

MAINTAINING HIGH PROFESSIONAL STANDARDS	
Summary statement: How does the document support patient care?	By providing a framework for investigating concerns in relation to staff so any issues impacting on patient care, delivery of service or staff wellbeing can be addressed
Staff/stakeholders involved in development: <i>Job titles only</i>	Head of Employee Relations Assistant Director of Human Resources Medical Director Joint Local Negotiating Committee
Division:	Organisational Development and Leadership
Department:	Human Resources
Responsible Person:	Medical Director
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For use by:	This policy applies to all Clinicians for whom UHS is their employer.
Purpose:	This policy sets out the commitment of University Hospitals Sussex NHS Foundation Trust to using a structured process for ensuring Medical and Dental Practitioners adhere to high professional and clinical standards and code of conduct
This document supports: <i>Standards and legislation</i>	ACAS Code of Practice Employment Legislation Maintaining High Professional Standards in the modern NHS (Department of Health, 2003)
Key related documents:	Health and Wellbeing Policy, Staff Discipline Policy, Grievance and Fair Treatment Policy, Dignity at Work Policy, Raising Concerns (Whistleblowing) Policy, UHS Child Protection and Safeguarding Procedures, Pan Sussex Child Protection & Safeguarding Procedures, UHS Trust Safeguarding Adults Policy, Pan Sussex Adult Safeguarding Procedures, Management and Investigation of Serious Incidents Requiring Investigation Policy, Revalidation and Appraisal Policy

Approved by: <i>Divisional Governance/Management Group</i>	Joint Local Negotiating Committee, Trust Executive Committee
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1. Purpose

- 1.1 University Hospitals Sussex NHS Foundation Trust is striving to create a culture where everyone is passionate about delivering exceptional quality every time and “where better never stops”.
- 1.2 Patient First is our Trust-wide approach to improving the quality of care for patients. One of the four strategic themes is Our People. This theme focuses on the importance of supporting our staff to deliver high quality services.
- 1.3 The Trust recognises there will be occasions when concerns are raised about staff. The purpose of this policy is to provide a framework for addressing these concerns in relation to medical and dental staff specifically.
- 1.4 This policy implements the framework set out in the “Maintaining High Professional Standards in the Modern NHS” issued under the direction of the Secretary of State for Health on 11 February 2005.
- 1.5 This policy is designed to comply with best practice, the ACAS Code of Practice and current legislation, including the Employment Act 2008 and the Equality Act 2010.
- 1.6 This policy should be read in conjunction with the Staff Discipline Policy, Grievance and Fair Treatment Policy, Dignity at Work Policy, Health and Wellbeing Policy and Raising Concerns (Whistle blowing) Policy.

2. Scope

2.1 Who is covered by the Policy

- 2.1.1 This policy applies to all Medical and Dental staff employed by the Trust, including Doctors in training, regardless of location.

2.2 When the Policy should be used

- 2.2.1 Where a concern is raised regarding the health, conduct or capability of a member of medical or dental staff.
- 2.2.2 Where, following investigation under this policy, a conduct issue that requires a formal hearing is identified, the Trusts Staff Discipline Policy should be used.
- 2.2.3 Where there is a concern regarding the health of a member of medical or dental staff, the Trust’s Health and Wellbeing Policy should be used. The management of a health issue must comply with the principles set out in this policy.

2.3 **Use of this Policy with other Investigation Processes**

- 2.3.1 There are a number of other investigation processes that can be instigated, both internal and external, for example Police investigation, Counter Fraud investigation, Serious Incident Requiring investigation or Safeguarding enquiry. Consideration should always be given as early as possible as to whether an alternative investigation process will enable a decision regarding next steps to be reached or whether a concurrent or subsequent investigation under this policy will be required. These decisions are complex and should be taken on an individual basis, with advice from Human Resources. It is important to consider as part of the decision making on whether to proceed with a concurrent investigation under this policy may prejudice any other investigation.

3. **Principles**

- 3.1 The management of performance is a continuous process, which is intended to identify problems. Numerous ways now exist in which concerns about a practitioner's performance can be identified; through which remedial and supportive action can be quickly taken before problems become serious or patients are harmed; and which need not necessarily require formal investigation or the resort to formal capability or disciplinary procedures.
- 3.2 Concerns about a doctor or dentist's conduct or capability can come to light in a wide variety of ways, for example:
- Concerns expressed by other NHS professionals, health care managers, students and non-clinical staff either by way of governance or 'whistle blowing'.
 - Review of performance against job plans, annual appraisal, revalidation
 - Monitoring of data on performance and quality of care
 - Clinical governance, risk management, clinical audit and other quality improvement activities
 - Complaints about care by patients or relatives of patients
 - Information from the regulatory bodies
 - Litigation following allegations of negligence
 - Information from the police or coroner
 - Court judgments

- 3.3 Unfounded and malicious allegations can cause lasting damage to a practitioner's reputation and career prospects. The Trust will investigate all allegations, including those made by relatives of patients, or concerns raised by colleagues, to establish the facts. It is essential that for all employees where there are concerns, these are investigated sensitively but robustly to avoid the negative impacts on those involved, patient care, delivery of service and on teams and colleagues. Where evidence is found that an allegation is malicious or vexatious this will be dealt with in line with the appropriate Trust policy.
- 3.4 This Policy outlines Trust procedures for handling serious concerns about an individual's conduct and capability. These procedures also allow for informal resolution of less serious problems. Informal resolution can provide a valuable opportunity to clarify expected standards of conduct or performance and identify any support required for the doctor to achieve these.
- 3.5 Concerns about the capability of doctors and dentists in training will be considered initially as training issues and the Postgraduate Dean will be involved from the outset.
- 3.6 The causes of adverse events should not automatically be attributed to the actions, failings or unsafe acts of an individual alone. Root cause analyses of individual adverse events frequently show that these are more broadly based and can be attributed to systems or organisational failures, or demonstrate that they are untoward outcomes which could not have been predicted and are not the result of any individual or systems failure. Each will require appropriate investigation and remedial actions.
- 3.7 **Representation**
- 3.7.1 Any practitioner covered by this policy and procedure may be accompanied by a work colleague or trade union/defence organisation representative. The right to be accompanied extends to any of the meetings or hearings referred to throughout the policy and procedures. The representative will be entitled to present a case on behalf of the practitioner, address the panel and question the management case and any witness evidence; a representative may not answer questions on behalf of the practitioner. In cases of serious misconduct or capability that may result in dismissal, this may be a legally qualified person employed or retained by a defence organisation or Trade Union.
- 3.8 **Confidentiality**
- 3.8.1 These procedures are subject to the EU General Data Protection Regulation (GDPR) and Freedom of Information Act 2005 and confidentiality will be maintained at all times. No press release will be issued, nor the name of the practitioner released, in regard to any investigation or hearing into disciplinary matters. The Trust will only confirm that an investigation or disciplinary hearing is underway. Personal data released to the case investigator for the purposes of the investigation must be relevant and take into account the seriousness of the matter under investigation.

3.9 **Support**

- 3.9.1 It is recognised that being involved in a formal process is likely to be distressing for the individual concerned and others within the team who may be affected. It is the responsibility of the case manager at all stages of the process to ensure that appropriate support is being offered to those involved.

4. **ACTION WHEN A CONCERN ARISES**

- 4.1 All serious concerns must be registered with the Medical Director who will ensure a Case Manager is appointed and that the Chief Executive and Deputy Chief Executive are kept informed.

- 4.2 The Medical Director will work with the Assistant Director of HR to decide the appropriate course of action in each case and appoint a case manager. The Medical Director will act as the case manager in cases involving Chiefs of Service but may delegate to a Chief of Service for other grades of staff.

4.3 **Restrictions on Practice or Exclusion**

- 4.3.1 When serious concerns are raised about a practitioner, the Trust will urgently consider whether it is necessary to place temporary restrictions on their practice. This might be to amend or restrict clinical duties, obtain undertakings or provide for the exclusion of the practitioner from the Trust. Section 5 of this document sets out the procedures for this.
- 4.3.2 The duty to protect patients and the quality and safety of care is paramount. If at any point in the process the case manager has reached a clear judgment that a practitioner is considered to be a serious potential danger to patients or staff, that practitioner must be referred to the regulatory body, whether or not the case has been referred to the NHS Resolution (formerly NCAS). The issue of whether or not to request an alert letter should also be considered. The Medical Director will hold early discussions with the GMC Liaison Officer to identify cases where an early referral is required.

4.4 **Case Manager assessment**

- 4.4.1 The case manager should review the issues and the facts available. If further facts are required before making a decision they should take steps to gain those facts as soon as possible and ideally within 24 – 48 hours of the concern being raised. This may include the collation of witness statements, reviewing patient records or other documentary evidence or speaking to those involved.
- 4.4.2 Once the initial fact finding is undertaken a decision should be taken as to whether an investigation is required. The case manager should consult with the Medical Director, designated HR lead and NHS Resolution in making their decision.

- 4.4.3 Where there are concerns about a doctor or dentist in training, the Postgraduate Dean should be involved as soon as possible.
- 4.4.4 If a decision is taken that informal resolution is appropriate NHS Resolution can still be involved until the problem is resolved. This may include NHS Resolution undertaking a formal clinical performance assessment of the practitioner when the practitioner, the Trust and NHS Resolution agree this could be helpful.
- 4.4.5 Other informal processes may include a structured discussion with the practitioner for the purpose of improving future performance and/or behaviour, which should be confirmed in writing with the practitioner. This is not a formal disciplinary sanction but provides a useful opportunity to clarify standards and expectations. It is also an opportunity to agree any support required to achieve the standards in future.
- 4.4.6 Where a decision is taken that a formal route is required the Chairman of the Board will designate a non-executive member “the designated board member” to oversee the case and ensure that momentum is maintained.

4.5 **Framework of investigation**

- 4.5.1 The case manager will determine the terms of reference (TOR) for an investigation. The terms of reference will define the purpose of the investigation, provide relevant background information to the case investigator and detail the documents to be passed to the case investigator at the outset of the investigation. The terms of reference should set appropriate boundaries for the investigation, including the timeframe.
- 4.5.2 The case manager will appoint an appropriately experienced or trained investigator. It is important that this individual has not been involved in the concern previously and can act independently to ascertain the facts and evidence as outlined in the terms of reference. The seniority of the case investigator will differ depending on the grade of practitioner involved in the allegation. The case investigator will usually work jointly with a member of the Human Resources team.
- 4.5.3 The case investigator is responsible for leading the investigation into any allegations or concerns about a practitioner, establishing the facts and reporting the findings and:
- will formally involve a senior member of the medical or dental staff where a question of clinical judgment is raised during the investigation process, if they themselves are not suitably qualified to consider this.
 - will ensure safeguards are in place throughout the investigation so that confidentiality is preserved as far as possible. Patient confidentiality must be maintained although the report will need to include sufficient details of the allegations. It is the responsibility of the case investigator to judge what and how, information should be gathered.

- will ensure there are sufficient written statements collected to establish a case prior to a decision about next steps, and, on aspects of the case not covered by written statements, ensure that oral evidence is given sufficient weight in the investigation report.
- 4.5.4 The case investigator will not make the decision on what action should be taken nor whether the practitioner should be excluded from work and may not be a member of any disciplinary or appeal panel relating to the case.
- 4.5.5 As soon as it has been decided by the case manager that an investigation is to be undertaken, the practitioner will be invited to a meeting to be notified of the concerns or allegations and the investigation process that will follow, if this has not already occurred during the fact finding stage. The terms of reference will be explained and where possible they will be informed of the case investigator at this stage.
- 4.5.6 The case manager is not required to give notice of this meeting as this meeting is purely to inform them of the intended investigation and explain the process that will be followed. The practitioner will be asked if they would like to bring someone with them (see section 3 on representation) however it will not be possible to unreasonably delay the meeting due to the unavailability of support.
- 4.5.7 There may be occasions where it is not possible to meet. If this is the case the practitioner will be given the option to discuss the concerns by phone or for them to be communicated in writing. This should only occur when all reasonable attempts to meet have been made by the case manager.
- 4.5.8 The practitioner will be sent a letter by the case manager, outlining the nature of the concerns and the investigation process within 7 calendar days of the meeting. The practitioner will also be given the opportunity to see documents passed to the case investigator as part of the terms of reference.
- 4.5.9 The case investigator has wide discretion on how the investigation is carried out, but in all cases the purpose of the investigation is to ascertain the facts keeping an open mind throughout. Investigations are not intended to secure evidence against the practitioner but to establish precisely what occurred. Information gathered during the course of the investigation may exonerate the practitioner, or provide a basis for an effective conclusion.
- 4.5.10 If, during the course of the investigation it transpires that the case involves more complex clinical issues than first anticipated, the case manager should consider whether to request assistance from an independent practitioner from another NHS Trust.
- 4.5.11 The case investigator should complete the investigation within four weeks of appointment and submit their report to the case manager within a further five days.

4.6 **Outcome of the investigation**

- 4.6.1 On receipt of the investigation report the case manager should consider whether there is sufficient information for them to make a decision on next steps. If there is not they can ask for additional enquiries to be carried out and the report resubmitted.
- 4.6.2 The case manager should discuss the report with their designated HR lead before making a decision. They may also discuss the report with NHS Resolution before making a decision, particularly where the decision is to proceed with formal action. They may also discuss the report with the GMC Liaison where it is considered a referral is required as an outcome of the investigation.
- 4.6.3 The case manager should make a decision within 10 working days of receipt of the report as to the next steps. If the decision is going to be delayed the case manager should notify the member of staff.
- 4.6.4 The report of the investigation should give the case manager sufficient information to make a decision on whether or not:
- there is a case of misconduct that should be dealt with under the Trust Disciplinary Policy
 - there are concerns about the practitioner's health that should be considered by the Occupational Health Department (see section 9)
 - there are concerns about the practitioner's performance that should be further explored by the NHS Resolution (see section 7)
 - restrictions on practice or exclusion from work should be considered (see section 5)
 - there are serious concerns that should be referred to the GMC or GDC
 - there are intractable problems and the matter should be put before a capability panel (see section 7)
 - there are concerns that can be managed informally
 - no further action is needed
 - there are organisational issues that need to be addressed
- 4.6.5 The case manager is responsible for communicating the outcome of the investigation to the member of staff. This would normally be done in a meeting but can be done over the telephone or in writing.

4.6.6 The outcome of the investigation and next steps should be confirmed in writing.

5. RESTRICTION OF PRACTICE AND EXCLUSION FROM WORK

5.1 The Trust will only use exclusion from work as an interim measure whilst action to resolve a problem is being considered. Where a practitioner is excluded, this will be for the minimum necessary period of time, up to but no more than four weeks at a time.

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

5.3 Where there are concerns about a doctor or dentist in training, the Postgraduate Dean will be involved as soon as possible.

5.4 Exclusion of clinical staff from the workplace is a temporary expedient. Under this policy, exclusion is a precautionary measure and not a disciplinary sanction. Exclusion from work is reserved for only the most exceptional circumstances:

- 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; and/or
- the continuing presence of the practitioner in the workplace would be detrimental to their health and wellbeing (this should be reviewed with advice from NHS Resolution and Occupational Health)

5.5 The level of action will depend on the nature and seriousness of the concerns and alternative ways to manage risks should be considered to avoid exclusion, such as

- Medical Director or Chief of Service 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. By mutual agreement the latter might include some formal retraining
- sick leave for the investigation of specific health problems

5.6 In cases relating to the capability of a practitioner, the Trust will consider whether an action plan to resolve the problem can be agreed with the practitioner.

5.7 If the nature of the problem and a workable remedy cannot be determined in this way, the case manager will seek to agree with the practitioner to refer the case to the NHS Resolution, which can assess the problem in more depth and give advice on any action necessary.

5.8 **Exclusion Process**

5.8.1 The Trust Chief Executive has overall responsibility for managing exclusion procedures and for ensuring that cases are properly managed.

5.8.2 The decision to exclude a practitioner or restrict his/her practice will not be taken lightly and the case will be discussed fully with the Chief Executive, the Medical Director, designated HR lead, NHS Resolution and other interested parties (such as the police where there are serious criminal allegations or the Counter Fraud and Security Management Service) prior to the decision to exclude a practitioner. In the rare cases where immediate exclusion is required, the above parties will discuss the case within forty-eight hours following exclusion, preferably at a case conference.

5.9 **The role of the Board and Designated Board Member**

5.9.1 The Trust Board should be made aware of exclusions under this procedure but should not be provided with any level of detail in the interests of confidentiality and in case they are required to be involved in subsequent formal processes.

5.9.2 The Chairman is responsible for designating one of the non-executive members as a designated Board member to oversee the case. They are the person, as stated in section 4.4.6, who oversees the process and ensures momentum is maintained.

5.9.3 The designated Board member responsibilities include:

- Receiving and reviewing updates on the exclusion and investigation process
- Considering any representations from the practitioner about his or her exclusion
- Considering any representations about the investigation

5.10 **Immediate Exclusion**

5.10.1 An immediate time limited exclusion may be necessary following:

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

5.10.2 Such an exclusion will allow a more measured consideration to be undertaken. This period will be used to carry out a preliminary situation analysis, to contact NHS Resolution for advice and to convene a case conference. The manager making the exclusion will explain why the exclusion is being made in broad terms. They will agree a date up to a maximum of two weeks away at which the practitioner should return to the workplace for a further meeting. The manager must advise the practitioner of their rights, including rights of representation. This should be followed up in writing to the practitioner.

5.11 **Formal Exclusion**

5.11.1 A formal exclusion may only take place after the case manager has first considered whether there is a case to answer and then considered, at a case conference, whether there is reasonable and proper cause to exclude. NHS Resolution must be consulted where formal exclusion is being considered. A risk assessment should be undertaken of the factors involved in the decision, including consideration of any information available through the preliminary fact finding or an update from the case investigator if an investigation has already commenced.

5.11.2 Formal exclusion of one or more clinicians will only be used where there is a need to protect the interests of patients or other staff pending the outcome of a full investigation of:

- allegations of misconduct
- concerns about serious dysfunctions in the operation of a clinical service
- substantial concerns about lack of capability or poor performance;

and/or

- the continuing presence of the practitioner in the workplace would be detrimental to their health and wellbeing (this should be reviewed with advice from NHS Resolution and Occupational Health).
- the presence of the practitioner in the workplace is likely to hinder the investigation.

5.11.3 The Trust will give full consideration as to whether the practitioner could continue in or, in cases of an immediate exclusion, return to work in a limited capacity or in an alternative, possibly non-clinical role, pending the resolution of the case.

5.11.4 When the practitioner is informed of the exclusion, a witness should be present and the nature of the allegations or areas of concern conveyed to the practitioner. The practitioner will be told of the reason(s) why formal exclusion is regarded as the only way to deal with the case. At this stage the practitioner will be given the opportunity to state their case and

propose alternatives to exclusion e.g. further training, referral to occupational health, referral to NHS Resolution with voluntary restriction.

- 5.11.5 The formal exclusion will be confirmed in writing as soon as is reasonably practicable and will state the effective date and time, duration, the content of the allegations, the terms of the exclusion and the action to follow. The practitioner will be advised that they may make representations about the exclusion to the designated board member at any time after receipt of the letter confirming the exclusion.
- 5.11.6 In cases when disciplinary procedures are being followed after the conclusion of an investigation, exclusion may be extended for four-week renewable periods until the completion of disciplinary procedures if a return to work is considered inappropriate. The exclusion should still only last for four weeks at a time and be subject to review. The exclusion should usually be lifted and the practitioner allowed back to work, with or without conditions placed upon the employment, as soon as the original reasons for exclusion no longer apply.
- 5.11.7 If the case manager considers that the exclusion will need to be extended over a prolonged period outside of his or her control, for example because of a police investigation, the case must be referred to NHS Resolution for advice as to whether the case is being handled in the most effective way and suggestions as to possible ways forward. However, even during this prolonged period the principle of four-week renewability will be adhered to.
- 5.11.8 If at any time after the practitioner has been excluded from work, 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 will lift the exclusion, and inform the relevant designated Board member, and make arrangements for the practitioner to return to work with any appropriate support as soon as practicable.

5.12 **Exclusion from Premises**

- 5.12.1 Practitioners should not be automatically barred from the premises upon exclusion from work. Case managers must always consider whether a bar from the premises is absolutely necessary. There are certain circumstances, however, where the practitioner should be excluded from the premises. This could be where there may be a danger of tampering with evidence, or where the practitioner may be a serious potential danger to patients or other staff. In other circumstances, however, there may be no reason to exclude the practitioner from the premises. The practitioner may want to retain contact with colleagues, take part in clinical audit and to remain up to date with developments in their field of practice or to undertake research or training.

5.13 **Keeping in Contact and Availability for Work**

- 5.13.1 As exclusion under this policy will normally be on full pay, the practitioner must remain available for work with the Trust during their normal contracted hours. The practitioner

must inform the case manager of any other organisation(s) with whom they undertake either voluntary or paid work and seek their case manager's consent to continuing to undertake such work or to take annual leave or study leave.

5.13.2 The practitioner should be reminded of these contractual obligations and given twenty-four hours' notice to return to work. In exceptional circumstances the case manager may decide that payment is not justified because the practitioner is no longer available for work e.g. abroad without agreement.

5.13.3 The case manager will make arrangements to ensure that the practitioner is kept in contact with colleagues on professional developments, and take part in Continuing Professional development (CPD) and clinical audit activities with the same level of support as other doctors or dentists in their employment. In some circumstances a mentor will be appointed for this purpose if a colleague is willing to undertake this role.

5.14 **Informing Other Organisations**

5.14.1 In cases where there is concern that the practitioner may be a danger to patients, the Trust will inform other organisations including the private sector, of any restriction on practice or exclusion and provide a summary of the reasons for it. Details of other Trusts (NHS and non-NHS) may be readily available from job plans, but where it is not the practitioner should supply them.

5.14.2 Failure to do so may result in further disciplinary action or referral to the relevant regulatory body, as the paramount interest is the safety of patients. If the Trust places restrictions on practice, the practitioner must agree not to undertake any work in that area of practice with any other Trust or other organization.

5.14.3 If the case manager believes that the practitioner is practising in other parts of the NHS or in the private sector in breach or defiance of an undertaking not to do so, the professional regulatory body and the Director of Public Health will be contacted to consider the issue of an alert letter.

5.15 **Informal Exclusion**

5.15.1 The Trust will ensure that no practitioner be excluded from work other than through these procedures. However, a practitioner can voluntarily agree to restrictions in practice for a limited period should they be in agreement that this would be supportive and appropriate in the circumstances.

5.16 **Regular Review**

5.16.1 The case manager will review the exclusion before the end of each four-week period and report the outcome to the Chief Executive and the Medical Director. The Medical Director will determine how much information is reported to the Board to enable the Board to satisfy itself that procedures are being followed, as board members may be required to sit

as members of a future disciplinary or appeal panel. Only the designated board member will be involved to any significant degree in each review.

5.16.2 Careful consideration will be given as to whether the interests of patients, other staff, the practitioner, and/or the needs of the investigative process continue to necessitate exclusion and give full consideration to the option of the practitioner returning to limited or alternative duties where practicable. This will be carried out through a review of the risk assessment undertaken at the time the original decision to exclude was made. The practitioner should be notified in writing of the outcome of the review.

5.16.3 The exclusion will usually be lifted and the practitioner allowed back to work, with or without conditions placed upon the employment, at any time the original reasons for exclusion no longer apply and there are no other reasons for exclusion. The exclusion will lapse and the practitioner will be entitled to return to work at the end of the four-week period if the exclusion is not actively reviewed.

5.16.4 The Trust will review its action before the end of each four-week period. After three exclusions, the case must be discussed with NHS Resolution.

5.16.5 Normally there should be a maximum limit of six months for exclusion, except for those cases involving criminal investigations of the practitioner concerned. Under these circumstances the Trust and NHS Resolution will actively review those cases every six months.

5.17 **Return to Work**

5.17.1 If it is decided that the exclusion should come to an end, there will be formal arrangements for the return to work of the practitioner. The Trust will make 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.

6. **CONDUCT HEARINGS AND DISCIPLINARY MATTERS**

6.1 Misconduct matters for doctors and dentists, as for all other staff groups, must be resolved locally. All issues regarding the misconduct of doctors and dentists will be dealt with under the Trust's Staff Discipline Policy. The Trust's Staff Discipline policy sets out a number of the examples of types of misconduct.

6.2 Any concerns relating to training grade practitioners must be discussed with the relevant educational supervisor and college or clinical tutor, together with the postgraduate dean at the outset.

6.3 In line with the principles of the Trust's Staff Discipline policy, as a general rule no employee should be dismissed for a first offence, unless it is one of gross misconduct.

6.4 **Conduct Hearing Process**

- 6.4.1 If the case manager has determined, following the process outlined in section 4, that a hearing is required this should be arranged in accordance with the process outlined in the Trust's Disciplinary policy.
- 6.4.2 Where a case involving issues of professional misconduct proceeds to a hearing under the Trust's Disciplinary policy, the panel must include a member who is medically qualified (in the case of doctors) or dentally qualified (in the case of dentists) and who is not currently employed by the Trust.

6.5 **Allegations of Criminal Acts**

- 6.5.1 Where the investigation establishes a suspected criminal action in the UK or abroad, this will be reported to the police. The Trust investigation will then only proceed in respect of those aspects of the case that are not directly related to the police investigation underway. The Trust will consult the police to establish whether an investigation into any other matters would impede their investigation. In cases of fraud, the Counter Fraud and Security Management Service will be contacted.
- 6.5.2 There are some criminal offences that, if proven, could render a practitioner unsuitable for employment. In all cases, the Trust, having considered the facts, will need to consider whether the practitioner poses a risk to patients or colleagues and whether their conduct warrants instigating an investigation and the exclusion of the practitioner.
- 6.5.3 The Trust will give serious consideration to whether the practitioner can continue in their job once criminal charges have been made. Bearing in mind the presumption of innocence, the Trust will consider whether the offence, if proven, is one that makes practitioner unsuitable for their type of work and whether, pending the trial, the practitioner can continue in their present job, should be allocated to other duties or should be excluded from work. This will depend on the nature of the alleged offence and advice should be sought from the Trust legal adviser. As a matter of good practice the Trust will explain the reasons for its actions to the practitioner, such reasons may include potential damage of reputation or standing of the Trust, in the eyes of others.
- 6.5.4 When the Trust has refrained from taking action pending the outcome of a court case, 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. Similarly where there are insufficient grounds for bringing charges or the court case is withdrawn, there may be grounds for considering police evidence where the allegations would, if proved, constitute misconduct. The Trust will bear in mind that the evidence has not been tested in court and it will be made clear to the police that any evidence they provide, and is used in the Trust's case will be made available to the practitioner concerned.

6.5.5 Where charges are dropped, the presumption is that the practitioner will be reinstated.

7. PROCEDURES FOR DEALING WITH ISSUES OF CAPABILITY

- 7.1 Initial consideration must be given as to whether any failure or concern in relation to a practitioner was due to broader systems or organisational failure. If so appropriate investigation and remedial action should be taken.
- 7.2 However, where the Trust considers, following an investigation in line with section 4, that there has been a clear failure by an individual to deliver an adequate standard of care, or standard of management, through lack of knowledge, ability or consistently poor performance, these will be described as capability issues.
- 7.3 Concerns about the capability of a practitioner may arise from a single incident or a series of events, reports or poor clinical outcomes. Advice from the NHS Resolution will help the Trust to reach a decision on whether the matter raises questions about the practitioner's capability as an individual (health problems, behavioural difficulties or lack of clinical competence) or whether there are other matters that need to be addressed.
- 7.4 Matters which may fall under the capability procedures include:
- out of date clinical practice
 - inappropriate clinical practice arising from a lack of knowledge or skills that puts patients at risk
 - incompetent clinical practice
 - inability to communicate effectively
 - inappropriate delegation of clinical responsibility
 - inadequate supervision of delegated clinical tasks
 - ineffective clinical team working skills
- 7.5 The Trust aims to resolve issues of capability (including clinical competence and health) through ongoing appraisal, assessment and support. Early identification of problems is essential to reduce the risk of serious harm to patients.
- 7.6 Any concerns about capability relating to a doctor or dentist in recognised training grades should be considered initially as a training issue and dealt with via the educational supervisor and clinical tutor, with close involvement of the postgraduate dean from the outset.

7.7 How to Proceed with Conduct and Capability Issues

- 7.7.1 It is inevitable that some cases will cover both conduct and capability issues and it is recognized that such cases can be complex and difficult to manage. If a case covers more than one category of problem, it will normally be combined under a capability hearing although there may be occasions where it is necessary to pursue a conduct issue separately. The Case Manager will decide on the most appropriate way forward having consulted with an NHS Resolution adviser and designated HR lead. If a practitioner considers the case has been wrongly classified as misconduct they should raise this with the Case Manager who will appoint an independent senior manager, who has not previously been involved, to review the decision. The practitioner can also raise this with the Designated Board member overseeing their case.

7.8 Capability and Ill Health

- 7.8.1 Capability may be affected by ill health. Arrangements for handling concerns about a practitioner's health are described in Section 9 of this policy.

7.9 The Pre-Hearing Process

- 7.9.1 When a report of the Trust investigation (as in section 4) has been received, the case manager will give the practitioner the opportunity to comment in writing on the factual content of the report produced by the case investigator. Comments in writing from the practitioner, including any mitigation, must normally be submitted to the case manager within ten working days of the date of receipt of the request for comments. In exceptional circumstances, for example in complex cases or due to annual leave, the deadline for comments from the practitioner will be extended.
- 7.9.2 The case manager 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 the NCAS. The case manager will need to consider urgently:
- whether action under section 5 of this policy is necessary to exclude the practitioner; or
 - to place temporary restrictions on their clinical duties
- 7.9.3 The case manager will also need to consider with advice from the designated HR lead and NHS Resolution whether the issues of capability can be resolved through local action, (such as retraining, counselling, performance review). If this action is not practicable for any reason the matter must be referred to NHS Resolution for it to consider whether an assessment should be carried out and to provide assistance in drawing up an action plan. The case manager will inform the practitioner concerned of the decision immediately and normally within ten working days of receiving the practitioner's comments.

- 7.9.4 NHS Resolution will assist the Trust to draw up an action plan designed to enable the practitioner to remedy any lack of capability that has been identified during the assessment. The Trust must facilitate the agreed action plan (which has to be agreed by the Trust and the practitioner before it can be actioned). There may be occasions when a case has been considered by NHS Resolution, but the advice of its assessment panel is that the practitioner's performance is so fundamentally flawed that no educational and/or organisational action plan has a realistic chance of success. In these circumstances, the case manager must make a decision, based upon the completed investigation report and informed by NHS Resolution advice, whether the case should be determined under the capability procedure. If so, a panel hearing will be necessary.
- 7.9.5 If the practitioner does not agree to the case being referred to NHS Resolution or an action plan is not agreed then a panel hearing will normally be necessary.
- 7.9.6 The case manager must notify the practitioner in writing of the decision to arrange a capability hearing. This notification should be made at least 20 working days before the hearing and include details of the allegations and the arrangements for proceeding including the practitioner's rights to be accompanied and copies of any documentation and/or evidence that will be made available to the capability panel. This period will give the practitioner sufficient notice to allow them to arrange for a companion to accompany them to the hearing if they so choose.
- 7.9.7 All parties must exchange any documentation, including witness statements, on which they wish to rely in the proceedings no later than ten working days before the hearing. In the event of late evidence being presented, the Trust will consider whether a new date should be set for the hearing.
- 7.9.8 Should either party request a postponement to the hearing the case manager is responsible for ensuring that a reasonable response is made and that time extensions to the process are kept to a minimum. The Trust retains the right, after a reasonable period (not normally less than 30 working days), to proceed with the hearing in the practitioner's absence, although the Trust will act reasonably in deciding to do so.
- 7.9.10 Should the practitioner's ill health prevent the hearing taking place the Trust will implement their usual absence procedures and involve the Occupational Health Department as necessary.
- 7.9.11 Witnesses who have made written statements as part of the investigation stage may, but 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 of the panel 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.

7.9.12 If witnesses required to attend the hearing choose to be accompanied, the person accompanying them will not be able to participate in the hearing.

7.10 **The Hearing Framework**

7.10.1 An Executive Director of the Trust will normally chair the capability hearing. The panel will comprise a total of three people; two members of the Trust Board, or senior staff appointed by the Board for the purpose of the hearing, and one member of the panel will be a medical or dental practitioner who is not employed by the Trust. As far as is reasonably possible or practical, no member of the panel or advisers to the panel will have been previously involved in the investigation. In the case of clinical academics a further panel member may be appointed as agreed between the Trust and the university.

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

- A senior member of staff from Human Resources, and
- A senior clinician from the same or similar clinical specialty as the practitioner concerned, but from another NHS Trust.
- A representative of a university if appropriate.

7.10.2 It is important that the panel is aware of the typical standard of competence required of the grade of doctor in question. If for any reason the senior clinician is unable to advise on the appropriate level of competence, a doctor from another NHS Trust in the same grade as the practitioner in question should be asked to provide advice.

7.10.3 The Trust will decide on the membership of the panel, however a practitioner may raise an objection to the choice of any panel member within five working days of notification. The case manager in consultation with the designated HR lead should consider the objections and will respond in writing to the practitioner prior to the hearing, stating the reasons for any decisions on the objections. Reasonable efforts will be made to agree the composition of the panel and only in exceptional circumstances should the hearing be postponed whilst the matter is resolved.

7.10.4 The hearing is not a court of law. Whilst the practitioner will be given every reasonable opportunity to present the case, the hearing will not be conducted in a legalistic or excessively formal manner.

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

7.10.6 A practitioner will be entitled to a representative as outlined in section 3. The representative will be entitled to present a case on behalf of the practitioner, address the panel and question the management case and any witness evidence.

7.10.7 The panel and its advisers, the practitioner and representative and the case manager will be present at all times during the hearing. Witnesses will be admitted only to give their evidence and answer questions and will then retire.

7.10.8 The procedure for the hearing will be as follows:

- The Case Manager presents the management case including calling any witnesses.
- The management witnesses will be called in turn:
 - Each witness will confirm their written statement and give any supplementary evidence
 - The case manager may ask additional questions
 - The practitioner or their representative can then question the witness
 - The panel may question the witness
 - The case manager may then ask further questions to clarify any point but will not be able to raise new evidence
- The Chair will give the opportunity for the practitioner and/or representative to ask any questions of the Case Manager on the management case
- The Chair shall invite the Case Manager to clarify any matters arising from the management case on which the panel requires further clarification.
- The practitioner and/or their representative shall present the practitioner's case, calling any witnesses. The above procedure for dealing with witnesses shall be undertaken for each witness in turn, at the end of which each witness shall be allowed to leave.
- The Chair will give the opportunity for the Case Manager to ask any questions of the practitioner on their case
- The Chair shall invite the practitioner and/or representative to clarify any matters arising from the practitioner's case on which the panel requires further clarification.
- The Chair shall invite the Case Manager to make a brief closing statement summarising the key points of the case.
- The Chair shall invite the practitioner and/or representative to make a brief closing statement summarising the key points of the practitioner's case. Where appropriate this statement may also introduce any grounds for mitigation.
- The panel shall then retire to consider its decision.

7.11 **Decisions of Panel**

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

- No action required
- Oral agreement that there must be an improvement in clinical performance within a specified time scale with a written statement of what is required and how it might be achieved. This will stay on the practitioner's record for six months
- Written warning that there must be an improvement in clinical performance within a specified time scale with a statement of what is required and how it might be achieved. This will stay on the practitioner's record for one year
- Final written warning that there must be an improvement in clinical performance within a specified time scale with a statement of what is required and how it might be achieved. This will stay on the practitioner's record for one year
- Termination of contract

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

7.11.3 A record of oral agreements and written warnings will be kept on the practitioner's personnel file but will be removed following the specified period. A record of all live and expired warning will be maintained by the Human Resources department. Further details of the circumstances in which warnings will be used are contained within the Trust's Staff Discipline policy.

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

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

7.12 **Appeals Procedure in Capability Cases**

7.12.1 The appeals procedure provides a mechanism for practitioners who disagree with the outcome of a decision to have an opportunity for the case to be reviewed. The appeal

panel will need to establish whether the Trust's procedures have been adhered to and that the panel in arriving at their decision acted fairly and reasonably based on:

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

7.12.2 It can also hear new evidence submitted by the practitioner and consider whether it might have significantly altered the decision of the original hearing. The appeal panel, however, will not rehear the entire case.

7.13 **The Appeals Hearing Framework**

7.13.1 The predominant purpose of the appeal is to ensure that a fair hearing was given to the original case and a fair and reasonable decision reached by the hearing panel. The appeal panel has the power to confirm or vary the decision made at the capability hearing, or order that the case is reheard. Where it is clear in the course of the appeal hearing that the proper procedures have not been followed and the appeal panel determines that the case needs to be fully re-heard, the Chair of the appeal panel shall have the power to instruct a new capability hearing.

7.13.2 Where the appeal is against dismissal, the practitioner will not be paid during the period of appeal, from the date of termination of employment. Should the appeal be upheld, the practitioner will be reinstated and pay backdated to the date of termination of employment. Where the decision is to rehear the case, the practitioner should also be reinstated, subject to any conditions or restrictions in place at the time of the original hearing, and paid backdated to the date of termination of employment.

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

- An independent member, trained in legal aspects of appeals, from an approved pool. This person will be appointed from the national list held by NHS Employers. This person is designated Chair
- The Trust's Chair or another non-executive director
- A medically qualified member (or dentally qualified if appropriate) who is not employed by the Trust

- In the case of clinical academics a further panel member may be appointed in accordance as agreed between the Trust and the university

7.13.4 The panel will normally call on others to provide specialist advice. This will include:

- A Consultant from the same specialty or subspecialty as the appellant, but from another Trust
- A senior member of HR, who has not previously been involved in the case

7.13.5 It is important that the panel is aware of the typical standard of competence required of the grade of doctor in question. If for any reason the senior clinician is unable to advise on the appropriate level of competence, a doctor from another NHS Trust in the same grade as the practitioner in question should be asked to provide advice.

7.13.6 The Trust will arrange the panel and notify the appellant as soon as possible and in any event within the recommended timetable.

7.13.7 Every effort will be made to ensure that the panel members are acceptable to the appellant. Where in rare cases agreement cannot be reached upon the constitution of the panel, the appellant's objections will be noted carefully. The Trust will act reasonably at all stages of the process.

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

- Appeal by written statement to be submitted to the designated appeal point (normally the Director of Human Resources) within 25 working days of the date of the written confirmation of the original decision
- Hearing to take place within 25 working days of date of lodging appeal
- Decision reported to the appellant and the Trust within five working days of the conclusion of the hearing

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

7.13.10 The appeal panel has the right to call witnesses of its own volition, but must notify both parties at least ten working days in advance of the hearing and provide them with a written statement from any such witness at the same time.

7.13.11 Exceptionally, where during the course of the hearing the appeal panel determines that it needs to hear the evidence of a witness not called by either party, then it shall have the

power to adjourn the hearing to allow for a written statement to be obtained from the witness and made available to both parties before the hearing reassembles.

- 7.13.12 If, during the course of the hearing, the appeal panel determines that new evidence needs to be presented, it should consider whether an adjournment is appropriate. Much will depend on the weight of the new evidence and its relevance.
- 7.13.13 The appeal panel has the power to determine whether to consider the new evidence as relevant to the appeal, or whether the case should be reheard, on the basis of the new evidence, by a capability hearing panel.
- 7.13.14 All parties will have all documents, including witness statements, from the previous capability hearing together with any new evidence.
- 7.13.15 The practitioner will be entitled to a representative in line with section 4. The representative will be entitled to present a case on behalf of the practitioner, address the panel and question the management case and any written evidence.
- 7.13.16 Both parties will present full statements of fact to the appeal panel and will be subject to questioning by either party, as well as the panel. When all the evidence has been presented, both parties shall briefly sum up. At this stage, no new information can be introduced. The appellant (or representative) can at this stage make a statement in mitigation.
- 7.13.17 The panel, after receiving the views of both parties, shall consider and make its decision in private.

7.14 Decision of Appeal Hearing Panel

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

7.15 Action Following Hearing

- 7.15.1 Records must be kept, including a report detailing the capability issues, the practitioner's defense or mitigation, the action taken and the reasons for it. These records must be kept confidential and retained in accordance with the capability procedure and the EU General Data Protection Regulation (GDPR). These records need to be made available to those with a legitimate call upon them, such as the practitioner, the Regulatory Body, or in response to a Direction from an Employment Tribunal.

8. Termination of Employment with Issues Unresolved

- 8.1 Where the practitioner leaves employment before procedures have been completed, the investigation must be taken to a final conclusion in all cases and formal proceedings must be completed wherever possible, whatever the personal circumstances of the employee concerned.
- 8.2 Every reasonable effort must be made to ensure the practitioner remains involved in the process. If contact with the employee has been lost, the Trust will invite them to attend any hearing by writing to both their last known home address and their registered address (the two will often be the same).
- 8.3 The Trust must make a judgment, based on the evidence available, as to whether the allegations about the practitioner's capability or conduct are upheld. If the allegations are upheld, the Trust must take appropriate action, such as requesting the issue of an alert letter and referral to the professional regulatory body, referral to the police, or the Protection of Children Act List (held by the Department for Education and Skills).
- 8.4 If an excluded practitioner or a practitioner facing capability proceedings becomes ill, they will be subject to the Trust's usual sickness absence procedures. The sickness absence procedures take precedence over other procedures and the Trust should take reasonable steps to give the practitioner time to recover and attend any hearing. Where the practitioner's illness exceeds four weeks, they must be referred to the Occupational Health Service. The Occupational Health Service will advise the Trust on the expected duration of the illness and any consequences it may have for the capability process and will also be able to advise on the practitioner's capacity for future work, as a result of which the Trust will consider retirement on health grounds. If the employment be terminated as a result of ill health, the investigation will still be taken to a conclusion and the Trust will form a judgment as to whether the allegations are upheld.
- 8.5 If, in exceptional circumstances, a hearing proceeds in the absence of the practitioner, for reasons of ill-health, the practitioner should have the opportunity to submit written submissions and/or have a representative attend in his absence.
- 8.6 Where a case involves allegations of abuse against a child, the guidance issued to the NHS in September 2000, called 'The Protection of Children Act 1999 – A Practical Guide to the Act for all Organisations Working with Children' gives more detailed information.

9. HANDLING CONCERNS ABOUT A PRACTITIONER'S HEALTH

- 9.1 A wide variety of health problems can have an impact on an individual's clinical performance. These conditions may arise spontaneously or be as a consequence of work place factors such as stress.

- 9.2 The principle for dealing with individuals with health problems is that, wherever possible and consistent with reasonable public protection, they should be treated, rehabilitated or re-trained kept in employment, rather than be lost from the NHS.
- 9.3 The management of individual's health problems will be taken forward under the Trust's Health and Wellbeing Policy, ensuring it is managed in line with the principles of this policy.
- 9.4 Wherever possible the Trust will attempt to continue to employ the practitioner provided this does not place patients or colleagues at risk.
- 9.5 Examples of action to take:
- sick leave for the practitioner (the practitioner to be contacted frequently on a pastoral basis to stop them feeling isolated)
 - remove the practitioner from certain duties
 - reassign the practitioner to a different area of work
 - arrange re-training or adjustments to the practitioner's working environment , with appropriate advice from NHS Resolution and/or deanery, under reasonable adjustment provision in the Equality Act 2010
- 9.6 At all times the practitioner will be supported by the Trust and the Occupational Health Service who will ensure that the practitioner is offered every available resource to return to practice where appropriate. The Trust will consider what reasonable adjustments could be made to their workplace conditions or other arrangements.

Examples of reasonable adjustment:

- Make adjustments to the premises
- Re-allocate some of the practitioner's duties to another
- Transfer the practitioner to an existing vacancy
- Alter the practitioner's working hours or pattern of work
- Assign the practitioner to a different workplace
- Allow absence for rehabilitation, assessment or treatment
- Provide additional training or retraining
- Acquire/modify equipment

- Modifying procedures for testing or assessment
 - Provide a reader or interpreter
 - Establish mentoring arrangements
- 9.7 In some cases retirement due to ill health may be necessary. Ill health retirement should be approached in a reasonable and considerate manner, in line with NHS Pensions Agency Advice. However, it is important that the issues relating to conduct or capability that have arisen are resolved, using the agreed procedures where appropriate.
- 9.8 Where there is an incident that points to a problem with the practitioner's health, the incident may need to be investigated to determine a health problem. If the report recommends Occupational Health Service (OHS) involvement, the nominated manager must immediately refer the practitioner to the OHS
- 9.9 NHS Resolution should be approached to offer advice on any situation and at any point where the Trust is concerned about a practitioner. Even apparently simple or early concerns should be referred, as these are easier to deal with before they escalate.
- 9.10 Occupational Health should provide recommendations to the practitioners manager and a meeting should be convened to agree a timetable of action and rehabilitation, where appropriate. The practitioner may wish to bring a support companion to these meetings. This could be a family member, a colleague or a trade union or defence association representative. All parties must maintain confidentiality at all times.
- 9.11 If a practitioner's ill health makes them a danger to patients and they do not recognise that, or are not prepared to co-operate with measures to protect patients, then exclusion from work will be considered and the professional regulatory body informed, irrespective of whether or not they have retired on the grounds of ill health.
- 9.12 In those cases where there is impairment of performance solely due to ill health, disciplinary procedures would only be considered in the most exceptional of circumstances, for example if the individual concerned refuses to co-operate with the Trust to resolve the underlying situation e.g. by repeatedly refusing a referral to the Occupational Health Service (OHS) or NHS Resolution. In these circumstances the procedures in Part Four should be followed.
- 9.13 There will 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 the Trust will refer the practitioner to the OHS for assessment as soon as possible. Unreasonable refusal to accept a referral to, or to co-operate with, the OHS under these circumstances, may give separate grounds for pursuing disciplinary action.

10. Monitoring, Review and Learning

- 10.1 The Employee Relations team will be responsible for maintaining records of actions taken undertaken under this policy. Themes of investigations will be reviewed on a bi-annual basis and outlined in an Employee Relations report to the Quality and Risk Committee, with appropriate action plans where required.
- 10.2 The Employee Relations team will maintain statistics of all actions undertaken under this policy and monitor trends by disability, age, gender, race and sexual orientation. This will be reported on a regular basis through the Diversity Matters group and appropriate action plans developed.
- 10.3 During investigations there will often be opportunities for organisational learning (e.g. changes to systems, processes or approaches). It is the responsibility of the case manager receiving the report to ensure that learning is appropriately disseminated in the organisation. The Employee Relations team will keep records of organisational learning identified and report this in the Employee Relations report.
- 10.4 Where the learning relates to the implementation of this or another Human Resource policy, the Employee Relations team will be responsible for carrying out a case review that will be used to inform management training, advice from Human Resources and any required changes to policies, procedures and guidance documents.

EQUALITY IMPACT ASSESSMENT (EIA)

PURPOSE OF EQUALITY IMPACT ASSESSMENT

The EIA should:

- Inform the Trust if any groups are, or could be, disadvantaged by a policy, service change or reconfiguration and if so clarify / propose action to mitigate that impact
- Enable the Trust to identify where policy changes may be needed to actively promote equality / inclusivity and eliminate inequality
- Remind all involved in delivering services of the determination to promote equality
- If advice is required in completing the EIA please contact an HR Advisor

Section 1 – About the Policy, Service, Function, Proposal, Strategy or Consultation

1.1 Name of Policy, Service, Function, Proposal, Strategy or Consultation	Maintaining High Professional Standards in the Modern NHS
1.2 Name of person completing this assessment (and role / department)	████████ Assistant Director of HR
1.3 Brief description of the aims of the policy, service, function, proposal, strategy or consultation? (include details of who is affected by, involved in and / or benefits from it)	This policy sets out the commitment of University Hospitals Sussex NHS Foundation Trust to using a structured process for ensuring Medical and Dental Practitioners adhere to high professional and clinical standards and code of conduct
1.4 Which department owns the policy, service, function, proposal, strategy or consultation?	Human Resources
1.5 Is responsibility for implementation of this policy, service, function, proposal, strategy or consultation shared with another agency / department?	Yes all Medical and Dental Practitioners
1.6 Does the policy, service, function, proposal, strategy or consultation have direct consequences or implications for service users and / or staff?	Yes

Section 2 – Equality Impacts

2.1 Have you made sure that the views of stakeholders, including key people likely to face exclusion have been influential in the development of the policy, service, function, proposal, strategy? (please indicate which)

External	Partners	Internal
Service user interviews	Care Quality Commission	Staff event
Focus Groups	Multi Agency event	Staff interviews
Public events	Joint Working group	Staff workshop/focus groups
Patient experience surveys	Regional Minority network	Management Board
Voluntary organizations	Regional equality forum	Trust Executive Committee ✓
Minority group events/forums	GP Practice groups	Diversity Matters Group
Carer Forum	Local/County Council	Staff Side reps ✓
LINKs	Equality and Human Rights Commission (EHRC)	Staff minority forums (e.g disability, BME, sexual orientation, religion/beliefs) (please state)
HOSC	Other NHS Trust (please identify below)	
On line forums		Trust Board
Local media		Staff survey results
Published research into minority needs		Annual General Meeting
Census data or other external demographic reports		Other (please state)
Comments:		

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Section 3 – Equality Analysis Template

To be used to analyse the effect of your policy or service on the protected groups in equality law, resulting in either:

- 1. removing or minimizing disadvantages suffered by people due to their protected group characteristics (i.e. age, race/ethnicity, disability, gender reassignment, sex, sexual orientation, marriage & civil partnership, pregnancy, maternity/paternity, religion/belief, human rights)*
- 2. taking steps to meet the needs of people from protected groups where these are different from the needs of other people*
- 3. no further action required*

Equality law protects people on the following grounds:	Is your policy or service relevant to this area of equality or human rights?		If relevant, is the effect positive or negative		Evidence of the effect (e.g. statistics, research, surveys, results of engagement, etc)	Is further action required?	
	Yes	No	Positive effect	Negative effect		*Yes	No
Age	X		X				X
Race / Ethnicity	X		X				X
Disability	X		X				X
Gender Reassignment	X		X				X
Sex	X		X				X
Sexual orientation	X		X				X
Marriage and Civil Partnership	X		X				X
Pregnancy, Maternity / Paternity	X		X				X
Religion / Belief	X		X				X
Human Rights	X		X				X

* Complete the following Equality Analysis Action Plan only for the equality grounds marked: *Yes further action required.

Equality Analysis Action Plan								
Equality grounds ticked *yes requiring further action:	Does your policy or service:			Any action taken to date	Action to be taken	Target date	Responsible Person(s)	Expected Outcome (including monitoring arrangements)
	Discriminate?	Eliminate discrimination or promote equality?	Promote good relations between groups?					
Age								
Race / Ethnicity								
Disability								
Gender Reassignment								
Sex								
Sexual orientation								
Marriage and Civil Partnership								
Pregnancy, Maternity/Paternity								
Religion / Belief								
Human Rights								

Equality Analysis: Care Group Manager / Head of Service to sign off			
Signed		Date	