Urology Services Inquiry

Urology Services Inquiry | 1 Bradford Court | Belfast BT8 6RB
T: 02890 251005 | E: info@usi.org.uk | W: www.urologyservicesinquiry.org.uk

Mr. Colin Weir
C/O
Southern Health and Social Care Trust
Craigavon Area Hospital,
68 Lurgan Road, Portadown,
BT63 5QQ

29 April 2022

Dear Mr. Weir,

Re: The Statutory Independent Public Inquiry into Urology Services in the Southern Health and Social Care Trust

Provision of a Section 21 Notice requiring the provision of evidence in the form of a written statement

I am writing to you in my capacity as Solicitor to the Independent Public Inquiry into Urology Services in the Southern Health and Social Care Trust (the Urology Services Inquiry) which has been set up under the Inquiries Act 2005 ('the Act').

I enclose a copy of the Urology Services Inquiry's Terms of Reference for your information.

You will be aware that the Inquiry has commenced its investigations into the matters set out in its Terms of Reference. The Inquiry is continuing with the process of gathering all of the relevant documentation from relevant departments, organisations and individuals. In addition, the Inquiry has also now begun the process of requiring individuals who have been, or may have been, involved in the range of matters which come within the Inquiry's Terms of Reference to provide written evidence to the Inquiry panel.

The Urology Services Inquiry is now issuing to you a Statutory Notice (known as a Section 21 Notice) pursuant to its powers to compel the provision of evidence in the form of a written statement in relation to the matters falling within its Terms of Reference.

The Inquiry is aware that you have held posts relevant to the Inquiry's Terms of Reference. The Inquiry understands that you will have access to all of the relevant information required to provide the witness statement required now or at any stage

Issued by Urology Services Inquiry on 29 April 2022. Annotated by the Urology Services Inquiry.

throughout the duration of this Inquiry. Should you consider that not to be the case, please advise us of that as soon as possible.

The Schedule to the enclosed Section 21 Notice provides full details as to the matters which should be covered in the written evidence which is required from you. As the text of the Section 21 Notice explains, you are required by law to comply with it.

Please bear in mind the fact that the witness statement required by the enclosed Notice is likely (in common with many other statements we will request) to be published by the Inquiry in due course. It should therefore ideally be written in a manner which is as accessible as possible in terms of public understanding.

You will note that certain questions raise issues regarding documentation. As you are aware the Trust has already responded to our earlier Section 21 Notice requesting documentation from the Trust as an organisation. However if you in your personal capacity hold any additional documentation which you consider is of relevance to our work and is not within the custody or power of the Trust and has not been provided to us to date, then we would ask that this is also provided with this response.

If it would assist you, I am happy to meet with you and/or the Trust's legal representative(s) to discuss what documents you have and whether they are covered by the Section 21 Notice.

You will also find attached to the Section 21 Notice a Guidance Note explaining the nature of a Section 21 Notice and the procedures that the Inquiry has adopted in relation to such a notice. In particular, you are asked to provide your evidence in the form of the template witness statement which is also enclosed with this correspondence. In addition, as referred to above, you will also find enclosed a copy of the Inquiry's Terms of Reference to assist you in understanding the scope of the Inquiry's work and therefore the ambit of the Section 21 Notice.

Given the tight time-frame within which the Inquiry must operate, the Chair of the Inquiry would be grateful if you would comply with the requirements of the Section 21 Notice as soon as possible and, in any event, by the date set out for compliance in the Notice itself.

Issued by Urology Services Inquiry on 29 April 2022. Annotated by the Urology Services Inquiry.

If there is any difficulty in complying with this time limit you must make application to the Chair for an extension of time before the expiry of the time limit, and that application must provide full reasons in explanation of any difficulty.

Finally, I would be grateful if you could acknowledge receipt of this correspondence and the enclosed Notice by email to Personal Information redacted by the USI.

Please do not hesitate to contact me to discuss any matter arising.

Yours faithfully

Personal Information redacted by the USI

Anne Donnelly
Solicitor to the Urology Services Inquiry

Tel: Personal Information redacted by the USI
Mobile: Personal Information redacted by the USI

Issued by Urology Services Inquiry on 29 April 2022. Annotated by the Urology Services Inquiry.

THE INDEPENDENT PUBLIC INQUIRY INTO
UROLOGY SERVICES IN THE
SOUTHERN HEALTH AND SOCIAL CARE TRUST

Chair's Notice

[No 33 of 2022]

pursuant to Section 21(2) of the Inquiries Act 2005

WARNING

If, without reasonable excuse, you fail to comply with the requirements of this Notice you will be committing an offence under section 35 of the Inquiries Act 2005 and may be liable on conviction to a term of imprisonment and/or a fine.

Further, if you fail to comply with the requirements of this Notice, the Chair may certify the matter to the High Court of Justice in Northern Ireland under section 36 of the Inquiries Act 2005, where you may be held in contempt of court and may be imprisoned, fined or have your assets seized.

TO:

Mr. Colin Weir
C/O
Southern Health and Social Care Trust
Headquarters
68 Lurgan Road
Portadown
BT63 5QQ

Issued by Urology Services Inquiry on 29 April 2022. Annotated by the Urology Services Inquiry.

IMPORTANT INFORMATION FOR THE RECIPIENT

1. This Notice is issued by the Chair of the Independent Public Inquiry into Urology Services in the Southern Health and Social Care Trust on foot of the powers given to her by the Inquiries Act 2005.

2. The Notice requires you to do the acts set out in the body of the Notice.

3. You should read this Notice carefully and consult a solicitor as soon as possible about it.

4. You are entitled to ask the Chair to revoke or vary the Notice in accordance with the terms of section 21(4) of the Inquiries Act 2005.

5. If you disobey the requirements of the Notice it may have very serious consequences for you, including you being fined or imprisoned. For that reason you should treat this Notice with the utmost seriousness.

WITNESS STATEMENT TO BE PRODUCED

TAKE NOTICE that the Chair of the Independent Public Inquiry into Urology Services in the Southern Health and Social Care Trust requires you, pursuant to her powers under section 21(2)(a) of the Inquiries Act 2005 ('the Act'), to produce to the Inquiry a Witness Statement as set out in the Schedule to this Notice by **noon on 10th June 2022.**

APPLICATION TO VARY OR REVOKE THE NOTICE

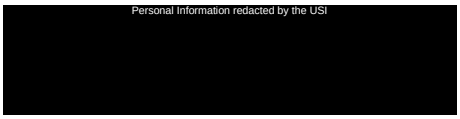
AND FURTHER TAKE NOTICE that you are entitled to make a claim to the Chair of the Inquiry, under section 21(4) of the Act, on the grounds that you are unable to comply with the Notice, or that it is not reasonable in all the circumstances to require you to comply with the Notice.

If you wish to make such a claim you should do so in writing to the Chair of the Inquiry at: **Urology Services Inquiry, 1 Bradford Court, Belfast, BT8 6RB** setting out in detail the basis of, and reasons for, your claim by **noon on 3rd June 2022**.

Issued by Urology Services Inquiry on 29 April 2022. Annotated by the Urology Services Inquiry.

Upon receipt of such a claim the Chair will then determine whether the Notice should be revoked or varied, including having regard to her obligations under section 21(5) of the Act, and you will be notified of her determination.

Dated this day 29th April 2022

Signed: 

Christine Smith QC

Chair of Urology Services Inquiry

Issued by Urology Services Inquiry on 29 April 2022. Annotated by the Urology Services Inquiry.

SCHEDULE
[No 33 of 2022]

General

1. Having regard to the Terms of Reference of the Urology Services Inquiry, please provide a narrative account of your involvement in or knowledge of all matters falling within the scope of sub-paragraph (e) of those Terms of Reference concerning, inter alia, 'Maintaining High Professional Standards in the Modern HPSS' ('MHPS Framework') and the Trust's investigation. This should include an explanation of your role, responsibilities and duties, and should provide a detailed description of any issues raised with you, meetings attended by you, and actions or decisions taken by you and others to address any concerns. It would greatly assist the inquiry if you would provide this narrative in numbered paragraphs and in chronological order using the form provided.

2. Provide any and all documents within your custody or under your control relating to paragraph (e) of the Terms of Reference except where those documents have been previously provided to the Inquiry by the SHSCT. Provide or refer to any documentation you consider relevant to any of your answers, whether in answer to Question 1 or to the questions set out below. If you are in any doubt about the documents previously provided by the SHSCT you may wish to contact the Trust's legal advisors or, if you prefer, you may contact the Inquiry.

3. Unless you have specifically addressed the issues in your reply to Question 1 above, answer the remaining questions in this Notice. If you rely on your answer to Question 1 in answering any of these questions, specify precisely which paragraphs of your narrative you rely on. Alternatively, you may incorporate the answers to the remaining questions into your narrative and simply refer us to the relevant paragraphs. The key is to address all questions posed. If there are questions that you do not know the answer to, or where someone else is better placed to answer, please explain and provide the name and role of that other person. When answering the questions set out below you will need to equip yourself with a copy of *Maintaining High Professional Standards in the Modern*

HPSS' framework ('MHPS') and the '*Trust Guidelines for Handling Concerns about Doctors' and Dentists' Performance' ('Trust Guidelines').*

Policies and Procedures for Handling Concerns

4. Were you aware of the '*Trust Guidelines for Handling Concerns about Doctors' and Dentists' Performance'* published 23 September 2010? If so, when you were aware of concerns, did you implement those Guidelines? If so, set out in full how you did so on every occasion and with whom you engaged. If not, why not?

5. If you were not aware of the '*Trust Guidelines for Handling Concerns about Doctors' and Dentists' Performance'* what was your understanding of the reporting of concerns relating to other doctors practices? How, if at all, did this understanding inform your response to concerns you were aware of regarding urology services?

6. In your roles as Clinical Manager and Case Investigator what, if any, training or guidance did you receive with regard to:

    I. The MHPS framework*;*
    II. The Trust Guidelines; and
    III. The handling of performance concerns generally.

7. Specifically, what if any training or guidance did you receive with regard preliminary enquiries under Section I paragraph 15 of MHPS or the undertaking of an initial verification of the issues raised under paragraph 2.4 of the Trust Guidance and the conduct of investigations under Section I paragraph 31 of MHPS and the Trust Guidelines.

8. Outline how you understood the role of Clinical Manager and Case Investigator was to relate to and engage with the following individuals under the MHPS Framework and the Trust Guidelines:

    I. Case Manager;
    II. Chief Executive;
    III. Medical Director;
    IV. Designated Board member,
    V. The clinician who is the subject of the investigation; and
    VI. Any other relevant person under the MHPS framework and the Trust Guidelines, including any external person(s) or bodies.

9. With regard to Section I paragraph 29 of the MHPS framework, what processes or procedures existed within the Trust to provide a clear audit route for initiating and tracking the progress of investigations, their costs and resulting actions? Who was responsible for ensuring such processes were in place and what role, if any, did you have as the Case Manager in relation to these matters?

Handling of Concerns relating to Mr O'Brien

10. In respect of concerns raised regarding Mr Aidan O'Brien:
    I. When and in what circumstances did you first become aware of concerns, or received information which could have given rise to concerns?
    II. If different, also state when you became aware that there would be an investigation into matters concerning the performance of Mr O'Brien?
    III. Outline all steps taken to address those concerns;
    IV. In respect of any attempts to resolve concerns informally in accordance with Section I Paragraph 15 of MHPS, outline the steps you took, any advice you received or discussions concerning informal resolution and any engagement you had with Mr O'Brien to attempt to informally resolve concerns; and
    V. If you did not implement or apply MHPS and/or the Trust Guidelines notwithstanding the existence of performance concerns, explain why not.

11. Outline when and in what circumstances you became aware of the following Serious Adverse Incident investigations and that they raised concerns about Mr O'Brien, and outline what action you took upon becoming aware of those concerns:

    I. Patient "[Patient 10]" ([Personal Information redacted by the USI]),
    II. The care of five patients [Personal Information redacted by USI] and
    III. Patient "[Patient 16]" ([Personal Information redacted by the USI]).

12. When, and in what circumstances, did you first became aware of concerns, or receive any information which could have given rise to a concern that Mr O'Brien may have been affording advantageous scheduling to private patients.

13. What steps did you take to prepare your preliminary report for consideration by the Case Manager and Case Conference on 26th January 2017? What action did you take as Mr O'Brien's clinical manager to assess the substance or accuracy of the concerns, whether to verify or refute them?

14. What role or input, if any, did you have in relation to the formulation of the Terms of Reference for the formal investigation to be conducted under the MHPS Framework and Trust Guidelines in relation to Mr O'Brien? Outline all steps you took, information you considered and advice you received when finalising those Terms. Describe the various iterations or drafts of the Terms of Reference and the reasons for any amendments, and indicate when and in what manner these were communicated to Mr O'Brien.

15. With regard to the Return to Work Plan / Monitoring Arrangements dated 9th February 2017, see copy attached, please outline your role, as well as the role of any other responsible person, in monitoring Mr O'Brien's compliance with the Return to Work Plan and provide copies of all documentation showing the discharge of those roles with regard to each of the four concerns identified, namely:

    I. Un-triaged referrals to Mr Aidan O'Brien;
    II. Patient notes tracked out to Mr Aidan O'Brien;
    III. Undictated patient outcomes from outpatient clinics by Mr Aidan O'Brien;

and

IV. The scheduling of private patients by Mr Aidan O'Brien

16. What is your understanding of the period of time during which this Return to Work Plan/Monitoring Arrangements remained in operation, and which person(s) were responsible for overseeing its operation in ay respect?

17. With specific reference to each of the concerns listed at (15) (i)-(iv) above, indicate if any divergences from the Return to Work Plan were identified and, if so, what action you took to address and/or escalate same.

18. Explain the circumstances which led to you being asked to step down from your role as Case Investigator in February 2017.

19. Outline what, if any, ongoing involvement you had in relation to matters relevant sub-paragraph (e) to the Terms of Reference of the Urology Services Inquiry after February 2017.

MHPS Determination

20. On 28 September 2018, Dr Ahmed Khan, as Case Manager, made his Determination with regard to the investigation into Mr O'Brien. This Determination, inter alia, stated that the following actions take place:

    I. The implementation of an Action Plan with input from Practitioner Performance Advice, the Trust and Mr O'Brien to provide assurance with monitoring provided by the Clinical Director;
    II. That Mr O'Brien's failing be put to a conduct panel hearing; and
    III. That the Trust was to carry out an independent review of administrative practices within the Acute Directorate and appropriate escalation processes.

With specific reference to each of the determinations listed at (I) – (III) above address,

A. Who was responsible for the implementation of each of these actions?
B. To the best of your knowledge, outline what steps were taken to ensure that each of these actions were implemented; and
C. If applicable, what factors prevented that implementation.
D. If the Action Plan as per 27(I) was not implemented, fully outline what steps or processes, if any, were put in place to monitor Mr O'Brien's practice, and identify the person(s) who were responsible for these? Did these apply to all aspects of his practice and, if not, why not?

Implementation and Effectiveness of MHPS

21. Having regard to your experience as Clinical Manager and Case Investigator, in relation to the investigation into the performance of Mr Aidan O'Brien, what impression have you formed of the implementation and effectiveness of MHPS and the Trust Guidelines both generally, and specifically as regard the case of Mr O'Brien?

22. Consider and outline the extent to which you feel you can effectively discharge your role as Clinical Manager and Case Investigator under MHPS and the Trust Guidelines in the extant systems within the Trust and what, if anything, could be done to strengthen or enhance that role.

23. Having had the opportunity to reflect, outline whether in your view the MHPS process could have been better used in order to address the problems which were found to have existed in connection with the practice of Mr O'Brien.

NOTE:

By virtue of section 43(1) of the Inquiries Act 2005, "document" in this context has a very wide interpretation and includes information recorded in any form. This will include, for instance, correspondence, handwritten or typed notes, diary entries and minutes and memoranda. It will also include electronic documents such as emails, text communications and recordings. In turn, this will also include relevant email and text communications sent to or from personal email accounts or telephone numbers, as well as those sent from official or business accounts or numbers. By virtue of section 21(6) of the Inquiries Act 2005, a thing is under a person's control if it is in his possession or if he has a right to possession of it.

Urology Services Inquiry

UROLOGY SERVICES INQUIRY

USI Ref: Notice 33 of 2022
Date of Notice: 29th April 2022

Witness Statement of: Colin Weir

I, Colin Weir, will say as follows:-

General

[1] Having regard to the Terms of Reference of the Urology Services Inquiry, please provide a narrative account of your involvement in or knowledge of all matters falling within the scope of sub-paragraph (e) of those Terms of Reference concerning, inter alia, 'Maintaining High Professional Standards in the Modern HPSS' ('MHPS Framework') and the Trust's investigation. This should include an explanation of your role, responsibilities and duties, and should provide a detailed description of any issues raised with you, meetings attended by you, and actions or decisions taken by you and others to address any concerns. It would greatly assist the inquiry if you would provide this narrative in numbered paragraphs and in chronological order using the form provided.

1. There is a significant overlap between this question and some of my answer to Question 1 of my first Section 21 Notice (No.22 of 2022). However, there are also a number of discrete additional points of relevance (e.g., regarding my training). I therefore consider it necessary to repeat in large part the account given previously, albeit with these additional points included in it.

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

2. On 9 January 2017 I received a copy of correspondence from Dr Wright, Medical Director, to Mr. O'Brien *[20170109 - E letter to aob 30 Dec located in Relevant to PIT – Evidence Added or Renamed after 19 01 2022 – Evidence No 77- No 77 Colin Weir CD].* This was a formal written notification of immediate exclusion and investigation under the Maintaining High Professional Standards Framework (MHPS). Around this time (albeit that I don't have a precise date or written or email notification or record) I was asked to be the Case Investigator under MHPS, with Dr Ahmed Khan being the Case Manager.

3. This correspondence from the Medical Director, Dr Wright, mentioned, *inter alia,* the lengthy period of time to triage referrals, the large number of untriaged cases (318), an ongoing SAI, a backlog on over 60 undictated clinics, and that some patient notes had been taken home. *[20170109 - E letter to aob 30 Dec located in Relevant to PIT – Evidence Added or Renamed after 19 01 2022 – Evidence No 77- No 77 Colin Weir CD].*

4. Further documents included and sent to me were Terms of Reference for the investigation into Mr. O'Brien's practice as well as correspondence from Dr Khan regarding the investigation. [20170118 - E MHPS Investigation - strictly confidential located in Relevant to PIT – Evidence Added or Renamed after 19 01 2022 – Evidence No 77- No 77 Colin Weir CD]

5. On 24 January 2017 I met Mr. O'Brien. I was meeting him in my capacity as Case investigator. Mrs. Siobhan Hynds provided HR support and was at the meeting. Mr. O'Brien was accompanied by his son.

6. This meeting was to review the situation with Mr. O'Brien. On that date the position was that there were 783 GP referrals not triaged and 668 patients with no outcome dictated or recorded. There were 307 sets of patient notes returned from Mr. O'Brien's home with 88 tracked to Mr. O'Brien's office and 13 sets of notes missing.

7. There is a full documented record of this meeting. [20170126 - E Preliminary report from case investigatoe 26 jan 17 – final located in Relevant to PIT – Evidence Added or Renamed after 19 01 2022 – Evidence No 77- No 77 Colin Weir CD]

8. It was noted that an early initial review had revealed that a number of patients awaiting triage had needed upgraded to red flag status or from routine to urgent.

9. Mr. O'Brien was given an opportunity to state his case so that we might better understand the current situation and how I could recommend actions that might help resolve things and allow Mr. O'Brien to return to work within restrictions or stipulations on his practice. He referred, *inter alia*, to workload pressures, additional operating sessions, inequitable workload compared to his colleagues, and high numbers of hours worked.

10. He stated the exclusion was stressful, that he was keen to return to work, and would be accepting of working with acceptable time frames for clinics, operating lists, and dictation to be complete at the end of every clinic. He was open to our suggestion of regular monitoring of the above. He stated that being excluded from work was stressful. [*20170126 - E Preliminary report from case investigatoe 26 jan 17 – final located in Relevant to PIT – Evidence Added or Renamed after 19 01 2022 – Evidence No 77- No 77 Colin Weir CD]* Preliminary report from Case Investigation, point 4.0.

11. On 26 January 2017 I was present at an Oversight Committee meeting in relation to Mr. O'Brien which was chaired by Dr Wright, Medical Director, with Vivienne Toal, Human Resources Director, Assistant Director, Simon Gibson,

Dr Khan, Case Manager, Siobhan Hynds, HR representative, and myself as Case investigator.

12. During this meeting we noted the position (as per para 6 above). There was discussion in which I advocated for Mr. O'Brien in my role as clinical director. I felt as a surgeon he was “good, precise and caring”. The committee asked my view on Mr. O'Brien’s return to work. I proposed and advocated for a return to work with either restricted duties or robust monitoring of Mr. O'Brien’s practice. Given Mr. O'Brien’s responses to my investigation and from personal experience of his clinical skills at clinics and the operating department and with monitoring I felt reassured that a return to work was not a risk to patient safety I would not have advocated for this without my knowledge of Mr. O'Brien’s clinical skills, Mr. O'Brien’s reassurances and monitoring. The committee decided that the operational team would undertake this process. The committee agreed with the view with strict compliance required in relation to Trust policies in relation to triage, note keeping, storage of medical records and private practice.

13. On or before 11 April 2017, I was informed verbally that I was no longer lead investigator for Mr. O'Brien’s case. I understood (but had no email or written communication regarding same) that after advice from the Trust’s appointed legal advisors they considered there was a conflict in that the same individual was both a case investigator and clinical director for the same Consultant (Mr. O'Brien). I was later emailed to invite me to give an account to the new lead investigator, Dr Neta Chada. [*20170607- E Witness Statement located in Relevant to PIT – Evidence Added or Renamed after 19 01 2022 – Evidence No 77- No 77 Colin Weir CD*]

14. On 24 May 2017 I duly met Dr Chada, lead investigator for Mr. O’Brien’s case under MHPS. I gave her an account of my involvement to date in my role as Clinical Director.

Urology Services Inquiry

15. In terms of relevant training:

a. I note that I received emails on 3 February 2017 inviting me and others to NCAS (National Clinical Assessment Service) Investigator training but I could not attend as I was surgeon of the week.

b. I also recall a half day of one-to-one training or update session from NCAS officer, Grainne Lynn, in early 2017. I am currently trying to find a record of this.

c. I note that I had NCAS training previously, recorded in my personal 'e diary' as, 'Managing Concerns. NCAS. Office Suite 3, Lisburn Square House, Haslem's Lane, Lisburn. 14th October 2014, 10-4:30pm'.

d. I attended a full day or half day course on MHPS provided by NCAS in Craigavon Area Hospital 24 September 2010. *[1. annexe e NCAS located in S21 33 of 2022 Attachments]*

[2] Provide any and all documents within your custody or under your control relating to paragraph (e) of the Terms of Reference except where those documents have been previously provided to the Inquiry by the SHSCT. Provide or refer to any documentation you consider relevant to any of your answers, whether in answer to Question 1 or to the questions set out below. If you are in any doubt about the documents previously provided by the SHSCT you may wish to contact the Trust's legal advisors or, if you prefer, you may contact the Inquiry.

[3] Unless you have specifically addressed the issues in your reply to Question 1 above, answer the remaining questions in this Notice. If you rely on your answer to Question 1 in answering any of these questions, specify precisely which paragraphs of your narrative you rely on. Alternatively, you may incorporate the

answers to the remaining questions into your narrative and simply refer us to the relevant paragraphs. The key is to address all questions posed. If there are questions that you do not know the answer to, or where someone else is better placed to answer, please explain and provide the name and role of that other person. When answering the questions set out below you will need to equip yourself with a copy of *Maintaining High Professional Standards in the Modern* HPSS' framework ('MHPS') *and the '*Trust Guidelines for Handling Concerns about Doctors' and Dentists' Performance' ('Trust Guidelines').

Policies and Procedures for Handling Concerns

[4] Were you aware of the '*Trust Guidelines for Handling Concerns about Doctors' and Dentists' Performance'* published 23 September 2010? If so, when you were aware of concerns, did you implement those Guidelines? If so, set out in full how you did so on every occasion and with whom you engaged. If not, why not?

16. I was aware of Trust Guidelines for Handling Concerns about Doctors' and Dentists' performance. This familiarity was acquired in my role as Foundation Programme Director and Associate Medical Director for Education and Training. I gave presentations to Consultants who were in educational or clinical supervision roles on this in conjunction with NIMDTA (the Northern Ireland Medical and Dental Training Agency). For example, I have a Keynote presentation written in 2013 covering many aspects of this under the title 'Doctors in Difficulty'. *[2. annexe f located in S21 33 of 2022 Attachments]*

17. The processes initiated with Mr. O'Brien happened without my decision or involvement. I was directed in investigating the concerns by the Terms of Reference, and by Dr Wright's letter to Mr. O'Brien of 6 January 2017 (mentioned above).

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18. I was aware that there was a formal MHPS process of investigation led by a case manager and that I was the case investigator.

19. Under 2.7 of the MHPS Guidelines (and as noted above), a local action plan was suggested by me and agreed by the Oversight Committee. This plan recorded close monitoring of the areas of concern and was agreed by the committee.

20. By the time I was involved there had already been screening process and a decision to undertake a formal process. A case manager was appointed, Dr Khan, an HR Case Manager, Siobhan Hynds, and a Case investigator, me.

21. A formal meeting took place on 24 January 2017 and reported to the Oversight Committee on 26 January 2017 (see my narrative response to Question 1 above at paras 5-11).

[5] If you were not aware of the '*Trust Guidelines for Handling Concerns about Doctors' and Dentists' Performance'* what was your understanding of the reporting of concerns relating to other doctors practices? How, if at all, did this understanding inform your response to concerns you were aware of regarding urology services?

22. I was aware of the Guidelines, as outlined above

[6] In your roles as Clinical Manager and Case Investigator what, if any, training or guidance did you receive with regard to:

I. **The MHPS framework;**

II. **The Trust Guidelines; and**

III. **The handling of performance concerns generally.**

23. The training sessions outlined in answer to Question 4 above covered the MHPS framework, the Trust Guidelines, and performance concerns. I would also refer to the training described in my answer to Question 1 above (at para 15).

[7] Specifically, what if any training or guidance did you receive with regard preliminary enquiries under Section I paragraph 15 of MHPS or the undertaking of an initial verification of the issues raised under paragraph 2.4 of the Trust Guidance and the conduct of investigations under Section I paragraph 31 of MHPS and the Trust Guidelines.

24. My training is explained in my responses to Question 1 (para 15) and Question 4 (para 16) above. I cannot recall anything more specific than covering the fundamental processes of preliminary enquiries and the processes also covered in the Trust Guidelines for Handling Concerns about Doctors' and Dentists' Performance *[ref annexe g located in S21 33 of 2022 Attachments*]

[8] Outline how you understood the role of Clinical Manager and Case Investigator was to relate to and engage with the following individuals under the MHPS Framework and the Trust Guidelines:

I. **Case Manager;**

II. **Chief Executive;**

III. Medical Director;

IV. Designated Board member,

V. The clinician who is the subject of the investigation; and

VI. Any other relevant person under the MHPS framework and the Trust Guidelines, including any external person(s) or bodies.

25. The role of Clinical Manager (meaning the relevant Clinical Director in the organisation) was a completely separate role from Case Investigator. Aspects and functions may have overlapped but it was entirely reasonable, and in hindsight preferable (and in fact later did happen), that the roles were undertaken by separate individuals.

26. To answer from the perspective of a Clinical Manager / Clinical Director (i.e., my role), I would expect to be made aware of investigations that had bypassed me (which is entirely possible under the Trust Guidelines). I would expect an oversight group or committee to inform me, as CD, of any outcomes that would impact on the service provision, patient safety concerns, or that would change, or place strictures upon, the working practices of a Consultant whom I was managing at that level. I would not have expected the Chief Executive to be involved unless they were a member of the oversight group. Similarly, with the designated board member. The Medical Director could have approached me directly in my role as CD but it is more likely that any such approach would have been through the Associate Medical Director. However, any of these routes of communication would be possible, with flexibility being the key in these circumstances.

27. The Case Manager, I understood, was the lead of the MHPS process. As Case Investigator I was given Terms of Reference for an investigation *[20170207 - E TOR for investigation located in Relevant to PIT – Evidence Added or Renamed after 19 01 2022 – Evidence No 77- No 77 Colin Weir CD].* My report of any

investigation was to be delivered to the Case Manager, who then makes determinations on actions. As Clinical Manager was a separate role, I would expect any final outcomes and action plans that impacted upon service delivery or patient safety to be forwarded to me by the Case Manager. I would expect, as a Clinical Manager, to be asked to be interviewed, if relevant, as part of an investigation.

28. As either Case Investigator or Clinical Manager I would have no direct contact with the Chief Executive; there would be other lines of hierarchy. For MHPS this would be Case Manager to Medical Director to Chief Executive. For Clinical Manager this would usually be to Associate Medical Director to Director of Acute Services to Chief Executive and also via the Senior Management Team.

29. The Medical Director makes the determination to investigate on a formal basis under MHPS. An oversight committee chaired by the MD could have the Case Investigator present results of investigations.

30. The designated board member was to be a lay or non-medical representative on the oversight committee of a formal investigation and the hierarchy I have explained in paras 27, 28, and 29.

31. As Case Investigator, it would have been my role to meet the clinician under investigation and any other relevant individuals, with a timeframe for a completed investigation being within 4 weeks, and with submission to the Case Manager within 5 days after that. There would be full documentation of every meeting and an opportunity afforded to the practitioner under investigation to agree the accuracy of the record of the meetings with him or her. After that, the Case Manager makes determinations such as no further action, restrictions on

practice, referral to occupational health, referral to NCAS, referral to a clinical performance panel, and GMC referral.

[9] With regard to Section I paragraph 29 of the MHPS framework, what processes or procedures existed within the Trust to provide a clear audit route for initiating and tracking the progress of investigations, their costs and resulting actions? Who was responsible for ensuring such processes were in place and what role, if any, did you have as the Case Manager in relation to these matters?

32. I have no knowledge of audit routes for investigations. I did not initiate, nor ever have I initiated, such an investigation. I was not a Case Manager for this or any other case. The training I received (in my recollection) would not have covered audit trails, but there were stipulations around timeframes. When I was Case Investigator, I acted and reported back to the Oversight Committee within the MHPS timeframe of four weeks. I was first briefed at some time between 6th and 9th January 2017, meeting Mr. O'Brien on 24th Jan 2017 and reporting to the Oversight Committee on 26th January 2017*. [20170127 - E preliminary report located in Relevant to PIT – Evidence Added or Renamed after 19 01 2022 – Evidence No 77- No 77 Colin Weir CD*]

<u>Handling of Concerns relating to Mr O'Brien</u>

[10] In respect of concerns raised regarding Mr Aidan O'Brien:

I. **When and in what circumstances did you first become aware of concerns, or received information which could have given rise to concerns?**

II. **If different, also state when you became aware that there would be an investigation into matters concerning the performance of Mr O'Brien?**

III. Outline all steps taken to address those concerns;

IV. In respect of any attempts to resolve concerns informally in accordance with Section I Paragraph 15 of MHPS, outline the steps you took, any advice you received or discussions concerning informal resolution and any engagement you had with Mr O'Brien to attempt to informally resolve concerns; and

V. If you did not implement or apply MHPS and/or the Trust Guidelines notwithstanding the existence of performance concerns, explain why not.

33. Adopting the number above, I would reply as follows.

I. I refer to my answer to Question 54 of my first Section 21 Notice (No.22 of 2022). In summary, concerns were first discussed with me informally in or around mid-June 2016. This was during meetings with the Acting Associate Medical Director for Surgery and Elective Care, Dr McAllister. I was only made aware that these issues predated my appointment as clinical director and attempts had been made to address them by the previous AMD for Surgery (Mr. Mackle) and Assistant Director (Heather Troughton). I was not made aware of any correspondence or previous action plans or the duration of said concerns. It became clear in September 2016 that the concerns were regarding triaged referrals not done, dictation backlog, no outcome being recorded on out-patients, and notes missing from records (the said notes being in the possession of Mr. O'Brien at home). I was then made aware in either late Dec 2016 or early Jan 2017 that Mr. O'Brien would be investigated under the Trust's procedures and policies in the implementation of MHPS. I received confirmation correspondence of this on 6 January 2017, as mentioned already above.

II. As per I above.

III. See my narrative account at Question 1 above and my detailed response to Section 21 Notice No.22 of 2022.

IV. I never had an opportunity to undertake any informal process, although I was asked to undertake one by Dr McAllister, the Associate Medical Director, and had produced a written action plan on 16 September 2016. This proposed approach was overtaken by the decision of the Medical Director's office, as summarised in my answer to Question 1 above. I understood that the Director Acute Services (Esther Gishkori) was communicating with the Medical Director (Dr Wright) and Director of Human Resources (Vivienne Toal) and mentioned an "oversight meeting". I was forwarded this email on 15th Sept 2016 [*20160915 - E Meeting re Mr O'Brien located in Relevant to PIT – Evidence Added or Renamed after 19 01 2022 – Evidence No 77- No 77 Colin Weir CD*] and yet I had no other briefing from any other team member other than the Associate Medical Director (Dr McAllister). Thus, given the timeframe and an apparent parallel process, I never had opportunity to commence an informal process.

V. I undertook my roles, both in the latter half of 2016 and in early 2017, as requested. I do not believe there was any implementation failure or omission on my part in this regard.

[11] Outline when and in what circumstances you became aware of the following Serious Adverse Incident investigations and that they raised concerns about Mr O'Brien, and outline what action you took upon becoming aware of those concerns:

I. Patient [redacted] **(**[redacted]**),**

II. The care of five patients ([redacted]**); and**

III. Patient [redacted] **(**[redacted]**).**

34. My answer to the questions at I, II and III is as follows. Emails suggest that I was made aware of these cases in or around 8 May 2017. I was no longer Case Investigator under MHPS at that point in time. Discussion from the investigation team and senior management was that Mr. O'Brien needed to be informed. That was suggested to the AMD, Ronan Carroll, who in turn asked me to inform Mr. O'Brien that an SAI process was being undertaken for each of these cases. I met Mr. O'Brien with Martina Corrigan on 25 May 2017 to inform him that an SAI was being undertaken. I was not involved in the SAI or aware of its processes or outcomes, nor was I involved in any further discussions in relation to any SAIs in respect of Mr. O'Brien.

[12] When, and in what circumstances, did you first became aware of concerns, or receive any information which could have given rise to a concern that Mr O'Brien may have been affording advantageous scheduling to private patients.

35. My earliest record of this is 6 January 2017 when I was notified of the Terms of Reference for MHPS investigation. They include the following: "… to determine if Mr. O'Brien has seen private patients … scheduled … in non -chronological order".

[13] What steps did you take to prepare your preliminary report for consideration by the Case Manager and Case Conference on 26th January 2017? What action did you take as Mr O'Brien's clinical manager to assess the substance or accuracy of the concerns, whether to verify or refute them?

36. I had the information on untriaged referrals and undictated outcomes, and notes retained by Mr. O'Brien and numbers of each of these. There were forwarded to me a sequence of emails between the Director Acute Services, the Medical Director, Simon Gibson the Assistant Director to the Medical Director, and

Ronan Carroll the Associate Director [*20170103 - E Confidential AOB located in Relevant to PIT – Evidence Added or Renamed after 19 01 2022 – Evidence No 77- No 77 Colin Weir CD*]. These discussed Mr. O'Brien's exclusion and the reasons for same. The numbers of cases of each I understood were widely known by all these individuals, at a senior level and clearly for some time so the veracity of these was not questioned by me. In any case, Mr. O'Brien was to be given every opportunity to respond to these as part of a two-way process in my meeting with him as Case Investigator. Prior to the meeting I was briefed on my role by Siobhan Hynds.

[14] What role or input, if any, did you have in relation to the formulation of the Terms of Reference for the formal investigation to be conducted under the MHPS Framework and Trust Guidelines in relation to Mr O'Brien? Outline all steps you took, information you considered and advice you received when finalising those Terms. Describe the various iterations or drafts of the Terms of Reference and the reasons for any amendments, and indicate when and in what manner these were communicated to Mr O'Brien.

37. I did not have any role at all in formulating the Terms of Reference. They were sent to me by email. I was therefore investigating under these Terms of Reference.

[15] With regard to the Return to Work Plan / Monitoring Arrangements dated 9th February 2017, see copy attached, please outline your role, as well as the role of any other responsible person, in monitoring Mr O'Brien's compliance with the Return to Work Plan and provide copies of all documentation showing the discharge of those roles with regard to each of the four concerns identified, namely:

I. Un-triaged referrals to Mr Aidan O'Brien;

II. **Patient notes tracked out to Mr Aidan O'Brien;**

III. **Undictated patient outcomes from outpatient clinics by Mr Aidan O'Brien; and**

IV. **The scheduling of private patients by Mr Aidan O'Brien**

38. Monitoring was undertaken by the operational team. I was updated via the Head of Service or Assistant Director.

39. The Head of Service wrote to Mr. O'Brien and copied me in on 21 June 2017 regarding numbers of notes in Mr. O'Brien's office [*20170711 - E charts in office located in Relevant to PIT – Evidence Added or Renamed after 19 01 2022 – Evidence No 77- No 77 Colin Weir CD*] and on 11July 2017 Mr. O'Brien was written to by email by the Head of Service under II above noting 90 charts stored in Mr. O'Brien's office in breach of the return to work action plan. Also on 11th July 2017 there were 30 paper outpatient referrals "not returned from your week on call", meaning these were not triaged, in breach of I above.

40. There were 75 charts tracked to Mr. O'Brien's office on 19 July 2017 [*20170719 - E triage not returned located in Relevant to PIT – Evidence Added or Renamed after 19 01 2022 – Evidence No 77- No 77 Colin Weir CD*], that email stated "a reduction of 30 from the last time I ran this" according to Martina Corrigan.

41. All of this communication was via the operation team and copied to the Associate Director, Ronan Carroll.

42. There is a gap in email correspondence. The next set of monitoring figures came from Wendy Clayton (who was then the acting or replacement Head of Service for urology). Further emails noted 91 letters not being dictated and 74 charts tracked to Mr. O'Brien's office but that, throughout, he adhered to

scheduling of patients in date order or urgency per IV above. *[20181018- E Return to work action plan February 2017 Final 3aa located in Relevant to PIT – Evidence Added or Renamed after 19 01 2022 – Evidence No 77- No 77 Colin Weir CD]*

43. I wrote to Dr Khan, Case Manager, on 18th October 2018 to raise an urgent concern stating there was a large backlog of undictated letters and there was a large number of charts in Mr O'Brien's office.

44. Ronan Carroll also wrote on 18th October 2018 that, because Martina Corrigan was "off since June", the "overseeing function has not taken place" *[20181018- E Return to work action plan February 2017 Final 3aa located in Relevant to PIT – Evidence Added or Renamed after 19 01 2022 – Evidence No 77- No 77 Colin Weir CD].*

[16] What is your understanding of the period of time during which this Return to Work Plan/Monitoring Arrangements remained in operation, and which person(s) were responsible for overseeing its operation in ay respect?

45. I understood the return to work plan remained in place for the entire duration of time I was Clinical Director, that is, at least from January 2017 to December 2018. The operational team would have had responsibility for the monitoring of this.

[17] With specific reference to each of the concerns listed at (15) (i)-(iv) above, indicate if any divergences from the Return to Work Plan were identified and, if so, what action you took to address and/or escalate same.

46. From June 2017, there were increasing and variable numbers of notes in Mr. O'Brien's office. In July 2017, there were 30 referrals not returned from triage. There was constant monitoring of this by the operational team. Also in July 2017, Martina Corrigan noted to me (in a copied email) 75 charts in Mr. O'Brien's office. There was to be a meeting with Mr. O'Brien by myself and either Martina Corrigan or Ronan Carroll but I don't have a record of that.

47. On 18 October 2018, I wrote an email to Dr Khan, Case Manager, to highlight a large backlog of dictated letters and charts retained in Mr. O'Brien's office.

48. In respect of monitoring of private patient scheduling, no breaches or concerns were raised with me.

49. I had sick leave in August 2017 for 6 weeks and from late November 2017 until early March 2018 so I was not present at work for significant parts of the relevant time period.

[18] Explain the circumstances which led to you being asked to step down from your role as Case Investigator in February 2017.

50. I was informed by the Medical Director, Richard Wright, that because I was Clinical Director that, after advice from the Trust's legal representatives, there was a conflict of interest in being both a Clinical Manager and a Case Investigator for the same consultant under investigation (Mr. O'Brien). I agreed with this.

Urology Services Inquiry

[19] Outline what, if any, ongoing involvement you had in relation to matters relevant sub-paragraph (e) to the Terms of Reference of the Urology Services Inquiry after February 2017.

51. I had no involvement after February 2017 under the MHPS Framework.

MHPS Determination

[20] On 28 September 2018, Dr Ahmed Khan, as Case Manager, made his Determination with regard to the investigation into Mr O'Brien. This Determination, inter alia, stated that the following actions take place:

I. **The implementation of an Action Plan with input from Practitioner Performance Advice, the Trust and Mr O'Brien to provide assurance with monitoring provided by the Clinical Director;**
II. **That Mr O'Brien's failing be put to a conduct panel hearing; and**
III. **That the Trust was to carry out an independent review of administrative practices within the Acute Directorate and appropriate escalation processes.**

With specific reference to each of the determinations listed at (I) – (III) above address,

A. **Who was responsible for the implementation of each of these actions?**
B. **To the best of your knowledge, outline what steps were taken to ensure that each of these actions were implemented; and**
C. **If applicable, what factors prevented that implementation.**

D. If the Action Plan as per 27(I) was not implemented, fully outline what steps or processes, if any, were put in place to monitor Mr O'Brien's practice, and identify the person(s) who were responsible for these? Did these apply to all aspects of his practice and, if not, why not?

52. For each of points I, II, and III, I can confirm as follows: that I was not aware of these actions; that I was not involved in any implementation of them; and that I was not involved in, or party to, any monitoring of those actions.

Implementation and Effectiveness of MHPS

[21] Having regard to your experience as Clinical Manager and Case Investigator, in relation to the investigation into the performance of Mr Aidan O'Brien, what impression have you formed of the implementation and effectiveness of MHPS and the Trust Guidelines both generally, and specifically as regard the case of Mr O'Brien?

53. As Case investigator, the process was robust with good provision of factual information and great support and assistance from HR. There were clear written Terms of Reference and, as a formal process, the Trust followed MHPS. In retrospect, clearly it would have been better at the outset to appoint a Case Investigator who was not also a clinical manager or clinical director.

54. As Clinical Director I was informed of progress against the stipulations of the return to work process. The Head of Service, Martina Corrigan, was invaluable in bridging communication from the operational side to me.

55. More frequent meetings of the whole team, both clinical and operational, to review Mr. O'Brien's progress, rather than numerous emails, would have been better.

56. There was a lack of clarity in who was implementing the return to work progress, that is, whether it was the role of the Oversight Group or the operational and clinical team. I don't recall or have any evidence of outcomes from monitoring of the Oversight Group. I didn't have any outcomes from SAIs or their progress.

57. All of this could have been "joined up" better. This would have been in patients' best interests as well as those of Mr. O'Brien. I emphasise that this is my subjective opinion in retrospect.

[22] Consider and outline the extent to which you feel you can effectively discharge your role as Clinical Manager and Case Investigator under MHPS and the Trust Guidelines in the extant systems within the Trust and what, if anything, could be done to strengthen or enhance that role.

58. As I was Case investigator for a limited time I consider that I have nothing to add to my response to Question 21 above. It has been my consistent view that Clinical Management and Case Investigation cannot be the same individual in a formal process under MHPS and the Trust's implementation of it. The outcomes of investigation and oversight committees must be shared and discussed with a Clinical Manager/Clinical Director if it impacts on service delivery, patient safety or the work of the other consultant or other staff in the unit. There was good briefing and support by the Trust in my Case Investigation role and I felt the separation into Case Management and an oversight group with a lay membership was good. On the other hand, training without experience is not enough to undertake Clinical Investigation or management role and shadowing or mentoring for a first-time position in this role would be

essential. No amount of sitting through courses or role play could fully prepare an investigator for a complex case without backup support or shadowing.

59. As Clinical Director (Clinical Manager), more frequent meetings with the team, both clinical and operational hierarchy, would have been better. There was too much of a 'top down' approach, with one level dictating or asking the next level down to undertake a task or implement a policy. A team approach would, I believe, have helped monitor situations better and a horizontal management structure would have communicated and acted better in my view.

[23] Having had the opportunity to reflect, outline whether in your view the MHPS process could have been better used in order to address the problems which were found to have existed in connection with the practice of Mr O'Brien.

60. The MHPS process was, in retrospect, the best and only way to progress the concerns raised. Understanding that repeated attempts made on previous occasions to resolve the situation had failed, meant that a formal MHPS process was appropriate. A formal process should, in my view, have started sooner. The period of time for a suggested informal approach was, in retrospect, pointless.

61. The investigations were robust, fair and well documented and the plans were clear, written and without any ambiguity. The use of an oversight group, written terms of reference, and documentation were all within the Trust's documented structures for the implementation of MHPS.

62. There was ample opportunity for Mr. O'Brien to understand, reflect and challenge decisions and, during my tenure as Case Investigator, I listened and reflected on his desire to return to work and advised the Oversight Group

accordingly.

63. During my time as Case Investigator, I achieved the goal of preliminary investigation and report to the Oversight Committee within a four-week timeframe (see para 32 above). However, the removal of myself and appointment of Dr Chada created a new set of investigations and interviews to be undertaken. The appointment of Dr Chada or another investigator on or around 6th January 2017 would on balance have avoided the need for extension to complete MHPS process.

64. However, I should not have been asked to undertake this role. With greater experience, I would have rejected the approach to do this.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed: _____ [redacted]

Date: _____21/6/2022_____

S21 33 of 2022

Attachments

Attachment	Document
5	annexe e NCAS
6	annexe f
7	annexe g

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

From: **Weir, Colin** [redacted]
Subject: FW: NCAS training
Date: 18 June 2022 at 4:01 pm
To: [redacted]

Colin Weir FRCSEd, FRCSEng, FFSTEd
Consultant Surgeon | Hon Clinical Lecturer

Secretary Claire Sullivan [redacted]

From: Parks, Zoe [redacted]
Sent: 23 May 2022 11:57
To: Weir, Colin [redacted]
Subject: NCAS training

Handling Concerns
- slides 2010 medica

I have your name as an attendee at the above training event which was attended by Colin Fitzpatrick from NCAS on **24 September 2010**

You were down to attend the refresh with Grainne Lynn on **6 October 2020** online – did you attend this online session (attached)?

We ran NCAS sessions and invited CD's, AMD's to attend on the following dates if you want to double check you attendance. The only two I have your name as a planned attendee was on 24.9.20; 6.10.20.

24 Sept 2010*
11 May 2011
6 March 2012
21 November 2014
Tuesday 22nd September 2015
7/8th March 2017
28/29 March 2019
10 January 2020
23/24 January 2020
30 September 2020
6 October 2020*
25 March 2021
November 2021
20 January 2022

Zoë

Zoë Parks MCIPD
Head of Medical HR
Southern Health & Social Care Trust

Tel: Personal Information redacted by the USI
Mob: Personal Information redacted by the USI

ilm
LEVEL 5
Certificate in Effective Coaching and Mentoring
8588-21

Click on the Medical HR Hub Links below:

oledata.mso

Understanding and usi...al.pptx

Doctors in Difficulty

Colin Weir
AMD Education and Training SHSCT

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Trust Guidelines

- Last reviewed Sept 2010
- DoH Maintaining High Professional Standards in the Modern HPSS (MHPS) 2005
- NCAS, How to perform a local performance investigation-2010
- SHSCT, Disciplinary Procedures
- SHCT Clinical Manager's MHPS Toolkit

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

MHPS

- Framework:
  - action when a concern first arises
  - restriction of practice and exclusion from work
  - how to deal with issues of clinical performance
  - handling concerns over a practitioner's health

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Responsible officer

- Compulsory to be in place from Oct 2010

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Screening process

- Establish a concern
- threat or POTENTIAL threat to patient safety
- undermines reputation or efficiency of service in some way
- outside acceptable guidelines or practice

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

FIRST

- raise with CLINICAL MANAGER CD or AMD
- could be with MD-who accepts and records and refers to Clinical Manager

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Second

- if concern needs managed under MHPS framework:
- concern registered with CX
- CM informs Operational Director
- Operational Director informs CX and MD

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Third

- CX appoints an OVERSIGHT GROUP (OG) to ensure consistency of approach
- MD/Responsible Officer
- Dir HR
- Operational director

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Fourth

- CM and HR manager investigate and assess actions required
- Possible actions:
  - NONE
    Informal remedial action with help NCAS
  - Formal investigation
  - Exclusion/restriction

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Fourth

- Advice and assessment could include evidence from NCAS, Occupational Health and NIMDTA.

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Fifth

- Where possible..
- LOCAL action plan agreed with doctor
- Monitoring by Clinical Manager and Oversight Group
- Retraining

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Sixth

- CM and HR manager informs Oversight Group of informal assessment
- Oversight group QUALITY ASSURES the process to be FAIR, TRANSPARENT and CONSISTENT

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Seventh

- Chair Oversight Group informs CX of informal action

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

FORMAL PROCEDURE

- If this required:
- CX and Oversight Group appoints a Case Manager and Investigator
- CX advises Chair Trust Board
- Chair designates a non-executive member of Board to oversee case and ensure momentum

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Informal v Formal

- seriousness
- repetition
- failure to comply with remedial action of NCAS
- can of course bypass informal process

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Documentation

- for anything other than EXONERATION
- findings must be recorded and available to appraisers by Clinical Manager(informal) or Case Manager(formal)

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Documentation

- all formal cases will be presented to SMT Governance by MD and Operational Director to promote learning and peer review

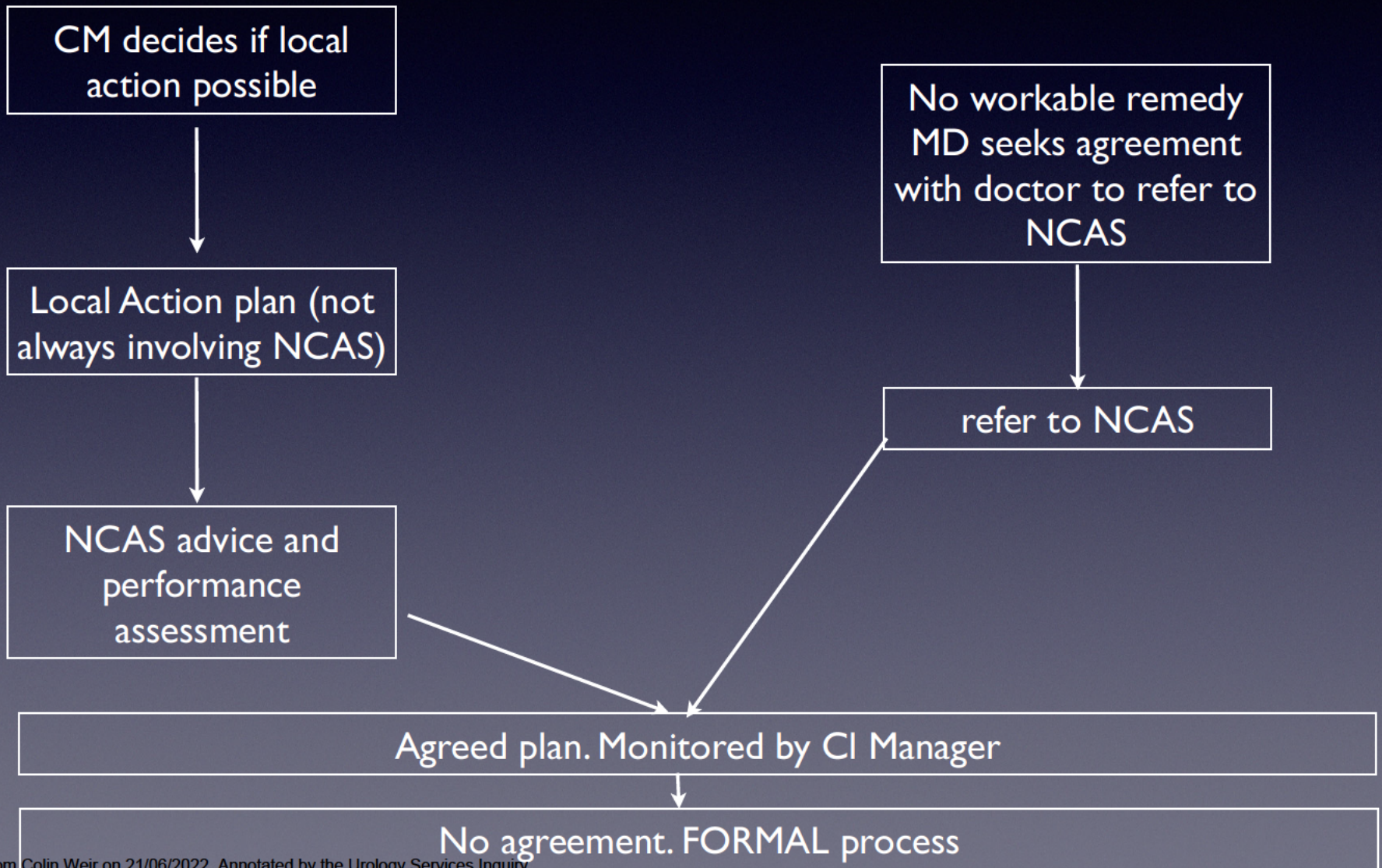
Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Practitioner

- all stages may be accompanied by
  - companion
  - work colleague
  - lay representative
  - BMA, BDA, MDU MPS representative
  - friend, spouse or partner

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Informal Process



Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Formal Process Key Points

- Practitioner sees all relevant correspondence
- List of potential witnesses
- Opportunity to put forward case
- Investigation in 4 weeks and submit to Case manager within a further 5 days

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Further possible actions

- restrictions on practice
- misconduct referred to Disciplinary procedures
- refer to Occ Health
- refer to NCAS
- refer to GMC/GDC
- refer to a clinical performance panel (must be referred to NCAS first)

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

- Conduct hearings-appendix 3
- Clinical performance hearings-app 3a
- Appeal procedures-app 4
- Restriction practice-app 5

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

What's missing?

- Role of ES, CS and AMD Ed Training
- Identifying range of issues: health, personal, financial, environmental.
- A formal process is actually VERY rare

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

MANAGING THROUGH ES AND AMD ED TRAINING

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

DIFFICULTIES

- Lack of trainee insight
- Lack of supervisor documentation

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

IDENTIFYING

- Anger
- Rigidity
- Absenteeism "disappearing act"
- Poor record keeping
- Lack of judgement
- Clinical mistakes
- Failing exams
- Complaints from staff
- Ward rage
- Bypass syndrome

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

DOCUMENT EARLY

- Other staff to commit concerns in writing
- Document behaviour with ES
- Tools of use for ES
  - MSF
  - CBD

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

EDUCATIONAL SUPERVISORS

- to provide a supportive learning environment
- to be open and trusting with the trainee
- to keep records
- to be a mentor (which a clinical supervisor may find difficult)

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

CHECKLIST FOR ES

- What problem has been identified
- Are concerns documented?
- Discuss and document with trainee
- Document meetings with trainee
- Does it need referred to AMD Ed Training?
- Review date documented

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

SUPPORTING THE TRAINEE

- create a learning plan
- SMART specific, measurable, achievable, relevant, time limited

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

PREVENTION

- Good educational framework
- Induction, supervision
- Clearly identified ES and CS
- Regular appraisal

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Broadly..

- ascertain quickly what has happened and why
- determine if there is continuing RISK
- decide if immediate action is required to remove source of risk
- establish actions required

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Think patient and person safety throughout

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

Southern Health and Social Care Trust

Trust Guidelines for Handling Concerns about Doctors' and Dentists' Performance

16 September 2010

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

1.0 Introduction

1.1 Maintaining High Professional Standards in the Modern HPSS ***A framework for the handling of concerns about doctors and dentists in the HPSS*** (hereafter referred to as Maintaining High Professional Standards (MHPS)) was issued by the Department of Health, Social Services and Public Safety (DHSSPS) in November 2005. MHPS provides a framework for handling concerns about the conduct, clinical performance and health of medical and dental employees. It covers action to be taken when a concern first arises about a doctor or dentist and any subsequent action including restriction or suspension.

1.2 The MHPS framework is in six sections and covers:

I. Action when a concern first arises
II. Restriction of practice and exclusion from work
III. Conduct hearings and disciplinary procedures
IV. Procedures for dealing with issues of clinical performance
V. Handling concerns about a practitioner's health
VI. Formal procedures – general principles

1.3 MHPS states that each Trust should have in place procedures for handling concerns about an individual's performance which reflect the framework.

1.4 This guidance, in accordance with the MHPS framework, establishes clear processes for how the Southern Health & Social Care Trust will handle concerns about it's doctors and dentists, to minimise potential risk for patients, practitioners, clinical teams and the organisation. Whatever the source of the concern, the response will be the same, i.e. to:

a) Ascertain quickly what has happened and why.
b) Determine whether there is a continuing risk.
c) Decide whether immediate action is needed to remove the source of the risk.
d) Establish actions to address any underlying problem.

Received from Colin Weir on 21/06/2022. Annotated by the Urology Services Inquiry.

1.5 This guidance also seeks to take account of the new role of Responsible Officer which Trusts in Northern Ireland must have in place by October 2010 and in particular how this role interfaces with the management of suspected poor medical performance or failures or problems within systems.

1.6 This guidance applies to all medical and dental staff, including consultants, doctors and dentists in training and other non-training grade staff employed by the Trust. In accordance with MHPS, concerns about the performance of doctors and dentists in training will be handled in line with those for other medical and dental staff with the proviso that the Postgraduate Dean should be involved in appropriate cases from the outset.

1.7 This guidance should be read in conjunction with the following documents:

Annex A
"Maintaining High Professional Standards in the Modern NHS" DHSSPS, 2005

Annex B
"How to conduct a local performance investigation" NCAS, 2010

Annex C
SHSCT Disciplinary Procedure

Annex D
SHSCT Clinical Manager's MHPS Toolkit

2.0 SCREENING OF CONCERNS – ACTION TO BE TAKEN WHEN A CONCERN FIRST ARISES

2.1 NCAS Good Practice Guide – "How to conduct a local performance investigation" (2010) indicates that regardless of how a is concern in identified, it should go through a screening process to identify whether an investigation in needed. The Guide also

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indicates that anonymous complaints and concerns based on 'soft' information should be put through the same screening process as other concerns.

2.2 Concerns should be raised with the practitioner's Clinical Manager – this will normally be either the Clinical Director or Associate Medical Director. If the initial report / concern is made directly to the Medical Director, then the Medical Director should accept and record the concern but not seek or receive any significant detail, rather refer the matter to the relevant Clinical Manager. Such concerns will then be subject to the normal process as stated in the remainder of this document.

2.3 Concerns which may require management under the MHPS framework must be registered with the Chief Executive. The Clinical Manager will be responsible for informing the relevant operational Director. They will then inform the Chief Executive and the Medical Director, that a concern has been raised.

2.4 The Clinical Manager will immediately undertake an initial verification of the issues raised. The Clinical Manager must seek advice from the nominated HR Case Manager within Employee Engagement & Relations Department prior to undertaking any initial verification / fact finding.

2.5 The Chief Executive will be responsible for appointing an Oversight Group (OG) for the case. This will normally comprise of the Medical Director / Responsible Officer, the Director of Human Resources & Organisational Development and the relevant Operational Director. The role of the Oversight Group is for quality assurance purposes and to ensure consistency of approach in respect of the Trust's handling of concerns.

2.6 The Clinical Manager and the nominated HR Case Manager will be responsible for investigating the concerns raised and assessing what action should be taken in response. Possible action could include:

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- No action required
- Informal remedial action with the assistance of NCAS
- Formal investigation
- Exclusion / restriction

The Clinical Manager and HR Case Manager should take advice from other key parties such as NCAS, Occupational Health Department, in determining their assessment of action to be taken in response to the concerns raised. Guidance on NCAS involvement is detailed in MHPS paragraphs 9-14.

2.7 Where possible and appropriate, a local action plan should be agreed with the practitioner and resolution of the situation (with involvement of NCAS as appropriate) via monitoring of the practitioner by the Clinical Manager. MHPS recognises the importance of seeking to address clinical performance issues through remedial action including retraining rather than solely through formal action. However, it is not intended to weaken accountability or avoid formal action where the situation warrants this approach. The informal process should be carried out as expediously as possible and the Oversight Group will monitor progress.

2.8 The Clinical Manager and the HR Case Manager will notify their informal assessment and decision to the Oversight Group. The role of the Oversight Group is to quality assure the decision and recommendations regarding invocation of the MHPS following informal assessment by the Clinical Manager and HR Case Manager and if necessary ask for further clarification. The Oversight group will promote fairness, transparency and consistency of approach to the process of handling concerns.

2.9 The Chief Executive will be informed of the action to be taken by the Clinical Manager and HR Case Manager by the Chair of the Oversight Group.

2.10 If a formal investigation is to be undertaken, the Chief Executive in conjunction with the Oversight Group will appoint a Case Manager

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and Case Investigator. The Chief Executive also has a responsibility to advise the Chairman of the Board so that the Chairman can designate a non-executive member of the Board to oversee the case to ensure momentum is maintained and consider any representations from the practitioner about his or her exclusion (if relevant) or any representations about the investigation.
Reference Section 1 paragraph 8 – MHPS 2005

3.0 MANAGING PERFORMANCE ISSUES

3.1 The various processes involved in managing performance issues are described in a series of flowcharts / text in Appendices 1 to 7 of this document.

Appendix 1
An informal process. This can lead to resolution or move to:

Appendix 2
A formal process. This can also lead to resolution or to:

Appendix 3
A conduct panel (under Trust's Disciplinary Procedure) OR a clinical performance panel depending on the nature of the issue

Appendix 4
An appeal panel can be invoked by the practitioner following a panel determination.

Appendix 5
Exclusion can be used at any stage of the process.

Appendix 6
Role definitions

3.2 The processes involved in managing performance issues move from informal to formal if required due to the seriousness or repetitive nature of the issue OR if the practitioner fails to comply with remedial action requirements or NCAS referral or

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recommendations. The decision following the initial assessment at the screening stage, can however result in the formal process being activated without having first gone through an informal stage, if the complaint warrants such measures to be taken.

3.3 If the findings following informal or formal stages are anything other than the practitioner being exonerated, these findings must be recorded and available to appraisers by the Clinical Manager (if informal) or Case Manager (if formal).

3.4 All formal cases will be presented to SMT Governance by the Medical Director and Operational Director to promote learning and for peer review when the case is closed.

3.5 During all stages of the formal process under MHPS - or subsequent disciplinary action under the Trust's disciplinary procedures – the practitioner may be accompanied to any interview or hearing by a companion. The companion may be a work colleague from the Trust, an official or lay representative of the BMA, BDA, defence organisation, or friend, work or professional colleague, partner or spouse. The companion may be legally qualified but not acting in a legal capacity. Refer MHPS Section 1 Point 30.

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Appendix 1

Step 1 Screening Process

Issue of concern i.e. conduct, health and/or clinical performance concern, raised with relevant Clinical Manager**

→ Clinical Manager/Operational Director informs:

- Chief Executive
- Medical Director
- Human Resources Department
- Practitioner

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Chief Executive appoints an Oversight Group – usually comprising of:

- Medical Director / Responsible Officer
- Director of Human Resources and Organisational Development
- Appropriate Operational Director

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Clinical Manager and HR Case Manager undertake preliminary enquires to identify the nature of the concerns and assesses the seriousness of the issue on the available information.

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Clinical Manager and HR Case Manager, consults with NCAS and / or Occupational Health Service for advice when appropriate.

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Clinical Manager and HR Case Manager notify the Oversight Group of their assessment and decision. The decision may be:

- No Action Necessary
- Informal remedial action with assistance and input from NCAS
- Formal Investigation
- Exclusion / Restriction

** If concern arises about the Clinical Manager this role is undertaken by the appropriate Associate Medical Director (AMD). If concern arises about the AMD this role is undertaken by the Medical Director

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Appendix 1

Step 2 Informal Process

A determination by the Clinical Manager and HR Case Manager is made to deal with the issues of concern through the informal process.

The Clinical Manager must give consideration to whether a local action plan to resolve the problem can be agreed with the practitioner.

If a workable remedy cannot be determined, the Clinical Manager and the operational Director in consultation with the Medical Director seeks agreement of the practitioner to refer the case to NCAS for consideration of a detailed performance assessment.

The Clinical Manager should seek advice from NCAS. This may involve a performance assessment by NCAS if appropriate.

Referral to NCAS

Informal plan agreed and implemented with the practitioner. Clinical Manager monitors and provides regular feedback to the Oversight Group regarding compliance.

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Appendix 2

Formal Process

A determination by the Clinical Manager and HR Case Manager is made to deal with the issues of concern through the formal process.

Chief Executive, following discussions with the MD and HROD, appoints a Case Manager and a Case Investigator.

Chief Executive, following discussions with the Chair, seeks appointment of a designated Board member to oversee the case.

Case Manager informs the Practitioner of the investigation in writing, including the name of the Case Investigator and the specific allegations raised.

Case Manager must ensure the Case Investigator gives the Practitioner an opportunity to see all relevant correspondence, a list of all potential witnesses and give an opportunity for the Practitioner to put forward their case as part of the investigation.

Case Investigator gathers the relevant information, takes written statements and keeps a written record of the investigation and decisions taken.

Case Investigator must complete the investigation within 4 weeks and submit to the Case Manager with a further 5 days. Independent advice should be sought from NCAS.

Case Manager gives the Practitioner an opportunity to comment on the factual content of the report including any mitigation within 10 days.

Case Manager must then make a decision on whether:

1. no further action is needed
2. restrictions on practice or exclusion from work should be considered
3. there is a case of misconduct that should be put to a conduct panel under the Trust's Disciplinary Procedures
4. there are concerns about the Practitioners health that needs referred to the Trust's Occupational Service for a report of their findings (Refer to MHPS Section V)
5. there are concerns about clinical performance which require further formal consideration by NCAS
6. there are serious concerns that fall into the criteria for referral to the GMC or GDC by the Medical Director/Responsible Officer
7. there are intractable problems and the matter should be put before a clinical performance panel.

Appendix 3

Conduct Hearings / Disciplinary Procedures

Case Manager makes the decision that there is a case of misconduct that must be referred to a conduct panel. This may include both personal and professional misconduct.

→ Case Manager informs:
- Chief Executive
- Designated Board member
- Oversight Group
- Practitioner

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Case referred under the Trust's Disciplinary Procedures. Refer to these procedures for organising a hearing.

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If a case identifies issues of professional misconduct:
- The Case Investigator must obtain appropriate independent professional advice
- The conduct panel at hearing must include a member who is medically qualified and who is not employed by the Trust.
- The Trust should seek advice from NCAS
- The Trust should ensure jointly agreed procedures are in place with universities for dealing with concerns about Practitioners with joint appointment contracts

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If the Practitioner considers that the case has been wrongly classified as misconduct, they are entitled to use the Trust's Grievance Procedure or make representations to the designated Board Member.

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In all cases following a conduct panel (Disciplinary Hearing), where an allegation of misconduct has been upheld consideration must be given to a referral to the GMC/GDC by the Medical Director/Responsible Officer.

If an investigation establishes suspected criminal action, the Trust must report the matter to the police. In cases of Fraud the Counter Fraud and Security Management Service must be considered. This can be considered at any stage of the investigation.

Consideration must also been given to referrals to the Independent Safeguarding Authority or to an alert being issued by the Chief Professional Officer at the DHSSPS or other external bodies.

Case presented to SMT Governance by the Medical Director and Operational Director to promote learning and for peer review once the case is closed.

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Appendix 3a

Clinical Performance Hearings

Case Manager makes the decision that there is a clear failure by the Practitioner to deliver an acceptable standard of care or standard of clinical management, through lack of knowledge, ability or consistently poor performance i.e. a clinical performance issue.

→ Case Manager informs:
- Chief Executive
- Designated Board member
- Oversight Group
- Practitioner

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Case MUST be referred to the NCAS before consideration by a performance panel (unless the Practitioner refuses to have their case referred).

→ Following assessment by NCAS, if the Case Manager considers a Practitioners practice so fundamentally flawed that no educational / organisational action plan is likely to be successful, the case should be referred to a clinical performance panel and the Oversight Group should be informed.

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Prior to the hearing the Case Manager must:
- Notify the Practitioner in writing of the decision to refer to a clinical performance panel at least 20 working days before the hearing.
- Notify the Practitioner of the allegations and the arrangements for proceeding
- Notify the Practitioner of the right to be accompanied
- Provide a copy of all relevant documentation/evidence

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Prior to the hearing:
- All parties must exchange documentation no later than 10 working days before the hearing.
- In the event of late evidence presented, consideration should be given to a new hearing date.
- Reasonably consider any request for postponement (refer to MHPS for time limits)
- Panel Chair must hear representations regarding any contested witness statement.
- A final list of witnesses agreed and shared between the parties not less than 2 working days in advance of the hearing.

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Composition of the panel – 3 people:
- **Chair -** Executive Director of the Trust (usually the Medical Director)
- **Panel 1 -** Member of Trust Board (usually the Operational Director)
- **Panel 2 -** Experienced medically / dentally qualified member not employed by the Trust

** for clinical academics including joint appointments a further panel member may be required.

→ Advisors to the Panel:
- a senior HR staff member
- an appropriately experienced clinician from the same or similar specialty but not employed by the Trust.

** a representative from a university if agreed in any protocol for joint appointments

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Appendix 3a

Clinical Performance Hearings

During the hearing - witnesses:

- shall confirm any written statement and give supplementary evidence.
- Be questioned by the side calling them
- Be questioned by the other side
- Be questioned by the panel
- Clarify any point to the side who has called them but not raise any new evidence.

During the hearing – order of presentation:

- Case Manager presents the management case calling any witnesses
- Case Manager clarifies any points for the panel on the request of the Chair.
- The Practitioner (or their Rep) presents the Practitioner's case calling any witnesses.
- Practitioner (or Rep) clarifies any points for the panel on the request of the Chair.
- Case Manager presents summary points
- Practitioner (or Rep) presents summary points and may introduce any mitigation
- Panel retires to consider its decision.

Decision of the panel may be:

1. Unfounded Allegations – Practitioner exonerated
2. A finding of unsatisfactory clinical performance (Refer to MHPS Section IV point 16 for management of such cases).

If a finding of unsatisfactory clinical performance - consideration must be given to a referral to GMC/GDC.

A record of all findings, decisions and warnings should be kept on the Practitioners HR file. The decision of the panel should be communicated to the parties as soon as possible and normally within 5 working days of the hearing. The decision must be confirmed in writing to the Practitioner within 10 working days including reasons for the decision, clarification of the right of appeal and notification of any intent to make a referral to the GMC/GDC or any other external body.

Case presented to SMT Governance by the Medical Director and Operational Director to promote learning and for peer review once the case is closed.

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Appendix 4

Appeal Procedures in Clinical Performance Cases

The appeals process needs to establish whether the Trust's procedures have been adhered to and that the panel acted fairly and reasonably in coming to their decision. The appeal panel can hear new evidence and decide if this new evidence would have significantly altered the original decision. The appeal panel should not re-hear the entire case but should direct that the case is reheard if appropriate.

Composition of the panel – 3 people:

- **Chair**

An independent member from an approved pool (Refer to MHPS Annex A)

- **Panel 1**

The Trust Chair (or other non-executive director) who must be appropriately trained.

- **Panel 2**

A medically/dentally qualified member not employed by the Trust who must be appropriately trained.

Advisors to the Panel:

- a senior HR staff member
- a consultant from the same specialty or subspecialty as the appellant not employed by the Trust.
- Postgraduate Dean where appropriate.

Timescales:

- Written appeal submission to the HROD Director within 25 working days of the date of written confirmation of the original decision.
- Hearing to be convened within 25 working days of the date of lodgement of the appeal. This will be undertaken by the Case Manager in conjunction with HR.
- Decision of the appeal panel communicated to the appellant and the Trust's Case Manager within 5 working days of conclusion of the hearing. This decision is final and binding.

Powers of the Appeal Panel

- Vary or confirm the original panels decision
- Call own witnesses – must give 10 working days notice to both parties.
- Adjourn the hearing to seek new statements / evidence as appropriate.
- Refer to a new Clinical Performance panel for a full re-hearing of the case if appropriate

Documentation:

- All parties should have all documents from the previous performance hearing together with any new evidence.
- A full record of the appeal decision must be kept including a report detailing the performance issues, the Practitioner's defence or mitigation, the action taken and the reasons for it.

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Appendix 5

Restriction of Practice / Exclusion from Work

- All exclusions must only be an interim measure.
- Exclusions may be up to but no more than 4 weeks.
- Extensions of exclusion must be reviewed and a brief report provided to the Chief Executive and the Board. This will likely be through the Clinical Director for immediate exclusions and the Case Manager for formal exclusions. The Oversight Group should be informed.
- A detailed report should be provided when requested to the designated Board member who will be responsible for monitoring the exclusion until it is lifted.

Immediate Exclusion

Consideration to immediately exclude a Practitioner from work when concerns arise must be recommended by the Clinical Manager (Clinical Director) and HR Case Manager. A case conference with the Clinical Manager, HR Case Manager, the Medical Director and the HR Director should be convened to carry out a preliminary situation analysis.

The Clinical Manager should notify NCAS of the Trust's consideration to immediately exclude a Practitioner and discuss alternatives to exclusion before notifying the Practitioner and implementing the decision, where possible.

The exclusion should be sanctioned by the Trust's Oversight Group and notified to the Chief Executive. This decision should only be taken in exceptional circumstances and where there is no alternative ways of managing risks to patients and the public.

The Clinical Manager along with the HR Case Manager should notify the Practitioner of the decision to immediately exclude them from work and agree a date up to a maximum of 4 weeks at which the Practitioner should return to the workplace for a further meeting.

During and up to the 4 week time limit for immediate exclusion, the Clinical Manager and HR Case Manager must:

- Meet with the Practitioner to allow them to state their case and propose alternatives to exclusion.
- Must advise the Practitioner of their rights of representation.
- Document a copy of all discussions and provide a copy to the Practitioner.
- Complete an initial investigation to determine a clear course of action including the need for formal exclusion.

At any stage of the process where the Medical Director believes a Practitioner is to be the subject of exclusion the GMC / GDC must be informed. Consideration must also be given to the issue of an alert letter - Refer to (HSS (TC8) (6)/98).

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Appendix 5

Restriction of Practice / Exclusion from Work

Formal Exclusion

Decision of the Trust is to formally investigate the issues of concern and appropriate individuals appointed to the relevant roles.

Case Investigator, if appointed, produces a preliminary report for the case conference to enable the Case Manager to decide on the appropriate next steps.

The report should include sufficient information for the Case Manager to determine:

- If the allegation appears unfounded
- There is a misconduct issue
- There is a concern about the Practitioner's Clinical Performance
- The case requires further detailed investigation

Case Manager, HR Case Manager, Medical Director and HR Director convene a case conference to determine if it is reasonable and proper to formally exclude the Practitioner. (To include the Chief Executive when the Practitioner is at Consultant level). This should usually be where:

- There is a need to protect the safety of patients/staff pending the outcome of a full investigation
- The presence of the Practitioner in the workplace is likely to hinder the investigation.

Consideration should be given to whether the Practitioner could continue in or (where there has been an immediate exclusion) could return to work in a limited or alternative capacity.

If the decision is to exclude the Practitioner:

The Case Manager MUST inform:

- NCAS
- Chief Executive
- Designated Board Member
- Practitioner

The Case Manager along with the HR Case Manager must inform the Practitioner of the exclusion, the reasons for the exclusion and given an opportunity to state their case and propose alternatives to exclusion. A record should be kept of all discussions.

The Case Manager must confirm the exclusion decision in writing immediately. Refer to MPHS Section II point 15 to 21 for details.

All exclusions should be reviewed every 4 weeks by the Case Manager and a report provided to the Chief Executive and Oversight Group. (Refer to MHPS Section II point 28 for review process.

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Appendix 6

Role definitions and responsibilities

Screening Process / Informal Process

Clinical Manager

This is the person to whom concerns are reported to. This will normally be the Clinical Director or Associate Medical Director (although usually the Clinical Director). The Clinical Manager informs the Chief Executive and the Practitioner that concerns have been raised, and conducts the initial assessment along with a HR Case Manager. The Clinical Manager presents the findings of the initial screening and his/her decision on action to be taken in response to the concerns raised to the Oversight Group.

Chief Executive

The Chief Executive appoints an appropriate Oversight Group and is kept informed of the process throughout. (The Chief Executive will be involved in any decision to exclude a practitioner at Consultant level.)

Oversight Group

This group will usually comprise of the Medical Director / Responsible Officer, Director of Human Resources & Organisational Development and the relevant Operational Director. The Oversight Group is kept informed by the Clinical Manager and the HR Case Manager as to action to be taken in response to concerns raised following initial assessment for quality assurance purposes and to ensure consistency of approach in respect of the Trust's handling of concerns.

Formal Process

Chief Executive

The Chief Executive in conjunction with the Oversight Group appoints a Case Manager and Case Investigator. The Chief Executive will inform the Chairman of formal the investigation and requests that a Non-Executive Director is appointed as "designated Board Member".

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Case Manager

This role will usually be delegated by the Medical Director to the relevant Associate Medical Director. S/he coordinates the investigation, ensures adequate support to those involved and that the investigation runs to the appropriate time frame. The Case Manager keeps all parties informed of the process and s/he also determines the action to be taken once the formal investigation has been presented in a report.

Case Investigator

This role will usually be undertaken by the relevant Clinical Director, in some instances it may be necessary to appoint a case investigator from outside the Trust. The Clinical Director examines the relevant evidence in line with agreed terms of reference, and presents the facts to the Case Manager in a report format. The Case Investigator does not make the decision on what action should or should not be taken, nor whether the employee should be excluded from work.

Note: Should the concerns involve a Clinical Director, the Case Manager becomes the Medical Director, who can no longer chair or sit on any formal panels. The Case Investigator will be the Associate Medical Director in this instance. Should the concerns involve an Associate Medical Director, the Case Manager becomes the Medical Director who can no longer chair or sit on any formal panels. The Case Investigator may be another Associate Medical Director or in some cases the Trust may have to appoint a case investigator from outside the Trust. Any conflict of interest should be declared by the Clinical Manager before proceeding with this process.

Non Executive Board Member

Appointed by the Trust Chair, the Non-Executive Board member must ensure that the investigation is completed in a fair and transparent way, in line with Trust procedures and the MHPS framework. The Non Executive Board member reports back findings to Trust Board.

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