



## Urology Services Inquiry

Urology Services Inquiry | 1 Bradford Court | Belfast BT8 6RB  
T: 02890 251005 | E: [info@usi.org.uk](mailto:info@usi.org.uk) | W: [www.urologyservicesinquiry.org.uk](http://www.urologyservicesinquiry.org.uk)

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

29 April 2022

Dear Mr. Khan,

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

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.

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

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

Chair's Notice

[No 31 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. Ahmed Khan  
C/O  
Southern Health and Social Care Trust  
Headquarters  
68 Lurgan Road  
Portadown  
BT63 5QQ

## 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 10<sup>th</sup> 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 3<sup>rd</sup> June 2022**.

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 29<sup>th</sup> April 2022

Signed:

Personal Information redacted by the USt

Christine Smith QC

Chair of Urology Services Inquiry

**SCHEDULE**  
**[No 31 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. In your role as Case Manager 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.
  
5. Specifically, what if any training or guidance did you receive regarding the establishment of Terms of Reference for formal investigations and the making of determinations under Section I paragraph 38 of MHPS.
  
6. The Inquiry is interested in your experience of handling concerns regarding any staff member. Prior to your appointment as MHPS Case Manager in respect of the case of Mr. Aidan O'Brien, specify whether you ever have had occasion to implement or apply MHPS and/or the Trust Guidelines in order to address performance concerns and outline the steps taken.
  
7. Outline how you understood the role of Case Manager was to relate to and engage with the following individuals under the MHPS Framework and the Trust Guidelines:
  - I. Clinical Manager;
  - II. Case Investigator;
  - III. Chief Executive;
  - IV. Medical Director;
  - V. Designated Board member,
  - VI. The clinician who is the subject of the investigation; and
  - VII. Any other relevant person under the MHPS framework and the Trust Guidelines, including any external person(s) or bodies.

8. 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**

9. In respect of concerns raised regarding Mr. Aidan O'Brien:
  - I. When did you first become aware that there were concerns in relation to the performance of Mr. O'Brien?
  - 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. Who communicated these matters to you and in what terms?
  - IV. Upon receiving this information what action did you take?
10. Confirm that you were the person responsible for taking the decision that Mr. O'Brien should be the subject of a formal investigation under the MHPS Framework and Trust Guidelines on 26 January 2017. If so, address the following matters:
  - I. Outline all steps taken by you in association with that decision;
  - II. Outline any advice received by you in relation to that decision, whether or not you accepted or applied that advice, and identify the person(s) or bodies who provided that advice to you;
  - III. Specify the information you took into account when reaching that decision, and identify the person(s) who provided that information to you, or the sources of that information;
  - IV. Set out each of the reasons relied upon by you when reaching that decision.

11. Confirm that you were the person responsible for formulating the Terms of Reference for the formal investigation to be conducted under the MHPS Framework and Trust Guidelines. If so, address the following matters:

- I. Outline all of the steps you took in order to formulate the Terms of Reference;
- II. Outline any advice received by you in relation to the formulation of the Terms of Reference, whether or not you accepted or applied that advice, and identify the person(s) or bodies who provided that advice to you;
- III. Specify the information you considered and took into account when formulating the Terms of Reference, and identify the sources of that information. If you consulted with anyone for the purposes of formulating the Terms of Reference you should identify that person and describe the process;
- IV. 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.

12. With regard to the Return to Work Plan / Monitoring Arrangements dated 9<sup>th</sup> February 2017, see copy attached, 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

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

14. With specific reference to each of the concerns listed at (12) (i)-(iv) above, indicate if any departures from the Return to Work Plan were identified at any time, describe those departures (if any) and, if applicable, indicate what action you took to address and/or escalate same.
15. On what basis was it decided that you, as Case Manager, and Dr Wright, as Medical Director, would respond to representations lodged by Mr. O'Brien with the designated Board member on 7<sup>th</sup> February 2017 and 6<sup>th</sup> March 2017 respectively.
16. Explain the circumstances which led to Mr. Colin Weir being asked to step down from his role of Case Investigator in February 2017.
17. Section I paragraph 37 of MHPS sets out a series of timescales for the completion of investigations by the Case Investigator and comments from the Practitioner. From your perspective as Case Manager, what is your understanding of the factors which contributed to any delays with regard to the following:
  - I. The conduct of the investigation;
  - II. The preparation of the investigator's report;
  - III. The provision of comments by Mr. O'Brien; and
  - IV. The making of the determination by the Case Manager.

Outline and provide all documentation relating to any interaction which you had with any of the following individuals with regard to any delays relating to matters (I) – (IV) above, and in so doing, outline any steps taken by you in order to prevent or reduce delay:

- A. Case Investigator;
- B. Designated Board member;
- C. the HR Case Manager;
- D. Mr Aidan O'Brien; and
- E. Any other relevant person under the MHPS framework and the Trust Guidelines.

18. Outline what steps, if any, you took during the MHPS investigation, and outline the extent to which you were kept apprised of developments during the MHPS investigation?

### **MHPS Determination**

19. Outline the content of all advice you received from the following individuals regarding your Determination under Section I paragraph 38 of MHPS whether or not you accepted or applied that advice:

- I. Trust's Chief Executive;
- II. Director of Human Resources & Organisational Development;
- III. NCAS;
- IV. Any other relevant person under the MHPS framework and the Trust Guidelines.

20. Even if you did not receive advice from any of the above persons with regard to the Determination, fully outline any discussions which you had with any of the above persons in relation to that Determination, the outcome of the MHPS process generally and/or the conduct of Mr. O'Brien, specify the date of any such discussion and whether you took any steps in response to matters discussed.

21. On 28 September 2018, you, as Case Manager, made a determination with regard to the MHPS investigation into Mr. O'Brien. This Determination, *inter alia*, stated that the following actions should 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 failings 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 21(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?

22. Outline the nature of any interactions you had with the GMC with regard to Mr. Aidan O'Brien in your capacity as Case Manager.

### **Implementation and Effectiveness of MHPS**

23. Having regard to your experience as Case Manager 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?

24. To what extent were you able to effectively discharge your role as Case Manager under MHPS and the Trust Guidelines in the extant systems within the Trust? What obstacles did you encounter when performing this role and what, if anything, could be done to strengthen or enhance that role?

25. 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

**USI Ref:** Notice 31 of 2022

**Date of Notice:** 29<sup>th</sup> April 2022

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**Witness Statement of: Ahmed Faraz Khan**

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I, Ahmed Faraz Khan, will say as follows:-

**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.**

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**1.1**\_\_Below I set out a summary of chronological account or timeline of my involvement in the MHPS process

**1.2** **2016:**

**During December 2016**

- a.** On 28<sup>th</sup> Dec 2016, the Medical director (Dr Richard Wright) contacted me by email for possible nomination as MHPS case manager. Evidence: Confidential email (from Dr Wright to me) **This can be located at Attachment folder S21 31 of 2022-Attachment 1.**

**1.3** **2017**

**During January 2017:**



## Urology Services Inquiry

- a. I met with Dr Wright to discuss for my possible MHPS case manager role. He provided me with a summary of this case. I informed him that I had no previous MHPS experience. He asked me to review the MHPS framework document and attend upcoming MHPS training in March 2017. Later that month I had further meeting with Dr Wright to discuss this case.
- b. I attended an Oversight committee case conference on 26<sup>th</sup> January 2017 along with members of oversight committee and the Clinical Director of the Urology Services (Mr Colin Weir). A preliminary report of a look back exercise was provided by Dr Weir.
- c. After considering all evidence presented to me, with advice from Oversight committee members, I took the decision for a formal investigations under MHPS. Also a decision to lift immediate exclusion with Return to Work Action Plan with monitoring arrangements was made. It was decided that the Clinical Director and Assistant Director of Acute Services would draft the proposed Return to Work Action Plan and monitoring arrangements for the oversight committee to consider.

### During February 2017:

- d. I wrote a letter to Mr O'Brien confirming the decision of the case conference to conduct a formal investigations under MHPS and also to lift immediate exclusion with a Return to Work Action Plan. **Evidence: Letter from Case Manager to Mr A O'B 06 February 2017). This can be located at Attachment folder S21 31 of 2022-Attachment 2.**
- e. I attended the Return to Work Action Plan meeting along with Mrs Siobhan Hynds, Mr Ronan Carroll and Mr Colin Weir. We reviewed the proposed plan with monitoring arrangements. After considering all concerns identified and the Return to Work Action Plan with monitoring arrangements, this was approved.
- f. I had a meeting with Mr O'Brien along with Mrs Siobhan Hynds regarding the return to Work Plan, which was shared and agreed with Mr O'Brien. **(Evidence: 20170205 Email RE MHPS) This can be located at Attachment folder S21 31 of 2022-Attachment 3.**



## Urology Services Inquiry

- g. During January and February: Mr O'Brien met with the Medical Director (Dr Wright) and Mr John Wilkinson, the Designated Non-Executive Director. This was discussed at oversight committee meetings. In consideration of representations made by Mr O'Brien the decision was made to replace Mr Colin Weir as Case investigator with Dr Neta Chada. I then informed Mr O'Brien of this in a letter. **(Evidence: Letter from Case Manager to Mr A O'B 24 February 2017).** This can be located at Attachment folder S21 31 of 2022- Attachment 4.

### During March 2017:

- h. The MHPS investigation Terms of Reference (TOR) were drafted and approved by oversight committee members. This was then shared with me and, after considering all concerns previously presented to me, I agreed with these TOR. There were 5 points in the TOR shared with me. **(Evidence: 20170119 Emails Re: Terms of Reference for Investigation)** These can be located at Attachment folder S21 31 of 2022- Attachment 5a and 5b.
- i. MHPS investigation Terms of Reference (TOR) were shared with Mr O'Brien along with an initial Witness List.

### During April 2017:

- j. I requested a Return to Work Action Plan assurance report from the Director of Acute Services. The assurance was provided by Mr Ronan Carroll, Assistant Director Acute Services. **(Evidence: 20170414 Email MHPS case update)** This can be located at Attachment folder S21 31 of 2022- Attachment 6.
- k. I sent an MHPS investigation update report to Mr John Wilkinson, Designated Non-Executive Director. **(Evidence: my email on 13/4/17 to Mr Wilkinson)** This can be located at Attachment folder S21 31 of 2022- Attachment 7.

### During May 2017:

- l. I requested a Return to Work Action Plan assurance report from the Acute Directorate. This is provided by Mr Ronan Carroll, Assistant Director, Acute Services.



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m. I received an MHPS investigation progress update from the Case Investigator, Dr Neta Chada.

**(Evidence – email from Siobhan Hynds to me) This can be located at Attachment folder S21 31 of 2022- Attachment 9.**

### During April, May & June 2017:

n. I became aware later that the Case Investigator, Dr Chada, met with all the witnesses relevant to the case.

o. I also became aware later that in June 2017, the Case Investigator requested a meeting with Mr O'Brien and offered a number of dates. Mr O'Brien requested to defer until the end of July 2017.

p. In June, a Return to Work Action Plan assurance report was provided by the Acute Directorate.

### During July 2017:

q. I received an MHPS investigation progress update from the Case Investigator, Dr Chada.

r. I received a letter from Mr O'Brien regarding the MHPS investigation and his previous involvements with the managers in Acute Services. I sent that letter to the Medical Director (Dr Wright) and to Mrs Hynds for sharing with the Case Investigator and with the Director of Acute Services. **(Evidence: Letter from Mr O'Brien to Dr Khan 30 July 2017) This can be located at Attachment folder S21 31 of 2022- Attachment 11.**

### During August 2017:

s. I became aware later that a meeting was held in August between the Case Investigator and Mr O'Brien for his interview and statement.

### During September & October 2017:

t. **I wasn't involved but was aware of the following:** a second meeting was planned in October with Mr O'Brien but happened in November at his request.



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### During November & December 2017:

- u. **I wasn't involved but was aware of the following:** Second meeting held with Mr O'Brien in November. Mr O'Brien requested some time (rest of November & December 2017) to complete his Annual Appraisal. As agreed by the Case Investigator, Dr Chada, Mr O'Brien was allowed time to complete his Appraisal by the end of December 2017.

### 1.4 2018

#### During Jan, February & March 2018:

- a. **I became aware later:** Dr Chada sought comments from Mr O'Brien as previously advised in February 2018. Then a further email reminder sent to Mr O'Brien in March.

#### During April 2018:

- b. Comments were received from Mr O'Brien on 2nd April. All of his comments were appended with other relevant documents in the Case Investigator's report.
- c. I was appointed as Acting Medical Director in April 2018, after a recruitment and selection process

#### During June 2018:

- d. I had a routine meeting with Ms Joanne Donnelly, GMC Employer Liaison Adviser (ELA) for Northern Ireland. This is a regular and routine meeting between the GMC ELA and all the Medical Directors in Northern Ireland. It has a set agenda which includes an update about ongoing MHPS cases. As part of the meeting, I informed regarding the progress of Mr O'Brien's MHPS investigation. She was already aware of this case from her meetings with previous Medical director (Dr Richard Wright).
- e. Later that month, I was copied in to an email from Mrs Siobhan Hynds, as she was replying to Mr O'Brien regarding his earlier enquiry about information request. **(Evidence: email from Siobhan to Mr O'Brien - RE MHPS investigations). This can be located at Attachment folder S21 31 of 2022- Attachment 12.**
- f. I received the Case Investigator Dr Chada's report in June 2018



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- g. I then wrote a Letter to Mr O'Brien, informing him that the investigation had now concluded and I had received the Case Investigator's report. I also shared this report with Mr O'Brien and requested his comments regarding factual. **Evidence – Case manager's letter to Mr O'Brien – June 2018. This can be located at Attachment folder S21 31 of 2022- Attachment 13.**

### During July & August 2018:

- h. I was on planned Annual leave during July 2018.
- i. Mr O'Brien's comments received in July & I sent him acknowledgement receipt of his comments to the Investigation report. **(Evidence: Letter from Case Manager to Mr O'Brien- 14 August 2018). This can be located at Attachment folder S21 31 of 2022- Attachment 14.**

### During September 2018:

- j. During August and September 2018, I deliberated on the Investigation report and the associated documents provided to me by the Case Investigator as part of the report.
- k. I had discussions with the Chief Executive (Mr Shane Devlin) and the Director of Human Resources (Mrs Toal) regarding the report. I shared the Case Investigator's report with them. I informed them that factual accuracy has been considered by providing a chance to Mr O'Brien to comment on it. I also informed them that there are evidences to support all of the allegations with regards to Mr O'Brien.
- l. I sought their advices. I do not exactly remember the details of our conversation however to best of my recollection they suggested that I should base my report and recommendations as per the evidence presented to me and in accordance with the MHPS framework and Trust Guidelines. I naturally followed this advice as it was consistent with my own approach in any event.
- m. I also sought advice from Ms Grainne Lynn, Adviser with Practitioner Performance Advice (formally NCAS) **(Evidence: LETO+180921+Advice+letter+18665). This can be located at Attachment folder S21 31 of 2022- Attachment 15.**
- n. Then I started to draft my Case Manager's Determination Report **(Evidence: 26/9/18- My email for meeting with CE & HR director). This can be located at Attachment folder S21 31 of 2022- Attachment 16.**



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- o. The MHPS Case Manager's Determination was completed & released on 26<sup>th</sup> September 2018. I shared my case manager's report and recommendations with the Chief Executive and the Director of Human Resources. **(Evidence: email to 26/9/18 to Chief Executive (Mr Devlin) & HR Director (Mrs Toal)) This can be located at Attachment folder S21 31 of 2022- Attachment 17.**
- p. I wrote to Mr O'Brien informing him that the Case Manager's Determination is ready and requested to meet him. **(Evidence: Letter from Case Manager to Mr A O'B 26th September 2018). This can be located at Attachment folder S21 31 of 2022- Attachment 18.**

### During October 2018:

- q. I had a meeting with Mr O'Brien on 1<sup>st</sup> of October where I shared my Determination Report with him.
- r. I then wrote a letter to Mr O'Brien confirming our discussion at the report sharing meeting. **(Evidence: 3/10/ 18- Case Manager letter to Mr O'Brien) This can be located at Attachment folder S21 31 of 2022- Attachment 19.**
- s. I sought assurance from the Acute Directorate regarding the Return to Work Action Plan from the Acute Directorate as there was some information regarding a possible departure from the Return to Work Plan by Mr O'Brien.
- t. I Informed the Chief Executive and the Director of Human Resources of this possible deviation from the Return to Work Plan by Mr O'Brien.**(Evidence: My email to the Chief Executive & the Director of Human Resources) This can be located at Attachment folder S21 31 of 2022- Attachment 20.**
- u. I received further information and reassurance from the Assistant Director (Ronan Carroll) in the Acute Directorate to the effect that no significant issues were found in relation to the Return to Work Plan & there were only 16 clinic consultation dictations awaiting completion from end of September 2018. **(Evidence: FW AOB notes and dictation1 (Ronan ,Siobhan & Ahmed Khan). This can be located at Attachment folder S21 31 of 2022- Attachment 21.**
- v. Then I wrote to Mr O'Brien regarding his obligations under the Return to Work Plan.
- w. My understanding was that my Case Manager role ceased at this point as the MHPS Case Manager's Determination Report with recommendations had been issued and shared with the Chief Executive and the Director of HR. My perception was that my involvement in this case onwards was as the Acting Medical Director, although I acknowledge on reflection that this was not perhaps clear to me and I believe it is



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unclear in the MHPS framework Guidelines as to when Case Manager's role will cease. I was also aware that the Oversight committee (The Medical director, Director of HR & Director of Acute Services) is in place to follow up the progress of the implementation of the recommendations.

### During November 2018:

- x. I and Mrs Siobhan Hynds received an email and a letter from Mr O'Brien, requesting further information. I replied to Mr O'Brien and informed him that I had asked Siobhan Hynds to liaise with him for these enquiries.
- y. I received a letter from Ms Grainne Lynn (Adviser at PPA, formerly NCAS) requesting a meeting on behalf of Mr O'Brien regarding MHPS investigations. This meeting didn't go ahead as MHPS investigation had already concluded and the Case Manager's Determination Report had been shared with Mr O'Brien. **Evidence 20181106 – This can be located at Attachment folder S21 31 of 2022- Attachment 45 letter from NCAS GL to Dr Khan**
- z. Then I received a letter and an email from Mr O'Brien. He asked for previously requested information from Siobhan Hynds. **(Evidence: my email to Siobhan Hynds- RE Information Request2). This can be located at Attachment folder S21 31 of 2022- Attachment 23.**
- aa. I sent an email to Mr O'Brien, regarding possible dates for Conduct Hearing in January 2019
- bb. I sought only to be advised by the Acute Directorate on any deviation/ departure from Return to Work plan by Mr O'Brien from his Return to Work Action Plan.

### During December 2018:

- cc. I received an email from Mr O'Brien, informing me that he had met with the Chief Executive (Mr Shane Devlin) and served a formal Grievance Notice. I forwarded this email to the Chief Executive.
- dd. A new Medical Director (Dr Maria O'Kane) commenced her post on 1<sup>st</sup> December.
- ee. My Medical Director handover to Dr O'Kane was completed. **Evidence: My Medical director Handover). This can be located at Attachment folder S21 31 of 2022- Attachment 25.**



## Urology Services Inquiry

1.5 2019

### During January 2019:

- ff. On 1<sup>st</sup> of January 2019, I returned to my previous post of Associate Medical Director in Children and Young People's Services. I also recommenced my clinical duties in Daisy Hill Hospital.
- j. My understanding was that my Case Manager's role ceased in October 2018. Now that my Acting Medical Director role has also ceased, I was no longer responsible in any way for this MHPS case and I would only get involved on the Medical Director's advice or request. I was also aware that the Oversight committee (The Medical director, Director of HR & Director of Acute Services) is in place to follow up the progress of the implementation of the recommendations.

### During February 2019:

- k. Dr O'Kane informed me that the GMC had requested referral information for Mr O'Brien.
- l. I was invited to attend a meeting, arranged twice by the Medical Director's Office between the Medical Director (Dr O'Kane), Mrs Siobhan Hynds, myself, and Mr Simon Gibson, However, they were cancelled due to apologies received from couple of people.

### During March 2019:

- m. I wrote to Mrs Siobhan Hynds for an update about the previous GMC request. **(Evidence: my email to Siobhan Hynds- RE Confirmed AOB- MHPS update meeting). This can be located at Attachment folder S21 31 of 2022- Attachment 27.**

### During April 2019:

- n. I was informed that Mr O'Brien's GMC referral had been made. **Evidence: Medical director Ref to GMC email. This can be located at Attachment folder S21 31 of 2022- Attachment 28.**



## Urology Services Inquiry

- o. Mr Siobhan Hynds also shared Ms Grainne Lynn's, NCAS letter of December 2016. **(Evidence: SH emailed me, MOK, SG & attached NCAS letter from 29/12/106). This can be located at Attachment folder S21 31 of 2022- Attachment 29.**
- p. On advice from the Medical Director, I met with Mr O'Brien to inform him that he has been referred to the General Medical Council by the Medical Director (Dr O'Kane) due to Fitness to practise concerns. **Evidence AO'B fitness-to-practise-referral-form. This can be located at Attachment folder S21 31 of 2022- Attachment 29b.**
- q. I also Informed the Designated Non-Executive Director (John Wilkinson) regarding this GMC Referral. **(Evidence: email to John Wilkinson: FOR UPDATE MHPS Case - MR A O'B). This can be located at Attachment folder S21 31 of 2022- Attachment 30.**

### During May 2019:

- r. I was copied into an email from Siobhan Hynds regarding Mr O'Brien's request for further information. **(Evidence: Siobhan Hynds email MOK, EG, SG & me.) This can be located at Attachment folder S21 31 of 2022- Attachment 32.**
- s. I received an email from Mr Simon Gibson (Assistant Director) Medical Director office, regarding current updates on the MHPS Case Manager's Determination Report and recommendations. **(Evidence: email from Simon Gibson: RE Action notes from meeting 29-5-19). This can be located at Attachment folder S21 31 of 2022- Attachment 33.**

### During September, October & November 2019:

- t. In September, There was a concern regarding deviation from the Return to Work Plan by Mr O'Brien, mainly for delay in triage of new referrals. On further enquiry, Mr Ronan Carroll informed that this concern only was triggered due to a change of monitoring dates. **Evidence: Medical Director's letter to GMC ELA informing details of monitoring arrangements 04.12.19. This can be located at Attachment folder S21 31 of 2022- Attachment 34.**
- u. Dr O'Kane informed me that Ms Joanne Donnelly, GMC ELA for NI, had requested some information and assurances. **Evidence: Medical Director's letter to GMC ELA informing details of monitoring arrangements 04.12.19. This can be located at Attachment folder S21 31 of 2022- Attachment 35.**



## Urology Services Inquiry

### 1.6 2020

#### During January 2020:

- a. I was invited to attend a meeting in the Medical Director's Office to discuss queries & information request from Ms Joanne Donnelly, GMC ELA.
- b. The Medical Director (Dr Maria O'Kane) wrote back a letter to Ms Joanne Donnelly replying to her queries. **(Evidence: This can be located at Attachment folder S21 31 of 2022- Attachment 37.**

#### During February 2020:

- c. I was invited to the Oversight Committee meeting, which I attended. **(Evidence: Oversight committee meeting minutes). This can be located at Attachment folder S21 31 of 2022- Attachment 38.**

#### During July 2020:

- d. Mr Stephen Wallace from the Medical Director's Office approached me through email for my comments on a draft Terms of Reference (TOR) for the Independent Admin review to be carried out in line with my Case Manager's MHPS recommendations.
- e. I provided my response to Mr Wallace was that during this investigations there was evidence of system wide failure within Acute directorate therefore my recommendation was to complete an the independent admin review in the acute Directorate & not to just focus in urology department. **(Evidence: see my response on email 29/7/2020). This can be located at Attachment folder S21 31 of 2022- Attachment 39.**

#### During Oct 2020:

- f. Then in October 2020, Mrs Siobhan Hynds shared some initial findings of the independent admin review however; this was to be completed in more detail at later stage.
- g. **Evidence : see 2 pages of draft findings of the Admin Review document. This can be located at Attachment folder S21 31 of 2022- Attachment 40.**
- h. To the best of my recollection, I wasn't contacted afterwards.



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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.

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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')*.

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### Policies and Procedures for Handling Concerns

4. In your role as Case Manager 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.

4.1 I reviewed the MHPS framework document (attached). **This can be located at Attachment folder S21 31 of 2022- Attachment 41.**

4.2 I also reviewed the Trust Guidelines for Handling Concerns about Doctors' and Dentists' Performance of September 2010 (attached). **This can be located at Attachment folder S21 31 of 2022- Attachment 42.**

4.3 I reviewed General Medical Council, Good Medical Practice guidelines.

4.4 I received MHPS training from 7- 8<sup>th</sup> March 2017 (Certificate attached). **This can be located at Attachment folder S21 31 of 2022- Attachment 43.**



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4.5 I also received Effective Serious Adverse Incident (SAI) Investigation Training on 7-8<sup>th</sup> March 2016 (Certificate attached). **This can be located at Attachment folder S21 31 of 2022- Attachment 44.**

**5. Specifically, what if any training or guidance did you receive regarding the establishment of Terms of Reference for formal investigations and the making of determinations under Section I paragraph 38 of MHPS.**

5.1 As indicated at Question 4, I received the MHPS framework document and the Trust Guidelines. I also received MHPS training on 7 and 8<sup>th</sup> March 2017.

5.2 The MHPS Terms of Reference were already drafted and approved by the oversight committee (see email from Richard Wright attached). **This can be located at Attachment folder S21 31 of 2022- Attachment 5.** However, as indicated at Question 1 above I agreed with them.

5.3 During the process of making the MHPS determinations, I discussed the investigation's findings with the Chief Executive, Mr Shane Devlin, and the Director of Human Resources & Organisational Development, Mrs Vivian Toal.

5.4 I also sought advice from Practitioner Performance Advice Formerly Known as National Clinical Assessment Services (NCAS) (Email for NCAS attached). **This can be located at Attachment folder S21 31 of 2022- Attachment 46.**



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**6. The Inquiry is interested in your experience of handling concerns regarding any staff member. Prior to your appointment as MHPS Case Manager in respect of the case of Mr. Aidan O'Brien, specify whether you ever have had occasion to implement or apply MHPS and/or the Trust Guidelines in order to address performance concerns and outline the steps taken.**

6.1 As Associate Medical Director (AMD) in Children & Young People Directorate (CYPD) from 2013 to 2018, I had managed medical staff performance concerns. This was carried out as per the Trust policy of September 2010, mentioned above.

6.2 Prior to this MHPS investigation, I had no previous experience of implementing or applying formal MHPS investigations.

6.3 My line manager, Dr Richard Wright, was aware of this as I informed him during our discussion for Mr O'Brien's MHPS Case Manager nomination in December 2016 & Jan 2017. He asked me to complete upcoming MHPS training in March 2017.

6.4 I did complete MHPS training on 7 and 8<sup>th</sup> March 2017. I also reviewed the MHPS framework document and Trust Guidelines in detail. This included those parts in respect of the roles and responsibilities of Case Investigator and Case Manager.

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

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

7.1 I carried out MHPS Case Manager role as per the MHPS framework and Trust Guidelines. The MHPS Framework describes the Case Manager's role as follows at Section I:



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*“34. The Case Manager is the individual who will lead the formal investigation. The Medical Director will normally act as the case manager but he/she may delegate this role to a senior medically qualified manager in appropriate cases. If the Medical Director is the subject of the investigation the Case Manager should be a medically qualified manager of at least equivalent seniority.*

*35. The practitioner concerned must be informed in writing by the Case Manager, that an investigation is to be undertaken, the name of the Case Investigator and the specific allegations or concerns that have been raised. The practitioner must be given the opportunity to see any correspondence relating to the case together with a list of the people whom the Case Investigator will interview. The practitioner must also be afforded the opportunity to put their view of events to the Case Investigator and given the opportunity to be accompanied.*

*36. If during the course of the investigation, it transpires that the case involves more complex clinical issues (which cannot be addressed in the Trust), the Case Manager should consider whether an independent practitioner from another HSS body or elsewhere be invited to assist.”*

### 7.2 Clinical Manager

- a. As the case manager, I liaised with Clinical Manager, i.e., Clinical Director (Mr Colin Weir) from the beginning of the formal investigation. He presented the findings report of a lookback exercise in the oversight committee meeting in January 2017. I discussed with him details of the findings to in order to reach my decision for formal Investigations under MHPS.
- b. Then, as part of return to work decision, I again discussed things with him in detail and sought his advice. The same occurred during the process of MHPS investigations (although he was Case Investigator then).
- c. I received communications regarding monitoring arrangements and assurance reporting during the MHPS investigation.

### 7.3 Case Investigator:

- a. At the beginning in January 2017, Mr Colin Weir was nominated as Case Investigator. I met him and discussed the preliminary findings of the lookback exercise in the case conference in January 2017.
- b. After Mr O'Brien made representations to the Medical Director and with the Designated Board Member (Mr John Wilkinson), the first Case Investigator was replaced by Dr Neta Chada.



## Urology Services Inquiry

- c. I liaised with Case Investigator, Dr Chada, multiple times during the MHPS investigation. Mostly these were informal discussions. This included on a range of matters such as the progress updates of the investigation and reasons for delay in completing the investigations and what could be done to progress things. It was unclear to me as how these communications were meant to take place because the Guidelines and MHPS Framework are unclear in this regard. Dr Chada also sent me investigation progress update reports by email in May, June, and October 2017 and in June 2018 after the investigation completed and her report was available to me.
- d. At the end of her investigation, I received her detailed report.

### 7.4 Chief Executive:

- a. I didn't get to meet with the Chief Executive during 2017. However, I met with the new Chief Executive (Shane Devlin) multiple times during 2018, especially after my appointment as Acting Medical Director in April 2018. I updated him regarding the MHPS investigations. He was already aware of delay in the investigation during 2017. As indicated above at Question 1, after receiving the Case Investigator's Report in June 2018, I also sought his advice during the process of making the MHPS determinations. I shared the Case Investigator's report with him. I informed him that there was evidence to support all of the allegations with regards to Mr O'Brien. I do not exactly remember the details of our conversation, however, he offered the advice that I base my report and recommendations as per the evidence presented to me and in accordance with the MHPS framework and Trust Guidelines. I naturally followed this advice and it was consistent with my own approach in any event.

***Email correspondence attached. This can be located at Attachment folder S21 31 of 2022- Attachments 16 & 17.***

### 7.5 Medical Director:

- a. I liaised with and met the Medical Director (Dr Richard Wright) many times during the MHPS process. After my nomination as Case Manager, I had several meetings in the beginning of 2017 regarding this case. Then I had meetings with him regarding the Return to Work Action Plan and its monitoring arrangements and regarding this MHPS investigations. During later part of 2017, I had discussions with him in relation



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to non engagement of Mr O'Brien to meet with Case Investigator and I understood he spoke to Mr O'Brien.

- b. Dr Wright went off on Personal Information leave at the beginning of 2018. After a recruitment and selection process I was appointed as the Acting Medical Director in April 2018. I remained in this post until December 2018, when Dr Maria O'Kane was appointed as substantive Medical Director. I handed this case to her as part of my Medical Director's handover.

**Medical Director Handover-2018- This can be located at Attachment folder S21 31 of 2022- Attachment 25.**

### 7.6 Designated Board Member:

- a. I liaised with the Designated Board Member (Mr John Wilkinson) multiple times throughout the MHPS investigation, mainly to keep him updated regarding the progress of the investigations. Once I received the Case Investigator's Report I informed him. I also informed him when Mr O'Brien was referred to the GMC in April 2019. (Email correspondence attached). **This can be located at Attachment folder S21 31 of 2022- Attachment 7.**

### 7.7 The clinician:

- a. As per my role, I informed the Mr O'Brien in writing that the MHPS investigation was to be undertaken. I also informed him of the Case Manager's name and the Terms of Reference for the investigation. Mr O'Brien was provided with the opportunity to see correspondence and evidence related to this case. He was also given the opportunity to put forward his views and provide his statement.
- b. I liaised with him on multiple occasions either to inform him on the progress or reply to his queries. I shared the Case Investigator's Report with him and requested his comments in June 2018.
- c. I met with him on a number of occasions, especially at the beginning of the investigation and at the end of formal investigations with my Case Manager's Determination report in September 2018.
- d. I informed Mr O'Brien in October 2018, when the GMC Employer Liaison Adviser had requested a copy of my Case Manager's Determination report.
- e. I also informed him when the GMC referral was made in April 2020.



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### 7.8 Any other relevant person:

- a. During the MHPS investigation, I sought advice from Practitioner Performance Advice (formerly known as NCAS). I had discussed this case with the PPA Adviser, Grainne Lynn, on multiple times during the process of the MHPS investigation.
- b. At the time of my Determination, I discussed the investigation in detail with Grainne Lynn. I informed her that, since the beginning of the investigation, Mr O'Brien had been working to an agreed action plan with on-going monitoring so that any risks to patients had been addressed. The factual accuracy of the report has been completed by providing an opportunity to Mr O'Brien to comment. I concluded that there was evidence to support all of the allegations with regards to Mr O'Brien. *Email/letters from NCAS attached. **This can be located at Attachment folder S21 31 of 2022-Attachment 46.***



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**8. 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?**

8.1 As per Section I, Paragraph 8 of the MHPS framework, the Medical Director delegated the role of Case Manager to me and I was leading the formal investigation.

8.2 As per Appendix 6 of the Trust Guidelines of 2010, I was keeping all parties informed of the process.

8.3 Once the investigation was completed by the Case Investigator, I sought advice from the Chief Executive, Director of Human Resources & Organisational Development, and Practitioner Performance Advice (formerly known as NCAS). I then carefully considered all options available to me as per MHPS Framework and made my Determination on the basis of all the evidence presented to me.

8.4 I reviewed General Medical Council (GMC) Good Medical Practice guidelines and compared Mr O'Brien's performance findings with GMC expected standards.

8.5 I wasn't aware of any specific MHPS audit route existing at that time or of me having a responsibility to put one in place, however, I tried to ensure that the process was kept moving along.

8.6 I was aware that the Designated Board Member had a role under the MHPS and framework and Trust Guidelines to ensure momentum was maintained in the whole process.

8.7 As indicated elsewhere, the MHPS investigation was supported by Ms Siobhan Hynds from Human Resources. She may be able to provide information regarding any formal audit or tracking process, if one existed.

### **9. In respect of concerns raised regarding Mr. Aidan O'Brien:**

**I. When did you first become aware that there were concerns in relation to the performance of Mr. O'Brien?**

9.1 I first become aware of the concerns in relation to Mr. O'Brien in December 2016 as follows:



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- a. I was contacted by the Medical Director at end of December 2016, who wished to nominate me as Case Manager of an MHPS investigation. In the discussion, he explained some emerging concerns about a Urology Consultant.
- b. I met with the Medical Director at the beginning of January 2017 (6/1/2017) to discuss this in more detail. He gave me a summary of this case. He also indicated that a lookback exercise was ongoing.
- c. I attended the oversight committee Case Conference on 26<sup>th</sup> January 2017. A preliminary report of the lookback exercise was provided by the then case investigator (Mr Colin Weir). I must emphasise that I wasn't aware of the extent & severity of the concerns until this report was presented at the case conference.
- d. After considering all evidence presented & with the advice from the oversight committee, I made the decision to conduct formal investigations under the MHPS Framework.
- e. After consultation and consideration of all the information provided to me, I also made the decision to lift the immediate exclusion of Mr O'Brien. However, there would be a return to work action plan with monitoring arrangements by the Acute Directorate team. An assurance report would also be provided on regular intervals to me as Case Manager.
- f. As this was my first experience of being involved in an MHPS investigation, it wasn't very clear to me at the beginning what my role as Case Manager would involve. The Oversight Committee was comprised of The Medical Director, Director of HR, and Director of Acute Services. This committee was already involved and had made some decisions for this case, so this blurred roles and responsibilities for me. I did have the benefit of the MHPS Framework and the Trust Guidelines but my MHPS training was not until March 2017, which was few months into the investigations.

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

9.2 See my answer at 9.1 above.

### **III. Who communicated these matters to you and in what terms?**

9.3 The Medical Director (Dr Richard Wright) communicated to me some information about some of these concerns in December 2016 and then he provided a summary of concerns in January 2017.



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### IV. Upon receiving this information what action did you take?

9.4 I informed the Medical Director, Dr Wright that I hadn't completed any MHPS investigations previously so he asked me to complete MHPS training, which I did in March 2017. I reviewed the Trust Guidelines for Handling Concerns about Doctors' and Dentists' Performance of 23 September 2010. I also reviewed the MHPS framework document. I then reviewed General Medical Council (GMC) Good Medical Practice guidelines

### 10. Confirm that you were the person responsible for taking the decision that Mr. O'Brien should be the subject of a formal investigation under the MHPS Framework and Trust Guidelines on 26 January 2017. If so, address the following matters:

10.1 Yes, as the MHPS Case Manager I took the decision that Mr O'Brien should be the subject of a formal investigation under the MHPS Framework.

### I. Outline all steps taken by you in association with that decision;

10.2 I considered all action taken to date for the concerns raised from March 2016 until 26<sup>th</sup> January 2017.

10.3 I reviewed the lookback exercise findings in the preliminary investigation report. There were 4 broad concerns identified as part of initial scoping exercise and presented at the case conference by the Case Investigator:

- a. Untriaged out-patient referrals: 783 GP referrals had not been triaged in line with the agreed / known process for such referrals. These dated back to 2015.
- b. Patient letters and clinic letters: 668 patients had no outcomes formally dictated from Mr O'Brien's outpatient clinics over a period of at least 18 months.
- c. Patient hospital charts at Mr O'Brien's home: 307 sets of patient notes were returned by Mr O'Brien from his home, 88 sets of notes were located within Mr O'Brien's office, and 13 sets of notes tracked to Mr O'Brien were still missing.
- d. Private patients: The fourth issue of concern identified during the initial scoping exercise related to Mr O'Brien's private patients. A review of Mr O'Brien's TURP patients identified 9 patients who had been seen privately as outpatients and then had their procedure within the NHS. The waiting times for these patients appeared to be significantly less than for other patients.



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10.4 I also considered all concerns raised from a recent SAI in December 2016 and the NCAS advice (sought on 28<sup>th</sup> December 2016 by the Medical Director) which was shared by the Medical Director.

10.5 I reviewed General Medical Council (GMC), Good Medical Practice guidelines

**II. Outline any advice received by you in relation to that decision, whether or not you accepted or applied that advice, and identify the person(s) or bodies who provided that advice to you;**

10.6 I received advice from the Oversight Committee members in the oversight committee case conference on 26<sup>th</sup> Jan 2017. In that meeting Mrs Vivienne Toal, Director of HROD, Dr Richard Wright, Medical Director, and Ms Anne McVey, Assistant Director of Acute Services (on behalf of Esther Gishkori as she had an apology) were present. After considering the report from the lookback exercise, all advised in favour of a formal investigation under the MHPS framework.

10.7 I also considered the recent advice from NCAS (sought in December 2016 by the Medical Director) and shared at the case conference. **NCAS advise letter - Dec 2016 attached. This can be located at Relevant to HR/Reference no 1/updated 2016 Exclusion Mr O'Brien - 25 Nov 2021/20161229 - 11.28 e-mail from SG enc NCAS letter.pdf**

**III. Specify the information you took into account when reaching that decision, and identify the person(s) who provided that information to you, or the sources of that information;**

10.8 I took account of:

- a. The preliminary report of the lookback exercise from the Case Investigator for consideration by the Case Manager / Case Conference, presented by Mr Colin Weir (Case investigator);
- b. I also considered concerns raised from a recent SAI in December 2016;
- c. The recent advice from the Practitioner Performance Advice (formerly NCAS) which had already been sought in December 2016 by the Medical Director and shared at the case conference;
- d. The MHPS Framework and Trust Guidelines documents.
- e. The General Medical Council (GMC) Good Medical Practice guidelines.



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### IV. Set out each of the reasons relied upon by you when reaching that decision.

10.9 There were the 4 broad concerns identified as part of initial scoping exercise and presented at the case conference by Mr Weir (as set out in detail at paragraph 10.3 above).

10.10 The SAI investigation identified a Urology patient under the care of Mr O'Brien who may have had a poor clinical outcome because of delay in triage of GP referrals. The SAI also identified an additional patient who may also have had an unnecessary delay in their treatment for the same reason. **This SAI investigation report 2016 already provided by the trust. This can be located at Relevant to Acute/Document Number 54/20200522 Final Report.pdf.**

10.11 I took into account both the nature of the concerns (e.g., the potentially very serious consequences for a patient who had been wrongly classed as 'routine' rather than 'red flag' if secondary triage was not performed on their GP's referral) and the extent of them (e.g., 783 untriaged referrals, 668 patients with no clinic outcome dictated, etc.). Therefore concluded that these were very serious concerns which required further investigations under MHPS.

**The Preliminary Report from Case Investigator for consideration for the oversight committee Case Conference attached. This can be located at Relevant to HR/Reference no 1/MHPS Investigation Report/MHPS Investigation/Appendix 6 Preliminary report from Case Investigator 26 January 2017 FINAL.pdf and Relevant to HR/Reference no 1/Oversight/documentation Mr O'Brien/2017 01 10 Oversight Group Notes**

**Relevant to HR/Reference no 1/Oversight documentation Mr O'Brien/2017 01 26 Oversight Group Notes**



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**11. Confirm that you were the person responsible for formulating the Terms of Reference for the formal investigation to be conducted under the MHPS Framework and Trust Guidelines. If so, address the following matters:**

11.1 Terms of Reference were already formulated and approved by the Oversight Committee. I received these in January 2017 for review and agreement. I am not aware of any changes in the number of TOR. When I received them for agreement, I believe that there were already 5 Terms. I agreed to these. (See email communication from Dr Wright to Siobhan Hynds attached). **This can be located at Attachment folder S21 31 of 2022- Attachment 54 and also located at Relevant to HR/Evidence after 4 November HR/Reference 77/S Hynds no 77/20170119 - Email - Re Terms of Reference for investigation 2.pdf**

**Relevant to HR/Evidence after 4 November HR/Reference 77/S Hynds no 77/20170119 - Attachment - Terms of Reference for Investigation January 2017 DRAFT FINAL.pdf**

**A) Outline all of the steps you took in order to formulate the Terms of Reference;**

11.2 After receiving these Terms of Reference, I carefully considered each one of them against the preliminary findings to ensure the Terms of Reference covered all the concerns identified. However, we also had the option to extend MHPS investigations if anything new came to light.

11.3 I reviewed the MHPS Framework document and the related Trust Guidelines of 23 September 2010. I also reviewed General Medical Council (GMC) Good Medical Practice guidelines.

**B) Outline any advice received by you in relation to the formulation of the Terms of Reference, whether or not you accepted or applied that advice, and identify the person(s) or bodies who provided that advice to you;**

11.4 I received advice from the Oversight Committee including the Medical Director and Director of HR. All oversight committee members, after considering findings report from lookback exercise, suggested a formal investigation under the MHPS framework.

11.5 I also considered recent advice from Practitioner Performance Adviser which had already been sought in December 2016 by the Medical Director and shared at the case



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conference. The advice from Grainne Lynn was to manage the Mr O'Brien concerns as per local policy and MHPS framework guidance. She advised that any formal investigations should be undertaken to robust and specific Terms of Reference and in line with guidance at 28-40 of MHPS section II. **Letter from NCAS 29<sup>th</sup> Dec 2016 attached. This can be located at Attachment folder S21 31 of 2022- Attachment 49.**

**C) Specify the information you considered and took into account when formulating the Terms of Reference, and identify the sources of that information. If you consulted with anyone for the purposes of formulating the Terms of Reference you should identify that person and describe the process;**

11.5 The information referenced in my answer to Question 10 was considered. Consultations were as described above in this answer.

**D) 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.**

11.6 I understand Terms of Reference were already formulated and approved by the Oversight Committee before being sent to me for agreement. I do not know if they went through different versions before then. Ms Siobhan Hynds may be able to provide this information. See email communication between Ms Siobhan Hynds and Dr Richard Wright attached. **This can be located at Attachment folder S21 31 of 2022- Attachment 5.**

11.7 The Terms of Reference were communicated to Mr O'Brien in writing along with the initial witness list on 16<sup>th</sup> March 2017. (See attached). **This can located at Relevant to HR/Evidence after 4 November HR/Reference 77/S Hynds no 77/20170316 - Email - Strictly Private and Confidential.pdf.**

**12. With regard to the Return to Work Plan / Monitoring Arrangements dated 9th February 2017, see copy attached, 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**



## Urology Services Inquiry

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

12.1 In the 26 January 2017 Oversight Committee meeting, there was a discussion in relation to whether formal exclusion was appropriate during the formal investigation, in the context of:

- a. Protecting patients;
- b. Protecting the integrity of the investigation;
- c. Protecting Mr O'Brien.

12.2 Mr Weir (CD & [then] Case Manager) reflected that there had been no concerns identified in relation to the clinical practice of Mr O'Brien.

12.3 The members discussed whether Mr O'Brien could be brought back with either restrictive duties or robust monitoring arrangements which could provide satisfactory safeguards. Mr Weir outlined that he was of the view that Mr O'Brien could come back and be closely monitored, with supporting mechanisms, doing the full range of duties. The members considered what this monitoring would look like, to ensure the protection of the patient.

12.4 A Return to Work Action Plan and monitoring arrangement was then drafted by the Acute Directorate management team & agreed by the Oversight Committee on 3rd February 2017.

12.5 This Return to Work Action Plan was shared with Mr O'Brien. He agreed to adhere to this plan during MHPS investigations.

12.6 As per the Return to Work Plan monitoring arrangements, I as Case Manager was to be informed of any deviation or departure from compliance with the Plan by Mr O'Brien. I received regular assurance reports. During the investigation period, I also requested assurance reports from Acute Directorate if needed to assure myself of compliance.

12.7 Although it wasn't written in the Return to Work Plan, the understanding among the oversight committee was that this Plan remained in-force during the period of MHPS formal investigations.



## Urology Services Inquiry

12.8 The monitoring arrangements were agreed by the Director of Acute Services, Mrs Esther Gishkori.

### Evidences:

**Preliminary investigations finds report- Jan 2017- this can be located at Relevant to HR/Reference no 1/MHPS Investigation Report/MHPS Investigation/Appendix 6 Preliminary report from Case Investigator 26 January 2017 FINAL.pdf**

**Oversight Case conference meeting minutes – 26<sup>th</sup> Jan 2017- this can be located at Relevant to HR/Reference no 1/Oversight/documentation Mr O'Brien/2017 01 10 Oversight Group Notes**

**Relevant to HR/Reference no 1/Oversight documentation Mr O'Brien/2017 01 26 Oversight Group Notes**

**Return to work action plan – Feb 2017- This can be located at Relevant to HR/Reference no 1/MHPS Investigation Report/MHPS Investigation/Appendix 8 Return to Work Action Plan February 2017 FINAL.pdf**

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

13.1 My understanding was that the return to work plan and monitoring arrangements remained in operation during the period of MHPS investigation and until it completed.

13.2 Mr O'Brien's return to work plan was based on his:

- a. Strict compliance with Trust Policies and Procedures in relation to:
  - i. Triaging of referrals
  - ii. Contemporaneous note keeping
  - iii. Storage of medical records
  - iv. Private practice
- b. Agreement to comply with the monitoring mechanisms put in place to assess his administrative processes.

13.3 The Action plan was shared with Mr O'Brien. He agreed to this action plan.



## Urology Services Inquiry

13.4 The monitoring arrangement was agreed by Director of Acute Services as follows:

Return to Work Action plan cited:

*“... on immediate return, Mr O’Brien will be primarily undertaking clinics and clinical validation of his reviews, his inpatient and day case lists. This work will be monitored by the Head of Service and reported to the Assistant Director.*

*All referrals received by Mr O’Brien will be monitored by the Central Booking Centre in line with the above timescales. A report will be shared with the Assistant Director of Acute Services, Anaesthetics and Surgery at the end of each period to ensure all targets have been met.*

*All clinics must be dictated at the end of each clinic/theatre session via digital dictation. This is already set up in the Thorndale Unit and will be installed on the computer in Mr O’Brien’s office and on his Trust laptop and training is being organised for Mr O’Brien on this. This dictation must be done at the end of every clinic and a report via digital dictation will be provided on a weekly basis to the Assistant Director of Acute Services, Anaesthetics and Surgery to ensure all outcomes are dictated.*

*The scheduling of patient’s must be undertaken by the secretary, who will check the list with Mr O’Brien and then contact the patient for their appointment. This process is in keeping with the practice established within the Urology team.*

*Any deviation from compliance with this action plan must be referred to the MHPS Case Manager immediately.”*

**Evidence: Return to work action plan – 9<sup>th</sup> Feb 2017 already attached. This can be located at Relevant to HR/Reference no 1/MHPS Investigation Report/MHPS Investigation/Appendix 8 Return to Work Action Plan February 2017 FINAL.pdf**



## Urology Services Inquiry

**14. With specific reference to each of the concerns listed at (12) (i)-(iv) above, indicate if any departures from the Return to Work Plan were identified at any time, describe those departures (if any) and, if applicable, indicate what action you took to address and/or escalate same.**

14.1 To the best of my recollection, I wasn't informed of any departure from the Return to Work Action Plan during the MHPS investigation during 2017.

14.2 However, in October 2018 (Just after the case manager's report was completed and released) there was an indication that he may have departed from the plan. Therefore, I took the following actions:

- a. I sought an assurance by way of a Return to Work Action Plan implementation report from the Assistant Director (Ronan Carroll) of the Acute Directorate on 20<sup>th</sup> October 2018.
- b. I informed the Chief Executive (Mr Shane Devlin) and Director of Human Resources (Mrs Toal) of some possible deviation from the Return to Work Plan on 22<sup>nd</sup> October 2018. See email. **This can be located at Attachment folder S21 31 of 2022- Attachment 60.**
- c. Then I followed this issue with the Acute Directorate to ensure monitoring arrangements were in place to identify any departure.
- d. I was assured by Mr Ronan Carroll (Assistant director) in Acute Directorate, on 23<sup>rd</sup> October 2018 that there wasn't any significant departure from the Plan and that there were only 16 clinic dictations awaiting completion from 28<sup>th</sup> September. I requested close monitoring of the Plan and its implementation. **See email FW AOB notes and dictation1** (from Ronan Carroll to Ahmed Khan, Siobhan Hynds & Simon Gibson) . **This can be located at Attachment folder S21 31 of 2022- Attachment 23.**
- e. On 30<sup>th</sup> October 2018, I also wrote to Mr O'Brien regarding his obligations under the Plan.

**15. On what basis was it decided that you, as Case Manager, and Dr Wright, as Medical Director, would respond to representations lodged by Mr. O'Brien with the designated Board member on 7th February 2017 and 6th March 2017 respectively.**

15.1 It was the Oversight Committee's decision. I wasn't involved in or invited to this decision-making process. The Oversight Committee was comprised of the Medical Director, Director of HR, and Director of Acute Services.



## Urology Services Inquiry

15.2 On the advice of oversight committee, I did respond to Mr O'Brien. See Case Manager letter to Mr O'Brien attached. **This can be located at Attachment folder S21 31 of 2022- Attachment 62.**

**16. Explain the circumstances which led to Mr. Colin Weir being asked to step down from his role of Case Investigator in February 2017.**

16.1 I wasn't involved in or invited to take part in this decision-making process. It was an Oversight Committee decision. My understanding was that, after considering the representations made by Mr O'Brien, the Committee decided to replace the Case Investigator. On advice of the Oversight Committee, I did write to Mr O'Brien to inform him about this decision. (See the Case Manager letter to Mr O'Brien referenced and attached at Question 15.) **This can be located at Attachment folder S21 31 of 2022- Attachment 63.** Dr Wright would be able to provide more information on this issue.

**17. Section I paragraph 37 of MHPS sets out a series of timescales for the completion of investigations by the Case Investigator and comments from the Practitioner. From your perspective as Case Manager, what is your understanding of the factors which contributed to any delays with regard to the following:**

**A. The conduct of the investigation;**

17.1 It was a very complex MHPS investigation with a large number of witness interviews and statements being undertaken and prepared.

17.2 Engagement with Mr O'Brien was challenging especially around January 2018. Multiple times he changed his meeting dates and also provided further information at later dates, both of which led to delay in investigation of this case.

**B. The preparation of the investigator's report;**

17.3 The Case Investigator would be better able to provide this information.

**C. The provision of comments by Mr. O'Brien; and**

17.4 As stated above, engagement with Mr O'Brien was very challenging. Multiple times he changed his meeting dates and also provided further information at later dates.



## Urology Services Inquiry

### D. The making of the determination by the Case Manager.

17.5 I received the Case Investigator's Report at the end of June 2018.

17.6 In April 2018 I had been appointed as Acting Medical Director, which was an extremely busy job with significant outstanding work due to the previous Medical Director (Dr Richard Wright) having been off Personal information redacted by U.S.I. for a period of time before I took up the acting role.

17.7 I had no dedicated / protected time in my Job Plan for this MHPS work from the start of this case in the beginning of January 2017. I already had a busy clinical and management role in Children & young people directorate. However, after my appointment as the acting Medical Director, I became extremely busy with senior management team and the trust board related duties.

17.8 Like many people, I had planned annual leave in July 2018.

17.9 I discussed these challenges with my line manager, the Chief Executive (Mr Shane Devlin) and Director of HR (Mrs Vivienne Toal) and the possibility of replacing my Case Manager role. I also provided the name of a senior Associate Medical Director as a possible replacement. However, such a change wasn't approved by the Oversight Committee.

See my email communication to Mrs Toal, regarding possible replacement of case manager's role. **This can be located at Attachment folder S21 31 of 2022- Attachment 64.**

17.10 Due to the very complex nature of this MHPS investigation (with the very detailed investigation report), it took me a significant amount of time to thoroughly review all of the statements and details of the investigation.

17.11 I then had number of meetings to seek advice from the Chief Executive, Director of HR, and the NCAS Adviser.

17.12 Then I started drafting my report with careful consideration of the options, as per the MHPS framework.



## Urology Services Inquiry

17.13 I completed all of my work on the Determination and Recommendations by the end of September 2018

**Outline and provide all documentation relating to any interaction which you had with any of the following individuals with regard to any delays relating to matters (I) – (IV) above, and in so doing, outline any steps taken by you in order to prevent or reduce delay:**

**A. Case Investigator;**

**B. Designated Board member;**

**C. the HR Case Manager;**

**D. Mr Aidan O'Brien; and**

**E. Any other relevant person under the MHPS framework and the Trust Guidelines.**

17.14 I received communication from the Case Investigator explaining the delay and reasons behind it such as the complex nature of the investigation and the periods of non-engagement by Mr O'Brien.

17.15 I discussed these with the Case Investigator and Ms Siobhan Hynds, the HR support manager for this MHPS case, on number of occasions to establish if anything could be done to progress this.

17.16 I understood a meeting request from Case Investigator to Mr O'Brien was sent in the middle of June 2017 (14/6/2017) and multiple dates offered. Mr O'Brien requested to defer until end of July 2017. Then on 30/7/17, a letter received from Mr O'Brien requested further information. **Letter attached here. This can be located at Attachment folder S21 31 of 2022- Attachment 11.** Finally, a meeting was held on 3rd August between Case Investigator and Mr O'Brien. A further meeting date was agreed in October. On 6<sup>th</sup> Nov 2017 a second meeting was held with him. Mr O'Brien requested some time (rest of November & December) to complete his annual Appraisal. This was facilitated by the case investigator, Dr Chada.

17.17. During later part of 2017, I had discussions with the Medical Director regarding this delay and he was already aware of it. I understand Dr Wright communicated directly with Mr O'Brien on multiple occasions.

17.18 I did not communicate directly with Mr O'Brien regarding the delay, as I was aware that the Medical Director as his responsible officer had spoken with him already. However, I communicated with him throughout the investigation process.



## Urology Services Inquiry

17.19 I became aware later that, on 15 and 22 February 2018, an update was sought by the Case Investigator from Mr O'Brien to provide comments. He was asked to provide these by 8th March. Mr O'Brien indicated that he would provide these by 31st March. On 2<sup>nd</sup> April 2018, The comments received from Mr O'Brien.

17.20 I kept the Designated Board Member informed during 2017 and the later part of 2018.



## Urology Services Inquiry

**18. Outline what steps, if any, you took during the MHPS investigation, and outline the extent to which you were kept apprised of developments during the MHPS investigation?**

18.1 Much of this information has been provided already, particularly at Question 1 above. Important points are set out below.

18.2 I received investigation progress updates by emails during May, June, and October 2017. By talking to Ms Siobhan Hynds, I also became aware of delay in December 2017 due to Mr O'Brien's request to allow time to complete his annual Appraisal. Then I received information from the Case Investigator when the investigation was completed in June 2018.

18.3 I discussed delay with Ms Siobhan Hynds and with Dr Chada on a number of occasions to establish if anything would be done to progress this. I also discussed the delay with the Medical Director (Dr Wright) on multiple occasions during the latter part of 2017, and he was already aware of it.

18.4 I ensured I received assurance monitoring reports from the Acute Directorate for the Return to Work Action Plan throughout the investigation process.

18.5 I communicated with Mr O'Brien throughout the investigation process. I also had number of meetings with him during this time.

18.6 I had discussions with Associate Medical Director (Mr Mark Haynes) regarding the Mr O'Brien investigations.

18.7 I also kept the Designated Board Member informed.

18.8 I sought advice from the NCAS adviser in relation to MHPS investigations.

18.9 I sought advice from the Chief Executive (Mr Shane Devlin) and from the Director of Human Resources, Mrs Vivienne Toal, during the process of considering and reaching my determination.



## Urology Services Inquiry

### MHPS Determination

19. Outline the content of all advice you received from the following individuals regarding your Determination under Section I paragraph 38 of MHPS whether or not you accepted or applied that advice:

#### a) Trust's Chief Executive;

19.1 I summarise discussions and advice separately as below:

- a. **Discussion:** I shared the Case Investigator's report with the Chief Executive (Mr Shane Devlin). I informed him that factual accuracy has been considered by providing a chance for Mr O'Brien to comment on it. I informed him that there was evidence to support all of the allegations with regards to Mr O'Brien. I do not exactly remember the details of our conversation. However, I do remember that he was supportive of openness and fairness during the process.
- b. **Advice:** As part of my work on my determination, I sought advice from the Chief Executive (Mr Shane Devlin). He offered the advice that I base my report and recommendations as per the evidence presented to me and in accordance with the MHPS framework and Trust Guidelines. Naturally, I followed this advice & it was consistent with my own approach in any event.

#### b) Director of Human Resources & Organisational Development;

19.2 I summarise discussions and advice separately as below

- a. **Discussion:** I also shared the Case Investigator's report with the Director of HR. Again, I do not exactly remember our conversation but my recollection is that she was similarly supportive of fairness during the process.
- b. **Advice:** I sought her advice and she also suggested that I should base my report and recommendations on the evidence presented to me and according to the MHPS framework and Trust Guidelines. Naturally, I followed this advice and it was consistent with my own approach in any event.

#### c) NCAS;

19.3 I summarise discussions and advice separately as below



## Urology Services Inquiry

- a. **Discussion:** I discussed in detail the investigation with NCAS/PPA adviser Grainne Lynn. I informed her that, since the beginning of the investigation, Mr O'Brien had been working to an agreed action plan with on-going monitoring so that any risks to patients had been addressed. I advised her of the 5 Terms of Reference and of the Case Investigator's report and the opportunity given to Mr O'Brien to comment on it. I advised her of my conclusion that there was evidence to support all of the allegations with regards to Mr O'Brien.
- b. **Advice:** We discussed that the identified issues in the investigation report were serious in nature. We also discussed the systemic issues. However, we both agreed that it was unlikely that the concerns about Mr O'Brien could be managed without formal action. We also discussed that, whilst the issues did have clinical consequences for patients, as some of the concerns appear to be due to a failure to follow policies and protocols, and possibly also a breach of data protection law, these might be considered to be matters of conduct rather than capability.
- c. Grainne Lynn suggested that it would be open to me as Case Manager to put the matter forward to a conduct hearing, but that Mr O'Brien could also be offered support going forward to ensure that in future he was able to meet and sustain the required and expected standards. She also informed me that Practitioner Performance Advice (NCAS) could offer support by drafting a robust action plan with input both from Mr O'Brien and the Trust. **See attached Letter from NCAS adviser- LETO+180921+Advice+letter+18665. This can be located at Attachment folder S21 31 of 2022- Attachment 15.**

#### IV. Any other relevant person under the MHPS framework and the Trust Guidelines.

19.4 Not applicable.

**20. Even if you did not receive advice from any of the above persons with regard to the Determination, fully outline any discussions which you had with any of the above persons in relation to that Determination, the outcome of the MHPS process generally and/or the conduct of Mr. O'Brien, specify the date of any such discussion and whether you took any steps in response to matters discussed.**



## Urology Services Inquiry

20.1 I refer to my answer to Question 19 where I have summarised both advice and discussions.

**21. On 28 September 2018, you, as Case Manager, made a determination with regard to the MHPS investigation into Mr. O'Brien. This Determination, inter alia, stated that the following actions should 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 failings 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.**



## Urology Services Inquiry

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?**

21.1 My understanding was that, as the MHPS investigation had concluded with my recommendations shared with the Chief Executive and the Director of Human Resources therefore my role as Case Manager ceased in October 2018. My perception was that my involvement in this case onwards was as the Acting Medical Director, which also completed in Dec 2018. Although I acknowledge on reflection that this was not perhaps clear to me and I believe it is unclear in the MHPS framework and Guidelines as to when Case Manager's role will cease. I was also aware that the Oversight Committee (The Medical director, Director of HR & Director of Acute Services) is in place to follow up the progress of the implementation of the recommendations.

**B. 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;**

21.2 My understanding was that the Clinical Director, along with the Head of Service and Assistant Director of Surgery and Elective Care, were to continue to provide assurance until a review of the current action plan was completed.

**C. That Mr. O'Brien's failings be put to a conduct panel hearing; and**

21.3 My understanding was that the Director of HR would implement this recommendation.

**D. That the Trust was to carry out an independent review of administrative practices within the Acute Directorate and appropriate escalation processes.**

21.4 My understanding was that this would be implemented by the Director of Acute Services and the Chief Executive.

**F. To the best of your knowledge, outline what steps were taken to ensure that each of these actions were implemented; and**



## Urology Services Inquiry

21.5 I don't have a complete knowledge of what steps were taken to implement these recommendations.

- a. 21.6 However, I was approached by Mr Stephen Wallace from the Medical Director's Office in July 2020 to review the Terms of Reference of the administrative review in the Acute Directorate. I provided my comments and suggested that the proposed TOR were very narrow and needed to be broader. (See my comments for those TOR – email attached). Then in October 2020, Mrs Siobhan Hynds shared some initial findings of the admin review however this was to be completed in more detail later.

**Evidence : see email with 2 pages of draft findings- URGENT FOR DISCUSSION AT 1.30PM**

**Admin Review document- This can be located at Attachment folder S21 31 of 2022- Attachment 40.**

### **G. If applicable, what factors prevented that implementation.**

21.7 I am not in position to provide comment on this as I wasn't involved in implementation. The Director of Acute Services, Chief Executive, Medical Director, and Director of HR should be able to provide this information.

### **H. If the Action Plan as per 21(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?**

21.8 My understanding was that the Clinical Director, along with the Head of Service and Assistant Director of Surgery and Elective Care, were to continue to provide assurance until a review of the current action plan was completed. Especially as there was some concern of possible breaches of existing action plan after the Manager's Determination (already mentioned above). Therefore the action plan that had been in place since February 2017 remained in place with monitoring arrangements until a review and/or new action plan was implemented.

### **22. Outline the nature of any interactions you had with the GMC with regard to Mr. Aidan O'Brien in your capacity as Case Manager.**



## Urology Services Inquiry

22.1 I had no interaction with the GMC with regard to Mr. Aidan O'Brien in my capacity as Case Manager.

22.2 I attended, along with Assistant Director Simon Gibson a number of GMC Liaison meetings with Employer Liaison Adviser in my capacity as Acting Medical Director. The first one was on 6<sup>th</sup> June 2018 and the second one was on 2<sup>nd</sup> October 2018. This meeting have a set agenda including MHPS case updates and therefore I updated her on Mr O'Brien's case. This case was already known to the GMC ELA from discussions with the previous Medical Director (Dr Wright).

**Evidence: See attached GMC Liaison meeting email for June 2018. This can be located at Relevant to MDO/Evidence after 4 November MDO/Reference no 77/no 77 Dr Khan and Dr Wright emails/20180608 Email SHSCT ELA-RO Meeting 6.6.18 - Urology consultant.pdf**

### **Implementation and Effectiveness of MHPS**

**23. Having regard to your experience as Case Manager 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?**

23.1 On reflection, in my view the MHPS process could have been more proactive. However, the dedicated resources were not sufficient. In this regard, I am not aware of the position for others involved in this process but my Case Manager role was an 'add on' to my other roles and responsibilities with no additional or dedicated time allocation.

23.2 I believe that the whole MHPS process requires review and improvements with dedicated resources and training and capacity-building. I believe that there is lot to learn from this case going forward.

**24. To what extent were you able to effectively discharge your role as Case Manager under MHPS and the Trust Guidelines in the extant systems within the Trust? What obstacles did you encounter when performing this role and what, if anything, could be done to strengthen or enhance that role?**

24.1 I tried my best to fulfil my duties as a Case Manager as best I could do.



## Urology Services Inquiry

24.2 However, on reflection I believe that I could maybe have been more proactive in dealing with challenges in the MHPS investigation. I believe there are some mitigating factors:

- a. I think most important factor was that I had no previous experience of conducting such a complex MHPS investigations as a Case Manager. I reviewed all the relevant Guidelines and the MHPS framework document. However, with no previous experience I wasn't fully equipped to carry out such a complex MHPS case investigation. I received MHPS training after the investigation had commenced.
- b. I also believe that having no dedicated / protected time for the Case Manager role in my job plan was also an important factor. Initially, it was meant to be for only a couple of months but ended up taking much longer. I was carrying out a very busy clinical and management job in Children's directorate at the same time. After my appointment as Acting Medical Director, I was very mindful of my competing demands as senior management team and Trust Board member and its responsibilities. Therefore, I requested to step down from the Case Manager role. However, this wasn't accepted by the Oversight Committee. (Email attached). **This can be located at Attachment folder S21 31 of 2022- Attachment 69 (a) and 69 (b).**
- c. After the formal MHPS process started in January 2017, clarity of roles and responsibilities between Oversight Committee and Case Manager was lacking when I saw some decisions were taken by the Committee prior to coming to me as a case manager. An example was replacing case investigator role. As the Medical Director (Dr Richard Wright) was my line manager and in the Committee, I took a step back.
- d. The information I received initially about the case was inadequate and inconsistent.
- e. The case investigation evolved into a case of a more complex nature with more and more unexpected findings emerging.
- f. The resources allocated to carry out such a complex investigation were inadequate.

24.3 However I believe these factors did not damage the quality of the end product (my Case Manager's Determination). They largely just caused the process to be slower than I think it ought to have been.



## Urology Services Inquiry

**25. 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.**

25.1 On reflection, the MHPS process was ongoing since earlier in 2016, with some informal measures. However, there appears to have been no real focus on outcomes and follow-up.

25.2 There were number of missed opportunities, especially there being no follow up after handing a letter of concern to Mr O'Brien in early 2016.

25.3 This MHPS process was progressing well in the first few months. However, planning of large numbers of interviews and statements was challenging. Perhaps better planning, organising and scheduling of these interviews may have improved the progress.

25.4 Then the non-engagement of Mr O'Brien for periods may have been avoided if the Medical Director, who was his Responsible Officer, had intervened earlier. I, as Case Manager, had discussions with the Medical Director (Dr Wright) regarding this. I believed Dr Wright had spoken to Mr O'Brien but Dr Wright would be able to provide this information.

25.5 Appropriate training and skills development is vital to carry out these roles effectively.

25.6 Dedicated and protected time is necessary in order to carry out these roles. This MHPS role was an 'add-on' for the professionals involved in investigating.

25.7 Developing experts into the role of MHPS Case Investigators and Case Managers would provide persons with the skills necessary to do the job better.



## Urology Services Inquiry

**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.

**Statement of Truth**

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

Signed: Ahmed Faraz Khan

Date: 08/ 07/ 2022

Dr Khan- S21 31 of 2022 statement Index

Attachment 1- Confidential.msg
Attachment 2- letter dated 6th February 2017.docx
Attachment 3-20170205 Email RE MHPS.pdf
Attachment 4- letter from Case Manager to Mr OB 24th Feb 2017.docx
Attachment 5a- Re Terms of Reference for Investigation January 2017 DRAFT FINAL.msg
Attachment 5b- Email re terms of reference for investigation
Attachment 6- RE Update on MHPS Investigation - AOB.msg
Attachment 7- Re MHPS - AOB.msg
Attachment 9- RE Update on MHPS Investigation - AOB.msg
Attachment 11- Letter to Dr. Khan 30 July 2017.docx
Attachment 12- RE MHPS investigations.msg
Attachment 13-Letter from Case Manager to Mr A O'B 18 June 2018.docx
Attachment 14- Letter from Case Manager to Mr A O'B 14 August 2018.docx
Attachment 15- LETO+180921+Advice+letter+18665.pdf
Attachment 16- Re; MHPS case.msg
Attachment 17 -RE Re; MHPS case determination1.msg
Attachment 18 -Letter from Case Manager to Mr A O'B 26th September 2018.docx
Attachment 19- Letter from Case Manager re GMC report 301018.pdf
Attachment 20- RE Urgent meeting with CEX.msg
Attachment 21- FW AOB notes and dictation.msg
Attachment 22-Letter from Case Manager re GMC report 301018.pdf
Attachment 23 RE Information Request.msg
Attachment 24- FW MHPS Case Manager Determination.msg
Attachment 25- Medical Director Handover.docx
Attachment 27- RE Confirmed AOB- MHPS update meeting.msg
Attachment 28- FW GMC Referral.msg
Attachment 29- NCAS letter December 2016
Attachment 29b- AOB- fitness-to-practise-referral-form
Attachment 30- FOR UPDATE MHPS Case - MR A O'B.msg
Attachment 32- URGENT Request for Information - Mr A O'Brien.msg
Attachment 33- RE Action notes from meeting 24-4-19.msg
Attachment 34-AOB Response to GMC e-mail of 12th November - revised draft 04.12.19.docx
Attachment 35-20190926_LtrJD_AOB_InformationRequest
Attachment 37- AOB response to GMC email of 12 <sup>th</sup> November revised draft (04.12.19) 002
Attachment 38- Meeting of Oversight Group - MHPS case Mr A O'Brien.msg
Attachment 39-FW MHPS Case Manager Determination.msg
Attachment 40- URGENT FOR DISCUSSION AT 1.30PM.msg
Attachment 41- MHPS guidelines.pdf
Attachment 42- 20100915 Guidelines for Handling Concerns about Doctors.pdf
Attachment 43- MHPS Training Certificate.pdf
Attachment 44- Effective investigations Training Certificate_page_2.pdf

Attachment 45- 20181106- TAB45 letter from NCAS GL to Dr Khan
Attachment 46 (b)- 20180927 NCAS REPORT.pdf
Attachment 46(a)- 20180927 NCAS REPORT A1.pdf
Attachment 60- RE MHPS Case.msg
Attachment 62- Letter to A O'Brien from Case Investigator 12 June 2017.docx
Attachment 63- Letter from Case Manager to Mr A O'B 06 February 2017.docx
Attachment 64- Re; MHPS Case.msg
Attachment 69 (a) Re; MHPS Case.msg
Attachment 69 (b) Re; MHPS Case.msg

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**From:** Wright, Richard  
**Sent:** 28 December 2016 11:14  
**To:** Khan, Ahmed  
**Subject:** Confidential

Hi Ahmed. I hope you have had a good break.

I have a tricky situation with I need some help with.

Mr A Obrien is a consultant urologist. There has been an SAI which has highlighted serious potential issues re revue of patients, possible missing patient notes and undictated clinics. The SAI has indicated that there has been patient harm in at least one case.

I was going to ask Colin Weir as CD to investigate this under MHPS. Would you be prepared to act as Case manager under the MHPS framework?

Happy to discuss if need be anytime over the holiday period.

Personal Information  
redacted by the USI

Regards Richard



*Quality Care - for you, with you*

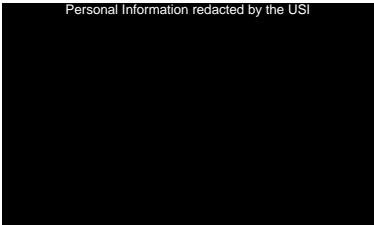
06 February 2017

**STRICTLY PRIVATE & CONFIDENTIAL**

**BY E-MAIL ONLY**

Mr Aidan O'Brien

Personal Information redacted by the USI

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Dear Mr O'Brien

**Re: Formal investigation under Maintaining High Professional Standards Framework (MHPS)**

The purpose of this correspondence is to put on record the decision of the case conference on 26 January 2017.

As per our telephone discussion on Thursday 26 January 2017, a case conference meeting to review your immediate exclusion from work which had been in place from 30 December 2016 took place on 26 January.

Mr Weir, Case Investigator provided the case conference with an update from the preliminary scoping exercise into 4 concerns previously notified to you. Based on this information, I have determined that you do have a case to answer in respect of the 4 concerns and that a formal investigation of the issues of concern is required.

The matter of your immediate exclusion from clinical duties was also discussed in detail and a decision was taken to lift the immediate exclusion with effect from 27 January 2017 as a formal exclusion is not required at this time. However this may be implemented at any time if all monitoring requirements are not met after you return to work. This is to ensure patient safety, to safeguard the investigation and to ensure you are protected from any further allegation of concern during the investigation process.

Please note you will be returning to work with a clear management plan for supervision and monitoring of key aspects of your work. The case conference members are satisfied that you can return to your full role with safeguards in place.

To discuss the detail of the monitoring arrangements, I would be grateful if you could meet with Siobhan Hynds and I, on Thursday 9 February at 4pm in the meeting room, Clanrye House, Daisy Hill Hospital.

I understand you are also due to be assessed by the Trust's Occupational Health department on the same date and we can therefore discuss your fitness for work when we meet.

If this date is not suitable, please contact Siobhan on Personal Information redacted by the USI or via e-mail at Personal Information redacted by the USI to arrange an alternative date.

Yours sincerely

Personal Information redacted by the USI

---

Dr Ahmed Khan  
Associate Medical Director &  
Case Manager

Copy to: Colin Weir, Siobhan Hynds

**Gibson, Simon**

---

**From:** Khan, Ahmed [Personal Information redacted by the USI]  
**Sent:** 05 February 2017 14:07  
**To:** Hynds, Siobhan  
**Cc:** Wright, Richard; Gishkori, Esther  
**Subject:** RE: MHPS

Siobhan, Thanks for confirming meeting on 8<sup>th</sup> –pm to review monitoring arrangements. We can also meet Mr O’Brien at 3.30pm on Wednesday 8<sup>th</sup> Pm (after our meeting) if its suitable to him & you. Can also meet 9<sup>th</sup> Feb between 3-5pm (both in DHH). Am away on Friday the 10<sup>th</sup> Feb. Following week no other day available (apart from 13 & 15<sup>th</sup> Feb ).

Thanks,  
Ahmed

---

**From:** Hynds, Siobhan  
**Sent:** 03 February 2017 20:06  
**To:** Khan, Ahmed  
**Cc:** Wright, Richard; Gishkori, Esther  
**Subject:** RE: MHPS

Dr Khan

I am meeting with Ronan and Esther on Monday afternoon to discuss and plan the monitoring arrangements. I will update you after our meeting. I am holding 8 Feb at 3pm to meet with you to discuss. I will come to Daisy Hill.

Unfortunately neither the 13<sup>th</sup> or 15<sup>th</sup> are suitable for me. I have a few days leave planned that week for mid term. Would you have any availability to meet with Mr O’Brien on 9<sup>th</sup> or 10<sup>th</sup> Feb. He is due to attend OH on 9<sup>th</sup> and could be passed fit for work therefore we would need to be in a position to meet with him to discuss the monitoring arrangements to ensure there is no hold up to his return.

I could do 11.30 to 2.15 on Thursday in Daisy Hill or Friday from 9.00 to 1pm in either DHH or CAH. Can you let me know if either of these dates are possible for you and I will contact Mr O’Brien.

Many thanks

Siobhan

---

**From:** Khan, Ahmed  
**Sent:** 01 February 2017 09:46  
**To:** Hynds, Siobhan  
**Cc:** Wright, Richard; Gishkori, Esther  
**Subject:** RE: MHPS

Siobhan,

I was hoping to meet Mr O'Brien this week as planned last Thursday however as this isn't possible now, will hold 8<sup>th</sup> Feb- 3-5pm ( for an hr) for preliminary meeting to review monitoring arrangements and 13<sup>th</sup> Feb -11-1pm and 15<sup>th</sup> Feb 11-1pm to meet with Mr O'Brien. Please confirm once you have more information as I have to release one of the dates ASAP for other urgent meetings.

Thanks, Ahmed

*Dr Ahmed Khan  
Consultant Paediatrician  
Associate Medical Director  
Children & young people Directorate  
SHSCT*

---

**From:** Hynds, Siobhan  
**Sent:** 31 January 2017 21:46  
**To:** [aidanpobrien](#) Personal Information  
**Cc:** Khan, Ahmed  
**Subject:** Meeting on Friday 3 February  
**Importance:** High

Mr O'Brien,

Further to our telephone conversation last Thursday afternoon (26 January) following the meeting of the case conference.

Dr Khan and I had hoped to meet with you on Friday 3 February to discuss with you the detail of the action plan on your return to work.

Unfortunately we will not be in a position to have the full detail of the action plan for this date. We hope to have an update on Monday 6 February, after which I will contact you to arrange an alternative date.

If you have any queries please contact me on Personal Information redacted by the USI. In the meantime I will send you through the record of our discussions from the meeting on Tuesday 24 January.

Kind Regards,

Siobhan

**Mrs Siobhan Hynds**  
Head of Employee Relations  
Human Resources & Organisational Development Directorate  
Hill Building, St Luke's Hospital Site  
Armagh, BT61 7NQ

Tel: Personal Information redacted by the USI Direct Line: Personal Information redacted by the USI  
Mobile: Personal Information redacted by the USI Fax: Personal Information redacted by the USI



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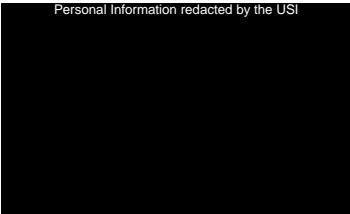
24 February 2017

**STRICTLY PRIVATE & CONFIDENTIAL**

**BY E-MAIL ONLY**

Mr Aidan O'Brien

Personal Information redacted by the USI

A large black rectangular redaction box covers the majority of the address block, obscuring the recipient's contact details.

Dear Mr O'Brien

**Re: Formal investigation under Maintaining High Professional Standards Framework (MHPS)**

Mr John Wilkinson Non-Executive Director has shared with me details of representations you have recently made to him at a meeting on 7 February 2017 about the formal investigation under the Maintaining High Professional Standards (MHPS) Framework.

Following due consideration of the issues you have raised, I wish to respond to you on these matters.

**1. The letter of 23 March 2016**

I have considered the representations you have made in respect of the letter of 23 March 2016. It is important that I state at the outset, that I was not involved in the conversations or discussions that took place at that time. I understand that concerns were identified by managers within the Acute Services Directorate and the purpose of the March 23<sup>rd</sup> letter was to set out to you those concerns on an informal basis in order to enable you to put in place measures to rectify the concerns. The issues of concern did not result from a specific complaint.

The letter was not set out to you in the context of an informal process under the Maintaining High Professional Standards Framework but rather was an informal attempt at local resolution of the issues, sent to you through normal line management channels. It was expected that as an experienced and senior Consultant, this notification of concern to you was sufficient to ensure you took all necessary steps to address the concerns and to rectify the identified problems.

You state in your submission to Mr Wilkinson that an agreement was in place that formal contact or meetings would not take place between you and Mr Mackle due to a prior grievance process. I am not aware of this background or the agreement referred to. I understand the Medical Director, Dr Wright is also unaware of this matter. As you will be aware, Dr Gillian Rankin has retired from the Trust. I feel this is a matter best dealt with via the formal investigation process and I would ask that you raise this with the Case Investigator to fully explore the background and history of what preceded the management of the concerns under the MHPS Framework as is relevant to the current investigation.

## **2. Formal Investigation**

You have raised the matter of the circumstances which led to the decision to manage the concerns under the formal process of the MHPS Framework. As you know, there were concerns raised with you in March 2016 about your administrative practices and the impact on patient management and care.

Management follow up is not clear to me at present. It is not my role to investigate the detail of this and I believe this is again a relevant matter for the formal investigation process. I am however aware that Mr Colin Weir was in post as Clinical Director in the period following March 2016 and given your representations to Mr Wilkinson, I feel it is likely Mr Weir may be required to provide information to the investigation on this issue. Therefore I have asked Mr Weir to step down from his role as Case Investigator and I have asked Dr Neta Chada, Associate Medical Director to undertake the role of Case Investigator. Dr Chada will be in contact with you in due course.

The SAI process you refer to in your submission, alerted the Trust to a very serious issue of concern which indicated harm had come to a patient who had not been properly triaged by you as was required. The issue was one of the same issues alerted to you informally in March 2016. You have noted that a decision was made to immediately exclude you from work prior to the finalised report on the SAI. The reason for this decision was due to the very serious nature of the concern. The Trust must ensure patient safety is properly safeguarded and when matters of serious concern arise, consideration is given to any necessary action to immediately ensure the safety of patients. It is for this reason, a decision was made to exclude you and to move to a formal investigation of the concerns.

You suggest the formal investigation has resulted because of an erroneous presumption that an informal attempt at resolution of the issues had failed. The Trust does not always manage issues of concern through an informal process, the seriousness of issues will always be considered. However an informal attempt to address concerns with you in March 2016 was made.

When a very serious issue of concern came to the attention of the Trust, i.e. the harm of a patient, it was necessary for the Trust to take action deemed necessary and proportionate to manage such a concern. This is the current formal investigation process.

A decision was initially taken to exclude you, this decision has since been reviewed taking into consideration the representations you made for alternatives to exclusion and you have returned to work with effect from 20 February pending conclusion of the formal investigation.

As discussed at our meeting on 9 February, you will be returning to work with a clear management plan for supervision and monitoring of key aspects of your work. An immediate priority is to ensure your job plan is reviewed and agreed to ensure a manageable and comparable workload with your other Consultant colleagues. I have asked for this to be completed as a matter of urgency.

### **3. Timescales of Investigation**

The matter of the timescales for the investigation has also been raised by you with Mr Wilkinson and I understand this was also raised by you at a meeting with Colin Weir and Siobhan Hynds on 24 January.

The timescale for a formal investigation as set out in the MHPS Framework states: *'The Case Investigator should, other than in exceptional circumstances, complete the investigation within 4 weeks of appointment and submit their report to the Case Manager within a further 5 working days.'*

Given the vast scale of the concerns, the numbers of patients involved, the time period over which the concerns stretch, the records which need to be reviewed and the scale of facts to be gathered, a 4 week turnaround time is not practicable in these circumstances. These are exceptional circumstances.

I can assure you that the investigation process will be concluded as expeditiously as possible ensuring that it is fully and properly completed. I will ensure you are kept informed on an on-going basis as to the status of the investigation and the likely timescale for completion.

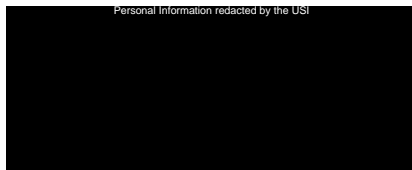
Your understanding that there is a team of case investigators looking at this case is not correct. The case investigator assigned to your case is Dr Chada, who will be assisted by Siobhan Hynds. However a review of the un-triaged patients must be completed to consider what, if any, impact there has been on patient care. A similar review must also be undertaken in respect of the undictated clinics. This can only be done from within the service directorate by individuals with the requisite expertise. This work will inform the case investigator's investigation.

I wish to assure you that all matters pertaining to these concerns will be kept strictly confidential and any individuals involved are wholly bound by their obligations of confidentiality in line with Trust Policy and contract of employment.

I trust this address the issues you have raised and provides assurance to you of my commitment to ensuring the investigation process is concluded as quickly, thoroughly and robustly as possible.

I have shared a copy of this letter with Mr Wilkinson for his information.

Yours sincerely

Personal Information redacted by the USI  


Dr Ahmed Khan  
Associate Medical Director &  
Case Manager

Copy to: Mr John Wilkinson

---

**From:** Wright, Richard  
**Sent:** 08 February 2017 14:22  
**To:** Hynds, Siobhan  
**Cc:** Khan, Ahmed; Toal, Vivienne; Gishkori, Esther; Weir, Colin  
**Subject:** Re: Terms of Reference for Investigation January 2017 DRAFT FINAL  
**Attachments:** image001.png; image002.png

Happy with these thanks Richard

Sent from my iPad

On 7 Feb 2017, at 20:26, Hynds, Siobhan <[redacted] Personal Information redacted by the USI > wrote:

Dr Khan

Please see attached draft Terms of Reference for the AOB investigation for your comment / agreement. Once agreed we can share these with AOB at our meeting this week.

Oversight Committee – for your comment / agreement.

Many thanks

Siobhan

**Mrs Siobhan Hynds**

Head of Employee Relations

Human Resources & Organisational Development Directorate

Hill Building, St Luke's Hospital Site

Armagh, BT61 7NQ

Tel: [redacted] Personal Information redacted by the USI Direct Line: [redacted] Personal Information redacted by the USI

Mobile: [redacted] Personal Information redacted by the USI Fax: [redacted] Personal Information redacted by the USI

<image001.png>

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<image002.png>

<Terms of Reference for Investigation January 2017 DRAFT FINAL.docx>

**Gibson, Simon**

---

**From:** Wright, Richard <[Redacted]>  
**Sent:** 19 January 2017 12:33  
**To:** Gibson, Simon  
**Cc:** Hynds, Siobhan; Toal, Vivienne; Gishkori, Esther  
**Subject:** Re: Terms of Reference for Investigation

I would be content with these. thanks Siobhann. Can we get these out to Dr Khan, Mr Weir ASAP? thanks Richard

Sent from my iPad

On 19 Jan 2017, at 10:46, Gibson, Simon <[Redacted]> wrote:

Dear all

I have considered this draft in the context of NCAS advice, and amended to try and make TOR as specific, focussed and quantitative as possible, by adding in the information presented by Ronan at the 10<sup>th</sup> January meeting.

In particular, the learning from another case in relation to non-chronological scheduling of patients is that this element in particular is better if very specific

Would welcome comments.

Kind regards

Simon

Simon Gibson  
 Assistant Director – Medical Directors Office  
 Southern Health & Social Care Trust

[Redacted]  
**Mobile:** [Redacted]  
**DHH:** [Redacted] **Ext:** [Redacted]

---

**From:** Hynds, Siobhan  
**Sent:** 18 January 2017 13:53  
**To:** Toal, Vivienne; Wright, Richard; Gishkori, Esther  
**Cc:** Gibson, Simon  
**Subject:** Terms of Reference for Investigation  
**Importance:** High

Dear All

Please find attached draft terms of reference for Mr A O'Brien investigation for your comment / approval.

Many thanks

Siobhan

Vivienne

**Mrs Siobhan Hynds**

Head of Employee Relations

Human Resources Department

Hill Building, St Luke's Hospital Site

Armagh, BT61 7NQ

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

Direct Line: [Personal Information redacted by the USI]  
Fax: [Personal Information redacted by the USI]

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<image002.png>

<Terms of Reference for Investigation January 2017 DRAFT FINAL (2).docx>

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**From:** Hynds, Siobhan  
**Sent:** 25 June 2017 19:40  
**To:** Khan, Ahmed  
**Cc:** Chada, Neta  
**Subject:** RE: Update on MHPS Investigation - AOB

**Importance:** High

Dr Khan

Further to the e-mail below, I am sending you a further update on the progress of the investigation relating to Mr A O'B.

All witness have now been met with and statements are being typed for agreement. Some statements have gone out for agreement, the remaining statements will be issued in the coming weeks.

Dr Chada had hoped to meet with Mr O'Brien on 30 June to put all concerns to him and take his response. Mr O'Brien has advised this is not suitable to him. A number of other dates were offered however at Mr O'Brien's request, the meeting will now take place on Monday 31<sup>st</sup> July.

Regards,

Siobhan

---

**From:** Hynds, Siobhan  
**Sent:** 15 May 2017 16:08  
**To:** Khan, Ahmed  
**Cc:** Chada, Neta  
**Subject:** Update on MHPS Investigation - AOB  
**Importance:** High

Dr Khan,

On behalf of Dr Chada, I am sending you an update on the progress of the investigation relating to Mr A O'B.

All witnesses have been scheduled and we hope to have these interviews complete by Monday 5 June. However, there is always the possibility that during the course of our interviews we may need to speak to other relevant witnesses which could delay this date. If there are no further witnesses, once these interviews are complete we should be in a position to meet with Mr O'Brien very shortly after 5 June.

In the update to you on 12 April it was noted that 24 referrals were considered to have required an upgraded referral to a red flag referral. Each case has now been looked at and of these 24, 4 cases have a confirmed cancer outcome. These 4 are in addition to the previous case in autumn of last year which was investigated by an SAI team . Therefore in total there are 5 cases. The other 4 cases will also require an SAI.

In respect of the un-dictated clinics, the look back exercise has been completed on 161 of the 668 and work is still on-going on the rest. For the purposes of the MHPS investigation, Dr Chada will use the sample of 161 cases to move forward with this process.

The investigation now needs to concentrate on the private patient concerns and a review of when patients were seen and if they were seen in non-chronological order is underway. It is hoped that this information will be available to us by end of May.

Whilst we anticipate meeting with Mr O'Brien to discuss the investigation findings and to seek a response from him by mid June, Dr Chada will update you should there be any slippage to this timescale.

If you require any further information please let Dr Chada or I know.

Regards,

Siobhan

**Mrs Siobhan Hynds**

Head of Employee Relations

Human Resources & Organisational Development Directorate

Hill Building, St Luke's Hospital Site

Armagh, BT61 7NQ

Tel: Personal Information redacted by the USI

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**From:** Khan, Ahmed  
**Sent:** 13 April 2017 07:24  
**To:** Wilkinson, John  
**Subject:** Re: MHPS - AOB

**Importance:** High

Dear Mr Wilkinson,  
As a case manager, I would like to update you the progress of Mr A OBrien MHPS Case.

## **Update as at 11 April 2017**

To date the case investigator, Dr Chada has met with 4 witnesses to take their statements. These are currently being typed for agreement with the witnesses. A further 11 potential witnesses have been identified and dates are currently being arranged to meet with them over the coming few weeks. The Easter break will delay some of the meetings due to annual leave. The updated witness list is attached.

### **Issue 1**

The case investigator has established that all un-triaged referrals have now been looked at and there are a number of referrals which, in the opinion of other Consultant Urologists, required to have been triaged as either red flag or urgent but were dealt with as routine due to non-triage. Currently this number is 24. Of these 24, 3 patients have been identified as having a cancer diagnosis and the cases meet the criteria for SAI. A further 5 are still unknown at present.

Mr O'B has not yet been alerted to the second and third SAI issue but I plan to do this before the end of this week.

### **Issue 2**

Of the notes that were missing, 13 patient files remain unaccounted for.

### **Issue 3**

There has been slower progress with the undictated clinics as the work required in the review of these cases is significant. The case investigator has requested an update on a sample of the patients to allow the investigation to progress.

I am informed that it is unlikely the investigation will be completed in the next 4 weeks. I will provide you with a further update in 4 weeks time. I have asked for a timeline for the investigation to be provided to me.

## Issue 4

It appears that at least 7 routine private patients have had a procedure well in excess of normal NHS waiting times.

I have requested an update on Mr A O'B's job plan as this has not yet been agreed. Mr O'B is now back undertaking his normal scheduled work and I am awaiting an update on adherence to the action plan in place by Mr O'B.

I apologise for having to provide this update via e-mail to you however I am currently on annual leave and do not have access to my laptop. This detail information has been provided to me by Ms Siobhan Hynds and Dr Chada. On my return I will call you to discuss any queries you may have about the progress.

Kind Regards,

Ahmed

Dr Ahmed Khan  
Associate Medical Director  
MHPS Case Manager,  
SHSCT

Sent by BlackBerry smart phone

---

**From:** Hynds, Siobhan  
**Sent:** 25 June 2017 19:40  
**To:** Khan, Ahmed  
**Cc:** Chada, Neta  
**Subject:** RE: Update on MHPS Investigation - AOB

**Importance:** High

Dr Khan

Further to the e-mail below, I am sending you a further update on the progress of the investigation relating to Mr A O'B.

All witness have now been met with and statements are being typed for agreement. Some statements have gone out for agreement, the remaining statements will be issued in the coming weeks.

Dr Chada had hoped to meet with Mr O'Brien on 30 June to put all concerns to him and take his response. Mr O'Brien has advised this is not suitable to him. A number of other dates were offered however at Mr O'Brien's request, the meeting will now take place on Monday 31<sup>st</sup> July.

Regards,

Siobhan

---

**From:** Hynds, Siobhan  
**Sent:** 15 May 2017 16:08  
**To:** Khan, Ahmed  
**Cc:** Chada, Neta  
**Subject:** Update on MHPS Investigation - AOB  
**Importance:** High

Dr Khan,

On behalf of Dr Chada, I am sending you an update on the progress of the investigation relating to Mr A O'B.

All witnesses have been scheduled and we hope to have these interviews complete by Monday 5 June. However, there is always the possibility that during the course of our interviews we may need to speak to other relevant witnesses which could delay this date. If there are no further witnesses, once these interviews are complete we should be in a position to meet with Mr O'Brien very shortly after 5 June.

In the update to you on 12 April it was noted that 24 referrals were considered to have required an upgraded referral to a red flag referral. Each case has now been looked at and of these 24, 4 cases have a confirmed cancer outcome. These 4 are in addition to the previous case in autumn of last year which was investigated by an SAI team . Therefore in total there are 5 cases. The other 4 cases will also require an SAI.

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The investigation now needs to concentrate on the private patient concerns and a review of when patients were seen and if they were seen in non-chronological order is underway. It is hoped that this information will be available to us by end of May.

Whilst we anticipate meeting with Mr O'Brien to discuss the investigation findings and to seek a response from him by mid June, Dr Chada will update you should there be any slippage to this timescale.

If you require any further information please let Dr Chada or I know.

Regards,

Siobhan

**Mrs Siobhan Hynds**

Head of Employee Relations

Human Resources & Organisational Development Directorate

Hill Building, St Luke's Hospital Site

Armagh, BT61 7NQ

Tel: Personal Information redacted by the USI

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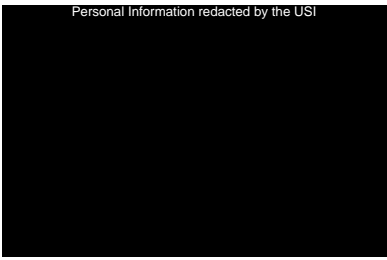


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30 July 2017.

Dr. Ahmed Khan,  
Associate Medical Director,  
Southern Health and Social Care Trust,  
Trust Headquarters,  
Craigavon Area Hospital,  
Craigavon,  
BT63 5QQ.

Dear Dr. Khan,

Re: Formal Investigation.

As you may know, I have been invited to interview by Dr. Chada, the Case Investigator, on Thursday 03 August 2017. I therefore wish to take this opportunity to register the cumulative concerns which I have had regarding the above investigation, the events leading to it and its conduct to date.

First amongst these is the relationship between 'Maintaining High Professional Standards in the Modern HPSS' issued by the Department of Health, Social Services & Public Safety (DHSSPS) in November 2005 and the 'Trust Guidelines for Handling Concerns about Doctors' and Dentists' Performance' issued by the Southern Health and Social Care Trust (SHSCT) in September 2010. 'Maintaining High Professional Standards in the Modern HPSS' (MHPS) is a framework for the handling of concerns about doctors and dentists in the HPSS. In Paragraph 3 of the Framework, the DHSSPS obliges HPSS organisations to notify the Department of the action they have taken to comply with the framework. In response to that obligation, the SHSCT formulated and issued its Guidelines in September 2010.

Paragraph 1.5 of the Trust Guidelines states that the 'guidance, in accordance with the MHPS framework, establishes clear processes for how the Southern Health & Social Care Trust will handle concerns about its doctors and dentists,

to minimise potential risk for patients, practitioners, clinical teams and the organisation'. Therefore, I believe that it is evident that the procedure by the SHSCT handles concerns about its doctors and dentists should be by and in accordance with its Guidelines, as obliged by the DHSSPS. Yet, this investigation has and continues to be conducted under MHPS, rather than under the Trust Guidelines.

In its Introduction, MHPS states that numerous ways exist in which concerns about a practitioner's performance can be identified, through which remedial and supportive action can be quickly taken before problems become serious or patients harmed, and which need not necessarily require formal investigation or the resort to disciplinary procedures. Paragraph 1.2 of the Trust Guidelines states that the document seeks to underpin the principle within the MHPS Framework that the management of performance is a continuous process to ensure both quality of service and to protect clinicians and that remedial and supportive action can be quickly taken before problems become serious or patients harmed.

In your letter of 24 February 2017 to me, you advised that the letter of 23 March 2016 given to me was not in the context of an informal process under the MHPS Framework but rather an informal attempt at local resolution of the issues, sent to me through normal line management channels. Apart from the fact that it was given to me rather than sent to me, it should not have been in the context of the MHPS Framework in any case. Instead, SHSCT management should have discussed with me and taken remedial and supportive action to resolve the issues of concern, in accordance with the Trust Guidelines.

In your letter, you stated that it was your understanding that concerns were identified by managers within the Acute Services Directorate and that the purpose of the March 23<sup>rd</sup> letter was to set out to me those concerns on an informal basis in order to enable me to put in place measures to rectify the concerns. Your understanding would infer that I had not been aware of those concerns prior to being given the letter. I had been burdened with the same concerns prior to being given the letter, and still am. I fail to understand how receipt of a letter outlining concerns of which I had long been aware, was itself enabling, without the remedial and supportive assistance obliged of those who wrote and gave the letter. Instead, it was expected that the letter was sufficient to ensure that I took all necessary steps to address the concerns and to rectify the identified problems.

Without the support which should have been given, it would have required the displacement of other work, and particularly operative activity. The numbers of patients severely suffering while awaiting surgery, at risk of suffering poorer clinical outcomes and actually doing so, remained my greatest clinical priority before and after receipt of the letter of 23 March 2016. During the months after March 2016, I deferred my own surgery which I should have had earlier, and did not take any leave on operating days or on the operating days vacated by colleagues, in order to maximise operating capacity, so as to minimise the poor outcomes suffered by scores of patients. To have attempted to address and rectify the concerns, on my own without support, would certainly have displaced all of the additional operating carried out during the remainder of 2016.

There were 280 patients awaiting admission for surgery in November 2016, excluding those awaiting admission to the Day Surgical Unit. Patients were waiting as far back as February 2014. That number included some thirty patients requiring admission as soon as was possible. The numbers suffering due to delay in admission, at risk of poor clinical outcomes and actually suffering poor clinical outcomes, have been and remain my greatest clinical concern. So far as I am aware, these outnumber many times over, those identified by the investigation as at risk of suffering poor clinical outcomes. When I advised Mr. Weir and Mrs. Hynds of this greatest clinical concern at my meeting with them on 24 January 2017, I was asked whether I had raised this issue with management previously. In addition to advising that I had done so numerous times with all tiers of management, I also asserted that I was doing so again, there and then, and that I predicted that my doing so would not appear in any record of the meeting. It did not! On 27 March 2017, I included this omission in a written request for the Note of the meeting to be amended, and returned to me. Four months later, I still await receipt of the amended Note.

I believe that I, and the patients about whom management claimed to have been concerned, were failed by management's failure to discuss the concerns which they had and which I shared, with a view to agreeing a remedial and supportive course of action over a period of time in order to rectify the problems, as obliged by Trust Guidelines. I would have so welcomed that support. Instead, when I asked what they wanted me to do, there was no advice or support offered.

I believe that the deliverance of a letter to me on 23 March 2016 by members of Trust management, identifying concerns which they expected me to address and rectify, on my own, without remedial action and support, in breach of Trust Guidelines, is untenable, particularly when those same concerns were deemed to be so grave as to merit a Formal Investigation and Immediate Exclusion nine months later.

In your letter of 24 February 2017, you related how the SAI investigation had alerted the Trust to a very serious issue of concern which indicated harm had come to a patient who had not been properly triaged by me as was required. I had indeed previously raised my concern that a decision had been made to proceed with a formal investigation and immediate exclusion, prior to even a draft final report of the investigating panel having been compiled. I was provided with that draft final report on 13 January 2017. I returned my comments upon the report on 25 January 2017. In doing so, I concluded that the terms of reference for the SAI investigation were prejudicial in that the investigation concerned itself with the period of time beginning with CT scanning on 24 June 2014 and ending with the patient's first urological consultation on 06 January 2016. The SAI investigation therefore failed to include that the renal lesion of concern could have been identified on CT scanning as early as December 2012. Most importantly, the patient did not come to any harm as a consequence of the delay in urological consultation. I believe that it was improper and prejudicial to have concluded that harm had been suffered by a patient before the investigation of the case had even reported. I believe that it was even more improper and prejudicial to have used that presumption of harm, which did not exist, to justify Formal Investigation and Immediate Exclusion, as you asserted.

It is also noteworthy that you made reference to my not having 'properly' triaged the letter of referral. I do believe that there is indeed a distinct difference between triage and proper triage. I believe that most, if not all, clinicians would agree that 'triage' is a process to allocate 'red flag', 'urgent' or 'routine' status to any referral in accordance with the information provided in the letter of referral. As I reported in my response to the draft final report of the SAI investigation, the patient had been a routine referral for assessment of a large, simple, right renal cyst, associated with right renal angle pain. Based upon this information, I asserted that I would have retained the routine referral status. The waiting time then for a routine urological outpatient consultation was then 66 weeks. At present, I believe it to be some 84 weeks.

I believe that 'proper' triage would have resulted in the referral status having been amended to 'Red Flag'. This would have required a review of the patient's entire history by access to NIECR. However, crucially, it would also have required a review of the digitalised imaging on NIPACS. I believe that it is a modest proposal that this would have taken some 15 to 20 minutes to undertake. We receive 120 to 160 referrals per week. Even if the mean time required to 'properly' triage were ten minutes each, that would require 20 to 27 hours during a week when one is responsible for all inpatient care of all urological patients, including emergency and urgent surgery, and all emergency and urgent referrals from elsewhere in Craigavon Area Hospital, Daisy Hill Hospital and South West Acute Hospital. Indeed, as reported in my comments upon the draft final report of the SAI investigation, on the day upon which the referral of the case was delivered for triage, I had additionally spent three hours previewing the cases for MDM discussion that afternoon when I spent a further three hours chairing MDM, followed by further time that evening proof reading and signing letters emanating from MDM, addressed to GPs. The following day, I reviewed ten oncology patients in addition to the continued responsibilities of being urologist of the week. It was precisely for this reason that I had previously advised that I had found it impossible to conduct triage on urgent and routine referrals, as there simply was inadequate time to do so. Indeed, in March 2015, as lead clinician of MDT, I had been unable to secure the commitment of my colleagues to conduct such triage on 'Red Flag' referrals alone, as they found it too time consuming and that there was not enough time as urologist of the week to do so, as documented in the minutes of the Urology MDT Business Meeting of 02 April 2015, and even though Red Flag referrals constitute only 15% to 20% of all referrals.

Also, in relation to triage, you referred in your letter to my having failed to properly triage *as was required*. I have twice requested a copy of, or a link to, the Trust's Policy and Procedure regarding triage, and to which reference has been made. I still await a reply, a copy or a link. Moreover, the ultimate reason why any patient had to wait 66 weeks for a routine consultation following referral is because the Trust provides such an inadequate service. It is worthy of note that the SAI investigation panel did not include that inadequacy at all as a factor in the patient's delay in diagnosis. Lastly, in relation to that SAI investigation, I have yet to receive a copy of the final report of the investigating panel. I have written to the Director of Acute Services requesting a copy.

Finally, in relation to triage, one of my colleagues luckily discovered during April 2017 that a decision had been made by some person(s) in management not to place patients on a waiting lists for outpatient consultations at all, if investigations had been requested during triage, until it had been determined whether appointments were required, following receipt of the results or reports of the investigations. This had been decided without any consultation with clinicians, never mind their agreement. Following protest, this practice has since been abandoned. So much for the 'agreed / established procedure' so often referred to, during the course of this investigation!

During 2016, I had deferred my own surgery for as long as possible, in order to operate on as many patients as I possibly could, so as to minimise the numbers suffering while awaiting admission, and suffering poor clinical outcomes, as already related. During 2016 alone, I carried out an additional 22 operating sessions, and an additional 17 Urodynamics and Oncology Review sessions. I continued to do so until my symptoms, and particularly pain, rendered it increasingly difficult to travel, to conduct clinics and to operate. In addition, I deferred my own surgery until after the departure from the Trust of a colleague who required support following concerns regarding his competence when urologist of the week.

As indicated previously, prior to my taking sick leave, I had identified thirty patients awaiting admission, and whom I believed required to be admitted as soon as was possible. On 07 November 2016, I advised the Head of Service and my four colleagues of the ten of those patients waiting the longest periods of time, requesting that they be admitted during my sick leave. I had surgery on 17 November 2016. During the subsequent weeks following discharge, I had arranged operating lists and clinic sessions to be undertaken by me during January 2017. By mid-December 2016, I had become so increasingly concerned by the outcome of my surgery that I contacted the surgeon who arranged for me to be readmitted on 24 December 2016 for Personal information redacted by USI, but who also advised Personal information redacted by USI. This proved to be so effective that there was no need for readmission, though it was equally evident that I needed to remain on antibiotic therapy for a protracted period of time. I felt well enough to have my secretary notify patients of their planned admissions and reviews in January 2017. I felt all the more compelled to do so as only two of the above ten patients had been admitted, by 31 December 2016.

Perhaps, the one aspect of this investigative process which I have found most incomprehensible was the decision to proceed to Formal Investigation and Immediate Exclusion without having consulted with me in the first instance. If I had been Medical Director and received such information, I would have certainly wanted to assess its veracity, accuracy and reliability, not only with those who had provided and delivered the information, but also with the clinician involved. I would certainly have wanted to explore with the clinician involved the reasons for the concerns raised. It would have been for me a matter of common sense, of courtesy and of natural justice. When requested to provide an explanation for this failure, the Medical Director, in his written reply of 30 March 2017, advised that it was not necessary as the required information was being collated by the Assistant Director of Acute Services and by the Head of Service. Instead, I was presented on 30 December 2017 with the fait accompli of Formal Investigation and Immediate Exclusion. Both were inflicted by a Medical Director, on behalf of an Oversight Group, upon a colleague recovering from surgery, even though he claimed to be unaware of the nature of the surgery or of the pathology for which it was performed. The consequences of both upon my health have been the most severe I have suffered in my lifetime, some permanently, and without enquiry since.

When I met with the Medical Director and Ms. Hainey on 30 December 2017, it did appear that the greatest issue of concern was that of 'missing' hospital charts at my home. I did advise that I had never mislaid a patient's chart and that the only patients' charts that I had ever known to have been mislaid, were mislaid by the Trust. Nevertheless, all charts were returned from my home, as directed, on 03 January 2017, so that the Medical Director could advise the Chief Medical Officer of the status of 'missing' charts. I was subsequently presented with a list of 13 patients' charts, tracked out to me, and which were still missing. These included one who had never been my patient, two who never had clinical episodes at Craigavon Area Hospital and who did not even have a Health & Care numbers, one discharged following his birth in 1993 and who had had no episodes since then and who did not have a Health & Care Number, and one who last attended in 1988, four years before my appointment. It also included a patient whose chart had been returned to Medical Records, but which remained tracked out to me, but who is currently an inpatient with her chart intact, provided by Medical records, of course!

It was reported that there were over 600 patients who had attended as outpatients at over 60 clinics, and whose outcomes were unclear. I have yet to be advised of the source of this information, though there has been a belief

that it may have been an extrapolation of an audit of seven outpatient attendances conducted in October 2016. In fact, 349 of 560 patients (62%) who had attended 51 clinics, had already had outcomes dictated and implemented because of their clinical priority. There were 211 patients whose outpatient consultations had neither been dictated or outcomes returned. At the meeting of 30 December 2016, as I had been advised that I would not be able to return to work as intended, I requested a period of two weeks to process these remaining patients, explaining that I would review all of these patients by telephone, to ensure that their current clinical status was up to date. That would have ensured that all of these patients would have been effectively reviewed, relevant correspondence dictated, charts and clinical outcomes returned and implemented, during January 2017. Instead, I was advised that the Oversight Group had directed that the utmost priority was to have the charts returned, by 03 January 2017, so that the Medical Director could see them and report to the Chief Medical Officer of the status of the 'missing' charts.

The Medical Director advised me in his letter of 06 January 2017 that he understood that the charts had been returned as directed, and that their return would be recorded, and their location tracked on PAS, back to filing, to my office or to my secretary's office, in line with Trust procedures. However, charts were not returned to my office or to my secretary's office. Having attended a meeting in the Associate Medical Directors' office on 09 March 2017, I was concerned to find the charts still there. Nevertheless, I had consoled myself that I had been able to document all of the clinical outcomes intended for each patient before returning the charts on 03 January 2017. All of these outcomes were returned, upon request, on Monday 09 January 2017. However, I was advised in June 2017, five months later, that the outcomes had not yet been registered on PAS, never mind implemented. I find it remarkable and contradictory that a Trust purporting to be so concerned about patient safety, harm and potential harm, could have considered it appropriate to insist that 'missing' charts be imminently returned so that they could be declared 'unmissing', having been advised by me that doing so would prevent the processing of those patients in the manner which I have described, and yet allow a further five months to elapse before the returned outcomes were implemented.

Even though it is clearly stated in the Trust Guidelines that the investigation must be completed within four weeks, I still had not received any communication from the appointed Case Investigator, by 16 January 2017,

never mind any notification of a meeting with the appointed Case Investigator, to provide me with an opportunity to state my case and to propose alternatives to exclusion, as required by the same Trust Guidelines, within the four week period permitted. I had to resort to contacting the Case Investigator myself, on 16 January 2017, to be advised that he had a meeting scheduled to take place on Thursday 26 January 2016, the penultimate day of the four week period, with Mrs. Hynds, the Human Resources person appointed to assist him in the investigation, and that no meeting with me had been scheduled to take place at all, within the four week period.

In addition, I had not been provided with the Terms of Reference for the investigation on the day on which it was initiated, in breach of NCAS guidelines. I had not been provided with a copy of correspondence or communication with NCAS. I had not been provided with the minutes of the meeting of the Oversight Group. I had not been provided with a Record of the meeting of 30 December 2016. I had not been advised of the identity of the non-executive Board member appointed to ensure momentum was maintained, to ensure that the investigation was completed in a fair and transparent way, and to consider any representations regarding exclusion or any other aspect of the investigation.

I had to write to the Medical Director on 17 January 2017 requesting to be advised of the identity of the non-executive Board member and requesting all minutes, records and documentation pertaining to the meeting of 30 December 2017. I expressed my concern that a date had not been set for me to meet with the Case Investigator within the four week period, as required by the Trust Guidelines. I also requested the Medical Director to inform me in more detail of the reasons and justifications for immediate exclusion, so that I may be able to adequately respond to them, and to consider proposals for alternatives.

The Medical Director wrote to me on 18 January 2017, enclosing a Note of Meeting of 30 December 2016. In a later letter of 23 January 2017, the Medical Director advised that he had approved the Note of the Meeting on 18 January 2017. I wrote to the Medical Director on 14 February 2017, detailing factual errors and omissions in the Note of the Meeting. I found it most egregious that the Note included a statement, in parenthesis, attributed to my wife who had accompanied me to the meeting, and which she did not make. I received an email from Mrs. Hynds on 01 March 2017, acknowledging receipt of my letter of 14 February 2017 to the Medical Director, and undertaking to arrange for an

amended Note to be sent to me, taking consideration of my comments. I sent a further email to Mrs. Hynds on 19 April 2017, advising her that I still awaited receipt of an amended Note of the meeting of 30 December 2016. I have yet to receive a reply, or an amended Note.

As a consequence of my contacting the Case Investigator on 16 January 2017, and of my letter to the Medical Director on 17 January 2017, I was advised by the Case Investigator, by telephone on 19 January 2017, that a meeting was arranged with him and with Mrs. Hynds on 24 January 2017. I was advised that the purpose of the meeting was to discuss alternatives to exclusion. I was then advised by the Case Investigator, in writing on 20 January 2017, that the purpose of the meeting was two-fold, an opportunity to state my case and to propose alternatives to formal exclusion, even though I had not yet been provided an opportunity to discuss alternatives to immediate exclusion. On 23 January 2017, the Medical Director confirmed in writing that a date for the meeting had been proposed. The Medical Director did not advise me of any specific reasons or justifications for immediate exclusion as requested. He did however avail of the opportunity to opine that the Trust Guidelines created an expectation that investigations are completed in four weeks, even though the Guidelines explicitly assert that investigations must be completed within four weeks. That the investigation was in breach of Trust Guidelines was acknowledged at the meeting with the Case Investigator and with Mrs. Hynds on 24 January 2017. That acknowledgement was not included in the Note of the Meeting.

At that meeting, I asked for specific reasons for my immediate exclusion. None could be given. I asked for specific reasons why exclusion should be continued. None could be given. That none could be given was not included in the Note of the Meeting.

It was at that meeting that it was claimed that a fourth issue of concern was identified during the initial scoping exercise and relating to nine patients who had private outpatient consultations, and who then had prostatic resections performed as NHS patients, after waiting times significantly less than for other patients. However, it was not possible for this fourth concern to be identified during scoping of triage of NHS referrals, NHS outpatient consultations and NHS charts retained at my home. I requested how this concern had been raised or who had raised it. I was advised that I would be advised of the source. Six months later, I have still not been advised. I requested the identity of the nine patients concerned. I still have not been advised of their identity. I asked

whether patients who had had private consultations and who still awaited prostatic resection had been identified, or whether NHS patients who had prostatic resections performed after a similarly short waiting time would be included in a comparative manner in such an investigation. Indeed, in a further communication from the Medical Director, dated 30 March 2017, he advised that all nine patients were classified as routine. I do not know how he could have come to such a conclusion, or who did so, on his behalf. Now, six months later and four days before interview by the Case Investigator, I have still not been advised of any further developments in the investigation of this fourth concern.

On 06 February 2017, I received from Mrs. Hynds a Note of the Meeting of 24 January 2017, inviting me to advise her of any amendments required to the factual accuracy of the Note. On 28 March 2017, I submitted to Mrs. Hynds amendments to be made as a consequence of factual errors and omissions. I still have not received an amended Note.

I was provided with the Terms of Reference for the investigation on 16 March 2017, though NCAS guidelines stipulate that the terms of reference be provided to the practitioner when advised of the formal investigation. On the same date, I was provided with a list of seven witnesses. Dr. Chada advised in her letter of 14 June 2017 that I will have received a witness list from her at an earlier date. I have not received any such list from Dr. Chada. I have not been provided with the testimonies of any witnesses. I have not yet been provided an opportunity to see all relevant correspondence, as obliged by Trust Guidelines.

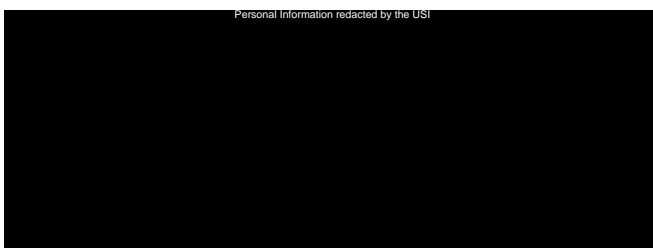
I had considered deferring this record of my concerns until after interview by Dr. Chada. However, I have decided to do so at this time after a recent experience. I had taken annual leave the week commencing Monday 10 July 2017, but had agreed upon request to be on call on Saturday 15 July and Sunday 16 July 2017. On Friday 14 July 2017, I received calls from colleagues advising me of patients acutely admitted for surgery over the weekend. There were a total of eight patients requiring urgent surgery but I was only able to operate on four due to lack of theatre capacity. Some days later, I was approached by a member of staff whom I presume has not known of this investigation but was concerned enough to advise me that an investigation was being conducted into the cases upon whom I had operated, as it had been reported that I had arranged for one or more of these patients to be admitted electively. I was shocked by this revelation. I reported this experience when I

met with the Assistant Director of Acute Services, the Clinical Director and the Head of Service on Tuesday 25 July 2017. It was evident that this investigation was known to one or more of them, if not instigated by one or more of them. I find this a matter of grave concern.

I have very much appreciated the flexibility demonstrated by Dr. Chada in facilitating her interviewing me on a date which did not further compromise patient management and outcomes. I approach that interview with integrity, sincerity, accountability and with some apprehension. However, I do so convinced that there was a safer and less traumatic way of dealing with the concerns identified by management in March 2016, and which I had shared before and since. I should have been offered and provided with remedial action and support to address and resolve those concerns at that time. I believe that I was failed by management, as were the patients I care for. In December 2016, I should then have been offered remedial action and support to address those same concerns. An investigation of untriaged referrals could have been conducted by my colleagues, without my involvement, as I provided all of those referrals in chronological order, upon request. All of the undictated outcomes could have been completed, with updated reviews, by mid-January 2017, as described above. All of the 'missing' charts would have been returned by then. I do believe that there was no need whatsoever for immediate exclusion to be imposed in December 2016, no more than was considered necessary to be continued in January 2017, thereby avoiding the consequences upon my health suffered since, and which have been further exacerbated by the administrative conduct of an investigation into my administrative practices.

Yours Sincerely,

Personal Information redacted by the USI

A large black rectangular box redacting the signature of Aidan O'Brien.

Aidan O'Brien.

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**From:** Khan, Ahmed  
**Sent:** 11 June 2018 10:52  
**To:** Hynds, Siobhan  
**Cc:** Chada, Neta; Toal, Vivienne  
**Subject:** RE: MHPS investigations

**Importance:** High

Siobhan , Can we discuss this today please. I know there is a meeting planned tomorrow between you, me & Neeta regarding this case report however due to my current MD role, I have already asked Vivienne to get some legal advise for my case manager role along with MD responsibilities.

Would like to get some clarity before we meet.

Regards,  
Ahmed

Dr Ahmed Khan  
Acting Medical Director  
SHSCT  
Trust HQ, CAH

---

**From:** Hynds, Siobhan  
**Sent:** 10 June 2018 20:01  
**To:** Aidan O'Brien  
**Cc:** Chada, Neta; Khan, Ahmed; Wilkinson, John  
**Subject:** RE: Investigation

Mr O'Brien

My apologies if you were waiting on a response in respect of the matters below. Your e-mail was a response to a number of e-mails I had sent to you requesting your comments to both your own statements and the witness statements. Despite a number of e-mails to you including one which notified you of the fact that the report was being finalised you hadn't responded to my requests within any of the timescales requested by me to you.

As a result and as notified to you, the Case investigator proceeded to write the investigation report. As I received your comments after I had notified you of the drafting of the report, rather than delay any further, your comments have been appended in full to the final report for the Case manager to consider. This was done in the interests of moving the matter forward as I had been requesting your comments as far back as November 17.

The Case investigator report is completed and a meeting is being held with the Case manager this week. It will be for the case manager to share the report with you for your comments on factual accuracy once he has had time to consider it.

Regards,

Siobhan

**From:** Aidan O'Brien [mailto:Personal Information redacted by the USI]  
**Sent:** 10 June 2018 17:08  
**To:** Hynds, Siobhan  
**Cc:** Chada, Neta; Khan, Ahmed; Wilkinson, John  
**Subject:** Investigation

Siobhan,

I refer to my email of 02 April 2018, attached below.  
 I have not yet received a reply, acknowledging its receipt.  
 I would appreciate if you would provide an acknowledgement as soon as possible.  
 I would also be grateful if you could provide me with a time frame in which I will receive a substantive response to the points raised in the Comments attached.  
 I would also appreciate if you would provide me with the amended minutes of meetings as requested, and promised, over one year ago.

Finally, 17 months have elapsed since this investigation was initiated, and 16 months in breach of Trust Guidelines.  
 I would be grateful if you could provide an update on when the report on the investigation is likely to be completed and when I am likely to receive it.

Aidan.

-----Original Message-----

**From:** Aidan O'Brien <Personal Information redacted by the USI>  
**To:** Siobhan.Hynds <Personal Information redacted by the USI>  
**CC:** neta.chada <Personal Information redacted by the USI>  
**Sent:** Mon, 2 Apr 2018 21:14  
**Subject:** Investigation

Siobhan,

Thank you for your email of 04 March 2018.  
 Thank you for the draft Respondent Statement relating to the meeting of 06 November 2017.

I have attached comments concerning the proposed Respondent Statements of 03 August 2017 and of 06 November 2018.  
 I have also attached comments relating to the Statements of Witnesses.

I also take this opportunity to remind you that I had written to Dr. Wright on 14 February 2017 with details of factual errors and omissions in the Note of the Meeting I had with him and Ms. Hailey on 30 December 2016.  
 You had written to me on 01 March 2017, advising that you would arrange an amended Note to be sent to me, taking consideration of my comments.  
 I still have not received an amended Note.

You had also provided me on 06 February 2017 with a Note of the Meeting of 24 January 2017 with Mr. Weir and with yourself.  
 I submitted proposed amendments to that Note on 28 March 2017.  
 I still await an amended Note.

I particularly would be grateful if you would clarify whether it is intended to provide amended Notes, and if so, when I might expect to receive them.

Thank you,

Aidan.



Southern Health  
and Social Care Trust

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18 June 2018

**BY E-MAIL ONLY**

Mr Aidan O'Brien

Personal Information redacted by the USI

Dear Mr O'Brien

**Re: Formal investigation under Maintaining High Professional Standards Framework (MHPS)**

I write further to the investigation under the Maintaining High Professional Standards Framework.

This investigation has now concluded and I am in receipt of the investigation report from the case investigator, Dr Neta Chada.

In line with the Maintaining High Professional Standards Framework, I wish to share with you, a copy of the investigation report inclusive of all appendices. You are invited to make comments to me in writing on the factual accuracy of the report and to include any mitigation you wish to be considered.

Given the confidential nature of the report I do not wish to post this to you and therefore a copy of the report is available for your collection from my secretary, Ms Laura White in Trust Headquarters.

I would ask you do this within 10 working days of receipt of this letter. I would therefore expect to receive your reply by XXXXX.

If you have any queries regarding this matter please contact me on 028 ??????.

Yours sincerely

**Dr Ahmed Khan**  
**Acting Medical Director / Case Manager**



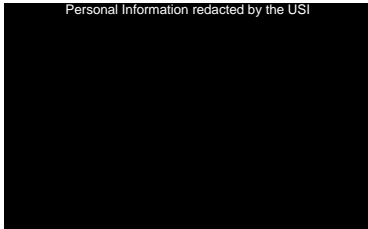
*Quality Care - for you, with you*

14 August 2018

**BY E-MAIL ONLY**

Mr Aidan O'Brien

Personal Information redacted by the USI



Dear Mr O'Brien

**Re: Formal investigation under Maintaining High Professional Standards Framework**

Thank you for providing your comments on the investigation report following conclusion of the formal investigation under the Maintaining High Professional Standards Framework. I have received your comments following my recent return from a period of extended annual leave.

Now that I have received the investigation report from the case investigator and your comments, as case manager, I will consider the final information in full to make a determination on the appropriate next step in the process.

As per the MHPS Framework, I have a range of decisions available to me which include that:

- No further action is needed
- Restriction/s on practice or exclusion from work is appropriate
- There is a case of misconduct that should be put to a conduct panel
- There are concerns about your health that should be considered by the occupational health service
- There are concerns about your clinical performance which require further formal consideration by NCAS
- There are serious concerns that fall into the criteria for referral to the GMC or GDC

- There are intractable problems and the matter should be put before a clinical performance panel.

I will endeavour to consider all available in full and liaise with you regarding my decision as soon as practicably possible. I hope you understand that there is a very significant volume of information to be considered and therefore I want to take time to do that thoroughly.

If you have any queries regarding this matter please do not hesitate to contact me.

Yours sincerely

**Dr Ahmed Khan**  
**Acting Medical Director / Case Manager**

## Resolution

### Practitioner Performance Advice (formerly NCAS)

2nd Floor, 151 Buckingham Palace Road

London

SW1W 9SZ

Advice line:

Personal Information redacted by the USI

Fax:

Personal Information redacted by the USI

[www.ncas.nhs.uk](http://www.ncas.nhs.uk)

Personal Information redacted by the USI

**21 September 2018**

### PRIVATE AND CONFIDENTIAL

Dr Ahmed Khan  
Medical Director  
Southern Health and Social Care Trust  
Beechfield House  
68 Lurgan Road  
Portadown  
BT63 5QQ

**Ref: 18665 (Please quote in all correspondence)**

Dear Dr Khan,

Further to our telephone conversation on 20 September 2018, I am writing to summarise the issues which we discussed for both of our records. Please let me know if any of the information is incorrect.

Practitioner Performance Advice (formerly NCAS) encourages transparency in the management of cases and advises that practitioners should be informed when their case has been discussed with us. I am happy for you to share this letter with Dr 18665 if you consider it appropriate to do so. The practitioner is also welcome to contact us for a confidential discussion regarding the case. We have recently launched a new guide for practitioners, which sets out information about our role and services which may be of interest and is available on our website under publications.

In summary, this reopened case, which I had previously discussed with your colleague, Dr Wright, involves Dr 18665, a senior consultant urologist about whom there had been increasing concerns. An investigation, for which you are the Case Manager, has now been completed – it was very delayed because of the complexities and extent of the issues – and you are considering the options as set out in paragraph 38 of Part I MHPS (Maintaining High Professional Standards in the Modern HPSS). You wanted to seek advice around this. You indicated that since February 2017, Dr 18665 has been working

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to an agreed action plan with on-going monitoring so that any risks to patients have been addressed.

There were 5 Terms of Reference for the investigation (although the last related to the extent to which the managers knew of or had previously managed the concerns). You told me that having read the report, the factual accuracy of which Dr 18665 has had a chance to comment on, you have concluded that there was evidence to support many of the allegations with regards to Dr 18665. Specifically, following detailed consideration, you noted that:

- a) There were clear issues of concern about Dr 18665's way of working and his management of his workload. There has been potential harm to a large number of patients (783) and actual harm to at least 5 patients;
- b) Dr 18665's reflection throughout the investigation process was concerning and in particular in respect of the 5 patients diagnosed with cancer;
- c) As a senior member of staff within the Trust Dr 18665 had a clear obligation to ensure managers within the Trust were fully and explicitly aware that he was not undertaking routine and urgent triage as was expected;
- d) There has been significant impact on the Trust in terms of its ability to properly manage patients, manage waiting lists and the extensive look back exercise which was required to identify patients who may have been affected by the deficiencies in Dr 18665's practice (and to address these issues for patients);
- e) There is no evidence of concern about Dr 18665's clinical ability with individual patients;
- f) Dr 18665 had advantaged his own private patients over HSC patients on at least 9 occasions;
- g) The issues of concern were known to some extent for some time by a range of managers and no proper action was taken to address and manage the concerns;

You told me that the SAI (serious adverse incident) investigation, which has patient involvement, is looking at the issue where patients have, or may have been, harmed as a result of failings. You are aware that patients are entitled to know this.

We discussed the current situation and the overriding need to ensure patients are protected. I note that you have a system in place within the Trust to safeguard patients, but we discussed that this needs to be mirrored in the private sector. You explained that Dr 18665 saw private patients at his home and did not have a private sector employer. I would suggest that as paragraph 22 of Section II MHPS states that "*where a HPSS employer has placed restrictions on practice, the practitioner should agree not to undertake any work in that area of practice with any other employer*" Dr 18665 should not currently be working privately.

We discussed that the issues identified in the report were serious, and that whilst there are clearly systemic issues and failings for the Trust to address, it is unlikely that in these circumstances the concerns about Dr 18665 could be managed without formal action. We also discussed that whilst the issues did have clinical consequences for patients, as some of the concerns appear to be due to a failure to follow policies and protocols, and possibly also a breach of data protection law, these might be considered to be matters of conduct rather than capability. We noted therefore that it would be open to you in your

role as Case Manager to put the matter forward to a conduct hearing, but that Dr 18665 could also be offered support going forward to ensure that in future he is able to meet and sustain the required and expected standards. You told me that the local GMC ELA is aware of the issue and I advised that you may wish to update her on the position. In the majority of cases, the GMC prefers Trust to conclude their own processes before considering referral, and early referral is only indicated in a minority of cases; but the ELA would be best placed to advise on this.

I told you that, whilst there are no noted clinical performance concerns, Practitioner Performance Advice could offer support via the Professional Support and Remediation (PSR) team by drafting a robust action plan with input both from Dr 18665 and the Trust to address some of the deficiencies which have been identified (around the management of workload, administrative type of issues, for example). The purpose of the plan would be to ensure oversight and supervision of Dr 18665's work so that the Trust is satisfied there is no risk to patients, but also to provide support for Dr 18665, to afford him the best opportunity of meeting the objectives of the plan. We noted that this might involve job planning issues such as reducing Dr 18665's workload, and enhanced appraisal.

Since we spoke, I have talked to PSR, and we will arrange for the forms, which must be completed to formally request PSR support with a plan, to be sent out.

I note you said that there are no reported health concerns. However, as this is likely to continue to be a stressful time for Dr 18665, he should be offered any additional support deemed appropriate (access to staff counselling, mentoring, etc.).

As discussed, we will keep this case open. Please feel free to call at any stage, if you have queries.

**Relevant regulations/guidance:**

- Local procedures
- General Medical Council Guide to Good Medical Practice
- Maintaining High Professional Standards in the Modern NHS (MHPS)
- The Medical Profession (Responsible Officer) Regulations 2010 and Amendment 2013

**Review date:** 24 September 2018

Yours sincerely,

Personal Information redacted by the USI

Dr Grainne Lynn  
**Adviser**  
**Practitioner Performance Advice**

---

**From:** Khan, Ahmed  
**Sent:** 26 September 2018 10:23  
**To:** Devlin, Shane; Toal, Vivienne  
**Cc:** Wright, Elaine  
**Subject:** Re; MHPS case  
**Attachments:** Draft Case Manager Determination AO'B 250918.docx  
  
**Importance:** High

Dear Shane & Vivienne,

Please find attached final draft of the Mr O'Brien's MHPS case recommendations. I have also written to him this morning with number of possible dates to meet (from end of this week onwards). Please feel free to add any final comments/suggestions in the attached draft report. We can pick this after SMT if required.

Many thanks,  
Ahmed

**Final Draft**  
**Confidential**

25/09/18

**Case Manager Determination**

**Formal Investigation under the Maintaining High Professional Standards Framework in respect of Mr Aiden O'Brien, Consultant Urologist**

Following conclusion of the formal investigation, the Case Investigator's report has been shared with Mr O'Brien for comment on the factual accuracy of the report. I am in receipt of Mr O'Brien's comments and therefore the full and final documentation in respect of the investigation.

**Responsibility of the Case Manager:**

In line with Section 1 Paragraph 38 of the MHPS Framework, as Case Manager I am responsible for making 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
4. There are concerns about the practitioner's health that should be considered by the HSS body's occupational health service, and the findings reported to the employer
5. There are concerns about the practitioner's 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
7. There are intractable problems and the matter should be put before a clinical performance panel.

**Formal Investigation Terms of Reference**

The terms of reference for the formal investigation were:

1. (a) To determine if there have been any patient referrals to Mr A O'Brien which were un-triaged in 2015 or 2016 as was required in line with established practice / process.

- (b) To determine if any un-triaged patient referrals in 2015 or 2016 had the potential for patients to have been harmed or resulted in unnecessary delay in treatment as a result.
  - (c) To determine if any un-triaged referrals or triaging delays are outside acceptable practice in a similar clinical setting by similar consultants irrespective of harm or delays in treatment.
  - (d) To determine if any un-triaged patient referrals or delayed tri-ages in 2015 or 2016 resulted in patients being harmed as a result.
2. (a) To determine if all patient notes for Mr O'Brien's patients are tracked and stored within the Trust.
- (b) To determine if any patient notes have been stored at home by Mr O'Brien for an unacceptable period of time and whether this has affected the clinical management plans for these patients either within Urology or within other clinical specialties.
- (c) To determine if any patient notes tracked to Mr O'Brien are missing.
3. (a) To determine if there are any undictated patient outcomes from patient contacts at outpatient clinics by Mr O'Brien in 2015 or 2016.
- (b) To determine if there has been unreasonable delay or a delay outside of acceptable practice by Mr O'Brien in dictating outpatient clinics.
- (c) To determine if there have been delays in clinical management plans for these patients as a result.
4. To determine if Mr O'Brien has seen private patients which were then scheduled with greater priority or sooner outside their own clinical priority in 2015 or 2016.
5. To determine to what extent any of the above matters were known to line managers within the Trust prior to December 2016 and if so, to determine what actions were taken to manage the concerns.

### **Investigation Findings**

In answering each of the set terms of reference of the investigation, the Case Investigator concluded:

- 1. (a) It was found that Mr O'Brien did not undertake non-red flag referral triage during 2015 and 2016 in line with the known and agreed process that was in

place. In January 2017, it was found that 783 referrals were un-triaged by Mr O'Brien. Mr O'Brien accepts this fact.

(b) It was found that there was the potential for 783 patients to have been added to the incorrect waiting list. A look back exercise of all referrals by other Consultant Urologists determined that of the 783 un-triaged referrals, 24 would have been upgraded to red-flag status, meaning the timescales for assessment and implementation of their treatment plans was delayed. All un-triaged referrals were added to Trust waiting lists based on the GP referral assessment.

(c) It was found that all other Consultant Urologists undertook triage of all referrals in line with established practice.

(d) It was found that of the 24 upgraded patient referrals, 5 patients have a confirmed cancer diagnosis. All 5 patients have been significantly delayed commencing appropriate treatment plans.

2. (a) It was found that in January 2017 Mr O'Brien returned 307 sets of patient notes which had been stored at his home. Mr O'Brien accepts that there were in excess of 260 patient notes returned from his home in January 2018.

(b) The notes dated as far back as November 2014. It was found that Mr O'Brien returned patient notes as requested and he asserts therefore there was no impact on patient care.

(c) It was found that there are 13 sets of patient notes missing. The Case Investigator was satisfied these notes were not lost by Mr O'Brien.

3. (a) It was found that there were 66 undictated clinics by Mr O'Brien during the period 2015 and 2016. Mr O'Brien's accepts this.

(b) It was accepted by Mr O'Brien that he did not dictate at the end of every care contact but rather dictated at the end of the full care episode. This is not the practice of any other Consultant Urologist. The requirements of the GMC is that all notes / dictation are contemporaneous.

(c) There are significant waiting list times for routine Urology patients. It is therefore unclear as to the impact of delay in dictation as the patients would have had a significant wait for treatment. The delay however meant that the actual waiting lists were not accurate and the look back exercise to ensure all patients had a clear management plan in place was done at significant additional cost and time to the Trust.

6. It has been found that Mr O'Brien scheduled 9 of his private patient's sooner and outside of clinical priority in 2015 and 2016.
7. Concerns about Mr O'Brien's practice were known to senior managers within the Trust in March 2016 when a letter was issued to Mr O'Brien regarding these concerns. The extent of the concerns was not known. No action plan was put in place to address the concerns. It was found that a range of managers, senior managers and Directors within the Acute Service Directorate were aware of concerns regarding Mr O'Brien's practice dating back a number of years. There was no evidence available of actions taken to address the concerns.

**Other findings / context**

Other important factors in coming to a decision in respect of the findings are:

**Triage**

1. Mr O'Brien provided a detailed context to the history of the Urology service and the workloads pressures he faced. Mr O'Brien noted that he agreed to the triage process but very quickly found that he was unable to complete all triage. Mr O'Brien noted that he had raised this fact with his colleagues on numerous occasions to no avail. Mr O'Brien accepts that he did not explicitly advise anyone within the Trust that he was not undertaking routine or urgent referral triage. Mr O'Brien did undertake red-flag triage.
2. It was known to a range of staff within the Directorate that they were not receiving triage back from Mr O'Brien. A default process was put in place to compensate for this whereby all patients were added to the waiting lists according to the GP categorisation. This would have been known to Mr O'Brien.
3. Mr Young is the most appropriate comparator for Mr O'Brien as both have historical long review lists which the newer Consultants do not have. Mr Young managed triage alongside his other commitments. Mr Young undertook Mr O'Brien's triage for a period of time to ease pressures on him while he was involved in regional commitments.

**Notes**

1. There was no proper Trust transport and collection system for patient notes to the SWAH clinic in place.
2. There was no review of notes tracked out by individual to pick up a problem.
3. Notes were returned as requested by Mr O'Brien from his home.

4. It was known that Mr O'Brien stored notes at home by a range of staff within the Directorate.

### **Undictated clinics**

1. Mr O'Brien's secretary did not flag that dictation was not coming back to her from clinics. Mr O'Brien's secretary was of the view that this was a known practice to managers within the Directorate.
2. Mr O'Brien indicated that he did not see the value of dictating after each care contact.
3. Mr O'Brien was not using digital dictation during the relevant period and therefore the extent of the problem was not evident.

### **Case Manager Determination**

My determination about the appropriate next steps following conclusion of the formal MHPS investigation:

- There is no evidence of concern about Mr O'Brien's clinical ability with patients.
- There are clear issues of concern about Mr O'Brien's way of working, his administrative processes and his management of his workload. The resulting impact has been potential harm to a large number of patients (783) and actual harm to at least 5 patients.
- Mr O'Brien's reflection on his practice throughout the investigation process was of concern to the Case Investigator and in particular in respect of the 5 patients diagnosed with cancer.
- As a senior member of staff within the Trust Mr O'Brien had a clear obligation to ensure managers within the Trust were fully and explicitly aware that he was not undertaking routine and urgent triage as was expected. Mr O'Brien did not adhere to the known and agreed Trust practices regarding triage and did not advise any manager of this fact.
- There has been significant impact on the Trust in terms of its ability to properly manage patients, manage waiting lists and the extensive look back

exercise which was required to address the deficiencies in Mr O'Brien's practice.

- Mr O'Brien did not adhere to the requirements of the **GMC's; Good Medical Practice**, specifically in terms of recording his work clearly and accurately, recording clinical events at the same time of occurrence or as soon as possible afterwards.
- Mr O'Brien has advantaged his own private patients over HSC patients on 9 known occasions.
- The issues of concern were known to some extent for some time by a range of managers and no proper action was taken to address and manage the concerns.

***This determination is completed without the findings from the Trust's SAI process which is not yet complete.***

### **Advice Sought**

Before coming to a conclusion in this case, I discussed the investigation findings with the Trust's Chief Executive, the Director of Human Resources & Organisational Development. I also sought advice from the National Clinical Assessment Service (NCAS).

### **My determination:**

#### **1. No further action is needed**

Given the findings of the formal investigation, this is not an appropriate outcome.

#### **2. Restrictions on practice or exclusion from work should be considered**

There are 2 elements of this option to be considered:

##### **a. A restriction on practice**

At the outset of the formal investigation process, Mr O'Brien returned to work following a period of immediate exclusion working to an agreed action plan from February 2017. The purpose of this action plan was to ensure risks to patients were

removed and his practice was monitored during the course of the formal investigation process. Mr O'Brien worked successfully to the action plan during this period.

It is my view that in order to ensure the Trust continues to have an assurance about Mr O'Brien's administrative practice/s and management of his workload, an action plan should be reviewed and should remain in place. The action plan should be reviewed and monitored on an on-going basis by Mr O'Brien's Clinical Director (CD), with escalation to the Associate Medical Director (AMD) should any concerns arise. The CD must provide the Trust with the necessary assurances about Mr O'Brien's practice. The action plan must address any issues with regards to patient related admin duties and there must be an accompanying agreed balanced job plan to include appropriate levels of administrative time.

#### **b. An exclusion from work**

A decision was taken to not to exclude Mr O'Brien at the outset of the formal investigation process rather to implement and monitor an action plan in order to mitigate patient safety risk.

Mr O'Brien has successfully worked to the agreed action plan during the course of the formal MHPS investigation. I therefore do not consider exclusion from work to be a necessary action now.

### **3. There is a case of misconduct that should be put to a conduct panel**

The formal investigation has concluded there have been failures on the part of Mr O'Brien to adhere to known and agreed Trust practices and that there have also been failures by Mr O'Brien in respect of '**Good Medical Practice**' as set out by the GMC.

These include:

- Failing to undertake non red flag triage. This was known to Mr O'Brien to be an agreed practice and expectation of the Trust.
- Failing to properly make it known to his line manager/s that he was not undertaking all triage, as would be expected and required of a senior clinician.
- Knowingly advantaging his private patients over HSC patients.
- Failing to undertake contemporaneous dictation of his clinical contacts with patients in line with 'Good Medical Practice'

- Failing to ensure the Trust had a clear picture of the extent of his waiting lists by ensuring all patients were properly added to waiting lists in chronological order.

Given the issues above, I have concluded that Mr O'Brien's failings must be put to a conduct panel for consideration of an appropriate decision / sanction.

**4. There are concerns about the practitioner's health that should be considered by the HSS body's occupational health service, and the findings reported to the employer.**

There are no evident concerns about Mr O'Brien's health. I do not consider this to be an appropriate option.

**5. There are concerns about the practitioner's clinical performance which require further formal consideration by NCAS**

*Before coming to a conclusion in this regard, I sought advice from NCAS.*

The formal investigation report does not highlight any concerns about Mr O'Brien's clinical ability. The concerns highlighted throughout the investigation are wholly in respect of Mr O'Brien's administrative practices. The report highlights the impact of Mr O'Brien's failings in respect of his administrative practices which had the potential to cause harm to patients and which caused actual harm in 5 instances.

I am satisfied, taking into consideration advice from NCAS, that this option is not required.

**6. There are serious concerns that fall into the criteria for referral to the GMC or GDC**

I refer to my conclusion above. I am satisfied that the concerns do not fall into the criteria for referral to the GMC at this time.

**7. There are intractable problems and the matter should be put before a clinical performance panel.**

I refer to my conclusion under option 6. I am satisfied there are no concerns highlighted about Mr O'Brien's clinical ability.

Mr O'Brien has been working to an action plan and has been safely practicing during the course of the investigation process.

**Final Conclusions / Recommendations:**

This MHPS formal investigation focused on the administrative practice/s of Mr O'Brien. The investigation report presented to me focused centrally on the specific terms of reference set for the investigation.

Within the report, as outlined above, there have been failings identified on the part of Mr O'Brien which require to be addressed, through a Trust conduct panel and a formal action plan.

The investigation report also highlights issues regarding systemic failures by managers at all levels, both clinical and operational, within the Acute Services Directorate. The report identifies there were missed opportunities by managers to fully assess and address the deficiencies in practice of Mr O'Brien. No-one assessed the extent of the issues or properly identified the potential risks to patients. Default processes were put in place to work around the deficiencies in practice rather than address them.

I am therefore of the view there are wider issues of concern, other than administrative practice concerns by Mr O'Brien, that must be considered and addressed. The findings of the report should not solely focus on one individual, Mr O'Brien.

In order for the Trust to understand completely the failings in this case, I recommend the Trust to carry out an independent review of the administrative processes with clarity of roles & responsibilities at all level within Acute Directorate, to look at the full system wide problems and to learn from the findings.

---

**From:** Khan, Ahmed  
**Sent:** 27 September 2018 09:18  
**To:** Toal, Vivienne; Devlin, Shane  
**Cc:** Wright, Elaine  
**Subject:** RE: Re; MHPS case

Yes that's fine.  
A

---

**From:** Toal, Vivienne  
**Sent:** 27 September 2018 07:38  
**To:** Devlin, Shane  
**Cc:** Khan, Ahmed; Wright, Elaine  
**Subject:** RE: Re; MHPS case

Yes no problem.

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**From:** Devlin, Shane  
**Sent:** 27 September 2018 07:38  
**To:** Toal, Vivienne  
**Cc:** Khan, Ahmed; Wright, Elaine  
**Subject:** RE: Re; MHPS case

I have a meeting with John Wilkinson and the chairman after the board therefore that may not be possible. Could we grab 10 mins over lunchtime?

On 27 Sep 2018 7:33 am, "Toal, Vivienne" <[REDACTED]> wrote:  
Ahmed and Shane – I think a short discussion on this would be helpful to make sure we are all on same page. Could we do that after Trust Board, all being well? I would be more content if we did.

Thanks  
Vivienne

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**From:** Khan, Ahmed  
**Sent:** 26 September 2018 10:23  
**To:** Devlin, Shane; Toal, Vivienne  
**Cc:** Wright, Elaine  
**Subject:** Re; MHPS case  
**Importance:** High

Dear Shane & Vivienne,

Please find attached final draft of the Mr O'Brien's MHPS case recommendations. I have also written to him this morning with number of possible dates to meet (from end of this week onwards). Please feel free to add any final comments/suggestions in the attached draft report. We can pick this after SMT if required.

Many thanks,  
Ahmed





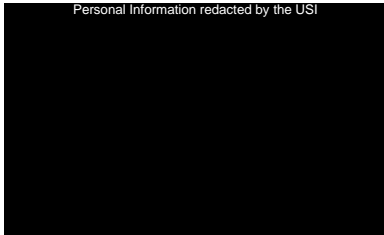
*Quality Care - for you, with you*

26<sup>TH</sup> September 2018

**BY E-MAIL ONLY**

Mr Aidan O'Brien

Personal Information redacted by the USI



Dear Mr O'Brien

RE: MHPS Formal Investigation

As you know, I have had an opportunity over the last number of weeks to consider the formal investigation report from the MHPS process undertaken by Dr Neta Chada. You have also provided comments to me in respect of the factual accuracy of the investigation report and have had an opportunity to provide comments in respect of mitigation.

I have considered all of the information presented and I am now in a position to meet with you to discuss my determination of the next steps given my role Case Manager.

You are entitled to be accompanied to the meeting in line with the arrangements as set out in the MHPS Framework.

Please find below a list of the dates I can offer to meet.

- 28<sup>th</sup> September- 11.30 am- Daisy Hill Hospital
- 4<sup>th</sup> October- 10 am- Trust HQ
- 16<sup>th</sup> October- 2pm- Trust HQ
- 22<sup>nd</sup> October- 2.30pm- Trust HQ
- 29<sup>th</sup> October- 2.30pm- Trust HQ

I appreciate the first dates are quite soon and you may need time to organise accompaniment to the meeting however I wanted to provide a range of dates for your consideration. I would be grateful if you could let me know your preferred date by return e-mail.

I have asked Siobhan Hynds from HR to be present at the meeting.

If you have any queries regarding this matter please do not hesitate to contact me. I look forward to hearing from you.

Kind Regards,

Dr Ahmed Khan  
Interim Medical Director  
MHPS Case Manager  
Trust HQ, CAH  
SHSCT  
Craigavon,  
BT63 5QQ.



*Quality Care - for you, with you*

31 October 2018

**STRICTLY PRIVATE & CONFIDENTIAL**

Mr Aidan O'Brien

Personal Information redacted by the USI

Dear Mr O'Brien

**Re: Formal investigation under Maintaining High Professional Standards Framework (MHPS)**

I write further to our meeting on Monday 1 October 2018.

The purpose of our meeting on 1 October was to discuss my determination on the next steps following conclusion of the formal investigation under the Maintaining High Professional Standards Framework.

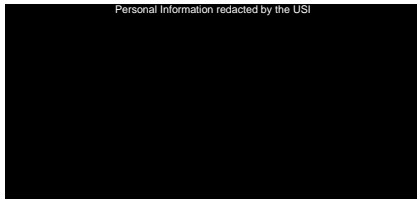
At this meeting, I had informed you that your case has been previously advised to the General Medical Council (GMC) liaison officer, Ms Joanne Donnelly, who meets regularly with the Trust to discuss all concerns being managed under the MHPS Framework.

I also advised you that at present no formal GMC referral has been made by the Trust about your case. However at the last GMC Liaison meeting, Ms Donnelly requested a redacted copy of the case manager

determination from the formal investigation. I write to advise you that Trust will be sharing this information with Ms Donnelly as per her request.

If you have any queries regarding this please let me know.

Yours sincerely



**Dr Ahmed Khan**  
**Case Manager – MHPS**  
**Medical Director (Interim)**

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**From:** Khan, Ahmed  
**Sent:** 22 October 2018 15:37  
**To:** White, Laura  
**Subject:** RE: Urgent meeting with CEX

See if Vivienne is also free at the same time as we may need to be at the discussion.

Thanks  
AK

---

**From:** White, Laura  
**Sent:** 22 October 2018 15:21  
**To:** Khan, Ahmed  
**Subject:** Urgent meeting with CEX

Dr Khan

I have pencilled in tomorrow at **12.30pm 1/2hr slot with CX**, if the previous meeting runs over he only has 5pm, we will see how it goes tomorrow and reschedule if need be to the end of the day.

Regards, Laura

---

**From:** Khan, Ahmed  
**Sent:** 22 October 2018 12:03  
**To:** White, Laura  
**Subject:** Re; Urgent meeting with CEX

Laura, can you check if CEX available tomorrow pm for 30 min urgent meeting regarding –MHPS case? I will now be in HQ all day .

Thanks  
AK

---

**From:** Khan, Ahmed (irrelevant redacted by the USI)  
**Sent:** 29 October 2018 10:28  
**To:** Hynds, Siobhan  
**Subject:** FW: AOB notes and dictation  
**Importance:** High

Siobhan, Would you be able to draft this reminder email to AOB. Any update for redacted report for GMC? this has to go by the middle of this week. What about conduct hearing panel members and date? I am in DHH today can you meet /talk at 4.30?  
Thanks  
AK

---

**From:** Carroll, Ronan  
**Sent:** 24 October 2018 15:48  
**To:** Khan, Ahmed  
**Cc:** Gishkori, Esther; Gibson, Simon; Hynds, Siobhan; Toal, Vivienne; Weir, Colin  
**Subject:** RE: AOB notes and dictation  
**Importance:** High

Dr Khan  
Happy to ensure AP is monitored.  
Could I ask that the oversight committee write to Mr O'Brien reminding him of his obligations/responsibilities to comply with this AP and that it will be monitored.  
Regards  
Ronan

*Ronan Carroll*  
*Assistant Director Acute Services*  
*ATICs/Surgery & Elective Care*

Personal Information  
redacted by the USI

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**From:** Khan, Ahmed  
**Sent:** 23 October 2018 16:08  
**To:** Carroll, Ronan  
**Cc:** Gishkori, Esther; Gibson, Simon; Hynds, Siobhan; Toal, Vivienne  
**Subject:** RE: AOB notes and dictation

Ronan, The action plan must be closely monitored with weekly report collected as per AP. Can you also clarify that yesterday, 22/10/18 there were 91 outstanding dictations and today only 16 (Oldest 28/9/18)?

Thanks,  
Ahmed

---

**From:** Gibson, Simon  
**Sent:** 23 October 2018 15:57  
**To:** Carroll, Ronan; Khan, Ahmed; Hynds, Siobhan; Toal, Vivienne

**Cc:** Gishkori, Esther  
**Subject:** RE: AOB notes and dictation

Dear Ahmed

I assume that would be a question for you as Case Manager (or the Oversight Committee)?

Kind regards

Simon

Simon Gibson  
Assistant Director – Medical Directors Office  
Southern Health & Social Care Trust

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(DHH)

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**From:** Carroll, Ronan  
**Sent:** 23 October 2018 15:34  
**To:** Gibson, Simon; Khan, Ahmed; Hynds, Siobhan; Toal, Vivienne  
**Cc:** Gishkori, Esther  
**Subject:** RE: AOB notes and dictation  
**Importance:** High

Re the outcome of today's meeting can I ask are we to continue monitoring AOB against the 4 elements of the AP?  
Ronan

*Ronan Carroll*  
*Assistant Director Acute Services*  
*Anaesthetics & Surgery*

*Mob*

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*Ext*

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**From:** Carroll, Ronan  
**Sent:** 23 October 2018 15:05  
**To:** Gibson, Simon; Khan, Ahmed; Hynds, Siobhan; Kerr, Vivienne  
**Subject:** RE: AOB notes and dictation

Yes

*Ronan Carroll*  
*Assistant Director Acute Services*  
*Anaesthetics & Surgery*

*Mob*

Personal Information redacted by the USI

*Ext*

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**From:** Gibson, Simon  
**Sent:** 23 October 2018 15:05  
**To:** Carroll, Ronan; Khan, Ahmed; Hynds, Siobhan; Kerr, Vivienne  
**Subject:** RE: AOB notes and dictation

P.S - Maybe should have gone to Viv Toal?

Kind regards

Simon

Simon Gibson  
Assistant Director – Medical Directors Office  
Southern Health & Social Care Trust

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(DHH)

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**From:** Carroll, Ronan  
**Sent:** 23 October 2018 15:02  
**To:** Khan, Ahmed; Hynds, Siobhan; Gibson, Simon; Kerr, Vivienne  
**Subject:** FW: AOB notes and dictation  
**Importance:** High

Please see updated position – apologies for the delay

*Ronan Carroll*  
*Assistant Director Acute Services*  
*Anaesthetics & Surgery*

**Mob**

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**Ext**

Personal Information redacted by the USI

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**From:** Clayton, Wendy  
**Sent:** 23 October 2018 13:43  
**To:** McCaul, Collette; Robinson, Katherine  
**Cc:** Carroll, Ronan  
**Subject:** RE: AOB notes and dictation

Ronan

Summary:

Outpatient charts waiting dictation = 16 (Oldest 28/9/18)

Notes in office = 54

- Deceased charts
- Telephone reviews
- Awaiting dictation
- Secretary queries
- Awaiting results (DARO)

Regards

*Wendy Clayton*  
*Acting HOS for G Surg, Breast & Oral Services*  
*SEC*

**Ext:**

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**External number:**

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**Mob:**

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If dialling from old phone please dial Personal Information redacted by the USI

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**From:** McCaul, Collette  
**Sent:** 23 October 2018 13:41  
**To:** Clayton, Wendy; Robinson, Katherine  
**Cc:** Carroll, Ronan  
**Subject:** RE: AOB notes and dictation

Wendy the column highlighted clinic awaiting typing in that actual column it says awaiting dictation and there are 16 charts awaited

Collette

---

**From:** Clayton, Wendy  
**Sent:** 23 October 2018 13:14  
**To:** Robinson, Katherine; McCaul, Collette  
**Cc:** Carroll, Ronan  
**Subject:** AOB notes and dictation

Thanks for the table left on my desk. Collette – I tried to phone you

Need to clarify **number of clinics notes waiting dictation**? You have discharges awaiting dictation but not OPD

Notes:

There are 54 notes in the office. Made up of:

- Deceased charts
- Telephone reviews
- Awaiting dictation
- Secretary queries
- Awaiting results (DARO)

Wendy Clayton  
Acting HOS for G Surg, Breast & Oral Services  
SEC

Ext: Personal Information redacted by the USI  
External number: Personal Information redacted by the USI  
Mob: Personal Information redacted by the USI



EXT Personal Information redacted by the USI if dialling from Avaya phone.  
If dialling from old phone please dial Personal Information redacted by the USI.

External No. Personal Information redacted by the USI



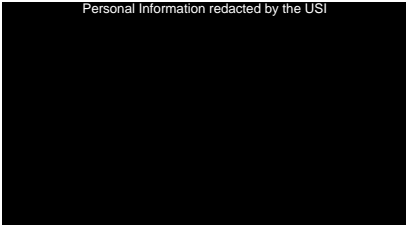
*Quality Care - for you, with you*

31 October 2018

**STRICTLY PRIVATE & CONFIDENTIAL**

Mr Aidan O'Brien

Personal information redacted by the USI



Dear Mr O'Brien

**Re: Formal investigation under Maintaining High Professional Standards Framework (MHPS)**

I write further to our meeting on Monday 1 October 2018.

The purpose of our meeting on 1 October was to discuss my determination on the next steps following conclusion of the formal investigation under the Maintaining High Professional Standards Framework.

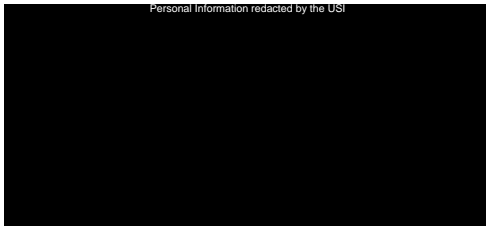
At this meeting, I had informed you that your case has been previously advised to the General Medical Council (GMC) liaison officer, Ms Joanne Donnelly, who meets regularly with the Trust to discuss all concerns being managed under the MHPS Framework.

I also advised you that at present no formal GMC referral has been made by the Trust about your case. However at the last GMC Liaison meeting, Ms Donnelly requested a redacted copy of the case manager

determination from the formal investigation. I write to advise you that Trust will be sharing this information with Ms Donnelly as per her request.

If you have any queries regarding this please let me know.

Yours sincerely



**Dr Ahmed Khan**  
**Case Manager – MHPS**  
**Medical Director (Interim)**

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**From:** Khan, Ahmed  
**Sent:** 05 November 2018 12:09  
**To:** O'Brien, Aidan  
**Cc:** Wilkinson, John; Hynds, Siobhan  
**Subject:** RE: Information Request  
**Attachments:** Letter from Case Manager re GMC report 301018.pdf; Case Manager Determination AO'B FINAL 280918 - Redacted.pdf

**Importance:** High

Dear Mr OBrien,

Thank you. I have requested advise in relation to your last email (below), will reply as soon as possible.

In the meantime please find attached letter & redacted copy of MHPS report for your information.

Regards,  
Ahmed

Dr Ahmed Khan  
Medical Director (Interim)  
Case Manager -MHPS

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**From:** O'Brien, Aidan  
**Sent:** 02 November 2018 07:54  
**To:** Khan, Ahmed  
**Cc:** Wilkinson, John; Toal, Vivienne  
**Subject:** RE: Information Request

Dear Dr Khan,

Thank you for your email of 23 October 2018.

I have taken note of the comments of Siobhan Hynds included in your email. I take issue with a number of the assertions contained therein. I will address those issues in a separate email in coming days.

I also note your enquiry as to my adherence to the Return to Work Plan. I will also address your enquiry in a separate email in coming days.

I do so as I wish to avail of this opportunity to advise you of my alarm to discover the nature of the activities and conduct of senior Trust management in 2016 related to concerns pertaining to my administrative practice. Having now received the Action Note emanating from the meeting of the Oversight Committee of the 22 December 2016, it is evident that there were earlier meetings of the Oversight Committee on 13 September 2016 and on 12 October 2016. It is stated that, at the meeting of 13 September 2016, the Oversight Committee had recommended a Formal Investigation at that time, and that subsequently a 'different approach was to be taken', as reported to the meeting of the Oversight Committee on 12 October 2016. I have never been made aware of these meetings, or of the decisions made at them, before receipt of your email, two years later. It would appear that none of these matters have been disclosed to the Investigation, or investigated by the Investigation, despite falling squarely within Term of Reference 5 of the Investigation.

It is now of the utmost importance that all correspondence and Minutes are shared as a matter of urgency. Accordingly, I request that you provide me with the following documents within seven days of the date hereof:

1. The Minutes of the meeting of the Oversight Committee of 13 September 2016
2. The Minutes of the meeting of the Oversight Committee of 12 October 2016

In addition, I request the following be provided to me within 14 days of the date hereof:

1. All minutes, notes or records pertaining to any and all meetings or case conferences of the Oversight Committee relating to my practice from 2015 to date.
2. All minutes, notes or records of the meeting held by Ms. Heather Trouton and the Medical Director on 11 January 2016 at 10.00 am, and to which Ms. Trouton referred in her unsigned, undated witness statement.
3. The correspondence from Mr. A. Glackin to Mr. R. Carroll and to Ms. E. Gishkori relating to my practice, and to which Mr. Carroll referred at Paragraph 9 of his witness statement of 17 August 2017.
4. The email sent from Mr. M. Haynes, received by Mr. R. Carroll and relating to concerns regarding my private practice, and to which Mr. Carroll referred at Paragraph 11 of his witness statement of 17 August 2017.
5. All correspondence about my practice sent between and amongst management in 2016.
6. All minutes, notes or records of any meetings or discussions by management regarding me and my practice in 2016.

Lastly, I request that you acknowledge receipt of this email, and confirm that the sought documentation will be provided within the time periods stated above, and further and in the alternative (if they cannot be provided) full and precise reasons why this is the case.

Yours Sincerely,

Aidan O'Brien.

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**From:** Khan, Ahmed  
**Sent:** 23 October 2018 16:57  
**To:** O'Brien, Aidan  
**Cc:** Wilkinson, John; Hynds, Siobhan  
**Subject:** RE: Information Request

Dear Mr O'Brien,

Further to your request, please find [comments](#) from Ms Siobhan Hynds below and attached documents as requested. I have also attached copy of September 2016 NCAS correspondence.

• In respect of the note of the meeting on 30 December 2016. This meeting was attended by Mr O'Brien, his wife, Dr Richard Wright and Lynne Hainey, HR Manager. The information I have from that early stage of the process outlines that a note of the meeting was produced and sent to Mr O'Brien at the time. Mr O'Brien wrote to Dr Wright outlining some factual errors with the note of the meeting from his perspective. These comments were considered and Dr Wright responded to Mr O'Brien with an amended note of the meeting. In correspondence to Mr O'Brien, Dr Wright outlined that he was content to amend some aspects of the note, others he felt were reflective of the meeting. As the note of the meeting remained under question by Mr O'Brien, as part of the Case Investigators report to you as the Case Manager, the note of the meeting from Dr Wright was appended to the report along with Mr O'Brien's comments to ensure both positions were known. Both documents are contained within the appendices of the Investigation Report. It has been previously clarified with Mr O'Brien, that the note of this meeting would not be further amended. Mr O'Brien's request for information was discussed with him and dealt with at the meeting of 3 August 2018. Mr O'Brien has been provided with all of the documents referred to above.

• In respect of the note of the meeting on 24 January 2017 – as per above, Colin Weir (then Case Investigator) was satisfied with the content of the note as an accurate reflection of the meeting with Mr O'Brien on 24 January. Mr

O'Brien submitted his comments on the note. Both have been appended to the final investigation report to ensure both positions could be considered. Mr O'Brien has been provided with these documents.

- Copy of the minutes of the meeting of the Oversight Group December 2016 attached.
- Copy correspondence with NCAS in September & December 2016 attached.
- Copy of the Integrated Elective Access Protocol attached. It has been previously clarified with Mr O'Brien that this is the document referred to at the outset of the investigation. It has previously been clarified with Mr O'Brien that there is no separate Southern Trust Policy or Procedure on Triage.

Aidan, I take this opportunity to ask if you are adherent to agreed MHPS action plan (attached)?

Regards,  
Ahmed

Dr Ahmed Khan  
Case Manger

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**From:** O'Brien, Aidan  
**Sent:** 21 October 2018 16:16  
**To:** Khan, Ahmed  
**Cc:** Toal, Vivienne; Wilkinson, John  
**Subject:** RE: Information Request

Dear Dr. Khan,

I am disappointed to have not yet received the information that I have previously requested.

I also write to advise you that I have since had the opportunity of discussing my concerns with Dr. Lynn of Practitioner Performance Advice (formerly NCAS).

I have been further concerned to be advised by her that there had been an earlier consultation with and communication from NCAS in September 2016, and about which I had not been advised.

Therefore, in addition to the information previously requested, I now request copies of all communications with and correspondence from NCAS pertaining to me during 2016.

As previously, if you are unable or unprepared to do so in a timely manner, I would be grateful if you would advise of the reason(s), and similarly advise me from whom the information may be obtained,

Aidan O'Brien

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**From:** Khan, Ahmed  
**Sent:** 03 October 2018 10:36  
**To:** O'Brien, Aidan  
**Cc:** Hynds, Siobhan  
**Subject:** RE: Investigation

Dear Mr O'Brien, thank you. I have requested some information & will be in touch soon.

Regards,  
Ahmed

Dr Ahmed Khan  
Case Manger- MHPS

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**From:** O'Brien, Aidan  
**Sent:** 01 October 2018 22:27  
**To:** Khan, Ahmed  
**Subject:** Investigation

Dear Dr. Khan,

Further to our meeting today, and specifically with regard to information previously requested, I write to clarify that I wrote to Dr. Wright on 14 February 2017, detailing a number of errors and omissions in the Note of the Meeting of 30 December 2016, requesting that amendments be made. On 01 March 2017, I received from Siobhan Hynds an acknowledgement of receipt of my letter to Dr. Wright. She advised that she would arrange for an amended Note to be sent to me, taking into consideration my suggested amendments. No amended Note was sent to me. On 19 April 2017, I sent an email to Siobhan Hynds, advising that I still awaited an amended Note. I did not receive any response, reply or amended Note. A further request was submitted on 31 July 2017. Again, I did not receive a response or an amended Note. An amended Note was included in the Investigator's report.

On 28 March 2017, I submitted to Siobhan Hynds a list of amendments to be made to the Note of the Meeting with her and with Mr. Weir, and which took place on 24 January 2017. I requested that she return a copy of the amended Note. I received no reply or response. On 31 July 2017, I again requested an amended Note of the Meeting, without response. The original Note of the Meeting was included in the Investigator's report, without amendments having been made.

On 31 July 2017, I submitted to Siobhan Hynds, by email, a request for a copy of the minutes of the meeting of the Oversight Group and which took place in December 2016. I have still not been provided with a copy of the minutes.

On 31 July 2017, I submitted to Siobhan Hynds, by email, a request for a copy of a record of communication and correspondence with NCAS in December 2016. I have still not been provided with a copy.

On 31 July 2017, I also requested a copy of the Southern Trust's Policy & Procedure on Triage, and which I had previously requested. I still have not been provided with a copy.

On 10 June 2018, I again sent an email to Siobhan Hynds requesting responses to the requests made previously, as detailed above. As before, I still await the information.

Therefore, I would be grateful, even at this late juncture, if you would have the requested information sent to me, and specifically, lest there be any doubt:

- A copy of the Record of Communication and / or Correspondence with NCAS in December 2016, and subsequently.
- A copy of the Minutes or Note of the Meeting of the Oversight Group in December 2016
- A copy of Southern Trust's Policy & Procedure for Triage

Most importantly, if you are unable or unprepared to provide me with these requested documents, or have them provided to me, in a timely manner, I would be grateful if you would advise me of the reasons why, and of whom I may request the information,

Aidan.

**Cunningham, Hannah**

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**From:** Wallace, Stephen [Personal Information redacted by USI]  
**Sent:** 29 July 2020 12:40  
**To:** Khan, Ahmed  
**Subject:** FW: MHPS Case Manager Determination

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**From:** Khan, Ahmed  
**Sent:** 29 July 2020 12:33  
**To:** Wallace, Stephen  
**Cc:** Hynds, Siobhan  
**Subject:** RE: MHPS Case Manager Determination

Stephen, thanks. It was clear during this investigations; system wide failure happed at many levels within Acute directorate therefore my recommendation was to provide recommendation for system wide problems in acute Directorate & not to just only focus on urology department. Happy to discuss further.

Regards,  
Ahmed

---

**From:** Wallace, Stephen  
**Sent:** 27 July 2020 13:47  
**To:** Khan, Ahmed  
**Cc:** Hynds, Siobhan  
**Subject:** MHPS Case Manager Determination

Ahmed,

Further to the AOB investigation conducted in 2018 under MHPS framework the report makes reference to an administrative review (below).

- *I recommend the Trust to carry out an independent review of the relevant administrative processes with clarity on roles and responsibilities at all levels within the Acute Directorate and appropriate escalation processes. The review should look at the full system wide problems to understand and learn from the findings.*

Below you will see are a draft terms of reference regarding this, can you confirm if these terms of reference encapsulate the requirements of the recommendation?

Thanks  
Stephen

**Purpose**

The purpose of the review, is to review the Trust urology administrative processes for management of patients referred to the service.

**Objectives**

The review will consider the present Trust urology administrative processes regarding referrals to the service and recommendations for the future, rather than past and pre-existing processes. The review in particular will consider the following:

- The administration processes regarding the receipt of and triage of patients referred to the urology service from all sources
- The effectiveness of monitoring of the administration processes including how and where this information is reviewed
- The roles and responsibilities of operational management and clinical staff in providing oversight of the administrative processes
- The effectiveness of the triggers and escalation processes regarding non-compliance with administration processes
- To identify any potential gaps in the system where processes can be strengthened

## **Outputs**

The Reviewer should provide a report which seeks to address the issues listed above. The report should provide recommendations on improvements to Trust urology administrative processes. Any recommendations should be evidence-based and proportionate, with consideration given to their implementation.

## **Scope**

The review should consider current Trust urology administrative processes for the management of referrals to the service. This is a forward-looking review and, as such, will not consider past decisions.

## **Timing**

The report, including any recommendations of the review, must be submitted to the Trust Acute Director by end September 2020.

## **Governance and Methodology**

The Reviewer will be appointed by, and accountable to, the Trust Acute Director for delivery of the review. Details of the governance which achieves this accountability and the methodology for the review - including evidence gathering, consultation with operational and clinical staff - will be agreed between the Reviewer and the Trust Acute Director by 5<sup>th</sup> August 2020.

**Medical Director Hand over****Dec 2018****Medical Director Office Structure**

- Attached
- Staffing challenges with in MD directorate

**MD meetings/ commitments:****External:**

- Medical director informal meeting- Quarterly
- DoH- Medical leaders forum- Quarterly
- PHA director with Med director meeting- Bimonthly
- Hyponatremia Regional oversight ( DoH) forum ( MD, Nursing director, CYP director)
- SAMRHA Forum
- Revalidation Operational Group meeting- quarterly

**Internal**

- SMT meeting – weekly
- Trust Board- Monthly
- Gov; Committee- Quarterly
- Lesson learned Forum- Quarterly
- GMC Liaison meeting- Quarterly
- Hyponatremia oversight group meeting- Quarterly
- QI steering group meeting - Quarterly
- IPC meeting- weekly
- IPC Strategy meeting- monthly
- 1;1 with CEX
- 1;1- MM
- 1;1- SG
- 1;1 meetings with all AMDs- monthly
- 1:1 meetings with all Directors
- MD-HR liaison meeting- quarterly
- NEWS Group- Quarterly
- BCBV- Monthly
- MS LSC Meeting- Litigation – Monthly
- LNC meeting- Quarterly
- AMD meeting- Monthly
- CD Meeting- quarterly
- CAH Medical staff meeting- Quarterly

- DHH Medical staff meeting- Quarterly
- Pathfinder meeting- quarterly
- M&M chairs meeting
- M&M strategy forum
- NIECR Project board- quarterly
- D&T committee- Quarterly
- Thrombosis committee-
- PCE Steering Group mtg
- Consultant Interviews - 1-2 /month
- Urgent meeting- 2 /week (average)

#### **Acute Directorate Issues:**

- Colorectal issues
- Spinal fracture issue
- Upper GI issues
- CT scanner issue
- Paeds surgical issues
- Hyponatremia recommendation related meetings
- Elective cancellation (30%) & impact of quality of care
- Theatre availability
- USC/Resilience plan

#### **GMC Issues:**

- GMC cases
- MHPS: AOB Case

#### **HR**

- Medical workforce- Recruitment & Retention challenges
- DHH Medical consultant acute shortage
- CAH- Medical trainees shortage
- NIMTDA Allocation of trainees
- Individual HR issues:
  - Personal Information redacted by the USI Issue
  - Personal Information redacted by the USI issue

#### **IPC:**

- IPC Strategy in place- To follow up implementation
- Med staff engagement- HH Audit

#### **Medical Leadership**

- Draft paper available
- AMD /CDs involvement variability

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**From:** Khan, Ahmed  
**Sent:** 06 March 2019 16:56  
**To:** Hynds, Siobhan  
**Subject:** RE: Confirmed: AOB- MHPS update meeting

Siobhan, I am just following up on this as I don't seem to have anything back from you. Has this been progressed somewhere else?

Regards,  
Ahmed

---

**From:** Khan, Ahmed  
**Sent:** 14 February 2019 13:22  
**To:** OKane, Maria; Hynds, Siobhan  
**Cc:** Toal, Vivienne; Parks, Zoe; Gibson, Simon  
**Subject:** RE: Confirmed: AOB- MHPS update meeting

Siobhan, thanks. I can meet on:  
Next week:

- 19/2/19- AM – In CAH
- 22/2/19- AM ( 11-1pm) in DHH

Following week:

- 26/2/19- 10.30am- 2pm-in CAH
- 1/3/19- 9.30-11.30pm in DHH

Please also send an update regarding his previous information request and what stage is formal grievance as I am sure these will come up during our meeting with him.

Regards,  
AK

*Dr Ahmed Khan  
Consultant Paediatrician  
Associate Medical Director  
CYPD, SHSCT*

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**From:** OKane, Maria  
**Sent:** 13 February 2019 15:45  
**To:** Hynds, Siobhan; Khan, Ahmed; Gibson, Simon  
**Cc:** Toal, Vivienne; Parks, Zoe  
**Subject:** RE: Confirmed: AOB- MHPS update meeting

Thanks Siobhan – that will give Ahmed a chance to get a date. Maria

Dr Maria O'Kane  
Medical Director  
Tel: Personal Information  
redacted by the USI

**From:** Hynds, Siobhan  
**Sent:** 13 February 2019 15:41  
**To:** OKane, Maria; Khan, Ahmed; Gibson, Simon  
**Cc:** Toal, Vivienne; Parks, Zoe  
**Subject:** RE: Confirmed: AOB- MHPS update meeting

Dr O’Kane / Dr Khan

I can make a start on a draft letter and get a date identified in the diaries. Unfortunately I am on leave next week so it will be the week of 25<sup>th</sup> February before I am in a position to meet.

Regards,

Siobhan

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**From:** OKane, Maria  
**Sent:** 13 February 2019 14:10  
**To:** Hynds, Siobhan; Khan, Ahmed; Gibson, Simon  
**Cc:** Toal, Vivienne; Parks, Zoe  
**Subject:** RE: Confirmed: AOB- MHPS update meeting

Dear all

as you know the GMC has now requested referral. I have spoken to Zoe this morning and Siobhan she will approach you to draft a letter and Ahmed please meet with him then as case manager to make him aware of the referral. We will then refer. I would be grateful if this process could be completed over the next week please. Many thanks Maria

Dr Maria O’Kane  
Medical Director  
Tel: Personal Information  
redacted by the USI

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**From:** White, Laura **On Behalf Of** OKane, Maria  
**Sent:** 13 February 2019 13:00  
**To:** Hynds, Siobhan; Khan, Ahmed; OKane, Maria; Gibson, Simon  
**Cc:** Murphy, Annette; Goodman, Maria; Montgomery, Ruth  
**Subject:** Confirmed: AOB- MHPS update meeting

Dear colleagues

I can now confirm that the above meeting will go ahead on **Wednesday 24<sup>th</sup> April at 10am in Dr O’Kane’s office Clanrye House DHH.**

Regards, Laura

**Laura White**  
PA to Dr Maria O’Kane, Medical Director  
SHSCT  
Direct Line: Personal Information  
redacted by the USI  
Personal Information redacted by the USI  
My hours are 8am – 4pm Monday to Friday

**From:** White, Laura  
**Sent:** 13 February 2019 10:57  
**To:** Hynds, Siobhan; Khan, Ahmed; OKane, Maria; Gibson, Simon  
**Cc:** Murphy, Annette; Goodman, Maria; Montgomery, Ruth  
**Subject:** To be rescheduled: AOB- MHPS update meeting - Wed 20 Feb 11am

Dear colleagues

Due to 2 apologies for this meeting we are having to reschedule the above meeting, can you please release this date from your diaries, thank you.

The following dates suit Dr O'Kane and Simon Gibson's diary.  
Annette tried you a couple of times this morning for Siobhan's diary but couldn't get hold of you.  
Maria has confirmed both these dates/times suit Dr Khan's diary.

Siobhan - can you please give me your availability for the following Wednesday's when Dr O'Kane is in DHH :

**Wed 24<sup>th</sup> April 10am – 11am**  
**or**  
**Wed 1<sup>st</sup> May 12 noon – 1pm**

Regards, Laura

**Laura White**

PA to Dr Maria O'Kane, Medical Director  
SHSCT

Direct Line: Personal Information redacted by the USI  
Personal Information redacted by the USI

My hours are 8am – 4pm Monday to Friday

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**From:** White, Laura  
**Sent:** 12 February 2019 14:56  
**To:** Khan, Ahmed; Hynds, Siobhan  
**Cc:** Gibson, Simon; Montgomery, Ruth  
**Subject:** CONFIRMED: AOB- MHPS update meeting

Dear colleagues

The above meeting will take place on:

**Wednesday 20<sup>th</sup> February at 1pm in DHH (Dr O'Kane's office in Clanrye House)**

Also attending: Simon Gibson.

Best regards, Laura

**Laura White**

PA to Dr Maria O'Kane, Medical Director  
SHSCT

Direct Line: Personal Information redacted by the USI  
Personal Information redacted by the USI

My hours are 8am – 4pm Monday to Friday

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**From:** OKane, Maria  
**Sent:** 10 February 2019 18:51  
**To:** White, Laura  
**Cc:** Montgomery, Ruth; Gibson, Simon  
**Subject:** RE: Please confirm re DIARY - - - AOB- MHPS update meeting

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**From:** White, Laura  
**Sent:** 06 February 2019 13:49  
**To:** OKane, Maria  
**Cc:** Montgomery, Ruth; Gibson, Simon  
**Subject:** Please confirm re DIARY - - - AOB- MHPS update meeting

Dear Dr O’Kane

Please see e-mail below from Dr Khan re setting up a meeting with the 4 of you.

I have checked your diary and the only time I can see available for yourself and Simon is:

**Wednesday 20<sup>th</sup> February** at either **11am** or **1pm** in **DHH**

Can you confirm if you would like me to offer the above to Siobhan Hynds and Dr Khan ?

They could V/C into to the meeting if it suits you.

Regards, Laura

---

**From:** Khan, Ahmed  
**Sent:** 06 February 2019 11:28  
**To:** White, Laura; Goodman, Maria  
**Cc:** Gibson, Simon; Hynds, Siobhan  
**Subject:** Re; AOB- MHPS update meeting

Laura ,

Dr O’Kane & I briefly discussed AOB- MHPS today, She has asked to arrange a meeting (in next couple of weeks) among Dr O’Kane, Siobhan, Simon & myself regarding this. It could be VC or face or face.

Thanks  
AK

*Dr Ahmed Khan  
Consultant Paediatrician  
Associate Medical Director  
Children & Young People Directorate  
SHSCT*

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**From:** OKane, Maria  
**Sent:** 02 April 2019 17:18  
**To:** Hynds, Siobhan; Khan, Ahmed; Gibson, Simon  
**Cc:** OKane, Maria  
**Subject:** FW: GMC Referral  
**Attachments:** AO'B fitness-to-practise-referral-form.pdf; Case Manager Determination AO'B FINAL 280918.pdf; Return to Work Action Plan February 2017 FINAL.pdf; December 2016.pdf; September 2018.pdf; March 2019.pdf

**Importance:** High

Dear All,

Please see below and attached for info.

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**From:** OKane, Maria  
**Sent:** 02 April 2019 17:17  
**To:** 'practise' (Personal Information redacted by the USI)  
**Cc:** Joanne Donnelly (Personal Information redacted by the USI)  
**Subject:** GMC Referral  
**Importance:** High

Please find attached GMC Referral, Reference: GMC Number 1394911

I have attached 2 appendices and 3 NCAS advice letters, all of which will also be sent with the full report via post.

I have been unable to attach my digital signature to the document, please advise if this is acceptable as proof of authorised submission from my own email account.

If you have any queries please come back to me.

Kind Regards,

Dr Maria O'Kane  
Medical Director

Southern Health & Social Care Trust  
Craigavon Area Hospital,  
Trust Head Quarters,  
Lurgan Road,  
Craigavon

# **Strictly Confidential**

## **Maintaining High Professional Standards Formal Investigation**

### **Case Manager Determination**

**Dr Ahmed Khan, Case Manager**

### **1.0 Case Manager Determination following Formal Investigation under the Maintaining High Professional Standards Framework in respect of Mr Aiden O'Brien, Consultant Urologist**

Following conclusion of the formal investigation, the Case Investigator's report has been shared with Mr O'Brien for comment on the factual accuracy of the report. I am in receipt of Mr O'Brien's comments and therefore the full and final documentation in respect of the investigation.

### **2.0 Responsibility of the Case Manager**

In line with Section 1 Paragraph 38 of the MHPS Framework, as Case Manager I am responsible for making 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
4. There are concerns about the practitioner's health that should be considered by the HSS body's occupational health service, and the findings reported to the employer
5. There are concerns about the practitioner's clinical performance which require further formal consideration by NCAS (re-named as Practitioner Performance Advice)
6. There are serious concerns that fall into the criteria for referral to the GMC or GDC
7. There are intractable problems and the matter should be put before a clinical performance panel.

### **3.0 Formal Investigation Terms of Reference**

The terms of reference for the formal investigation were:

1. (a) To determine if there have been any patient referrals to Mr A O'Brien which were un-triaged in 2015 or 2016 as was required in line with established practice / process.  
  
(b) To determine if any un-triaged patient referrals in 2015 or 2016 had the potential for patients to have been harmed or resulted in unnecessary delay in treatment as a result.

- (c) To determine if any un-triaged referrals or triaging delays are outside acceptable practice in a similar clinical setting by similar consultants irrespective of harm or delays in treatment.
  - (d) To determine if any un-triaged patient referrals or delayed tri-ages in 2015 or 2016 resulted in patients being harmed as a result.
2. (a) To determine if all patient notes for Mr O'Brien's patients are tracked and stored within the Trust.
- (b) To determine if any patient notes have been stored at home by Mr O'Brien for an unacceptable period of time and whether this has affected the clinical management plans for these patients either within Urology or within other clinical specialties.
- (c) To determine if any patient notes tracked to Mr O'Brien are missing.
3. (a) To determine if there are any undictated patient outcomes from patient contacts at outpatient clinics by Mr O'Brien in 2015 or 2016.
- (b) To determine if there has been unreasonable delay or a delay outside of acceptable practice by Mr O'Brien in dictating outpatient clinics.
- (c) To determine if there have been delays in clinical management plans for these patients as a result.
4. To determine if Mr O'Brien has seen private patients which were then scheduled with greater priority or sooner outside their own clinical priority in 2015 or 2016.
5. To determine to what extent any of the above matters were known to line managers within the Trust prior to December 2016 and if so, to determine what actions were taken to manage the concerns.

#### **4.0 Investigation Findings**

In answering each of the terms of reference of the investigation, the Case Investigator concluded:

1. (a) It was found that Mr O'Brien did not undertake non-red flag referral triage during 2015 and 2016 in line with the known and agreed process that was in place. In January 2017, it was found that 783 referrals were un-triaged by Mr O'Brien. Mr O'Brien accepts this fact.

- (b) It was found that there was the potential for 783 patients to have been added to the incorrect waiting list. A look back exercise of all referrals by other Consultant Urologists determined that of the 783 un-triaged referrals, 24 would have been upgraded to red-flag status, meaning the timescales for assessment and implementation of their treatment plans was delayed. All un-triaged referrals were added to Trust waiting lists based on the GP referral assessment.
- (c) It was found that all other Consultant Urologists undertook triage of all referrals in line with established practice.
- (d) It was found that of the 24 upgraded patient referrals, 5 patients have a confirmed cancer diagnosis. All 5 patients have been significantly delayed commencing appropriate treatment plans.
2. (a) It was found that in January 2017 Mr O'Brien returned 307 sets of patient notes which had been stored at his home. Mr O'Brien accepts that there were in excess of 260 patient notes returned from his home in January 2017.
- (b) The notes dated as far back as November 2014. It was found that Mr O'Brien returned patient notes as requested and he asserts therefore there was no impact on patient care.
- (c) It was found that there are 13 sets of patient notes missing. The Case Investigator was satisfied these notes were not lost by Mr O'Brien.
3. (a) It was found that there were 66 undictated clinics by Mr O'Brien during the period 2015 and 2016. Mr O'Brien's accepts this.
- (b) It was accepted by Mr O'Brien that he did not dictate at the end of every care contact but rather dictated at the end of the full care episode. This is not the practice of any other Consultant Urologist. The requirements of the GMC is that all notes / dictation are contemporaneous.
- (c) There are significant waiting list times for routine Urology patients. It is therefore unclear as to the impact of delay in dictation as the patients would have had a significant wait for treatment. The delay however meant that the actual waiting lists were not accurate and the look back exercise to ensure all patients had a clear management plan in place was done at significant additional cost and time to the Trust.
6. It has been found that Mr O'Brien scheduled 9 of his private patient's sooner and outside of clinical priority in 2015 and 2016.

7. Concerns about Mr O'Brien's practice were known to senior managers within the Trust in March 2016 when a letter was issued to Mr O'Brien regarding these concerns. The extent of the concerns was not known. No action plan was put in place to address the concerns. It was found that a range of managers, senior managers and Directors within the Acute Service Directorate were aware of concerns regarding Mr O'Brien's practice dating back a number of years. There was no evidence available of actions taken to address the concerns.

**Other findings / context**

Other important factors in coming to a decision in respect of the findings are:

**Triage**

1. Mr O'Brien provided a detailed context to the history of the Urology service and the workloads pressures he faced. Mr O'Brien noted that he agreed to the triage process but very quickly found that he was unable to complete all triage. Mr O'Brien noted that he had raised this fact with his colleagues on numerous occasions to no avail. Mr O'Brien accepts that he did not explicitly advise anyone within the Trust that he was not undertaking routine or urgent referral triage. Mr O'Brien did undertake red-flag triage.
2. It was known to a range of staff within the Directorate that they were not receiving triage back from Mr O'Brien. A default process was put in place to compensate for this whereby all patients were added to the waiting lists according to the GP categorisation. This would have been known to Mr O'Brien.
3. Mr Young is the most appropriate comparator for Mr O'Brien as both have historical long review lists which the newer Consultants do not have. Mr Young managed triage alongside his other commitments. Mr Young undertook Mr O'Brien's triage for a period of time to ease pressures on him while he was involved in regional commitments.

**Notes**

1. There was no proper Trust transport and collection system for patient notes to the SWAH clinic in place.
2. There was no review of notes tracked out by individual to pick up a problem.
3. Notes were returned as requested by Mr O'Brien from his home.

4. It was known that Mr O'Brien stored notes at home by a range of staff within the Directorate.

#### **Undictated clinics**

1. Mr O'Brien's secretary did not flag that dictation was not coming back to her from clinics. Mr O'Brien's secretary was of the view that this was a known practice to managers within the Directorate.
2. Mr O'Brien indicated that he did not see the value of dictating after each care contact.
3. Mr O'Brien was not using digital dictation during the relevant period and therefore the extent of the problem was not evident.

#### **5.0 Case Manager Determination**

My determination about the appropriate next steps following conclusion of the formal MHPS investigation:

- There is no evidence of concern about Mr O'Brien's clinical ability with patients.
- There are clear issues of concern about Mr O'Brien's way of working, his administrative processes and his management of his workload. The resulting impact has been potential harm to a large number of patients (783) and actual harm to at least 5 patients.
- Mr O'Brien's reflection on his practice throughout the investigation process was of concern to the Case Investigator and in particular in respect of the 5 patients diagnosed with cancer.
- As a senior member of staff within the Trust Mr O'Brien had a clear obligation to ensure managers within the Trust were fully and explicitly aware that he was not undertaking routine and urgent triage as was expected. Mr O'Brien did not adhere to the known and agreed Trust practices regarding triage and did not advise any manager of this fact.
- There has been significant impact on the Trust in terms of its ability to properly manage patients, manage waiting lists and the extensive look back

exercise which was required to address the deficiencies in Mr O'Brien's practice.

- Mr O'Brien did not adhere to the requirements of the GMC's Good Medical Practice specifically in terms of recording his work clearly and accurately, recording clinical events at the same time of occurrence or as soon as possible afterwards.
- Mr O'Brien has advantaged his own private patients over HSC patients on 9 known occasions.
- The issues of concern were known to some extent for some time by a range of managers and no proper action was taken to address and manage the concerns.

***This determination is completed without the findings from the Trust's SAI process which is not yet complete.***

### **Advice Sought**

Before coming to a conclusion in this case, I discussed the investigation findings with the Trust's Chief Executive, the Director of Human Resources & Organisational Development and I also sought advice from Practitioner Performance Advice (formerly NCAS).

### **My determination:**

#### **1. No further action is needed**

Given the findings of the formal investigation, this is not an appropriate outcome.

#### **2. Restrictions on practice or exclusion from work should be considered**

There are 2 elements of this option to be considered:

##### **a. A restriction on practice**

At the outset of the formal investigation process, Mr O'Brien returned to work following a period of immediate exclusion working to an agreed action plan from

February 2017. The purpose of this action plan was to ensure risks to patients were mitigated and his practice was monitored during the course of the formal investigation process. Mr O'Brien worked successfully to the action plan during this period.

It is my view that in order to ensure the Trust continues to have an assurance about Mr O'Brien's administrative practice/s and management of his workload, an action plan should be put in place with the input of Practitioner Performance Advice (NCAS), the Trust and Mr O'Brien for a period of time agreed by the parties.

The action plan should be reviewed and monitored by Mr O'Brien's Clinical Director (CD) and operational Assistant Director (AD) within Acute Services, with escalation to the Associate Medical Director (AMD) and operational Director should any concerns arise. The CD and operational AD must provide the Trust with the necessary assurances about Mr O'Brien's practice on a regular basis. The action plan must address any issues with regards to patient related admin duties and there must be an accompanying agreed balanced job plan to include appropriate levels of administrative time and an enhanced appraisal programme.

b. An exclusion from work

There was no decision taken to exclude Mr O'Brien at the outset of the formal investigation process rather a decision was taken to implement and monitor an action plan in order to mitigate any risk to patients. Mr O'Brien has successfully worked to the agreed action plan during the course of the formal investigation. I therefore do not consider exclusion from work to be a necessary action now.

**3. There is a case of misconduct that should be put to a conduct panel**

The formal investigation has concluded there have been failures on the part of Mr O'Brien to adhere to known and agreed Trust practices and that there have also been failures by Mr O'Brien in respect of 'Good Medical Practice' as set out by the GMC.

Whilst I accept there are some wider, systemic failings that must be addressed by the Trust, I am of the view that this does not detract from Mr O'Brien's own individual professional responsibilities.

During the MHPS investigation it was found that potential and actual harm occurred to patients. It is clear from the report that this has been a consequence of Mr O'Brien's conduct rather than his clinical ability. I have sought advice from Practitioner

Performance Advice (NCAS) as part of this determination. At this point, I have determined that there is no requirement for formal consideration by Practitioner Performance Advice or referral to GMC. The Trust should conclude its own processes.

The conduct concerns by Mr O'Brien include:

- Failing to undertake non red flag triage, which was known to Mr O'Brien to be an agreed practice and expectation of the Trust. Therefore putting patients at potential harm. A separate SAI process is underway to consider the impact on patients.
- Failing to properly make it known to his line manager/s that he was not undertaking all triage. Mr O'Brien as a senior clinician had an obligation to ensure, this was properly known and understood by his line manager/s.
- Knowingly advantaging his private patients over HSC patients.
- Failing to undertake contemporaneous dictation of his clinical contacts with patients in line with GMC 'Good Medical Practice'.
- Failing to ensure the Trust had a full and clear understanding of the extent of his waiting lists, by ensuring all patients were properly added to waiting lists in chronological order.

Given the issues above, I have concluded that Mr O'Brien's failings must be put to a conduct panel hearing.

- 4. There are concerns about the practitioner's health that should be considered by the HSS body's occupational health service, and the findings reported to the employer.**

There are no evident concerns about Mr O'Brien's health. I do not consider this to be an appropriate option.

- 5. There are concerns about the practitioner's clinical performance which require further formal consideration by NCAS (now Practitioner Performance Advice)**

Before coming to a conclusion in this regard, I sought advice from Practitioner Performance Advice.

The formal investigation report does not highlight any concerns about Mr O'Brien's clinical ability. The concerns highlighted throughout the investigation are wholly in respect of Mr O'Brien's administrative practices. The report highlights the impact of Mr O'Brien's failings in respect of his administrative practices which had the potential to cause harm to patients and which caused actual harm in 5 instances.

I am satisfied, taking into consideration advice from Practitioner Performance Advice (NCAS), that this option is not required.

**6. There are serious concerns that fall into the criteria for referral to the GMC or GDC**

I refer to my conclusion above. I am satisfied that the concerns do not require referral to the GMC at this time. Trust processes should conclude prior to any decision regarding referral to GMC.

**7. There are intractable problems and the matter should be put before a clinical performance panel.**

I refer to my conclusion under option 6. I am satisfied there are no concerns highlighted about Mr O'Brien's clinical ability.

**6.0 Final Conclusions / Recommendations**

This MHPS formal investigation focused on the administrative practice/s of Mr O'Brien. The investigation report presented to me focused centrally on the specific terms of reference set for the investigation. Within the report, as outlined above, there have been failings identified on the part of Mr O'Brien which require to be addressed by the Trust, through a Trust conduct panel and a formal action plan.

The investigation report also highlights issues regarding systemic failures by managers at all levels, both clinical and operational, within the Acute Services Directorate. The report identifies there were missed opportunities by managers to fully assess and address the deficiencies in practice of Mr O'Brien. No-one formally assessed the extent of the issues or properly identified the potential risks to patients.

Default processes were put in place to work around the deficiencies in practice rather than address them. I am therefore of the view there are wider issues of concern, to be considered and addressed. The findings of the report should not solely focus on one individual, Mr O'Brien.

In order for the Trust to understand fully the failings in this case, I recommend the Trust to carry out an independent review of the relevant administrative processes

with clarity on roles and responsibilities at all levels within the Acute Directorate and appropriate escalation processes. The review should look at the full system wide problems to understand and learn from the findings.



**MR A O'BRIEN, CONSULTANT UROLOGIST  
RETURN TO WORK PLAN / MONITORING ARRANGEMENTS  
MEETING 9 FEBRUARY 2017**

Following a decision by case conference on 26 January 2017 to lift an immediate exclusion which was in place from 30 December 2017, this action plan for Mr O'Brien's return to work will be in place pending conclusion of the formal investigation process under Maintaining High Professional Standards Framework.

The decision of the members of the case conference is for Mr O'Brien to return as a Consultant Urologist to his full job role as per his job plan and to include safeguards and monitoring around the 4 main issues of concerns under investigation. An urgent job plan review will be undertaken to consider any workload pressures to ensure appropriate supports can be put in place.

Mr O'Brien's return to work is based on his:

- strict compliance with Trust Policies and Procedures in relation to:
  - Triaging of referrals
  - Contemporaneous note keeping
  - Storage of medical records
  - Private practice
- agreement to comply with the monitoring mechanisms put in place to assess his administrative processes.

Currently, the Urology Team have scheduled and signed off clinical activity until the end of March 2017, patients are called and confirmed for the theatre lists up to week of 13 March. Therefore on immediate return, Mr O'Brien will be primarily undertaking clinics and clinical validation of his reviews, his inpatient and day case lists. This work will be monitored by the Head of Service and reported to the Assistant Director.

**CONCERN 1**

- That, from June 2015, 783 GP referrals had not been triaged in line with the agreed / known process for such referrals.

Mr O'Brien, when Urologist of the week (once every 6 weeks), must action and triage all referrals for which he is responsible, this will include letters received via the booking

centre and any letters that have been addressed to Mr O'Brien and delivered to his office. For these letters it must be ensured that the secretary will record receipt of these on PAS and then all letters must be triaged. The oncall week commences on a Thursday AM for seven days, therefore triage of all referrals must be completed by 4pm on the Friday after Mr O'Brien's Consultant of the Week ends.

Red Flag referrals must be completed daily.

All referrals received by Mr O'Brien will be monitored by the Central Booking Centre in line with the above timescales. A report will be shared with the Assistant Director of Acute Services, Anaesthetics and Surgery at the end of each period to ensure all targets have been met.

## **CONCERN 2**

- That, 307 sets of patient notes were returned by Mr O'Brien from his home, 88 sets of notes located within Mr O'Brien's office, 13 sets of notes, tracked to Mr O'Brien, are still missing.

Mr O'Brien is not permitted to remove patient notes off Trust premises.

Notes tracked out to Mr O'Brien must be tracked out to him for the shortest period possible for the management of a patient.

Notes must not be stored in Mr O'Brien's office. Notes should remain located in Mr O'Brien's office for the shortest period required for the management of a patient.

## **CONCERN 3**

- That 668 patients have no outcomes formally dictated from Mr O'Brien's outpatient clinics over a period of at least 18 months.

All clinics must be dictated at the end of each clinic/theatre session via digital dictation. This is already set up in the Thorndale Unit and will be installed on the computer in Mr O'Brien's office and on his Trust laptop and training is being organised for Mr O'Brien on this. This dictation must be done at the end of every clinic and a report via digital dictation will be provided on a weekly basis to the Assistant Director of Acute Services, Anaesthetics and Surgery to ensure all outcomes are dictated.

An outcome / plan / record of each clinic attendance must be recorded for each individual patient and this should include a letter for any patient that did not attend as there must be a record of this back to the GP.

**CONCERN 4**

- A review of Mr O'Brien's TURP patients identified 9 patients who had been seen privately as outpatients, then had their procedure within the NHS. The waiting times for these patients are significantly less than for other patients.

Mr O'Brien must adhere to all aspects of the Trust Private Practice Policy, 'A Guide to Paying Patients' and in particular to 'Referral of Private Patients to NHS Lists which states that *'any patient changing their status after having been provided with private services should not be treated on a different basis to other NHS patients as a result of having previously held private status: patients referred for an NHS service following a private consultation or private treatment should join any NHS waiting list at the same point as if the consultation or treatment were an NHS service. Their priority on the waiting list should be determined by the same criteria applied to other NHS patients'*.

The scheduling of patient's must be undertaken by the secretary, who will check the list with Mr O'Brien and then contact the patient for their appointment. This process is in keeping with the practice established within the Urology team.

Any deviation from compliance with this action plane must be referred to the MHPS Case Manager immediately.

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## Resolution

### Practitioner Performance Advice (formerly NCAS)

2nd Floor, 151 Buckingham Palace Road

London

SW1W 9SZ

Advice line:

Personal Information redacted by the USI

Fax:

www.ncas.nhs.uk

Personal Information redacted by the USI

21 September 2018

### PRIVATE AND CONFIDENTIAL

Dr Ahmed Khan  
 Medical Director  
 Southern Health and Social Care Trust  
 Beechfield House  
 68 Lurgan Road  
 Portadown  
 BT63 5QQ

**Ref: 18665 (Please quote in all correspondence)**

Dear Dr Khan,

Further to our telephone conversation on 20 September 2018, I am writing to summarise the issues which we discussed for both of our records. Please let me know if any of the information is incorrect.

Practitioner Performance Advice (formerly NCAS) encourages transparency in the management of cases and advises that practitioners should be informed when their case has been discussed with us. I am happy for you to share this letter with Dr 18665 if you consider it appropriate to do so. The practitioner is also welcome to contact us for a confidential discussion regarding the case. We have recently launched a new guide for practitioners, which sets out information about our role and services which may be of interest and is available on our website under publications.

In summary, this reopened case, which I had previously discussed with your colleague, Dr Wright, involves Dr 18665, a senior consultant urologist about whom there had been increasing concerns. An investigation, for which you are the Case Manager, has now been completed – it was very delayed because of the complexities and extent of the issues – and you are considering the options as set out in paragraph 38 of Part I MHPS (Maintaining High Professional Standards in the Modern HPSS). You wanted to seek advice around this. You indicated that since February 2017, Dr 18665 has been working

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to an agreed action plan with on-going monitoring so that any risks to patients have been addressed.

There were 5 Terms of Reference for the investigation (although the last related to the extent to which the managers knew of or had previously managed the concerns). You told me that having read the report, the factual accuracy of which Dr 18665 has had a chance to comment on, you have concluded that there was evidence to support many of the allegations with regards to Dr 18665. Specifically, following detailed consideration, you noted that:

- a) There were clear issues of concern about Dr 18665's way of working and his management of his workload. There has been potential harm to a large number of patients (783) and actual harm to at least 5 patients;
- b) Dr 18665's reflection throughout the investigation process was concerning and in particular in respect of the 5 patients diagnosed with cancer;
- c) As a senior member of staff within the Trust Dr 18665 had a clear obligation to ensure managers within the Trust were fully and explicitly aware that he was not undertaking routine and urgent triage as was expected;
- d) There has been significant impact on the Trust in terms of its ability to properly manage patients, manage waiting lists and the extensive look back exercise which was required to identify patients who may have been affected by the deficiencies in Dr 18665's practice (and to address these issues for patients);
- e) There is no evidence of concern about Dr 18665's clinical ability with individual patients;
- f) Dr 18665 had advantaged his own private patients over HSC patients on at least 9 occasions;
- g) The issues of concern were known to some extent for some time by a range of managers and no proper action was taken to address and manage the concerns;

You told me that the SAI (serious adverse incident) investigation, which has patient involvement, is looking at the issue where patients have, or may have been, harmed as a result of failings. You are aware that patients are entitled to know this.

We discussed the current situation and the overriding need to ensure patients are protected. I note that you have a system in place within the Trust to safeguard patients, but we discussed that this needs to be mirrored in the private sector. You explained that Dr 18665 saw private patients at his home and did not have a private sector employer. I would suggest that as paragraph 22 of Section II MHPS states that "*where a HPSS employer has placed restrictions on practice, the practitioner should agree not to undertake any work in that area of practice with any other employer*" Dr 18665 should not currently be working privately.

We discussed that the issues identified in the report were serious, and that whilst there are clearly systemic issues and failings for the Trust to address, it is unlikely that in these circumstances the concerns about Dr 18665 could be managed without formal action. We also discussed that whilst the issues did have clinical consequences for patients, as some of the concerns appear to be due to a failure to follow policies and protocols, and possibly also a breach of data protection law, these might be considered to be matters of conduct rather than capability. We noted therefore that it would be open to you in your

role as Case Manager to put the matter forward to a conduct hearing, but that Dr 18665 could also be offered support going forward to ensure that in future he is able to meet and sustain the required and expected standards. You told me that the local GMC ELA is aware of the issue and I advised that you may wish to update her on the position. In the majority of cases, the GMC prefers Trust to conclude their own processes before considering referral, and early referral is only indicated in a minority of cases; but the ELA would be best placed to advise on this.

I told you that, whilst there are no noted clinical performance concerns, Practitioner Performance Advice could offer support via the Professional Support and Remediation (PSR) team by drafting a robust action plan with input both from Dr 18665 and the Trust to address some of the deficiencies which have been identified (around the management of workload, administrative type of issues, for example). The purpose of the plan would be to ensure oversight and supervision of Dr 18665's work so that the Trust is satisfied there is no risk to patients, but also to provide support for Dr 18665, to afford him the best opportunity of meeting the objectives of the plan. We noted that this might involve job planning issues such as reducing Dr 18665's workload, and enhanced appraisal.

Since we spoke, I have talked to PSR, and we will arrange for the forms, which must be completed to formally request PSR support with a plan, to be sent out.

I note you said that there are no reported health concerns. However, as this is likely to continue to be a stressful time for Dr 18665, he should be offered any additional support deemed appropriate (access to staff counselling, mentoring, etc.).

As discussed, we will keep this case open. Please feel free to call at any stage, if you have queries.

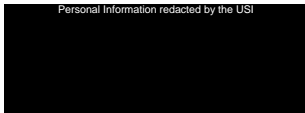
**Relevant regulations/guidance:**

- Local procedures
- General Medical Council Guide to Good Medical Practice
- Maintaining High Professional Standards in the Modern NHS (MHPS)
- The Medical Profession (Responsible Officer) Regulations 2010 and Amendment 2013

**Review date:** 24 September 2018

Yours sincerely,

Personal Information redacted by the USI



Dr Grainne Lynn  
**Adviser**  
**Practitioner Performance Advice**

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Dr Maria O'Kane  
 Medical Director  
 Southern Health and Social Care Trust  
 Craigavon Area Hospital  
 68 Lurgan Road  
 Portadown  
 Craigavon  
 BT63 5QQ

2nd Floor  
 151 Buckingham Palace Rd  
 London  
 SW1W 9SZ  
 DX: 6611000 Victoria 91 SW  
 Tel: Personal Information redacted by the USI

**BY EMAIL****Personal - Confidential**

4 March 2019

Dear Dr O'Kane

**Re: Practitioner Performance Advice (formerly known as NCAS) Case 18665 -  
 Request for information held by Practitioner Performance Advice**

I am writing to advise you that we have received a request for information from the practitioner who is the subject of this Practitioner Performance Advice case (Dr 18665). This request falls within the terms of the Data Protection Act 2018 and the General Data Protection Regulation (GDPR). My reason for writing to you is to consult with Southern Health and Social Care Trust in relation to the information that it provided to Practitioner Performance Advice, which is potentially disclosable to the practitioner.

As you may be aware, the Data Protection legislation provides a right for individuals to access information held about them (their "personal data").

Practitioner Performance Advice, a division of NHS Resolution, is aware that communications between Southern Health and Social Care Trust and Practitioner Performance Advice are in confidence and that the information supplied to Practitioner Performance Advice by you may be exempt from disclosure under the Data Protection legislation. I therefore enclose copies of documents containing information supplied to Practitioner Performance Advice by Southern Health and Social Care Trust for information to which your organisation is a party, for your consideration. I should be grateful if you would review the enclosed documentation, which is being considered for disclosure to the practitioner.

If you do think that Practitioner Performance Advice should withhold some information from the practitioner, you should ensure that you have identified the specific piece of information and explained the reasons why you feel that it should be withheld when you respond. You may find it useful to consult with the individual within your organisation who deals with requests under the DPA / FOIA.

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Practitioner Performance Advice is responsible for applying the exemptions and will consider your representations and take an independent decision as to whether the information can be withheld. It is very unlikely that Practitioner Performance Advice would be able to justify a decision to apply a blanket exemption to an entire document or an entire series of documents and it is therefore very important that when making any representations for Practitioner Performance Advice to withhold information, you identify the specific information (i.e. part of a document, paragraph, sentence or word) which you feel should be withheld and communicate the reasons for this to Practitioner Performance Advice so that we may take them into consideration. Without your input on the reasons why it would be inappropriate to disclose information, Practitioner Performance Advice may not be able to apply an appropriate exemption to disclosure.

The exception to this is in relation to information held within Practitioner Performance Advice files about individuals other than the data subject. Practitioner Performance Advice is concerned to ensure that it does not disclose any information which would constitute the personal data of a third party (for example, individual staff members who may have provided information and who are mentioned within the documents) if to do so would infringe the DPA, and Practitioner Performance Advice confirms that, generally, it will redact the identities of individuals other than Dr 18665 within the documentation unless it is lawful to disclose that information.

In cases where the disclosure of personal data about Dr 18665 would identify another individual, Practitioner Performance Advice will consider whether it is reasonable in all the circumstances to disclose the information, and would welcome your views on the disclosure of any specific piece of personal data. Further, if you feel that even redacted information within these documents (i.e. where names have been blacked out) would continue to enable the practitioner to identify another individual, please do let me know.

Once again, I must emphasise that Practitioner Performance Advice will consider any representations to withhold information, but that it is obliged to make its own decision as to whether information can be justifiably withheld under the legislation.

If possible, could you please acknowledge receipt of this letter and provide your final response to me in writing. Of course, if you would find it easier to discuss the request over the telephone in the meantime, please do not hesitate to contact me.

To assist us to comply with the statutory deadline, I should be grateful if you would respond with your views on the information by **Monday 18 March 2019**.

Yours sincerely

Personal information redacted by USI

**Racquel Ordonio**  
**Corporate Governance Officer**

Personal information redacted by USI

Email:

Enc.



## National Clinical Assessment Service

NCAS  
NHS Litigation Authority  
2<sup>nd</sup> Floor, 151 Buckingham Palace Road  
London  
SW1W 9SZ

Website: [www.ncas.nhs.uk](http://www.ncas.nhs.uk)

General Enquiries and Advice Line:

Direct Fax:

Email:

Personal Information  
redacted by the USI

29 December 2016

**SENT VIA EMAIL ONLY**

**PRIVATE AND CONFIDENTIAL**

Dr Richard Wright  
Medical Director  
Southern Health And Social Care Trust  
68 Lurgan Road  
Portadown  
BT63 5QQ

**NCAS ref: 18665 (Please quote in all correspondence)**

Dear Dr Wright

Further to our telephone conversation on 28 December 2016, I am writing to summarise the issues which we discussed for both of our records. Please let me know if any of the information is incorrect.

In summary, this case which my colleague Dr Fitzpatrick had previously discussed with Mr Gibson, involves Dr 18665, a senior consultant urologist about whom there have been increasing performance concerns. The allegations are of poor record keeping, and slowness of triaging referrals and arranging reviews. Dr 18665 is also reported to have removed a very substantial numbers of charts from the Trust's premises without bringing them back; despite requests that these be returned many charts remain outstanding. Dr 18665's colleagues have, on occasions, seen patients for whom there have been no notes. Dr 18665 is currently on sick leave, but has indicated that he is returning to work in January 2017.

A recent Serious Adverse Incident (SAI) has caused concern that there is potential for patients to be harmed by the ongoing situation. You are awaiting the report of the SAI but on the information available to date, you feel the Trust will need to undertake a formal investigation of Dr 18665. The Trust is also considering exclusion.

As you are aware, the concerns about Dr 18665 should be managed in line with local policy and the guidance in Maintaining High Professional Standards in the Modern HPSS (MHPS). We discussed that as the information to date - no noted improvement despite the matter having been raised with Dr 18665 - suggests that an informal approach (as per paragraphs 15-17 of Section I of MHPS) is unlikely to resolve the situation, a more formal process is now warranted.

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*Please ensure that any information provided to NCAS which contains personal data of any type is sent to us through appropriately secure means*



Any formal investigation should be undertaken to robust and specific Terms of Reference (ToR) and in line with the guidance in paragraphs 28-40 of MHPS Section II. The Case Manager should write to Dr 18665 as per paragraph 35 informing him of the name of the Case Investigator and Designated Board Member; any objections by Dr 18665 to the appointment of nominated individuals should be given serious consideration. The investigation should not be an unfocused trawl of Dr 18665's work but we discussed that if there are concerns that patients may not have received appropriate treatment, or that there are patients with inadequate records, then this could be managed separately with an audit/ look back to ensure that patients have received the appropriate standard of care. We noted that further preliminary information (such as from the SAI and taking account of Dr 18665's comments) may be helpful in deciding the scope of the investigation and therefore the ToR.

As well as being outwith the Trust's Information Governance policies, the allegations, if upheld, may mean that the legislation (DPA) has been breached, and once more information is available you may wish to take further advice on this. Paragraphs 20 and 21 of the GMC's Good Medical Practice also set out standards for record keeping including a requirement that records are kept in line with data protection duties.

Dr 18665 is due to attend Occupational Health to ascertain whether he is fit for work; if he is not, we noted that there would be no need at this time to consider exclusion but you may then wish to ask the Occupational Physician whether/when Dr 18665 would be fit to participate in an investigative process.

If Dr 18665 is deemed fit for work, we discussed the criteria for formal exclusion, and the option of an interim immediate exclusion for a maximum of 4 weeks (as per paragraphs 18-27 of Section I MHPS). The latter would allow for further information to be collated and to take account of Dr 18665's comments about the allegations, before deciding whether there are reasonable and proper grounds for formal exclusion such as a concern that the presence of the practitioner in the workplace would be likely to hinder the investigation. I note that there had been a concern expressed previously about a record missing for 2 years inexplicably appearing on a secretary's desk. In line with paragraph 22 of Section II MHPS, there is an obligation to inform other organisations, including the private sector, of any restriction or exclusion of a practitioner and a summary of the reasons for it.

Dr 18665 should be encouraged to contact his defence organisation/ BMA for help and advice. He may also benefit from staff support such as counselling, at what is likely to be a stressful time for him. Dr 18665 should be told of the involvement of NCAS and you are welcome to share this letter with him if you think this would be helpful.

As discussed, and as Dr 18665 may be excluded, NCAS will keep this case open and I will review it with you in approximately 1 month. Please call in the interim if you have any queries.

#### **Relevant regulations/guidance:**

- Local procedures
- General Medical Council Guide to Good Medical Practice
- Maintaining High Professional Standards in the Modern HPSS (MHPS)

#### **Review date:**

27 January 2017

*The National Clinical Assessment Service is an operating division of the NHS Litigation Authority. For more information about how we use personal information, please read our privacy notice at <http://www.nhs.uk/Pages/PrivacyPolicy.aspx>.*

*Please ensure that any information provided to NCAS which contains personal data of any type is sent to us through appropriately secure means*



If you have any further issues to discuss, or any difficulty with these arrangements, please contact Case Support on the direct line above.

I hope the process has been helpful to you.

Yours sincerely

Personal Information redacted by USI

Grainne Lynn  
**NCAS Adviser**

cc Case Support Team

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*Please ensure that any information provided to NCAS which contains personal data of any type is sent to us through appropriately secure means*



# Fitness to practise referral form

General  
Medical  
Council

**This form is for Responsible Officers, Suitable Persons, employers, their nominated representatives, and those acting on behalf of organisations to send fitness to practise concerns to us.**

## Getting help

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Guidance for completing this form is available in the [referral guidance](#). The guidance provides assistance on making fair and accurate referrals based on GMC thresholds.

Responsible Officers, Suitable Persons and their designates can seek advice and discussion about concerns and whether they meet our [threshold](#) for investigation. For details about the employer liaison adviser for your region, please visit [our website](#).

If you are a professional raising concerns in your individual capacity or a member of the public, please visit our website to fill in our [online form](#).

## Returning the form

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Please return this form to us, using [practise@gmc-uk.org](mailto:practise@gmc-uk.org). You should also copy in your employer liaison adviser into the email.

If the concerns are of a serious and urgent nature and completing the form could cause a delay, please e-mail [practise@gmc-uk.org](mailto:practise@gmc-uk.org) straight away with as much detail about the concern as possible.

## Details about the doctor

Doctor's full name	Mr Aidan O'Brien	GMC number	1394911
Doctor's speciality	Urology		
Doctor's job title	Consultant Urologist		
Doctor's grade	Consultant		

## The doctor's work details

Organisation the doctor was working for, or contracted to, or providing services for at the time the concerns arose.	Southern Health and Social Care Trust
How long have they worked here?	Appointed 6 July 1992
Other organisations where the doctor is known to work or contract with (eg independent hospital, locum agencies)	Mr O'Brien sees private patients from his home.

## Your relationship to the doctor

Are you the doctor's Responsible Officer? Yes ☒ No ☐

If no, please specify your connection to the doctor.

If no, and you have been able to identify the doctor's RO or Suitable Person, have you shared your concerns with that individual? Yes ☐ No ☐

Have you shared your concerns with the doctor? Yes ☒ No ☐

If yes, when did you do so?

The concerns were initially shared with the doctor in March 2016 and again in December 2016 prior to commencement of a formal investigation into the concerns.

Is the doctor aware that you are making a referral to the GMC? Yes ☒ No ☐

Do you need to detail concerns about another doctor? Yes ☐ No ☒

## Summary of concerns

Have you discussed your concerns with an employer liaison adviser?

Yes ☒ No ☐

If yes, did the ELA advise you to make a referral to us?

Yes ☒ No ☐

Please use the box below to provide the following details:

- summary of the concern(s) including location and who else was involved
- a chronology of events
- details of risk to patient safety (if applicable)
- summary of all local action taken and on-going investigations (if any)
- please indicate where you have been unable to verify information contained within this referral (eg where the information is from a source outside of your remit, where a local process is on-going or where you believe there is an evidential conflict)
- details of any other relevant concerns or previous complaints you are aware of at this time (and local actions and outcomes). This will help us assess whether this incident is part of a pattern of behaviour.

### The concerns

A Serious Adverse Incident (SAI) investigation was commenced within the Trust in April 2017 in respect of a patient <sup>Patient 10</sup> a patient of the Urology service. A referral had been received by the Trust in 2015 however the patient was not seen until February 2016. The patient was seen by Mr Mark Haynes, Consultant Urologist.

Mr Haynes reviewed the patient and the referral and was concerned about the delay for the patient. As a result Mr Haynes completed a Datix form to alert the Trust to the issue of concern.

Mr Anthony Glackin, Consultant Urologist chaired the SAI investigation which commenced in Autumn 2016. Through the SAI it was identified that the referral for patient <sup>Patient 10</sup> had not been triaged. An initial look back exercise was undertaken and a number of other patients were identified as not having been triaged. Further assessment of the issue identified a significant number of patients who had not been triaged.

The issues of concern relating to patient <sup>Patient 10</sup> were wider than the referral delay. There were issues of concerns in respect of the radiology reporting on diagnostic images however from a urology perspective, it was felt that the symptoms recorded by the patient's GP on the initial referral should have resulted in the referral being upgraded to a 'red-flag' referral and prioritised as such.

### The Timeline

**A full chronology is within the attached formal investigation report.**

#### **March 2016**

On 23 March 2016, Mr Eamon Mackle, Associate Medical Director (Mr O'Brien's clinical manager) and Mrs Heather Trouton, Assistant Director (Mr O'Brien's operational manager) met with Mr O'Brien to outline their concerns in respect of his clinical practice. In particular, they highlighted governance and patient safety concerns which they wished to address with him.

Mr O'Brien was provided with a letter detailing their concerns and asking him to respond with an immediate plan to address the concerns.

Four broad concerns were identified:

- Untriaged outpatient referral letters - It was identified at that time that there were 253 untriaged referrals dating back to December 2014.
- Current Review Backlog up to 29 February 2016 - It was identified at that time that there were 679 patient's on Mr O'Brien's review backlog dating back to 2013, with a separate oncology waiting list of 286 patients.
- Patient Centre letters and recorded outcomes from clinics - The letter noted reports of frustrated Consultant colleagues concerned that there was often no record of consultations / discharges made by Mr O'Brien on Patient Centre or on patient notes.
- Patient's hospital charts at Mr O'Brien's home - The letter indicated the issue of concern dated back many years. No numbers were identified within the letter.

#### **April to October 2016**

During the period April to October 2016, considerations were on-going about how best to manage the concerns raised with Mr O'Brien in the letter of 23 March 2016. It was determined that formal action would not be considered as it was anticipated that the concerns could be resolved informally.

#### **November 2016**

Mr O'Brien was off work on sick leave from 16 November 2016 and was due to return to work on 2 January 2017.

An on-going Serious Adverse Incident (SAI) investigation within the Trust identified a Urology patient who may have a poor clinical outcome because the GP referral was not triaged by Mr O'Brien. The SAI also identified an additional patient who may also have had an unnecessary delay in their treatment for the same reason.

#### **December 2016**

The concerns arising from the SAI were notified to the Trust's Medical Director, Dr Richard Wright in late December 2016. As a result of the concerns raised with Mr O'Brien on 23 March 2016 and the serious concern arising from the SAI investigation by late December 2016, the Trust's Medical Director determined that it was necessary to take formal action to address the concerns.

Information initially collated from the on-going SAI of Mr O'Brien's administrative practices identified the following:

- from June 2015, 318 GP referrals had not been triaged in line with the agreed / known process for such referrals. Further tracking and review was required to ascertain the status of all referrals.
- there was a backlog of 60+ undictated clinics dating back over 18 months amounting to approximately 600 patients, who may not have had their clinic outcomes dictated. It was unclear what the clinical management plan was for these patients, and if the plan had been actioned
- some of the patients seen by Mr O'Brien may have had their clinical notes taken back to his home, and are therefore not available within the hospital. The clinical management plan for these patients was unclear, and may be delayed.

As a result of these concerns, work was undertaken to scope the full extent of the issues and to put a management plan in place to review the status of each patient. The management plan put in place was to provide the necessary assurances in respect of the safety of patients involved.

**28 December 2016**

Advice was sought from the National Clinical Assessment Service on 28 December 2016 and it was indicated that a formal process under the Maintaining High Professional Standards Framework was warranted.

**30 December 2016**

Mr O'Brien was requested to attend a meeting on 30 December 2016 with Dr Richard Wright, Medical Director and Ms Lynne Hainey, HR Manager during which he was advised of a decision by the Trust to place him on a 4 week immediate exclusion in line with the Maintaining High Professional Standards (MHPS) Framework to allow for further preliminary enquiries to be undertaken.

**03 January 2017**

Mr O'Brien met with Mrs Martina Corrigan, Head of Service for Urology to return all case notes which he had at home and all undictated outcomes from clinics in line with the request made to him by Dr Wright on 30 December 2017.

**20 January 2017**

During the period of the 4 week immediate exclusion period notified to Mr O'Brien on 30 December 2016, Mr Colin Weir wrote to Mr O'Brien to request a meeting with him on 24 January 2017 to discuss the concerns identified and to provide an opportunity for Mr O'Brien to state his case and propose alternatives to formal exclusion.

**23 January 2017**

On 23 January 2017, Mr Weir wrote to Mr O'Brien seeking information from him in respect of 13 sets of case-notes that were traced out on PAS to Mr O'Brien but could not be located in his office and which had not been returned to the Trust with the other case-notes on 3 January 2017.

**24 January 2017**

The meeting between Mr Weir and Mr O'Brien took place on 24 January 2017.

**26 January 2017**

In line with the MHPS Framework, prior to the end of the 4 week immediate exclusion period, a case conference meeting was held within the Trust to review Mr O'Brien's immediate exclusion and to determine if, from the initial preliminary enquiries, Mr O'Brien had a case to answer in respect of the concerns identified.

A preliminary report was provided for the purposes of this meeting.

At the case conference meeting, it was determined by the Case Manager, Dr A Khan that Mr O'Brien had a case to answer in respect of the 4 concerns previously notified to him and that a formal investigation would be undertaken into the concerns.

The matter of his immediate exclusion was also considered and a decision taken to lift the immediate exclusion with effect from 27 January 2017 as exclusion was not deemed to be required. Instead, Mr O'Brien's return to work would be managed in line with a clear management plan for supervision and monitoring of key aspects of his work.

These decisions were communicated to Mr O'Brien verbally by telephone following the case conference meeting on 26 January 2017.

**6 February 2017**

A letter was sent to Mr O'Brien on 6 February 2017 confirming the decisions from the case conference meeting on 26 January 2017 and notifying him of a meeting on 9 February 2017 to discuss the detail of the management plan and monitoring arrangements to be put in place on his return to work.

**9 February 2017**

Mr O'Brien attended a meeting with the Case Manager, Dr Ahmed Khan on 9 February to discuss the management arrangements that were to be put in place on his return to work following the immediate exclusion period.

**20 February 2017**

Between 27 January 2017 when the immediate exclusion was lifted and 17 February 2017, Mr O'Brien was unable to return to work due to ill health. He returned to work on 20 February 2017 in line with action plan agreed at the meeting on 9 February 2017.

**January and February 2017**

During January and February 2017, Mr O'Brien made a number of representations to Dr Richard Wright, Medical Director and Mr John Wilkinson, Non-Executive Director in respect of process and timescale.

**16 March 2017**

The terms of reference for the formal investigation were shared with Mr O'Brien along with an initial witness list.

**April, May and June 2017**

During April, May and June 2017 the Case investigator met with all witnesses relevant to the investigation. Witness statements were prepared and issued for agreement.

**14 June 2017**

Dr Chada, Case Investigator wrote to Mr O'Brien requesting to meet with him on 28 June 2017 for the purpose of taking a full response in respect of the concerns identified.

**19 June 2017**

Mr O'Brien requested to reschedule the meeting to secure his preferred accompaniment to the meeting. This was facilitated. A meeting on 29 June, 30 June and 1<sup>st</sup> July was offered. Mr O'Brien requested to defer the meeting until later in July until after a period of planned annual leave, and a meeting was confirmed for 31 July 2017.

**05 July 2017**

Mr O'Brien advised the date of 31 July was not suitable and a date of 3 August 2017 was agreed.

**03 August 2017**

A first investigation meeting was held with Mr O'Brien in order to seek his response to the issues of concern.

**16 October 2017**

A meeting date for the second investigation meeting was agreed for 06 November 2017.

**06 November 2017**

A second investigation meeting was held with Mr O'Brien in order to seek his response to the issues of concern in respect of term of reference 4. At the meeting of 6 November 2017, Mr O'Brien advised Dr Chada that he wished to make comment on both his first statement and also the witness statements provided to him. He further advised that his priority for November and December was completion of his appraisal and that he would not be able to provide his comments during this period. It was agreed his timescales would be facilitated.

**15 February 2018**

By 15 February 2018, Mr O'Brien had not provided the comments he had previously advised he wished to make and therefore this was queried with Mr O'Brien and an update sought.

**22 February 2018**

No response was received and a further email reminder was sent to Mr O'Brien on 22 February 2018. On the same day, Mr O'Brien responded to advise that he had not had time to attend to the process since the meeting in November 2017. He requested a copy of the statement from the November meeting and indicated he would provide commentary on all documents by 31 March 2018.

In view of the timeframe to date, Mr O'Brien was asked to provide comments by 9 March 2018 rather than 31 March 2018.

**16 March 2018**

Comments on the documents were not received on 9 March 2018 and a further reminder was sent to Mr O'Brien requesting his comments no later than 26 March 2018. It was advised that the investigation report would be concluded thereafter if comments were not provided by 26 March 2018.

**26 March 2018**

No comments were received from Mr O'Brien.

**29 March 2018**

A final opportunity was provided to Mr O'Brien to provide comments by 12 noon on 30 March 2018. It was advised that the investigation report would be thereafter drafted.

**30 March 2018**

No comments were received from Mr O'Brien.

**2 April 2018**

Comments on the statements from the meetings of 3 August and 6 November were received from Mr O'Brien. Mr O'Brien also queried requested amendments to notes of meeting on 30 December 2016 and 24 January 2017.

**The Findings from the investigation**

There were 783 un-triaged referrals by Mr O'Brien of which 24 were subsequently deemed to need upgraded and a further 4 with confirmed diagnoses of cancer (plus the original SAI patient.) There was therefore potential for harm of 783 patients.

Mr O'Brien stored excessive numbers of case notes at his home for lengthy periods. 288 charts were brought by him from his home and returned in January 2017. This is outside normal acceptable practice. There were 13 case notes missing but the review team is satisfied with Mr O'Brien's account that he does not have these.

There were 66 clinics (668 patients) undictated and 68 with no outcome sheets, some going back a few years. Mr O'Brien gave an explanation of doing a summary account of each episode at the end. He indicated patients were added to waiting lists at the point they should have been in any event.

Some of Mr O'Brien's private patients were added to the HSC waiting list ahead of HSC patients without greater clinical need by these private patients .

GMC Liaison officer recommended referral on 19.01.19. Recently appointed MD reviewed and discussed concerns re insight.

## Local restrictions

Please provide details of any restrictions on the doctor's practise at a local level:

See attached management plan in place for Mr O'Brien.

## Supporting documentation

Please list in the box below any available supporting information and mark which items are included with this form. Please forward to us any further supporting information which subsequently becomes available as soon as possible and, if possible, indicate in the box below which information you expect to be able to send at a later stage.

Supporting documentation (where available) could include:

- notes, reports and transcripts of internal investigations or disciplinary documentation on this matter or related previous concerns
- complaint letter
- anonymised / redacted medical records  
Where supporting information contains patient identifiable details, we may ask you to seek consent from those individuals, where you have not done so already.
- expert report(s)
- relevant Royal College reviews
- relevant audit findings
- NCAS assessment reports and other relevant NCAS correspondence
- conviction / caution cases: criminal records check or certificate of conviction
- health cases: (1) details of any relevant sickness absence; (2) medical records and (3) notes of any meetings where the doctor's health has been discussed
- where the incident being referred is part of a pattern of behaviour - all supporting documentation relating to the other concerns.

Formal investigation report and appendices (send via post to GMC)  
Case Manager's determination (attached)  
Management Action Plan for Mr O'Brien (attached)  
NCAS advices (attached)

## Other sources of information

Please use the box below to detail any organisations and bodies (eg regulatory bodies, coroners, ombudsman, the police) that may be able to assist with providing relevant information to us. Where possible, please include the contact details of a named person within that organisation.

## Patient safety concerns

To your knowledge, has the doctor whom you are referring raised concerns about patient safety with your or any other organisation that patient safety or care is being compromised by the practice of colleagues, the system, policies, procedures in the organisations in which they work?

Yes ☒ No ☐ Explanatory guidance on patient safety concerns can be found in the [referral guidance](#).

If yes, when did the doctor raise their concern? Also, please indicate the nature of the concern.

Has raised concerns throughout about waiting lists which are well recognised

Have the concerns been investigated?

Yes ☒ No ☐

Please list any supporting information available in regard to the investigation and the patient safety issues raised. If the concern was not investigated, please provide an explanation below.

Supporting documentation (where available) could include:

- Reports or notes of internal / external enquiries or investigations

To mitigate effects of this Consultant of the week with triage was introduced to identify patients who should have been red flagged at referral.

## Declaration

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In accordance with my duty to raise concerns about the fitness to practise of doctors, I refer the named medical practitioner(s) to the GMC. In so doing, I confirm that:

- the referral is made in good faith, based on all the information that is available to me at the present time
- I have taken reasonable steps to ensure that the referral is fair and accurate.

Signature

Date

Your full name

Your role

Organisation

Where you are a nominated delegate, please provide the name and role of the person you are acting on behalf of, if applicable:

Acting on behalf and with the knowledge of

Role (eg Responsible Officer, Suitable Person, Medical Director, or Chief Executive)

Organisation

**From:** Hynds, Siobhan  
**Sent:** 07 April 2019 21:24  
**To:** Wilkinson, John  
**Cc:** Khan, Ahmed; OKane, Maria  
**Subject:** FOR UPDATE: MHPS Case - MR A O'B

**Importance:** High

Good afternoon John,

Dr Khan has asked me to update you in respect of a meeting held this morning at 10.30 am with Mr O'Brien. His son Personal Information redacted by the USI was in attendance.

The purpose of the meeting was to advise Mr O'Brien that a Fitness to Practice Referral has been made by the Trust to the General Medical Council. The referral comes on foot of a request from the GMC to the Trust for a referral to be made. The referral has been discussed between the Trust's GMC Liaison Officer, Joanne Donnelly and Dr O'Kane as RO for the Trust.

This information was shared today with Mr O'Brien. Mr O'Brien was provided with the information, he did not have any questions nor did he seek clarity on anything. The meeting was very short lasting no more than 5 minutes.

I trust this update is helpful. If you require any further information please let me know.

Regards,

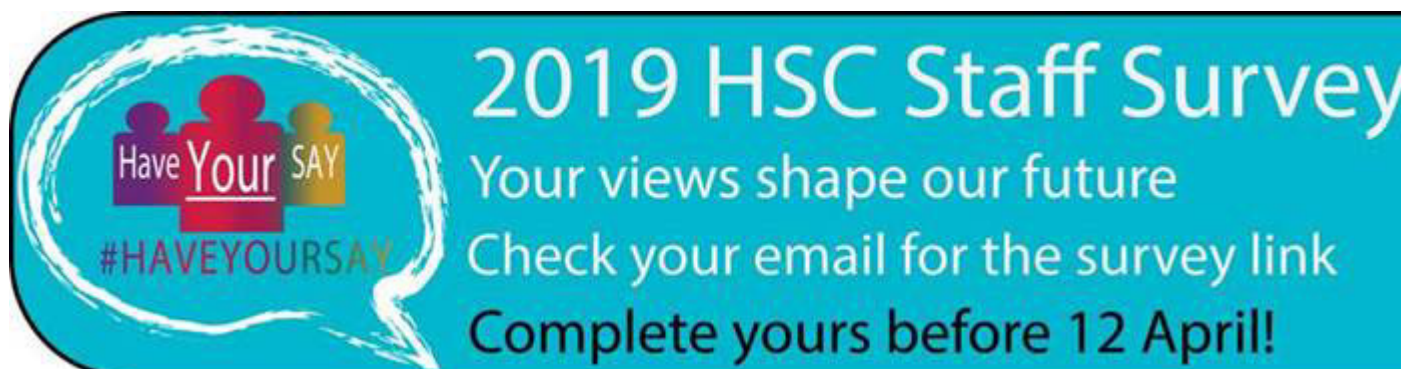
Siobhan

**Mrs Siobhan Hynds**

Deputy Director – HR Services  
Human Resources & Organisational Development Directorate  
Hill Building, St Luke's Hospital Site  
Armagh, BT61 7NQ

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

**#HAVEYOUR SAY** 2019 STAFF SURVEY: 4<sup>th</sup> MARCH – 12<sup>th</sup> APRIL. Click image below for Frequently Asked Questions.



**Cunningham, Hannah**

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**From:** Hynds, Siobhan  
**Sent:** 19 May 2019 22:42  
**To:** Gishkori, Esther; Trouton, Heather; Carroll, Ronan; Corrigan, Martina; Gibson, Simon; Wilkinson, John; Chada, Neta; Khan, Ahmed  
**Cc:** Neves, Joana; Anderson, Karen  
**Subject:** URGENT: Request for Information - Mr A O'Brien  
**Attachments:** Request for Further Information 3.docx  
  
**Importance:** High  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged  
  
**Categories:** Red Category

Dear All

Please see attached information request from Mr A O'Brien. I am seeking a legal view on our obligations however under MHPS we have extensive obligations to provide information and therefore I am sending this to you to being gathering the information / documentation requested.

Therefore could I please ask you to respond as follows:

- You will note there are references to some medical staff and therefore **Esther** – I would be grateful if you could advise who will be the point of contact to gather this requested information. You will note the request is for all correspondence so you will need to give consideration to staff who may not be specifically named but who may have been involved in correspondence / discussions on these issues.
- You will also note requests have been made for information which may have been held by staff who no longer work for the Trust – again consideration needs to be given to how to gather this information – it may require Director approval to get access by IT to closed accounts.
- I need everything including, notes, e-mails, file records, letters etc
- Can I please ask for all information to be returned to Joana Neves in HR no later than **Wednesday 29 May 2019**
- **Karen** – as this is a DPR can I please check in terms of timescales and any holding correspondence which we may need to send to Mr O'Brien.

If you have any queries please let me know.

Kind Regards,

Siobhan

**Mrs Siobhan Hynds**

Deputy Director – HR Services

Human Resources & Organisational Development Directorate

Hill Building, St Luke's Hospital Site

Armagh, BT61 7NQ

Tel:

Personal Information redacted  
by the USI

Mobile:

Personal Information  
redacted by the USI

## Request for Further Information

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### **Documentation arising from the letter of 23 March 2016**

I request the following information:

1. All emails, correspondence, notes of meetings or other information of whatsoever nature passing to and from Eamon Mackle and/or Heather Trouton and any other employee within the Trust in relation to the matters referred to in the letter of 23 March 2016, including all investigations for the purposes of collating the information required for the preparation of that letter and all follow-up to that letter (such as notifications to others within the Trust).
2. All emails, correspondence, notes of meetings or other information of whatsoever nature whereby concerns were raised by urological colleagues and by consultants in other specialties in relation to frustrations arising from the lack of records of consultations or discharges in patients' charts or on Patient Centre / NIECR.

### **Documentation in relation to Triage**

I request the following information:

3. All emails, correspondence, notes of meetings and documentation in relation to any and all employees of the Trust expressing awareness or knowledge of Mr. O'Brien not undertaking triage of referrals.
4. All emails, minutes of meetings and other communications regarding the criteria to be employed by Mr. O'Brien's colleagues when triaging the untriaged 783 referrals.
5. The minutes of the meeting between the Governance Team and Patient  
10 as referred to in Mr Glackin's Witness Statement, Appendix 16 Paragraph 7 of the Investigator's Report.

### **Dictated Outpatient Clinic Letters**

I request the following information:

6. Any and all Trust Guidelines, Policies and Procedures relating to the dictation of letters concerning patients following outpatient consultations.
7. The unit numbers of all patients whom Ms. Heather Trouton claimed had no dictated record or written record of their outpatient consultations, as stated in her Witness Statement, contained in Appendix 22, Paragraph 20 of the Investigator's Report.
8. Copies of the IR1 forms completed by Mr. Haynes as related in his Witness Statement, contained in Appendix 19, Paragraph 17 of the Investigator's Report

9. Copies of all documentation relating to the investigation of those IR1 cases.

### **Charts at Home**

I request the following information:

10. The Trust's policies, protocols and procedures in relation to guidance provided to staff with regard to data protection pertaining to the transfer of patients' records.
11. Details of all data protection training provided to consultant urologists, including Mr. O'Brien.
12. Ms. Graham's email of 03 April 2017 to the Case Investigator, as related in her Witness Statement, included in Appendix 13, Paragraph 9 of the Investigator's Report.
13. The email of 22 January 2015 referred to in Ms. Heather Trouton's Witness Statement, included in Appendix 22, Paragraph 19 of the Investigator's Report.

### **Private Patients**

I request the following information:

14. Copies of all notes of meetings, emails, correspondence and all other information in relation to the alleged preferential treatment of patients who had prior private consultations, including the emails sent by Mr. Haynes to Mr. Young and to Mrs. Corrigan in June 2015 and in December 2015, as claimed by Mr. Haynes in his Witness Statement, contained in Appendix 19, Paragraph 26 of the Investigator's Report.
15. Copies of all notes of meetings, emails, correspondence and any other communications pertaining to any investigation of the above alleged preferential treatment following receipt by Mr. Carroll of the email from Mr. Haynes
16. The unit numbers of the nine patients who had TURP performed as NHS patients, having previously had private consultations, as detailed in the Note of the Meeting with Mr. Colin Weir and with Ms. Siobhan Hynds, on Tuesday 24 January 2017.
17. The identity of the person or persons who compiled the list of the above nine patients.
18. Copies of all correspondence and communication relating to the above nine patients.
19. Minutes and records of all meetings, correspondence and communication, providing an insight into the transformation of nine 'TURP' patients to a list of eleven patients, of whom only three had undergone TURP.

20. All notes of meetings, emails, correspondence and communication of whatsoever manner with Mr. Young in relation to his review of the management of the above eleven patients by Mr. O'Brien, particularly the criteria that Mr. Young was instructed to use in his review.

**Mr. Simon Gibson.**

Mr. Gibson initiated contact with NCAS. I request the following information:

21. The identity of the person or persons who authorised Mr. Gibson to contact NCAS, the date upon which the authorisation was given, and a copy of the record of that authorisation.

Mr. Gibson advised Dr Fitzpatrick of NCAS, referring to Mr. O'Brien, that *'he often takes charts home and does not return them promptly. This leads to patients arriving for outpatient appointments with no records available.'* I request the following information:

22. The identity of the person or persons who communicated this information to Mr Gibson and all records and evidence in support of the allegation

Mr Gibson advised Dr Fitzpatrick that Mr. O'Brien's *'note-taking has been reported as very poor, and on occasions there are no records of consultations.'* I request the following information:

23. The identity of the person or persons who communicated this information to Mr Gibson, and the unit numbers of all patients for whom note taking was reported to be very poor, and those for whom no records of their consultations were alleged to have been made.

Mr Gibson advised Dr Fitzpatrick that *'there are anecdotal reports of delayed referral to oncology'*. I request the following information:

24. The identity of the persons or persons who reported this to Mr Gibson, and the unit numbers of all those patients who allegedly had a delayed referral to oncology.

Mr Gibson reported to Dr Fitzpatrick that *'Mr O'Brien has been spoken to on a number of occasions about his behaviour.'* I request the following information:

25. The identity of all persons who allegedly had spoken to me, the dates on when I had been spoken to, and all records relating to them.

**Oversight Group Meeting 13 September 2016**

The concerns relating to Mr. O'Brien were discussed at a meeting of the Oversight Group on 13 September 2016. I request the following information:

26. The identity of the person or persons who listed Mr. O'Brien for discussion at the above meeting, the date upon which that decision was made, and all records pertaining to that decision

Mr. Gibson consulted with Dr Fitzpatrick from NCAS on 7 September 2016. The Oversight Group met on 13 September 2016 with Mr Gibson in attendance. In the minutes of this meeting, there is no record of Mr Gibson's discussions with NCAS, or of the recommendations made by Dr Fitzpatrick. I request the following information:

27. Either confirmation that the discussion with and the advice received from NCAS were shared with the members of the Oversight Group but not recorded, or that they were not shared with the members of the Oversight Group and an explanation for the failure to do so.

It was reported to the Oversight Group that a preliminary investigation had already taken place on paper. I request the following information:

28. The identity of the person or persons who conducted the preliminary investigation, and a copy of the report of the preliminary investigation.

The Oversight Group agreed that Mr. Gibson would *'draft a letter for Colin Weir and Ronan Carroll to present to AOB'*. I request the following information:

29. A copy of the draft letter prepared by Mr Gibson.

The Oversight Group agreed that *'Esther Gishkori to meet with Colin Weir, Ronan Carroll and Simon Gibson to go through the letter and confirm actions required'*. I request the following information:

30. The date of the above meeting, a record of the proceedings and a copy of the required actions.

### **Mrs Esther Gishkori**

Dr Wright has advised in writing that the concerns were brought to his attention by Mrs Gishkori. I request the following information:

31. The date when Mrs. Gishkori brought the concerns to Dr Wright.
32. The identity of the person or persons who brought the concerns to the attention of Mrs. Gishkori.
33. The date or dates when the concerns were brought to the attention of Mrs. Gishkori
34. A record of the concerns brought to her attention
35. The actions undertaken by Mrs. Gishkori on receipt of the concerns.

In the exchange of emails between Mrs. Gishkori and Dr Wright on 15 September 2016 and 16 September 2016, Mrs. Gishkori related that Dr McAllister and Mr. Weir had plans to deal with the urology backlog in general and with Mr. O'Brien's performance. I request the following information:

36. A record of the plans that Dr McAllister and Mr. Weir had at that time.

37. An explanation for the failure to have these plans discussed with Mr. O'Brien

At the meeting of the Oversight Group of 12 October 2016, Mrs. Gishkori advised that *'Mr. O'Brien had not been told of the concerns following the previous Oversight Committee'*. I request the following information:

38. An explanation for the failure to have been advised of the concerns by 12 October 2016

Mrs. Gishkori advised the Oversight Group on 12 October 2016 that plans were in place to deal with a range of backlogs within Mr. O'Brien's practice during his absence. I request the following information:

39. A copy of the plans to which Mrs. Gishkori referred.

Mrs. Gishkori provided the Oversight Group on 12 October 2016 with an assurance that the concerns would be formally discussed with Mr. O'Brien following his return from sick leave. I request the following information:

40. If the concerns were of such concern, an explanation as to the reason for deferring the formal discussion until after Mr. O'Brien's return from sick leave.

### **Oversight Group Meetings**

I request the minutes of the Oversight Group Meetings of:

41. November 2016

42. January 2017

### **Mrs Heather Trouton**

There has been an inadequate response for documentation from Mrs Trouton. I request the following information:

43. All emails, correspondence, notes of meetings or other information of whatsoever nature passing to and from Eamon Mackle and/or Heather Trouton and any other employee within the Trust in relation to the matters referred to in the letter of 23 March 2016, including all investigations for the purposes of collating the information required for the preparation of that letter and all follow-up to that letter (such as notifications to others within the Trust).

**Dr Khan and Dr Chada**

I request the following information pertaining to the above persons:

44. The titles of all training courses undertaken by them in the conduct of formal investigations, the date upon which they were taken and copies of their accreditation.
45. The number of investigations that have been conducted by the above persons, and their respective roles in each of those investigations.

On Page 35, paragraph 3, of Dr Chada's report, it is stated that Datix reports were completed by medical records staff when charts were not returned by Mr. O'Brien. I request the following information:

46. A copy of all the Datix reports referred to above.

On Page 36 of Dr Chada's report, it is stated that Mrs. Corrigan reported complaints from GPs and an MLA about the lack of information concerning patients. I request the following information:

47. A copy of all records of the complaints referred to above.

Dr Chada, in her report, and Dr Khan, in his determination, both persisted to refer to 668 patients who had no dictated outcomes, even though detailed evidence had been submitted to Dr Chada that 189 patients had not had outcomes dictated. I request the following information:

48. The unit numbers or H&C numbers of all 668 patients who allegedly had no dictated outcomes.

On page 37, paragraph 3, of her report, Dr Chada stated that an extensive review exercise was undertaken by Mr. O'Brien's colleagues of all the undictated consultations. I request the following information:

49. A copy of the complete report of this exercise.

In the same above paragraph, Dr Chada claimed that the exercise ensured that all patients had an outcome dictated and a clear management plan for treatment. I request the following information:

50. A copy of the dictated outcomes and the clear management plans for treatment for all of the patients reviewed by my colleagues in the above extensive review exercise.
51. Dr Chada failed to interview Mrs. Gishkori, Mr. Gibson and Dr Wright in her investigation. I request an explanation for her failure to do so.

**Ms. S. Hynds**

Ms. Siobhan Hynds claimed that Dr Wright had written to Mr. O'Brien advising him of the amendments that he had been prepared to make to the Note of the Meeting of 30 December 2016, and the requested amendments that he was not prepared to have made. Ms. Hynds also claimed that Mr. O'Brien subsequently contested Dr Wright's accepted amendments.

It would appear that Ms. Hainey drafted a letter for Dr Wright to send to Mr. O'Brien. The unsigned draft letter has been provided to Mr. O'Brien upon his request. There has been no record of a signed letter to be sent to Mr. O'Brien, or proof that it was so sent. Thereafter, there has been no record of any communication received from Mr. O'Brien contesting Dr Wright's accepted amendments.

I request the following information:

- 52. A copy of the signed letter from Dr Wright detailing the amendments to the Note of the Meeting of the 30 December 2016 that he had accepted.
- 53. A copy of any correspondence received from Mr. O'Brien in which he contested Dr Wright's amended Note.

**Mr. John Wilkinson**

Mr. Wilkinson was appointed the Non-Executive Director to oversee the case to ensure that momentum was maintained during the course of the investigation, to consider any representations from the practitioner about his or her exclusion, or any representations about the investigation, to ensure that the investigation was completed in a fair and transparent manner, and to report back findings to the Trust Board. I therefore request the following information:

- 54. Copies of minutes and records of all meetings involving Mr. Wilkinson in his fulfilment of the above roles.
- 55. Copies of all emails, correspondence and communications of whatsoever nature to and from Mr. Wilkinson in his fulfilment of the above roles.

Aidan O'Brien.  
12 March 2019.

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**From:** Gibson, Simon  
**Sent:** 30 May 2019 13:25  
**To:** OKane, Maria  
**Cc:** Khan, Ahmed; Hynds, Siobhan; Toal, Vivienne; Parks, Zoe; Montgomery, Ruth  
**Subject:** RE: Action notes from meeting 24-4-19

- Conduct panel delayed pending grievance hearing
- Grievance hearing delayed pending further information being requested – **Siobhan Hynds to clarify from Vivienne Toal what this information is**  
Siobhan Hynds is gathering this information under the auspices of MHPS. It was noted that this will take significant time to gather.
- GMC have requested further information – response will be that we have no specific written information/document from AOB **Simon Gibson**  
Response was provided – GMC written again seeking clarification. Siobhan Hynds to draft response
- Working from home – clarification from Joanne Donnelly as to whether this is still required **Dr O’Kane**  
Dr O’Kane wasn’t at the meeting to provide an update on this
- Discuss with Shane with regard to organisational review **Dr O’Kane**  
Dr O’Kane wasn’t at the meeting to provide an update on this
- Need to seek assurance from Acute (**Dr O’Kane**):
  - Is there an agreed job plan Simon to check with Mark Haynes on behalf of Dr O’Kane
  - Is the 2017 action plan being followed – and all monitoring arrangements in place Siobhan Hynds reported that Martina Corrigan is ensuring monitoring arrangements are still in place, with no exception reports flagged to case manager. It was agreed that the Case Manager should periodically seek this assurance.

Kind regards

Simon

Simon Gibson  
Assistant Director – Medical Directors Office  
Southern Health & Social Care Trust

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(DHH)

**Medical Directorate**

Our Ref:

Date:

Joanne Donnelly  
ELC Liaison Officer  
GMC

Dear Joanne

**RE: SHSCT - Dr O'Brien GMC - 1394911**

I am writing in response to your e-mail dated 12<sup>th</sup> November regarding the above, within which you asked three questions. My response to these questions is as below:

**Can you advise whether there is have any evidence to demonstrate that Dr O'Brien was complying with his agreed local action plan (up to September 19 when the recent deviation occurred)?**

The February 2017 action plan was put in place following Mr O'Brien's return to work following an immediate exclusion process in January 2017. The action plan was shared with Mr O'Brien at a meeting on 9 February 2017 and was to be monitored on-going with any deviation from the action plan to be immediately escalated to the MHPS Case Manager. See attached action plan for information.

A summary e-mail was sent weekly by the service manager to the Case Manager (an example is attached). There were occasions when the backlog reports identified small deviations but given the complex nature of the monitoring process, we could not be confident that these were true deviations but actually resulted from delays in transcription of clinic letters by administrative staff and so continued to assess compliance. These small deviations were not showing consistently from one month to the next. In or around November 2018, the Case Manager sought only to be advised on significant deviations from the action plan as he determined that Dr O'Brien was reasonably compliant.

In terms of evidence of compliance with the action plan the following monitoring arrangements were, and remain, in place. The details of the monitoring arrangements are as follows:

Action Plan Monitoring Element	Details
<b><i>Triage of Referrals</i></b>	<p>Compliance regarding triage of referrals is monitored via two mechanisms;</p> <ul style="list-style-type: none"> <li>• The service manager reviews electronic referrals received via NIECR to ensure appropriate triage management</li> <li>• The Trust Referral and Booking Centre Team monitor hardcopy referrals received, and if not returned within the agreed timescale, escalate this to the service manager.</li> </ul> <p>In respect of Red flag triage, the action plan initially set out that triage should be completed by 4pm on the Friday following being Mr O'Brien Urologist of the Week. It was amended slightly through monitoring to an understanding that Mr O'Brien would complete all Red Flag triage referrals from his week on call by the end of the working day on the Thursday and the rest by the following Monday morning after he finished the week (handover is Thursday morning).</p> <p>Mr O'Brien had been meeting this expectation however in August and September the completion dates have extended to Tuesday or Wednesday of the following week that he has finished his triage. As the waiting times to first appointments for urology are significant (recently was 67 days), this has not impacted on patient pathways, and so this minor deviation was not considered material.</p>
<b><i>Clinical Dictation</i></b>	<p>Completed dictations from each clinic are monitored by the service manager by random checks on NIECR of outpatient sessions and checking if letters have been done. In addition the secretarial staff report backlog data to the admin team and a report is generated monthly. This details any outstanding dictation from outpatient clinics.</p> <p>Escalation occurred at the end August 19 when it appeared that dictations were not done and awaiting transcription.</p>

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	Following further investigation this matter was resolved and no action was necessary.
<b>Keeping Patient Notes at Home</b>	<p>The process whereby Mr O'Brien is expected to transport patient notes on behalf of the Trust to outpatients clinics in South West Acute Hospital (SWAH) remains the same as previous.</p> <p>No patient notes have been tracked out to Mr O'Brien's home and no reports of notes being unavailable at the location they have been tracked to (e.g. Mr O'Brien's secretaries office), or instances of notes being unavailable as not found following a consultation with Mr O'Brien have been noted.</p> <p>Notes are present at Mr O'Brien's home overnight on any Monday that he conducts an outpatient clinic in SWAH. This is for logistical reasons as Mr O'Brien lives in Moy and would not return to Craigavon Area Hospital until Tuesday morning.</p>
<b>Private Practice</b>	Mr O'Brien complies with the trust private practice policy regarding transfer from private care to NHS care and there have been no identified occasions where patients transferring from private care had their treatment expedited more patients of the same urgency from NHS clinics.

**Has Dr O'Brien made any comments to the Trust in response to the recent deviation from his agreed action plan in September 19?**

Mr O'Brien has made comments to the Trust (letter attached)

**Regarding the recent incident in September 19, can you provide an update on what actions the Trust plan to take against Dr O'Brien? Specifically, are any measures being put in place to support Dr O'Brien and help him to address his current deficiencies?**

The Trust has offered a meeting with Mr O'Brien on 12<sup>th</sup> December for further discussions on his job plan, which will include measures to support him in his working practices. As this meeting has not yet taken place, we have not yet had the opportunity to discuss the issues raised in his letter to clarify expectations, agree an action plan and consequence of continued non-compliance. Once an action plan has been

agreed, it will be monitored and non-compliance will lead to the implementation of appropriate Trust disciplinary processes.  
I hope the above is useful.

Yours sincerely,

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---

**Dr Maria O’Kane**  
**Medical Director**

Southern Trust Headquarters, Craigavon Area Hospital, 68 Lurgan Road, Portadown, BT63 5QQ

Tel: Personal Information redacted by the USI / Email: Personal Information redacted by the USI

26<sup>th</sup> September 2019

**Via email:** Personal Information redacted by the USI

Ref: MOK/Im

Joanne Donnelly  
Employer Liaison Service for Northern Ireland  
General Medical Council

Dear Joanne,

**RE: SHSCT - DR O'BRIEN – GMC NO. 1394911 – GMC REQUEST FOR FURTHER INFORMATION**

In response to your correspondence dated 27<sup>th</sup> August 2019 please find below a table outlining Trust responses to your information requests.

GMC Information Request	Trust Response
<i>Along with your referral of Dr O'Brien, you forwarded a copy of the MHPS Investigation Case Manager Determination (dated September 2018). Given the Report was completed last year, was there any specific reason the referral to the GMC was delayed?</i>	The MHPS Case Manager Determination was notified to the Practitioner on 1 October 2018. The decision of the Case Manager at that time was not to refer to GMC but to conclude the internal process first, which was referral to a conduct panel. On further discussion of the MHPS case with the Trust's GMC liaison officer, a request to the Trust was made for referral to GMC and this was made by the Trust's Medical

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	Director.
<i>The MHPS Determination highlighted a number of “wider, systemic findings that must be addressed by the Trust” and “systemic failures by managers at all levels, both clinical and operational”. What exactly were these specific systemic issues; have any inspections of these issues taken place. We also need information on what the Trust have done to address these issues so far?</i>	<p>The MHPS determination highlighted ‘failures by managers at all levels, both clinical and operational’ – this referred to failings to manage concerns in respect of the Practitioner when the issues were first known and on-going thereafter.</p> <p>The concerns about the Practitioner were known to managers at a number of levels within the organisation over a number of years and the report noted that management of the concerns was not as it should have been.</p> <p>The Trust have committed to an independent review of the relevant administrative processes and roles and responsibilities. This review has not yet commenced.</p>
<i>It is noted that the Trust were also asked to carry out an independent review of the relevant administrative processes with clarity on roles and responsibilities at all levels, and to look at the full system wide problems. Has this review has been completed; what were the findings (or an update on the current progress)?</i>	Please see above response.
<i>The referral also raised questions about Dr O’Brien’s lack of insight into the concerns raised about his practice. Can you confirm specific details of what these issues were, including any examples suggesting the doctor lacked insight?</i>	<p>The MHPS Case Investigator referred to a lack of insight on the part of the practitioner in the formal investigation report following conclusion of the investigation. This was primarily in respect of the Practitioner’s responses during the investigation into the issues of concern and impact of his administrative practices on the HSC patients on his caseload. The one clear example of his lack of insight was in respect of his response on the impact on the 5 patients with a confirmed cancer diagnosis.</p>

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<i>We note there was a return to work plan meeting held on 09/02/2017 where Dr O'Brien was informed of what he needed to do in terms of his admin processes. Was his return to work monitored in any way by the Trust at that time and if so, what was the outcome?</i>	The return to work action plan was put in place at the time of Mr O'Brien's return to work and this continues to be monitored by the operational Head of Service. The Head of Service reports any deviation from the action plan, by exception, to the MHPS Case Manager.
<i>In addition, is Dr O'Brien's admin processes / work still being monitored at the present time? If so, can the Trust provide an update on how the doctor is currently performing and whether he is managing his administrative duties effectively?</i>	As of Monday 16 September 2019, the operational Head of Service has notified the MHPS Case Manager of a deviation from the action plan by Mr O'Brien. The scale of this deviation is currently being scoped and a meeting will be held with Mr O'Brien once the full extent of this deviation is known. Prior to this, Mr O'Brien has been working in line with the return to work action plan.
<i>Have there been any recent or new concerns raised about his practice (or his admin processes) that haven't already been considered under the MHPS or the Trust SAI Investigations?</i>	Please see above I respect of a very recent deviation from the Trust's return to work action plan in respect of Mr O'Brien's administrative practices. I have no information in respect of further SAs.
<i>Has Dr O'Brien made any recent statements or provided any evidence, in response to the concerns being raised about him?</i>	I am not aware of any recent statements.
<i>When we spoke on 14 March 19 (see attached) you advised that SHSCT staff have come under external pressure not to challenge Dr O'Brien (pressure from his high-profile/influential private patients). Can the Trust provide any further information to support this/in relation to this?</i>	A member of SHSCT staff referred to Dr O'Brien's standing with some patients under his care who felt his practice was of an exemplary standard. This had no bearing or influence on the Trust decision to make a GMC referral.
<i>We don't appear to have a copy of the formal local/SAI Investigation Report (we only have the MHPS Case Manager Determination). We understand that you indicated the Report(s) would be posted to us – however we don't</i>	The local SAI reports are currently being reviewed by the Trust operational governance teams; these will be shared with the GMC when available.

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<i>appear to have received it. Could an electronic copy to be forwarded too?</i>	
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If you have any queries please do not hesitate to contact me directly.

Yours sincerely,

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**Dr Maria O’Kane**  
**Medical Director**

Southern Trust Headquarters, Craigavon Area Hospital, 68 Lurgan Road, Portadown, BT63 5QQ

Tel: Personal Information redacted by the USI / Email: Personal Information redacted by the USI

**Medical Directorate**

Our Ref:

Date:

Joanne Donnelly  
ELC Liaison Officer  
GMC

Dear Joanne

**RE: SHSCT - Dr O'Brien GMC - 1394911**

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**Can you advise whether there is have any evidence to demonstrate that Dr O'Brien was complying with his agreed local action plan (up to September 19 when the recent deviation occurred)?**

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A summary e-mail was sent weekly by the service manager to the Case Manager (an example is attached). There were occasions when the backlog reports identified small deviations but given the complex nature of the monitoring process, we could not be confident that these were true deviations but actually resulted from delays in transcription of clinic letters by administrative staff and so continued to assess compliance. These small deviations were not showing consistently from one month to the next. In or around November 2018, the Case Manager sought only to be advised on significant deviations from the action plan as he determined that Dr O'Brien was reasonably compliant.

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<b><i>Clinical Dictation</i></b>	<p>Completed dictations from each clinic are monitored by the service manager by random checks on NIECR of outpatient sessions and checking if letters have been done. In addition the secretarial staff report backlog data to the admin team and a report is generated monthly. This details any outstanding dictation from outpatient clinics.</p> <p>Escalation occurred at the end August 19 when it appeared that dictations were not done and awaiting transcription.</p>



	Following further investigation this matter was resolved and no action was necessary.
<b>Keeping Patient Notes at Home</b>	<p>The process whereby Mr O'Brien is expected to transport patient notes on behalf of the Trust to outpatients clinics in South West Acute Hospital (SWAH) remains the same as previous.</p> <p>No patient notes have been tracked out to Mr O'Brien's home and no reports of notes being unavailable at the location they have been tracked to (e.g. Mr O'Brien's secretaries office), or instances of notes being unavailable as not found following a consultation with Mr O'Brien have been noted.</p> <p>Notes are present at Mr O'Brien's home overnight on any Monday that he conducts an outpatient clinic in SWAH. This is for logistical reasons as Mr O'Brien lives in [Personal Information] and would not return to Craigavon Area Hospital until Tuesday morning.</p>
<b>Private Practice</b>	Mr O'Brien complies with the trust private practice policy regarding transfer from private care to NHS care and there have been no identified occasions where patients transferring from private care had their treatment expedited more patients of the same urgency from NHS clinics.

**Has Dr O'Brien made any comments to the Trust in response to the recent deviation from his agreed action plan in September 19?**

Mr O'Brien has made comments to the Trust (letter attached)

**Regarding the recent incident in September 19, can you provide an update on what actions the Trust plan to take against Dr O'Brien? Specifically, are any measures being put in place to support Dr O'Brien and help him to address his current deficiencies?**

The Trust has offered a meeting with Mr O'Brien on 12<sup>th</sup> December for further discussions on his job plan, which will include measures to support him in his working practices. As this meeting has not yet taken place, we have not yet had the opportunity to discuss the issues raised in his letter to clarify expectations, agree an action plan and consequence of continued non-compliance. Once an action plan has been

agreed, it will be monitored and non-compliance will lead to the implementation of appropriate Trust disciplinary processes.  
I hope the above is useful.

Yours sincerely,

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**Dr Maria O’Kane**  
**Medical Director**

Southern Trust Headquarters, Craigavon Area Hospital, 68 Lurgan Road, Portadown, BT63 5QQ

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**From:** Hynds, Siobhan  
**Sent:** 14 February 2020 16:50  
**To:** OKane, Maria; McClements, Melanie; Toal, Vivienne; Gibson, Simon; Carroll, Ronan; Khan, Ahmed  
**Subject:** Meeting of Oversight Group - MHPS case Mr A O'Brien  
**Importance:** High

Dear All – please find note of the meeting on 12 February 2020. Please let me know if you have any amendments.

Regards,

Siobhan

Meeting of Oversight Group - MHPS case Mr A O'Brien  
12 February 2020  
17:20

**In attendance:**

Maria O'Kane  
Melanie McClements  
Vivienne Toal  
Simon Gibson  
Siobhan Hynds

**Via Video Conference**

Ronan Carroll

**Via Phone**

Ahmed Khan

Siobhan gave an overview of the process and investigation. Discussions were held in respect of the outstanding actions to be progressed and how these would be taken forward including recent correspondences from GMC and RQIA.

Melanie provided an update on the SAI processes and the sign off.

**Actions:**

- Maria - To have a meeting / conversation with Ted McNaboe, Clinical Director regarding him meeting with AOB regularly and seeking assurances through that supervisory process that AOB was working

in accordance with the triage process, was not holding notes at home and was undertaking all digital dictation immediately following each individual clinical contact with a patient.

- Maria - to speak with Ted McNaboe and Mark Haynes to ensure an agreed job plan is in place for AOB as a matter of priority or to escalate to the next stage of the job planning process.
- Maria to seek assurance from Damien Scullion to ensure AOB is completing annual appraisals.
- Maria to draft a response to GMC and RQIA in respect of their recent correspondences to the Trust seeking additional information about the case.
- Siobhan to draft a terms of reference for the independent review of the SAI recommendations and the MHPS review recommendation. Terms of reference to go to the Group for agreement.
- Melanie to share SAI reports and recommendations with Siobhan for drafting of the TOR.
- Maria to speak to Dr Rose McCullough (GP) to undertake the independent review.
- Maria to update Shane
- Vivienne to progress AOB's Grievance process.

Created with Microsoft OneNote 2010  
One place for all your notes and information

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**From:** Wallace, Stephen  
**Sent:** 29 July 2020 12:40  
**To:** Khan, Ahmed  
**Subject:** FW: MHPS Case Manager Determination

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**From:** Khan, Ahmed  
**Sent:** 29 July 2020 12:33  
**To:** Wallace, Stephen  
**Cc:** Hynds, Siobhan  
**Subject:** RE: MHPS Case Manager Determination

Stephen, thanks. It was clear during this investigations; system wide failure happed at many levels within Acute directorate therefore my recommendation was to provide recommendation for system wide problems in acute Directorate & not to just only focus on urology department. Happy to discuss further.

Regards,  
Ahmed

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**From:** Wallace, Stephen  
**Sent:** 27 July 2020 13:47  
**To:** Khan, Ahmed  
**Cc:** Hynds, Siobhan  
**Subject:** MHPS Case Manager Determination

Ahmed,

Further to the AOB investigation conducted in 2018 under MHPS framework the report makes reference to an administrative review (below).

- *I recommend the Trust to carry out an independent review of the relevant administrative processes with clarity on roles and responsibilities at all levels within the Acute Directorate and appropriate escalation processes. The review should look at the full system wide problems to understand and learn from the findings.*

Below you will see are a draft terms of reference regarding this, can you confirm if these terms of reference encapsulate the requirements of the recommendation?

Thanks  
Stephen

## **Purpose**

The purpose of the review, is to review the Trust urology administrative processes for management of patients referred to the service.

## **Objectives**

The review will consider the present Trust urology administrative processes regarding referrals to the service and recommendations for the future, rather than past and pre-existing processes. The review in particular will consider the following:

- The administration processes regarding the receipt of and triage of patients referred to the urology service from all sources
- The effectiveness of monitoring of the administration processes including how and where this information is reviewed
- The roles and responsibilities of operational management and clinical staff in providing oversight of the administrative processes
- The effectiveness of the triggers and escalation processes regarding non-compliance with administration processes
- To identify any potential gaps in the system where processes can be strengthened

## **Outputs**

The Reviewer should provide a report which seeks to address the issues listed above. The report should provide recommendations on improvements to Trust urology administrative processes. Any recommendations should be evidence-based and proportionate, with consideration given to their implementation.

## **Scope**

The review should consider current Trust urology administrative processes for the management of referrals to the service. This is a forward-looking review and, as such, will not consider past decisions.

## **Timing**

The report, including any recommendations of the review, must be submitted to the Trust Acute Director by end September 2020.

## **Governance and Methodology**

The Reviewer will be appointed by, and accountable to, the Trust Acute Director for delivery of the review. Details of the governance which achieves this accountability and the methodology for the review - including evidence gathering, consultation with operational and clinical staff - will be agreed between the Reviewer and the Trust Acute Director by 5<sup>th</sup> August 2020.

**From:** Hynds, Siobhan  
**Sent:** 05 October 2020 12:45  
**To:** Khan, Ahmed  
**Cc:** Kingsnorth, Patricia  
**Subject:** URGENT FOR DISCUSSION AT 1.30PM  
**Attachments:** Document2 (2).docx

Hi Dr Khan

Please find attached document setting out draft findings from the initial look at the administrative review. It is only 2 pages – if you get a chance could you take a quick read for discussion at 1.30pm.

Many thanks

Siobhan

## Findings

1. **The administration processes regarding the receipt of and triage of patients referred to the urology service from all sources**

**Current process** – *Referrals to Southern Trust Urology come from a number of different sources within Primary and Secondary Care and also include referrals from the private sector. Referrals are made mainly via CCG (Clinical Communications Gateway) from Primary care (although not exclusively) and in paper format from other sources.*

*All referrals are triaged by the Consultant of the week, for the CCG referrals this involves working through a digital list and paper referrals are viewed physically by the Consultant after they have been scanned and dated.*

**Recommendation** – *We recommend moving to an amalgamated electronic list which would incorporate all CCG referrals and also all paper referrals, this list would be locked at an agreed time each week to ensure no patient could be added after the list had been triaged. This process would provide an additional layer of assurance regarding the avoidance of referrals becoming mislead and also to ensure chronicity of referrals in terms of triage was adhered to.*

2. **The effectiveness of monitoring of the administration processes including how and where this information is reviewed**

**Current process**- *The monitoring of this service is carried out by the Administration team with cross cover arrangements in place. There is also a level of oversight by the booking centre.*

**Recommendation**-*We recommend that this process in terms of the administration team and booking centre is formalised and an effective Standard Operating Procedure is put in place with regular review.*

3. **The roles and responsibilities of operational management and clinical staff in providing oversight of the administrative processes**

**Current process** – *The role of the Consultant of the week and the checking mechanism by the member of the administration team are clear.*

**Recommendation** – *Again we recommend an effective SOP for the administration processes but also feel that increased communication between clinical teams regarding roles may be helpful and may prevent*

*the need to escalate difficulties. In particular the role of locum Consultants should be clearly defined with appropriate safety-netting in place.*

**4. The effectiveness of the triggers and escalation processes regarding non-compliance with administration processes**

**Current Process** – *The administration checking process allows non-compliance to be detected and remedied.*

**Recommendation** – *Formalisation of the current escalation processes involving the administration team is likely to be beneficial and as already described open communication between clinical teams where difficulties arise may result in the need for less escalation.*

**5. To identify any potential gaps in the system where processes can be strengthened**

**Current Process-** *The dual system of digital referrals and paper referrals may present issues with dealing with referrals in an appropriate chronological manner.*

**Recommendation** – *In conclusion the amalgamation of both paper and digital referrals into a single list which can be easily checked is likely to be beneficial.*

*Formalised Standard Operating procedures for all processes with adequate safety netting and increased open communication between clinical teams and locum Consultants is likely to see benefits*

**Maintaining High Professional Standards in the Modern**  
**HPSS**

*A framework for the handling of concerns about doctors and  
dentists in the HPSS*

Department of Health, Social Services & Public Safety  
November 2005

# MAINTAINING HIGH PROFESSIONAL STANDARDS IN THE MODERN HPSS

*A framework for the handling of concerns about doctors and dentists in the  
HPSS*

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## INTRODUCTION

1. This document introduces the new 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 when deciding whether there needs to be any restriction or suspension placed on a doctor's or dentist's practice.
2. Throughout this framework where the term "performance" is used, it should be interpreted as referring to all aspects of a practitioner's work, including conduct, health and clinical performance. Where the term "clinical performance" is used, it should be interpreted as referring only to those aspects of a practitioner's work that require the exercise of clinical judgement or skill.
3. Under the Directions on Disciplinary Procedures 2005, HPSS organisations must notify the Department of the action they have taken to comply with the framework by 31 January 2006.
4. The 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
5. Local conduct procedures will apply to all concerns about the conduct of a doctor or dentist.

## Background

6. There has been some concern in the past about the way in which complaints about doctors and dentists have been handled. Developing new arrangements for dealing with medical and dental staff performance has become increasingly important in order to address these concerns and to reflect the new systems for quality assurance, quality improvement and patient safety being introduced in the HPSS.
7. The National Clinical Assessment Authority (NCAA) was established to improve arrangements for dealing with poor clinical performance of doctors. The Department entered into a service level agreement with the NCAA in October 2004 to provide advice and guidance to the HPSS. Since April 2005,

the NCAA has become a division of the National Patient Safety Agency, and is now known as the National Clinical Assessment Service (NCAS).

8. The new approach set out in the framework builds on four key elements:
  - appraisal<sup>1</sup> and revalidation – processes which require practitioners to maintain the skills and knowledge needed for their work through Continuing Professional Development (CPD);
  - the advisory and assessment services of the NCAS – aimed at enabling HSS Bodies<sup>2</sup> to handle cases quickly and fairly - reducing the need to use disciplinary procedures to resolve problems;
  - tackling the blame culture – recognising that most failures in standards of care are caused by systems' weaknesses, not individuals per se;
  - new arrangements for handling exclusion from work as set out in Sections I and II of this framework.
9. To work effectively these need to be supported by a culture and by attitudes and working practices which emphasise the importance of doctors and dentists maintaining their competence; and which support an open approach to reporting and addressing concerns about doctors' and dentists' practice. The new approach recognises the importance of seeking to address clinical performance issues through remedial action including retraining rather than solely through disciplinary action. However, it is not intended to weaken accountability or avoid disciplinary action where the situation warrants this approach.

### The new framework

10. At the heart of the new arrangements is a co-ordinated process for handling concerns about the safety of patients posed by the performance of doctors and dentists when this comes to the attention of the HPSS. Whatever the source of this information the response must be the same –
  - to ascertain quickly what has happened and establish the facts;
  - to determine whether there is a continuing risk;
  - to decide whether immediate action is needed to manage the risk to ensure the protection of patients;
  - to put in place action to address any underlying problem.

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<sup>1</sup> Appraisal is a structured process which gives doctors an opportunity to reflect on their practice and discuss, with a suitably trained and qualified appraiser, any issues arising from their work, and their development needs.

<sup>2</sup> In the Direction and Framework "HSS bodies" means: HSS Trusts, HSS Boards and Special Agencies

Under these new mechanisms, exclusion from work must be used only in the most exceptional circumstances.

11. All HSS bodies must have procedures for handling concerns about an individual's performance. These procedures must reflect the framework in this document and allow for informal resolution of problems where deemed appropriate. Concerns about the performance of doctors and dentists in training should 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. The onus still rests with the employer for the conduct of the investigation and any necessary action.



## **SECTION I. ACTION WHEN A CONCERN FIRST ARISES**

### **INTRODUCTION**

1. The management of performance is a continuous process to ensure both quality of service and to protect clinicians. Numerous ways exist in which concerns about a practitioner's performance can be identified, through which remedial and supportive action can be quickly taken before problems become serious or patients harmed, and which need not necessarily require formal investigation or the resort to disciplinary procedures.
2. Concerns about a doctor or dentist's performance can come to light in a wide variety of ways, for example:
  - concerns expressed by other HPSS staff;
  - review of performance against job plans and annual appraisal;
  - monitoring of data on clinical performance and quality of care;
  - clinical governance, clinical audit and other quality improvement activities;
  - complaints about care by patients or relatives of patients;
  - information from the regulatory bodies;
  - litigation following allegations of negligence;
  - information from the police or coroner;
  - court judgements; or
  - following the report of one or more critical clinical incidents or near misses.
3. All allegations, including those made by relatives of patients, or concerns raised by colleagues, must be properly investigated to establish the facts and the substance of any allegations. Unfounded or malicious allegations can cause lasting damage to a doctor's reputation and career. Where allegations raised by a fellow HPSS employee are shown to be malicious, that employee should be subject to the relevant disciplinary procedures.

### **SUMMARY OF KEY ACTIONS NEEDED**

4. The key actions needed at the outset can be summarised as follows:
  - clarify what has happened and the nature of the problem or concern;
  - consider discussing case with NCAS on the way forward;
  - consider if urgent action needs to be taken to protect the patient/s;
  - consider whether restriction of practice or exclusion is required;

- if the case can be progressed by mutual agreement consider if an NCAS assessment would help;
- if a formal approach under conduct or clinical performance procedures is required, appoint a case investigator;
- consider whether further action is required under the conduct, clinical performance or health procedures.

## PROTECTING THE PUBLIC

5. From the outset, a fundamental consideration is the continued safety of patients and the public. Whilst exclusion from the workplace may be unavoidable it should not be the sole or first approach to ensuring patient safety. Alternative ways to manage risks, avoiding exclusion, include:
  - arranging supervision of normal contractual clinical duties;
  - restricting the practitioner to certain forms of clinical duties;
  - restricting activities to non clinical duties. By mutual agreement the latter might include some formal retraining;
  - sick leave for the investigation of specific health problems.
6. In the vast majority of cases when action other than immediate exclusion can ensure patient safety the clinician should always initially be dealt with using an informal approach. Only where a resolution cannot be reached informally should a formal investigation be instigated. This will often depend on an individual's agreement to the solutions offered. It is imperative that all action is carried out without any undue delay.

## DEFINITION OF ROLES

7. The Board, through the Chief Executive, has responsibility for ensuring that these procedures are established and followed. Board members may be required to sit as members of a disciplinary or appeal panel. Therefore, information given to the board should only be sufficient to enable the board to satisfy itself that the procedures are being followed. Only the "*designated Board member*" should be involved to any significant degree in the management of individual cases.
8. The key individuals that may have a role in the process are summarised below:-
  - Chief Executive (CE) – **all** concerns must be registered with the CE who, should a formal investigation be required, must ensure that the following individuals are appointed;
  - the "*designated Board member*" – this is a non-executive member of the Board appointed by the Chairman of the Board, to oversee the case to ensure that momentum is maintained and consider any

representations from the practitioner about his or her exclusion or any representations about the investigation;

- Case Manager – this is the individual who will lead the formal investigation. The Medical Director will normally act as the case manager but he/she may delegate this role to a senior medically qualified manager in appropriate cases. If the Medical Director is the subject of the investigation the Case Manager should be a medically qualified manager of at least equivalent seniority;
- Case Investigator – this is the individual who will carry out the formal investigation and who is responsible for leading the investigation into any allegations or concerns, establishing the facts, and reporting the findings to the Case Manager. He / she is normally appointed by the CE after discussion with the Medical Director and Director of HR and should, where possible, be medically qualified;
- the Director of HR 's role will be to support the Chief Executive and the Medical Director.

## INVOLVEMENT OF NCAS

9. At any stage in the handling of a case, consideration should be given to the involvement of the NCAS. The NCAS has developed a staged approach to the services it provides HSS Trusts and practitioners. This includes:
  - immediate telephone advice, available 24 hours;
  - advice, then detailed supported local case management;
  - advice, then detailed NCAS performance assessment;
  - support with implementation of recommendations arising from assessment.
10. Employers or practitioners are at liberty to make use of the services of NCAS at any point they see fit. However, where an employing body is considering exclusion or restriction from practice the NCAS must be notified, so that alternatives to exclusion can be considered. Procedures for immediate and formal exclusion are covered respectively in Sections I and II of this framework.
11. The first stage of the NCAS's involvement in a case is exploratory – an opportunity for local managers or practitioners to discuss the problem with an impartial outsider, to look afresh at a problem, and possibly recognize the problem as being more to do with work systems than a doctor's performance, or see a wider problem needing the involvement of an outside body other than the NCAS.
12. The focus of the NCAS's work on assessment is likely to involve performance difficulties which are serious and/or repetitive. That means:

- clinical performance falling well short of recognized standards and clinical practice which, if repeated, would put patients seriously at risk;
  - alternatively, or additionally, issues which are ongoing or recurrent.
13. A practitioner undergoing assessment by the NCAS must co-operate with any request from the NCAS to give an undertaking not to practice in the HPSS or private sector other than their main place of HPSS employment until the NCAS assessment is complete. The NCAS has issued guidance on its processes, and how to make such referrals. This can be found at [www.ncaa.nhs.uk](http://www.ncaa.nhs.uk). See also circular HSS(TC8) 5/04.
  14. Failure on the part of either the clinician or the employer to co-operate with a referral to the NCAS may be seen as evidence of a lack of willingness to resolve performance difficulties. If the practitioner chooses not to co-operate with such a referral, and an underlying health problem is not the reason, disciplinary action may be needed.

## INFORMAL APPROACH

15. The first task of the clinical manager is to identify the nature of the problem or concern and to assess the seriousness of the issue on the information available. As a first step, preliminary enquiries are essential to verify or refute the substance and accuracy of any concerns or complaints. In addition, it is necessary to decide whether an informal approach can address the problem, or whether a formal investigation is needed. This is a difficult decision and should not be taken alone but in consultation with the Medical Director and Director of HR, taking advice from the NCAS or Occupational Health Service (OHS) where necessary.
16. The causes of adverse events should not automatically be attributed to the actions, failings or unsafe acts of an individual alone. Root cause analyses of individual adverse events frequently show that these are more broadly based and can be attributed to systems or organizational failures, or demonstrate that they are untoward outcomes which could not have been predicted and are not the result of any individual or systems failure. Each will require appropriate investigation and remedial actions.
17. In cases relating primarily to the performance of a practitioner, consideration should be given to whether a local action plan to resolve the problem can be agreed with the practitioner. The NCAS can advise on the practicality of this approach. This may involve a performance assessment by the NCAS if considered appropriate – (Section IV paragraph 7 refers). If a workable remedy cannot be determined in this way, the Medical Director, in consultation with the clinical manager, should seek the agreement of the practitioner to refer the case to the NCAS for consideration of a detailed performance assessment.

**IMMEDIATE EXCLUSION**

18. When significant issues relating to performance are identified which may affect patient safety, the employer must urgently consider whether it is necessary to place temporary restrictions on an individual's practice. Examples of such restrictions might be to amend or restrict the practitioner's clinical duties, obtain relevant undertakings eg regarding practice elsewhere or provide for the temporary exclusion of the practitioner from the workplace.
19. An immediate time limited exclusion may be necessary
  - to protect the interests of patients or other staff;
  - where there has been a breakdown in relationships within a team which has the potential to significantly endanger patient care.
20. The NCAS must, where possible, be informed prior to the implementation of an immediate exclusion. Such exclusion will allow a more measured consideration to be undertaken. This period should be used to carry out a preliminary situation analysis and to convene a case conference involving the clinical manager, the Medical Director and appropriate representation from Human Resources.
21. The authority to exclude a member of staff must be vested in a nominated manager or managers of the Trust. These should include, where possible, the CE, Medical Director and the Clinical Directors for staff below the grade of consultant. For consultants it should include the CE and Medical Director. The number of managers involved should be the minimum number of people consistent with the size of the organisation and the need to ensure 24 hour availability of a nominated manager in the event of a critical incident. The clinical manager seeking an immediate exclusion must explain to the nominated manager why the exclusion is justified.
22. The clinical manager having obtained the authority to exclude must explain to the practitioner why the exclusion is justified (there may be no formal allegation at this stage), and agree a date up to a maximum of four weeks at which the practitioner should return to the workplace for a further meeting
23. Immediate exclusion should be limited to the shortest feasible time and in no case longer than 4 weeks. During this period the practitioner should be given the opportunity to state their case and propose alternatives to exclusion e.g. further training, referral to occupational health, referral to the NCAS with voluntary restriction. The clinical manager must advise the practitioner of their rights, including rights of representation.
24. All these discussions should be minuted, recorded and documented, and a copy given to the practitioner.
25. The 4 week exclusion period should allow sufficient time for initial investigation to determine a clear course of action, including the need for formal exclusion.

26. At any point in the process where the Medical Director has reached a judgment that a practitioner is to be the subject of an exclusion, the regulatory body should be notified. Guidance on the process for issuing alert letters can be found in circular HSS (TC8) (6)/98. This framework also sets out additional circumstances when the issue of an alert letter may be considered.
27. Section II of this framework sets out the procedures to be followed should a formal investigation indicate that a longer period of formal exclusion is required.

## FORMAL APPROACH

28. Where it is decided that a formal approach needs to be followed (perhaps leading to conduct or clinical performance proceedings) the CE must, after discussion between the Medical Director and Director of HR, appoint a Case Manager, a Case Investigator and a designated Board member as outlined in paragraph 8. The seniority of the Case Investigator will differ depending on the grade of practitioner involved in the allegation. Several Case Investigators should be appropriately trained, to enable them to carry out this role.
29. All concerns should be investigated quickly and appropriately. A clear audit route must be established for initiating and tracking progress of the investigation, its' costs and resulting action.
30. At any stage of this process - or subsequent disciplinary action - the practitioner may be accompanied to any interview or hearing by a companion. The companion may be another employee of the HSS body; 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 he or she will not, however, be acting in a legal capacity.

### The Case Investigator's role

31. The Case Investigator:
  - must formally, on the advice of the Medical Director, involve a senior member of the medical or dental staff<sup>3</sup> with relevant clinical experience in cases where a question of clinical judgment is raised during the investigation process;
  - must ensure that safeguards are in place throughout the investigation so that breaches of confidentiality are avoided. Patient confidentiality needs to be maintained. It is the responsibility of the Case Investigator

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<sup>3</sup> Where no other suitable senior doctor or dentist is employed by the HSS body a senior doctor or dentist from another HSS body should be involved.

- to judge what information needs to be gathered and how (within the boundaries of the law) that information should be gathered;
  - must ensure that sufficient written statements are collected to establish the facts of the case, and on aspects of the case not covered by a written statement, ensure that there is an appropriate mechanism for oral evidence to be considered where relevant;
  - must ensure that a written record is kept of the investigation, the conclusions reached and the course of action agreed by the Medical Director with advice from the Director of HR;
  - must assist the designated Board member in reviewing the progress of the case.
32. 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. They may not be a member of any disciplinary or appeal panel relating to the case.
33. The Case Investigator has wide discretion on how the investigation is carried out, but in all cases the purpose of the investigation is to ascertain the facts in an unbiased manner. Information gathered in the course of an investigation may clearly exonerate the practitioner, or provide a sound basis for effective resolution of the matter.

#### The Case Manager's role

34. The Case Manager is the individual who will lead the formal investigation. The Medical Director will normally act as the case manager but he/she may delegate this role to a senior medically qualified manager in appropriate cases. If the Medical Director is the subject of the investigation the Case Manager should be a medically qualified manager of at least equivalent seniority
35. The practitioner concerned must be informed in writing by the Case Manager, that an investigation is to be undertaken, the name of the Case Investigator and the specific allegations or concerns that have been raised. The practitioner must be given the opportunity to see any correspondence relating to the case together with a list of the people whom the Case Investigator will interview. The practitioner must also be afforded the opportunity to put their view of events to the Case Investigator and given the opportunity to be accompanied.
36. If during the course of the investigation, it transpires that the case involves more complex clinical issues (which cannot be addressed in the Trust), the Case Manager should consider whether an independent practitioner from another HSS body or elsewhere be invited to assist.

Timescale and decision

37. The Case Investigator should, other than in exceptional circumstances, complete the investigation within 4 weeks of appointment and submit their report to the Case Manager within a further 5 working days. The Case Manager must give the practitioner the opportunity to comment in writing on the factual content of the report produced by the Case Investigator. Comments in writing from the practitioner, including any mitigation, must normally be submitted to the Case Manager within 10 working days of the date of receipt of the request for comments. In exceptional circumstances, for example in complex cases or due to annual leave, the deadline for comments from the practitioner should be extended.
38. The report should give the Case Manager sufficient information to make a decision on whether:
- no further action is needed;
  - restrictions on practice or exclusion from work should be considered;
  - there is a case of misconduct that should be put to a conduct panel;
  - there are concerns about the practitioner's health that should be considered by the HSS body's occupational health service, and the findings reported to the employer;
  - there are concerns about the practitioner's clinical performance which require further formal consideration by NCAS ;
  - there are serious concerns that fall into the criteria for referral to the GMC or GDC;
  - there are intractable problems and the matter should be put before a clinical performance panel.

**CONFIDENTIALITY**

39. Employers must maintain confidentiality at all times, and should be familiar with the guiding principles of the Data Protection Act. No press notice can be issued, nor the name of the practitioner released, in regard to any investigation or hearing into disciplinary matters. They may only confirm that an investigation or disciplinary hearing is underway.
40. Personal data released to the Case Investigator for the purposes of the investigation must be fit for the purpose, and not disproportionate to the seriousness of the matter.

**TRANSITIONAL ARRANGEMENTS**

41. On implementation of this framework, the new procedures must be followed, as far as is practical, for all existing cases taking into account the stage the case has reached.

## SECTION II. RESTRICTION OF PRACTICE & EXCLUSION FROM WORK

### INTRODUCTION

1. This part of the framework replaces the guidance in HSS (TC8) 3/95 (Disciplinary Procedures for Hospital and Community Medical and Hospital Dental Staff - Suspensions). Under the Directions on Disciplinary Procedures 2005, HPSS employers must incorporate these principles and procedures within their local procedures. The guiding principles of Article 6 of the Human Rights Act must be strictly adhered to.
2. In this part of the framework, the phrase “exclusion from work” has been used to replace the word “suspension” which can be confused with action taken by the GMC or GDC to suspend the practitioner from the register pending a hearing of their case or as an outcome of a fitness to practice hearing.
3. The Directions require that HSS bodies must ensure that:
  - exclusion from work is used only as an interim measure whilst action to resolve a problem is being considered;
  - where a practitioner is excluded, it is for the minimum necessary period of time: this can be up to but no more than four weeks at a time;
  - all extensions of exclusion are reviewed and a brief report provided to the CE and the board;
  - a detailed report is provided when requested to the designated Board member who will be responsible for monitoring the situation until the exclusion has been lifted.

### MANAGING THE RISK TO PATIENTS

4. Exclusion of clinical staff from the workplace is a temporary expedient. Under this framework, exclusion is a precautionary measure and not a disciplinary sanction. Exclusion from work should be reserved for only the most exceptional circumstances.
5. The purpose of exclusion is:
  - to protect the interests of patients or other staff; and/or
  - to assist the investigative process when there is a clear risk that the practitioner’s presence would impede the gathering of evidence.
6. It is imperative that exclusion from work is not misused or seen as the only course of action that could be taken. The degree of action must depend on the nature and seriousness of the concerns and on the need to protect patients, the practitioner concerned and/or their colleagues.

## THE EXCLUSION PROCESS

7. **Under the Directions, an HSS body cannot require the exclusion of a practitioner for more than four weeks at a time.** The justification for continued exclusion must be reviewed on a regular basis and before any further four-week period of exclusion is imposed. Under the framework key officers and the Board have responsibilities for ensuring that the process is carried out quickly and fairly, kept under review and that the total period of exclusion is not prolonged.

### *Key aspects of exclusion from work*

8. Key aspects include:
- an initial “immediate” exclusion of no more than four weeks if warranted as set out in Section I;
  - notification of the NCAS before immediate and formal exclusion;
  - formal exclusion (if necessary) for periods up to four weeks;
  - ongoing advice on the case management plan from the NCAS;
  - appointment of a designated Board member to monitor the exclusion and subsequent action;
  - referral to NCAS for formal assessment, if part of case management plan;
  - active review by clinical and case managers to decide renewal or cessation of exclusion;
  - a right to return to work if review not carried out;
  - performance reporting on the management of the case;
  - programme for return to work if not referred to disciplinary procedures or clinical performance assessment;
  - a right for the doctor to make representation to the designated Board member
9. The authority to exclude a member of staff must be vested in a nominated manager or managers of the Trust. As described for immediate exclusion, these managers should be at an appropriately senior level in the organisation and should be the minimum number of people consistent with the size of the organisation and the need to ensure 24 hour availability of a nominated manager in the event of a critical incident. It should include the CE, Medical Director and the Clinical Directors for staff below the grade of consultant. For consultants it should include the CE and Medical Director.

***Exclusion other than immediate exclusion***

10. A formal exclusion may only take place in the setting of a formal investigation after the Case Manager has first considered whether there is a case to answer and then considered, at a case conference (involving as a minimum the clinical manager, Case Manager and Director of HR), whether there is reasonable and proper cause to exclude. **The NCAS must be consulted where formal exclusion is being considered.** If a Case Investigator has been appointed he or she must produce a preliminary report as soon as is possible to be available for the case conference. This preliminary report is advisory to enable the Case Manager to decide on the next steps as appropriate.
11. The report should provide sufficient information for a decision to be made as to whether:
  - (i) the allegation appears unfounded; or
  - (ii) there is a misconduct issue; or
  - (iii) there is a concern about the practitioner's clinical performance; or
  - (iv) the complexity of the case warrants further detailed investigation before advice can be given.
12. Formal exclusion of one or more clinicians must only be used where:
  - a. there is a need to protect the safety of patients or other staff pending the outcome of a full investigation of:
    - allegations of misconduct;
    - concerns around the functioning of a clinical team which are likely to adversely affect patients;
    - concerns about poor clinical performance; or
  - b. the presence of the practitioner in the workplace is likely to hinder the investigation.
13. Members of the case conference should consider whether the practitioner could continue in or (where there has been an immediate exclusion) return to work in a limited capacity or in an alternative, possibly non-clinical role, pending the resolution of the case.
14. When the practitioner is informed of the exclusion, there should, where practical, be a witness present and the nature of the allegations of concern should be conveyed to the practitioner. The practitioner should be told the reason(s) why formal exclusion is regarded as the only way to deal with the case. At this stage the practitioner should be given the opportunity to state their case and propose alternatives to exclusion (e.g. further training, referral to occupational health, referral to the NCAS with voluntary restriction). The practitioner may be accompanied to any interview or hearing by a companion

(paragraph 30 of Section I defines companion). All discussions should be minuted, recorded and documented and a copy given to the practitioner.

15. The formal exclusion must be confirmed in writing immediately. The letter should state the effective date and time, duration (up to 4 weeks), the content of the allegations, the terms of the exclusion (e.g. exclusion from the premises, see paragraph 19, and the need to remain available for work paragraph 20) and that a full investigation or what other action will follow. The practitioner and their companion should be informed that they may make representations about the exclusion to the designated Board member at any time after receipt of the letter confirming the exclusion.
16. In cases when disciplinary procedures are being followed, exclusion may be extended for four-week reviewable periods until the completion of disciplinary procedures, if a return to work is considered inappropriate. The exclusion should still only last for four weeks at a time and be subject to review (see paras 26 – 31 relating to the review process). The exclusion should usually be lifted and the practitioner allowed back to work, with or without conditions placed upon the employment, as soon as the original reasons for exclusion no longer apply.
17. If the Case Manager considers that the exclusion will need to be extended over a prolonged period outside of his or her control (for example because of a police investigation), the case must be referred back to the NCAS for advice as to whether the case is being handled in the most effective way. However, even during this prolonged period the principle of four-week review must be adhered to.
18. If at any time after the practitioner has been excluded from work, the investigation reveals that either the allegations are without foundation or that further investigation can continue with the practitioner working normally or with restrictions, the Case Manager must lift the exclusion and notify the appropriate regulatory authorities. Arrangements should be in place for the practitioner to return to work with any appropriate support (including retraining after prolonged exclusion) as soon as practicable.

### ***Exclusion from premises***

19. Practitioners should not be automatically barred from the premises upon exclusion from work. Case Managers must always consider whether a bar is absolutely necessary. The practitioner may want to retain contact with colleagues, take part in clinical audit, to remain up to date with developments in their specialty or to undertake research or training. There are certain circumstances, however, where the practitioner should be excluded from the premises. There may be a danger of tampering with evidence, or where the practitioner may present a serious potential danger to patients or other staff

***Keeping in contact and availability for work***

20. Exclusion under this framework should be on full pay provided the practitioner remains available for work with their employer during their normal contracted hours. The practitioner should not undertake any work for other organisations, whether paid or voluntary, during the time for which they are being paid by the HPSS employer. This caveat does not refer to time for which they are not being paid by the HPSS employer. The practitioner may not engage in any medical or dental duties consistent within the terms of the exclusion. In case of doubt the advice of the Case Manager should be sought. The practitioner should be reminded of these contractual obligations but would be given 24 hours notice to return to work. In exceptional circumstances the Case Manager may decide that payment is not justified because the practitioner is no longer available for work (e.g. abroad without agreement).
21. The Case Manager should make arrangements to ensure that the practitioner may keep in contact with colleagues on professional developments, take part in CPD and clinical audit activities with the same level of support as other doctors or dentists in their employment. A mentor could be appointed for this purpose if a colleague is willing to undertake this role. In appropriate circumstances Trusts should offer practitioners a referral to the Occupational Health Service.

***Informing other organisations***

22. Where there is concern that the practitioner may be a danger to patients, the employer has an obligation to inform other organisations including the private sector, of any restriction on practice or exclusion and provide a summary of the reasons. Details of other employers (HPSS and non-HPSS) may be readily available from job plans, but where it is not the practitioner should supply them. Failure to do so may result in further disciplinary action or referral to the relevant regulatory body, as the paramount interest is the safety of patients. Where a HPSS employer has placed restrictions on practice, the practitioner should agree not to undertake any work in that area of practice with any other employer<sup>4</sup>.
23. Where the Case Manager has good grounds to believe that the practitioner is practicing in other parts of the HPSS, or in the private sector in breach or defiance of an undertaking not to do so, they should contact the professional regulatory body and the CMO of the Department to consider the issue of an alert letter.
24. No practitioner should be excluded from work other than through this new procedure. Informal exclusions, so called 'gardening leave' have been

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<sup>4</sup> HSS bodies must develop strong co-partnership relations with universities and ensure that jointly agreed procedures are in place for dealing with any concerns about practitioners with joint appointments.

commonly used in the recent past. **No HSS body may use "gardening leave" as a means of resolving a problem covered by this framework.**

### ***Existing suspensions & transitional arrangements***

25. On implementation of this framework, all informal exclusions (e.g. 'gardening leave') must be transferred to the new system of exclusion and dealt with under the arrangements set out in this framework.

## **KEEPING EXCLUSIONS UNDER REVIEW**

### ***Informing the board of the employer***

26. The Board must be informed about an exclusion at the earliest opportunity. The Board has a responsibility to ensure that the organisation's internal procedures are being followed. It should, therefore:
- receive a monthly statistical summary showing all exclusions with their duration and number of times the exclusion had been reviewed and extended. A copy must be sent to the Department (Director of Human Resources).
  - receive an assurance from the CE and designated board member that the agreed mechanisms are being followed. Details of individual exclusions should not be discussed at Board level.

### ***Regular review***

27. The Case Manager must review the exclusion before the end of each four week period and report the outcome to the Chief Executive<sup>5</sup>. The exclusion should usually be lifted and the practitioner allowed back to work, with or without conditions placed upon their employment, at any time providing the original reasons for exclusion no longer apply. The exclusion will lapse and the practitioner will be entitled to return to work at the end of the four-week period if the exclusion is not actively reviewed.
28. The HSS body must take review action before the end of each 4-week period. The table below outlines the various activities that must be undertaken at different stages of exclusion.

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<sup>5</sup> It is important to recognise that Board members might be required to sit as members of a future disciplinary or appeal panel. Therefore, information to the Board should only be sufficient to enable the Board to satisfy itself that the procedures are being followed. Only the designated Board member should be involved to any significant degree in each review. Careful consideration must be given as to whether the interests of patients, other staff, the practitioner, and/or the needs of the investigative process continue to necessitate exclusion and give full consideration to the option of the practitioner returning to limited or alternative duties where practicable.

Stage	Activity
First and second reviews (and reviews after the third review)	<p>Before the end of each exclusion (of up to 4 weeks) the Case Manager reviews the position.</p> <ul style="list-style-type: none"> <li>• The Case Manager decides on the next steps as appropriate. Further renewal may be for up to 4 weeks at a time.</li> <li>• Case Manager submits advisory report of outcome to CE and Medical Director.</li> <li>• Each review is a formal matter and must be documented as such.</li> <li>• The practitioner must be sent written notification of the outcome of the review on each occasion.</li> </ul>
Third review	<p>If the practitioner has been excluded for three periods:</p> <ul style="list-style-type: none"> <li>• A report must be made by the Medical Director to the CE: <ul style="list-style-type: none"> <li>- outlining the reasons for the continued exclusion and why restrictions on practice would not be an appropriate alternative;</li> <li>and if the investigation has not been completed</li> <li>- a timetable for completion of the investigation.</li> </ul> </li> <li>• The CE must report to the Director of Human Resources at the Department, who will involve the CMO if appropriate.</li> <li>• The case must be formally referred back to the NCAS explaining: <ul style="list-style-type: none"> <li>- why continued exclusion is thought to be appropriate;</li> <li>- what steps are being taken to complete the investigation at the earliest opportunity.</li> </ul> </li> <li>• The NCAS will review the case and advise the HSS body on the handling of the case until it is concluded.</li> </ul>
6 month review	<p>If the exclusion has been extended over 6 months,</p> <ul style="list-style-type: none"> <li>• A further position report must be made by the CE to</li> </ul>

	<p>the Department indicating:</p> <ul style="list-style-type: none"> <li>- the reason for continuing the exclusion;</li> <li>- anticipated time scale for completing the process;</li> <li>- actual and anticipated costs of the exclusion.</li> </ul> <p>The Department will consider the report and provide advice to the CE if appropriate.</p>
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29. Normally there should be a maximum limit of 6 months exclusion, except for those cases involving criminal investigations of the practitioner concerned. The employer and the NCAS should actively review those cases at least every six months.

### ***The role of the Department in monitoring exclusions***

30. When the Department is notified of an exclusion, it should confirm with the NCAS that they have been notified.
31. When an exclusion decision has been extended twice (third review), the CE of the employing organisation (or a nominated officer) must inform the Department of what action is proposed to resolve the situation.

### **RETURN TO WORK**

32. If it is decided that the exclusion should come to an end, there must be formal arrangements for the return to work of the practitioner. It must be clear whether clinical and other responsibilities are to remain unchanged, what duties and restrictions apply, and any monitoring arrangements to ensure patient safety.

## SECTION III. GUIDANCE ON CONDUCT HEARINGS AND DISCIPLINARY PROCEDURES

### INTRODUCTION

1. This section applies when the outcome of an investigation under Section I shows that there is a case of misconduct that must be put to a conduct panel (paragraph 38 of section 1). Misconduct covers both personal and professional misconduct as it can be difficult to distinguish between them. The key point is that all misconduct issues for doctors and dentists (as for all other staff groups) are matters for local employers and must be resolved locally. All misconduct issues should be dealt with under the employer's procedures covering other staff where conduct is in question.
2. It should be noted that if a case covers both misconduct and clinical performance issues it should usually be addressed through a clinical performance procedure (paragraph 5 of Section IV refers).
3. Where the investigation identifies issues of professional misconduct, the Case Investigator must obtain appropriate independent professional advice. Similarly where a case involving issues of professional misconduct proceeds to a hearing under the employer's conduct procedures the panel must include a member who is medically qualified (in the case of doctors) or dentally qualified (in the case of dentists) and who is not currently employed by the organisation.<sup>6</sup>
4. Employers are strongly advised to seek advice from NCAS in misconduct cases, particularly in cases of professional misconduct.
5. HSS bodies must develop strong co-partnership relations with universities and ensure that jointly agreed procedures are in place for dealing with any concerns about practitioners with joint appointment contracts.

### CODES OF CONDUCT

6. Every HPSS employer will have a Code of Conduct or staff rules, which should set out acceptable standards of conduct and behaviour expected of all its employees. Breaches of these rules are considered to be "misconduct". Misconduct can cover a very wide range of behaviour and can be classified in a number of ways, but it will generally fall into one of four distinct categories:
  - a refusal to comply with the requirements of the employer where these are shown to be reasonable;
  - an infringement of the employer's disciplinary rules including conduct that contravenes the standard of professional behaviour required of

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<sup>6</sup> Employers are advised to discuss the selection of the medical or dental panel member with the appropriate local professional representative body eg for doctors in a hospital trust the local negotiating committee

doctors and dentists by their regulatory body<sup>7</sup>;

- the commission of criminal offences outside the place of work which may, in particular circumstances, amount to misconduct;
- wilful, careless, inappropriate or unethical behaviour likely to compromise standards of care or patient safety, or create serious dysfunction to the effective running of a service.

## EXAMPLES OF MISCONDUCT

7. The employer's Code of Conduct should set out details of some of the acts that will result in a serious breach of contractual terms and will constitute gross misconduct, and could lead to summary dismissal. The code cannot cover every eventuality. Similarly the Labour Relations Agency (LRA) Code of Practice provides a non-exhaustive list of examples. Acts of misconduct may be simple and readily recognised or more complex and involved. Examples may include unreasonable or inappropriate behaviour such as verbal or physical bullying, harassment and/or discrimination in the exercise of their duties towards patients, the public or other employees. It could also include actions such as deliberate falsification or fraud.
8. Failure to fulfil contractual obligations may also constitute misconduct. For example, regular non-attendance at clinics or ward rounds, or not taking part in clinical governance activities may come into this category. Additionally, instances of failing to give proper support to other members of staff including doctors or dentists in training may be considered in this category.
9. It is for the employer to decide upon the most appropriate way forward, including the need to consult the NCAS and their own sources of expertise on employment law. If a practitioner considers that the case has been wrongly classified as misconduct, he or she (or his/her representative) is entitled to use the employer's grievance procedure. Alternatively, or in addition, he or she may make representations to the designated Board member.
10. In all cases where an allegation of misconduct has been upheld consideration must be given to referral to GMC/GDC.

## ALLEGATIONS OF CRIMINAL ACTS

### ***Action when investigations identify possible criminal acts***

11. Where an employer's investigation establishes a suspected criminal action in the UK or abroad, this must be reported to the police. The Trust investigation should only proceed in respect of those aspects of the case that are not directly related to the police investigation underway. The employer must consult the police to establish whether an investigation into any other matters

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<sup>7</sup> In case of doctors, *Good Medical Practice*. In the case of dentists, *Maintaining Standards*.

would impede their investigation. In cases of fraud, the Counter Fraud & Security Management Service must be contacted.

***Cases where criminal charges are brought not connected with an investigation by an HPSS employer***

12. There are some criminal offences that, if proven, could render a doctor or dentist unsuitable for employment. In all cases, employers, having considered the facts, will need to determine whether the employee poses a risk to patients or colleagues and whether their conduct warrants instigating an investigation and the exclusion of the practitioner. The employer will have to give serious consideration to whether the employee can continue in their current duties once criminal charges have been made. Bearing in mind the presumption of innocence, the employer must consider whether the offence, if proven, is one that makes the doctor or dentist unsuitable for their type of work and whether, pending the trial, the employee can continue in their present duties, should be allocated to other duties or should be excluded from work. This will depend on the nature of the offence and advice should be sought from an HR or legal adviser. Employers should, as a matter of good practice, explain the reasons for taking such action.

***Dropping of charges or no court conviction***

13. If the practitioner is acquitted following legal proceedings, but the employer feels there is enough evidence to suggest a potential danger to patients, the Trust has a public duty to take action to ensure that the practitioner does not pose a risk to patient safety. Where the charges are dropped or the court case is withdrawn, there may be grounds to consider allegations which if proved would constitute misconduct, bearing in mind that the evidence has not been tested in court. It must be made clear to the police that any evidence they provide and is used in the Trust's case will have to be made available to the doctor or dentist concerned.



## SECTION IV. PROCEDURES FOR DEALING WITH ISSUES OF CLINICAL PERFORMANCE

### INTRODUCTION & GENERAL PRINCIPLES

1. There will be occasions following an adequate investigation where an employer considers that there has been a clear failure by an individual to deliver an acceptable standard of care, or standard of clinical management, through lack of knowledge, ability or consistently poor performance. These are described as clinical performance issues.
2. Concerns about the clinical performance of a doctor or dentist may arise as outlined in Section I. Advice from the NCAS will help the employer to come to a decision on whether the matter raises questions about the practitioner's performance as an individual (health problems, conduct difficulties or poor clinical performance) or whether there are other matters that need to be addressed. If the concerns about clinical performance cannot be resolved through local informal processes set out in Section I (paragraphs 15 – 17) **the matter must be referred to the NCAS before consideration by a performance panel** (unless the practitioner refuses to have his or her case referred).
3. Matters which may fall under the performance procedures include:
  - out moded clinical practice;
  - inappropriate clinical practice arising from a lack of knowledge or skills that puts patients at risk;
  - incompetent clinical practice;
  - inappropriate delegation of clinical responsibility;
  - inadequate supervision of delegated clinical tasks;
  - ineffective clinical team working skills.

Wherever possible such issues should be dealt with informally, seeking support and advice from the NCAS where appropriate. The vast majority of cases should be adequately dealt with through a plan of action agreed between the practitioner and the employer.

4. Performance may be affected by ill health. Should health considerations be the predominant underlying feature, procedures for handling concerns about a practitioner's health are described in Section V of this framework.

### ***How to proceed where conduct and clinical performance issues are involved***

5. It is inevitable that some cases will involve both conduct and clinical performance issues. Such cases can be complex and difficult to manage. If

a case covers more than one category of problem, it should usually be addressed through a clinical performance hearing although there may be occasions where it is necessary to pursue a conduct issue separately. It is for the employer to decide on the most appropriate way forward having consulted with an NCAS adviser and their own source of expertise on employment law.

### ***Duties of employers***

6. The procedures set out below are designed to cover issues where a doctor's or dentist's standard of clinical performance is in question<sup>8</sup>.
7. As set out in Section I (paras 9 - 14), the NCAS can assist the employer to draw up an action plan designed to enable the practitioner to remedy any limitations in performance that have been identified during the assessment. The employing body must facilitate the agreed action plan (agreed by the employer and the practitioner). There may be occasions when a case has been considered by NCAS, but the advice of its assessment panel is that the practitioner's performance is so fundamentally flawed that no educational and/or organisational action plan has a realistic chance of success. In these circumstances, the Case Manager must make a decision, based upon the completed investigation report and informed by the NCAS advice, whether the case should be determined under the clinical performance procedure. If so, a panel hearing will be necessary.
8. If the practitioner does not agree to the case being referred to NCAS, a panel hearing will normally be necessary.

## **HEARING PROCEDURE**

### ***The pre-hearing process***

9. The following procedure should be followed before the hearing:
  - the Case Manager must notify the practitioner in writing of the decision to arrange a clinical performance hearing. This notification should be made at least 20 working days before the hearing, and include details of the allegations and the arrangements for proceeding including the practitioner's rights to be accompanied, and copies of any documentation and/or evidence that will be made available to the panel. This period will give the practitioner sufficient notice to allow them to arrange for a companion to accompany them to the hearing if they so wish;
  - all parties must exchange any documentation, including witness statements, on which they wish to rely in the proceedings no later than 10 working days before the hearing. In the event of late evidence being presented, the employer should consider whether a new date

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<sup>8</sup> see paragraphs 5 and 6 in section 6I on arrangements for small organisations

should be set for the hearing;

- should either party request a postponement to the hearing, the Case Manager should give reasonable consideration to such a request while ensuring that any time extensions to the process are kept to a minimum. Employers retain the right, after a reasonable period (not normally less than 30 working days from the postponement of the hearing), and having given the practitioner at least five working days notice, to proceed with the hearing in the practitioner's absence, although the employer should act reasonably in deciding to do so;
- Should the practitioner's ill health prevent the hearing taking place, the employer should implement their usual absence procedures and involve the Occupational Health Department as necessary;
- witnesses who have made written statements at the inquiry stage may, but will not necessarily, be required to attend the clinical performance hearing. Following representations from either side contesting a witness statement which is to be relied upon in the hearing, the Chairman should invite the witness to attend. The Chairman cannot require anyone other than an employee to attend. However, if evidence is contested and the witness is unable or unwilling to attend, the panel should reduce the weight given to the evidence as there will not be the opportunity to challenge it properly. A final list of witnesses to be called must be given to both parties not less than two working days in advance of the hearing.
- If witnesses who are required to attend the hearing, choose to be accompanied, the person accompanying them will not be able to participate in the hearing.

### ***The hearing framework***

10. The hearing will normally be chaired by an Executive Director of the Trust. The panel should comprise a total of 3 people, normally 2 members of the Trust Board, or senior staff appointed by the Board for the purpose of the hearing. At least one member of the panel must be an appropriately experienced medical or dental practitioner who is not employed by the Trust.<sup>9</sup> No member of the panel or advisers to the panel should have been previously involved in the investigation. In the case of clinical academics, including joint appointments, a further panel member may be appointed in accordance with any protocol agreed between the employer and the university.
11. Arrangements must be made for the panel to be advised by:
  - a senior member of staff from Human Resources;
  - an appropriately experienced clinician from the same or similar clinical specialty as the practitioner concerned, but from another HPSS employer;

<sup>9</sup> Employers are advised to discuss the selection of the medical or dental panel member with the appropriate local professional representative body eg for doctors in a hospital trust the local negotiating committee.

- a representative of a university if provided for in any protocol agreed between the employer and the university.

It is important that the panel is aware of the typical standard of competence required of the grade of doctor in question. If for any reason the selected clinician is unable to advise on the appropriate level of competence, a doctor from another HPSS/NHS employer, in the same grade as the practitioner in question, should be asked to provide advice. In the case of doctors in training the postgraduate dean's advice should be sought.

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

### ***Representation at clinical performance hearings***

13. The hearing is not a court of law. Whilst the practitioner should be given every reasonable opportunity to present his or her case, the hearing should not be conducted in a legalistic or excessively formal manner.
14. The practitioner may be represented in the process by a companion who may be another employee of the HSS body: an official or lay representative of the BMA, BDA, defence organisation or work or professional colleague. Such a representative may be legally qualified but they will not, however, be representing the practitioner formally in a legal capacity. The representative will be entitled to present a case on behalf of the practitioner, address the panel and question the management case and any witness evidence.

### ***Conduct of the clinical performance hearing***

15. The hearing should be conducted as follows:
  - the panel and its advisers, the practitioner, his or her representative and the Case Manager will be present at all times during the hearing. Witnesses will be admitted only to give their evidence and answer questions and will then retire;
  - the Chairman of the panel will be responsible for the proper conduct of the proceedings. The Chairman should introduce all persons present and announce which witnesses are available to attend the hearing;
  - the procedure for dealing with any witnesses attending the hearing shall be the same and shall reflect the following:

- the witness to confirm any written statement and give any supplementary evidence;
- the side calling the witness can question the witness;
- the other side can then question the witness;
- the panel may question the witness;
- the side which called the witness may seek to clarify any points which have arisen during questioning but may not at this point raise new evidence.

The order of presentation shall be:

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

### **Decisions**

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

#### Possible decisions made by the clinical performance panel

- a finding that the allegations are unfounded and practitioner exonerated. Finding placed on the practitioner's record;
- a finding of unsatisfactory clinical performance. All such findings require a written statement detailing:

- the clinical performance problem(s) identified;
- the improvement that is required;
- the timescale for achieving this improvement;
- a review date;
- measures of support the employer will provide; and
- the consequences of the practitioner not meeting these requirements.

In addition, dependent on the extent or severity of the problem, the panel may:

- issue a written warning or final written warning that there must be an improvement in clinical performance within a specified time scale together with the duration that these warnings will be considered for disciplinary purposes (up to a maximum of two years depending on severity);
- decide on termination of contract.

In all cases where there is a finding of unsatisfactory clinical performance, consideration must be given to referral to the GMC/GDC.

It is also reasonable for the panel to make comments and recommendations on issues other than the competence of the practitioner, where these issues are relevant to the case. The panel may wish to comment on the systems and procedures operated by the employer.

17. A record of all findings, decisions and written warnings should be kept on the practitioner's personnel file. Written warnings should be disregarded for disciplinary purposes following the specified period.
18. The decision of the panel should be communicated to the parties as soon as possible and normally within 5 working days of the hearing. Given the possible complexities of the issues under deliberation and the need for detailed consideration, the parties should not necessarily expect a decision on the day of the hearing.
19. The decision must be confirmed in writing to the practitioner within 10 working days. This notification must include reasons for the decision, clarification of the practitioner's right of appeal (specifying to whom the appeal should be addressed) and notification of any intent to make a referral to the GMC/GDC or any other external/professional body.

## APPEALS PROCEDURES IN CLINICAL PERFORMANCE CASES

### *Introduction*

20. Given the significance of the decision of a clinical performance panel to warn or dismiss a practitioner, it is important that a robust appeal procedure is in place. Every Trust must therefore establish an internal appeal process.
21. The appeals procedure provides a mechanism for practitioners who disagree with the outcome of a decision to have an opportunity for the case to be reviewed. The appeal panel will need to establish whether the Trust's procedures have been adhered to and that the panel, in arriving at their decision, acted fairly and reasonably based on:
  - a fair and thorough investigation of the issue;
  - sufficient evidence arising from the investigation or assessment on which to base the decision;
  - whether in the circumstances the decision was fair and reasonable, and commensurate with the evidence heard.

It can also hear new evidence submitted by the practitioner and consider whether it might have significantly altered the decision of the original hearing. The appeal panel, however, should not re-hear the entire case but may direct that the case is re-heard if it considers it appropriate (see paragraph 24 below).

22. A dismissed practitioner will, in all cases, be potentially able to take their case to an Industrial Tribunal where the fairness of the Trust's actions will be tested.

### *The appeal process*

23. The predominant purpose of the appeal is to ensure that a fair hearing was given to the original case and a fair and reasonable decision reached by the hearing panel. The appeal panel has the power to confirm or vary the decision made at the clinical performance hearing, or order that the case is re-heard. Where it is clear in the course of the appeal hearing that the proper procedures have not been followed and the appeal panel determines that the case needs to be fully re-heard, the Chairman of the panel shall have the power to instruct a new clinical performance hearing.
24. Where the appeal is against dismissal, the practitioner should not be paid, from the date of termination of employment. Should the appeal be upheld, the practitioner should be reinstated and must be paid backdated to the date of termination of employment. Where the decision is to re-hear the case, the practitioner should also be reinstated, subject to any conditions or restrictions in place at the time of the original hearing, and paid backdated to the date of termination of employment.

***The appeal panel***

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

**Membership of the appeal panel**

- an independent member (trained in legal aspects of appeals) from an approved pool.<sup>10</sup> This person is designated Chairman;
- the Chairman (or other non-executive director) of the employing organisation who must have the appropriate training for hearing an appeal;
- a medically qualified member (or dentally qualified if appropriate) who is not employed by the Trust<sup>11</sup> who must also have the appropriate training for hearing an appeal.

In the case of clinical academics, including joint appointments, a further panel member may be appointed in accordance with any protocol agreed between the employer and the university

26. The panel should call on others to provide specialist advice. This should normally include:
- a consultant from the same specialty or subspecialty as the appellant, but from another HPSS/NHS employer<sup>12</sup>;
  - a senior Human Resources specialist.

It is important that the panel is aware of the typical standard of competence required of the grade of doctor in question. If for any reason the selected clinician is unable to advise on the appropriate level of competence, a doctor from another HPSS employer in the same grade as the practitioner in question should be asked to provide advice. Where the case involves a doctor in training, the postgraduate dean should be consulted.

27. The Trust should convene the panel and notify the appellant as soon as possible and in any event within the recommended timetable in paragraph 29. Every effort should be made to ensure that the panel members are acceptable to the appellant. Where in rare cases agreement cannot be reached upon the constitution of the panel, the appellant's objections should be noted carefully. Trusts are reminded of the need to act reasonably at all stages of the process.

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<sup>10</sup> See Annex A.

<sup>11</sup> Employers are advised to discuss the selection of the medical or dental panel member with the local professional representative body eg in a hospital trust the local negotiating committee.

<sup>12</sup> Where the case involves a dentist this may be a consultant or an appropriate senior practitioner.

28. It is in the interests of all concerned that appeals are heard speedily and as soon as possible after the original performance hearing. The following timetable should apply in all cases:
- appeal by written statement to be submitted to the designated appeal point (normally the Director of HR) within 25 working days of the date of the written confirmation of the original decision;
  - hearing to take place within 25 working days of date of lodging appeal;
  - decision reported to the appellant and the Trust within 5 working days of the conclusion of the hearing.
29. The timetable should be agreed between the Trust and the appellant and thereafter varied only by mutual agreement. The Case Manager should be informed and is responsible for ensuring that extensions are absolutely necessary and kept to a minimum.

### ***Powers of the appeal panel***

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

### ***Conduct of appeal hearing***

33. All parties should have all documents, including witness statements, from the previous performance hearing together with any new evidence.
34. The practitioner may be represented in the process by a companion who may be another employee of the HSS body; an official or lay representative of the BMA, BDA, defence organisation, or work or professional colleague. Such a representative may be legally qualified but they will not, however, be representing the practitioner formally in a legal capacity. The representative

will be entitled to present a case on behalf of the practitioner, address the panel and question the management case and any written evidence.

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

### ***Decision***

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

### ***Action following hearing***

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

**Annex A****APPEAL PANELS IN CLINICAL PERFORMANCE CASES*****Introduction***

1. The framework provides for the appeal panel to be chaired by an independent member from an approved pool trained in legal aspects of appeals.
2. It has been agreed that it would be preferable to continue to appoint appeal panel chairmen through a separately held Northern Ireland wide list rather than through local selection. The benefits include:
  - the ability to secure consistency of approach through national appointment, selection and training of panel chairmen; and
  - the ability to monitor performance and assure the quality of panellists.
3. The following provides an outline of how it is envisaged the process will work.

***Creating and administering the list***

4. The responsibility for recruitment and selection of panel chairs to the list will lie with the Department, who will be responsible for administration of the list
5. Recruitment to the list will be in accordance with published selection criteria drawn up in consultation with stakeholders, including the BMA, BDA, defence organisations, and the NCAS. These stakeholders will also assist in drawing up the selection criteria and in seeking nominations to serve.
6. The Department of Health Social Services and Public Safety, in consultation with employers, the BDA and the BMA will provide a job description, based on the Competence Framework for Chairmen and Members of Tribunals, drawn up by the *Judicial Studies Board*. The framework, which can be adapted to suit particular circumstances sets out six headline competencies featuring the core elements of law and procedure, equal treatment, communication, conduct of hearing, evidence and decision making. Selection will be based on the extent to which candidates meet the competencies.
7. Panel members will be subject to appraisal against the core competencies and feedback on performance provided by participants in the hearing. This feedback will be taken into account when reviewing the position of the panel member on the list.
8. The level of fees payable to panel members will be set by the Department and paid locally by the employer responsible for establishing the panel.

9. List members will be expected to take part in and contribute to local training events from time to time. For example, training based on generic tribunal skills along the lines of the Judicial Studies Board competencies and /or seminars designed to provide background on the specific context of HPSS disciplinary procedures.

## **SECTION V. HANDLING CONCERNS ABOUT PERFORMANCE ARISING FROM A PRACTITIONER'S HEALTH**

### **INTRODUCTION**

1. This section applies when the outcome of an investigation under Section I shows that there are concerns about the practitioner's health that should be considered by the HSS body's Occupational Health Service (OHS) and the findings reported to the employer.
2. In addition, if at any stage in the context of concerns about a practitioner's clinical performance or conduct it becomes apparent that ill health may be a factor, the practitioner should be referred to OHS. Employers should be aware that the practitioner may also self refer to OHS.
3. The principle for dealing with individuals with health problems is that, wherever possible and consistent with maintaining patient safety, they should be treated, rehabilitated or re-trained (for example if they cannot undertake exposure prone procedures) and kept in employment, rather than be lost from the HPSS.

### **HANDLING HEALTH ISSUES**

4. On referral to OHS, the OHS physician should agree a course of action with the practitioner and send his/her recommendations to the Medical Director and a meeting should be convened with the Director of HR, the Medical Director or Case Manager, the practitioner and case worker from the OHS to agree a timetable of action and rehabilitation (where appropriate)<sup>13</sup>. The practitioner may be accompanied to these meetings (as defined in Section I, para 30). Confidentiality must be maintained by all parties at all times.
5. The findings of OHS may suggest that the practitioner's health makes them a danger to patients. Where the practitioner does not recognise that, or does not comply with measures put in place to protect patients, then exclusion from work must be considered. The relevant professional regulatory body must be informed, irrespective of whether or not the practitioner has retired on the grounds of ill health.
6. In those cases where there is impairment of clinical performance solely due to ill health or an issue of conduct solely due to ill health, disciplinary procedures (as outlined in Section IV), or misconduct procedures (as outlined in Section III) would only be considered in the most exceptional of circumstances, for example if the individual concerned refuses to co-operate with the employer

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<sup>13</sup> In the absence of a Medical Director organisations should put in place appropriate measures as part of agreed arrangements for small organisations to ensure the appropriate level of input to the process. See section vi.

to resolve the underlying situation e.g. by refusing a referral to the OHS or NCAS.

7. A practitioner who is subject to the procedures in Sections III and IV may put forward a case on ill health grounds that proceedings should be delayed, modified or terminated. In those cases the employer should refer the practitioner to OHS for assessment as soon as possible and suspend proceedings pending the OHS report. Unreasonable refusal to accept a referral to, or to co-operate with OHS, may give separate grounds for pursuing disciplinary action.

## **RETAINING THE SERVICES OF INDIVIDUALS WITH HEALTH PROBLEMS**

8. Wherever possible the Trust should attempt to continue to employ the individual provided this does not place patients or colleagues at risk. The following are examples of actions a Trust might take in these circumstances, in consultation with OHS and having taken advice from NCAS and/or NIMDTA if appropriate.

### **Examples of action to take**

- sick leave for the practitioner (the practitioner to be contacted frequently on a pastoral basis to stop them feeling isolated);
- remove the practitioner from certain duties;
- make adjustments to the practitioner's working environment;
- reassign them to a different area of work;
- arrange re-training for the practitioner;
- consider whether the Disability Discrimination Act (DDA) applies (see below), and, if so, what other reasonable adjustments might be made to their working environment.

## **DISABILITY DISCRIMINATION ACT (DDA)**

9. Where the practitioner's health issues come within the remit of the DDA, the employer is under a duty to consider what reasonable adjustments can be made to enable the practitioner to continue in employment. At all times the practitioner should be supported by their employer and OHS who should ensure that the practitioner is offered every available resource to enable him/her to continue in practice or return to practice as appropriate.
10. Employers should consider what reasonable adjustments could be made to the practitioner's workplace conditions, bearing in mind their need to negate any possible disadvantage a practitioner might have compared to his/her non-disabled colleagues. The following are examples of reasonable adjustments an employer might make in consultation with the practitioner and OHS.

**Examples of reasonable adjustment**

- make adjustments to the premises;
- re-allocate some of the disabled person's duties to another;
- transfer employee to an existing vacancy;
- alter employee's working hours or pattern of work;
- assign employee to a different workplace;
- allow absence for rehabilitation, assessment or treatment;
- provide additional training or retraining;
- acquire/modify equipment;
- modifying procedures for testing or assessment;
- provide a reader or interpreter;
- establish mentoring arrangements.

11. In some cases retirement due to ill health may be necessary. Ill health retirement should be approached in a reasonable and considerate manner, in consultation with the practitioner, OHS, and HPSS Superannuation Branch.

*Note. Special Professional Panels (generally referred to as the "three wise men") were set up under circular TC8 1/84. This part of the framework replaces those arrangements and any existing panels should be disbanded.*



## **SECTION VI. FORMAL PROCEDURES – GENERAL PRINCIPLES**

### **TRAINING**

1. Employers must ensure that managers and Case Investigators receive appropriate training in the operation of formal performance procedures. Those undertaking investigations or sitting on disciplinary or appeals panels must have had formal equal opportunities training before undertaking such duties. The Trust Board must agree what training its staff and its members have completed before they can take a part in these proceedings.

### **HANDLING OF ILLNESS ARISING DURING FORMAL PROCEEDINGS**

2. If an excluded employee or an employee facing formal proceedings becomes ill, they should be subject to the employer's usual sickness absence procedures. The sickness absence procedures can take place alongside formal procedures and the employer should take reasonable steps to give the employee time to recover and attend any hearing. Where the employee's illness exceeds 4 weeks, they must be referred to the OHS. The OHS will advise the employer on the expected duration of the illness and any consequences the illness may have for the process. OHS will also be able to advise on the employee's capacity for future work, as a result of which the employer may wish to consider retirement on health grounds. Should the employment be terminated as a result of ill health, the investigation should still be taken to a conclusion and the employer form a judgement as to whether the allegations are upheld.
3. If, in exceptional circumstances, a hearing proceeds in the absence of the practitioner, for reasons of ill-health, the practitioner should have the opportunity to provide written submissions and/or have a representative attend in his absence.
4. Where a case involves allegations of abuse against a child or a vulnerable adult, the guidance issued to the HPSS in 2005, "Choosing to Protect – A Guide to Using the Protection of Children Northern Ireland (POCNI) Service", gives more detailed information.

### **PROCESS FOR SMALLER ORGANISATIONS**

5. Many smaller organisations may not have all the necessary personnel in place to follow the procedures outlined in this document. For example, some smaller organisations may not employ a medical director or may not employ medical or dental staff of sufficient seniority or from the appropriate specialty. Also, it may be difficult to provide senior staff to undertake hearings who have not been involved in the investigation.
6. Such organisations should consider working in collaboration with other local HPSS organisations (eg other Trusts) in order to provide sufficient personnel

to follow the procedures described. The organisation should be sufficiently distant to avoid any organisational conflict of interest and any nominee should be asked to declare any conflict of interest. In such circumstances the HPSS organisation should contact the Department to take its advice on the process followed and ensure that it is in accordance with the policy and procedures set out in this document.

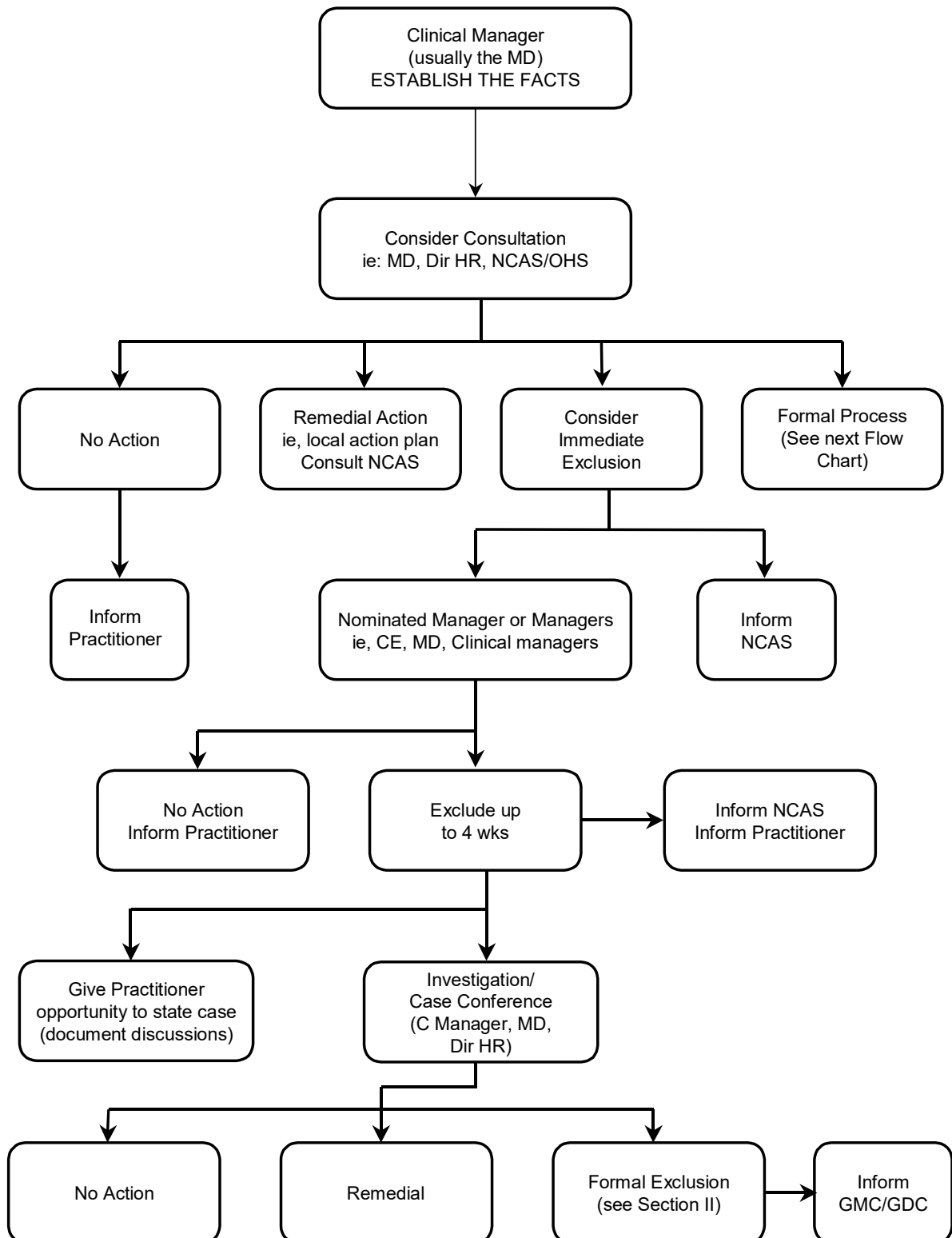
## **TERMINATION OF EMPLOYMENT WITH PROCEDURES UNFINISHED**

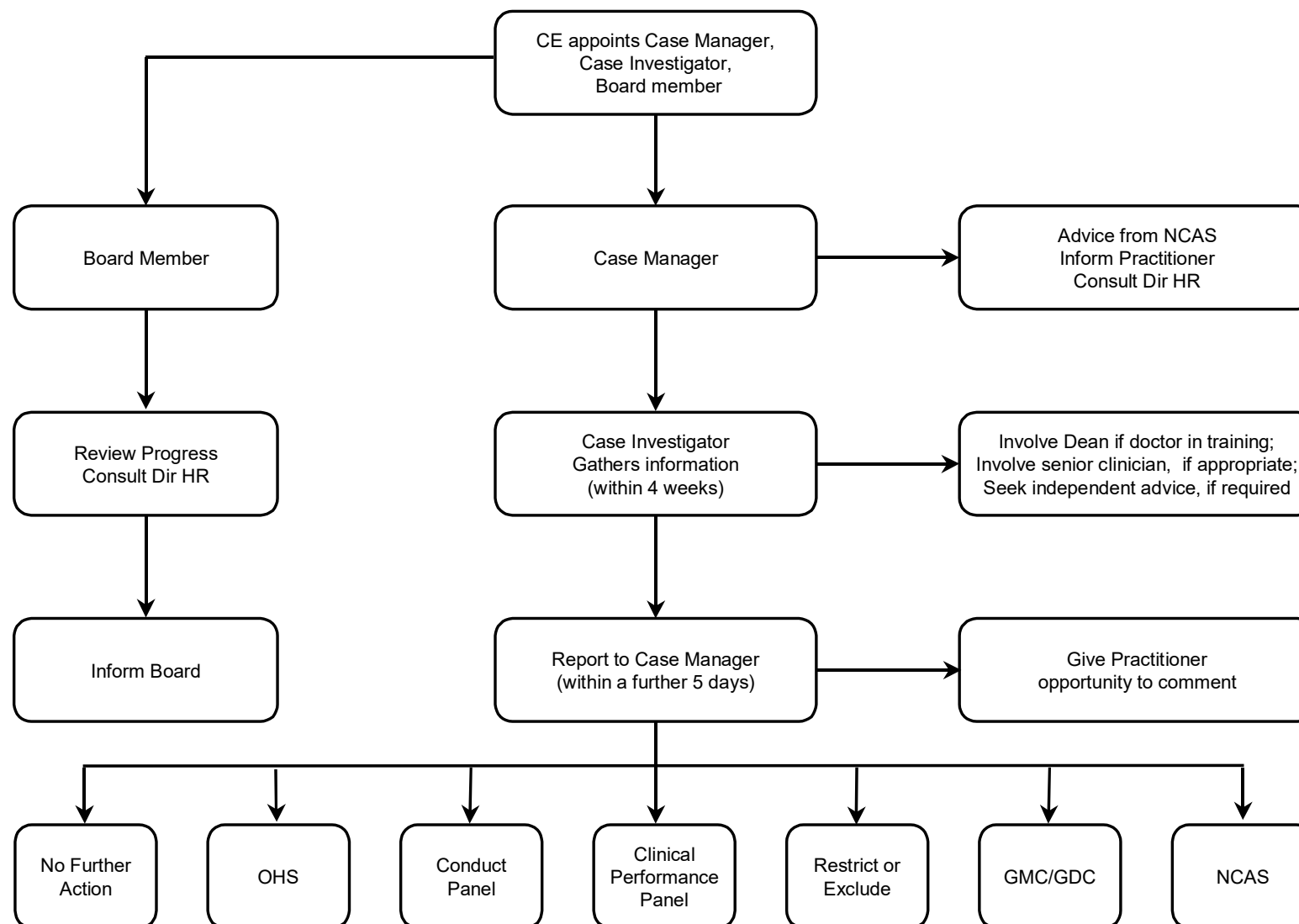
7. Where the employee leaves employment before formal procedures have been completed, the investigation must be taken to a final conclusion in all cases and performance proceedings must be completed wherever possible, whatever the personal circumstances of the employee concerned.
8. There will be circumstances where an employee who is subject to proceedings puts forward a case, on health grounds, that the proceedings should be delayed, modified or terminated. In such cases the employer is expected to refer the doctor or dentist to the OHS for assessment as soon as possible. Unreasonable refusal to accept a referral to, or to co-operate with, the OHS under these circumstances, may give separate grounds for pursuing disciplinary action.
9. Every reasonable effort must be made to ensure the employee remains involved in the process. If contact with the employee has been lost, the employer should invite them to attend any hearing by writing to both their last known home address and their registered address (the two will often be the same). The employer must make a judgement, based on the evidence available, as to whether the allegations are upheld. If the allegations are upheld, the employer must take appropriate action, such as requesting the issue of an alert letter and referral to the professional regulatory body, referral to the police, or the Protection of Children and Vulnerable Adults List (held by the Department of Employment and Learning).

## **GUIDANCE ON AGREEING TERMS FOR SETTLEMENT ON TERMINATION OF EMPLOYMENT**

10. In some circumstances, terms of settlement may be agreed with a doctor or dentist if their employment is to be terminated. The following good practice principles are set out as guidance for the Trust:
  - settlement agreements must not be to the detriment of patient safety;
  - it is not acceptable to agree any settlement that precludes involvement of either party in any further legitimate investigations or referral to the appropriate regulatory body.

## INFORMAL PROCESS



**FORMAL PROCESS**



Southern Health  
and Social Care Trust

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

**16 September 2010**

## 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 its 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.

- 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 concern is identified, it should go through a screening process to identify whether an investigation is needed. The Guide also

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:

- 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 expeditiously 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

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

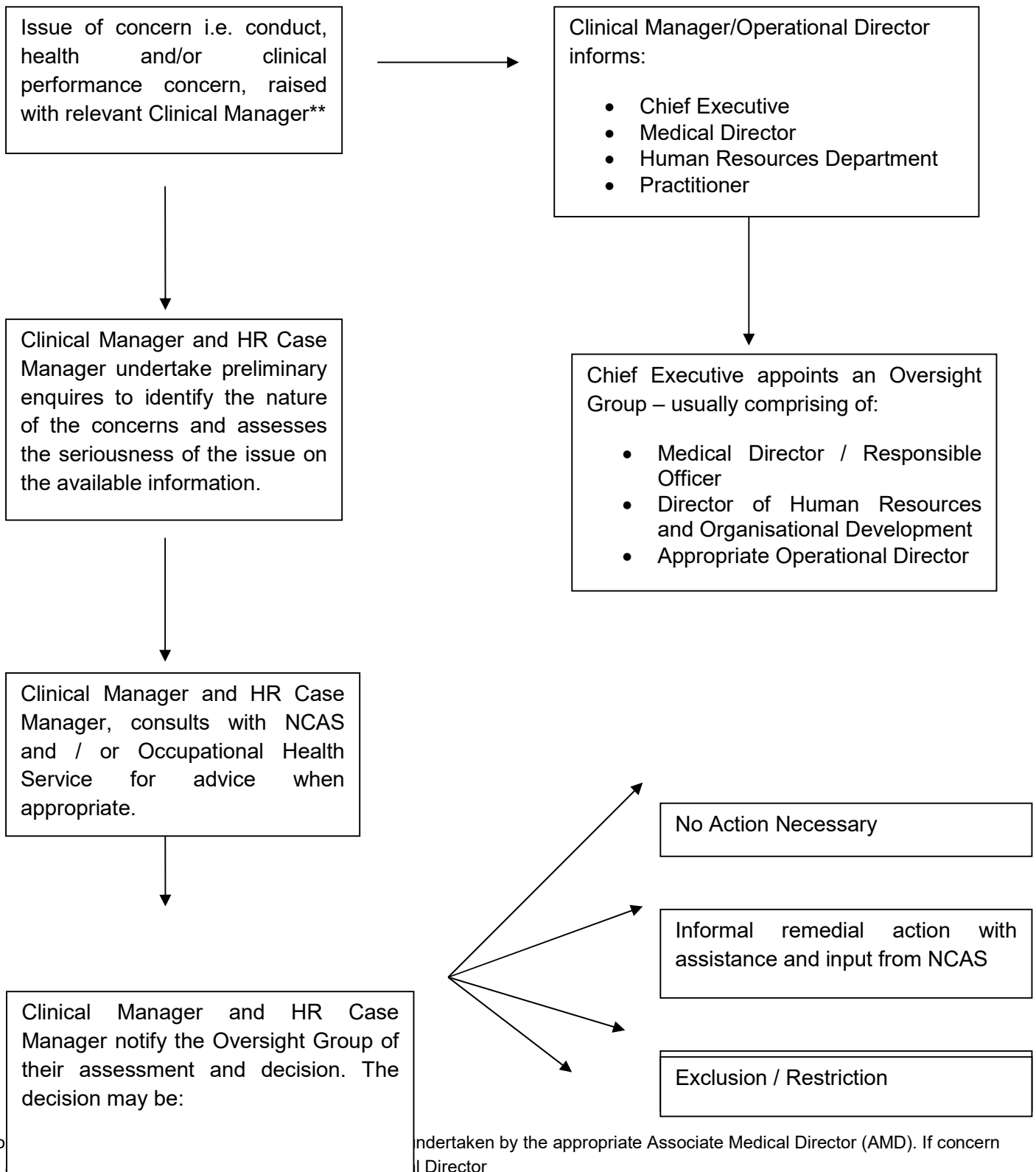
Role definitions

- 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

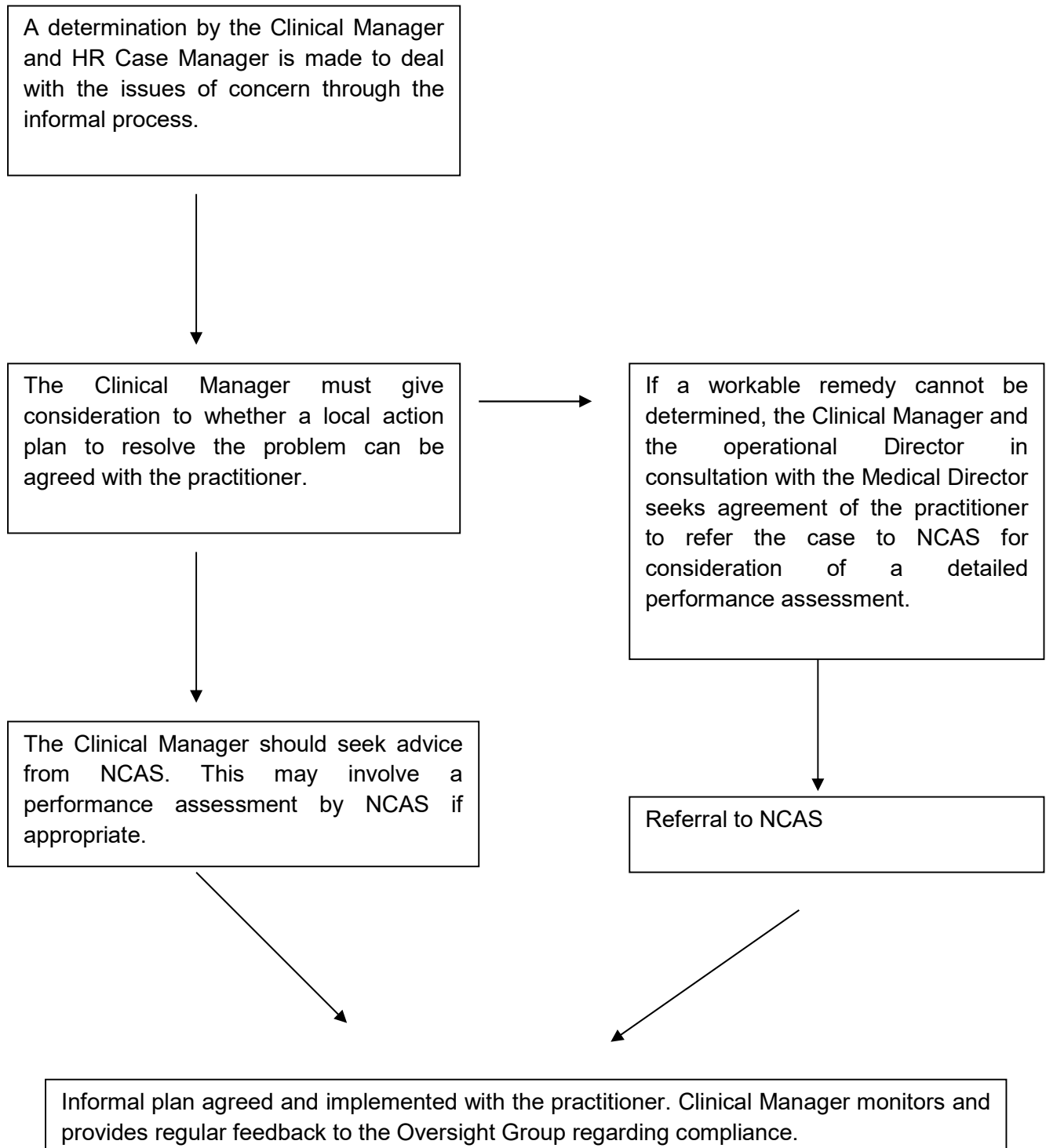
recommendations. The decision following the initial assessment at the screening stage, can however result in the formal process being activated without having first gone through an informal stage, if the complaint warrants such measures to be taken.

- 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.

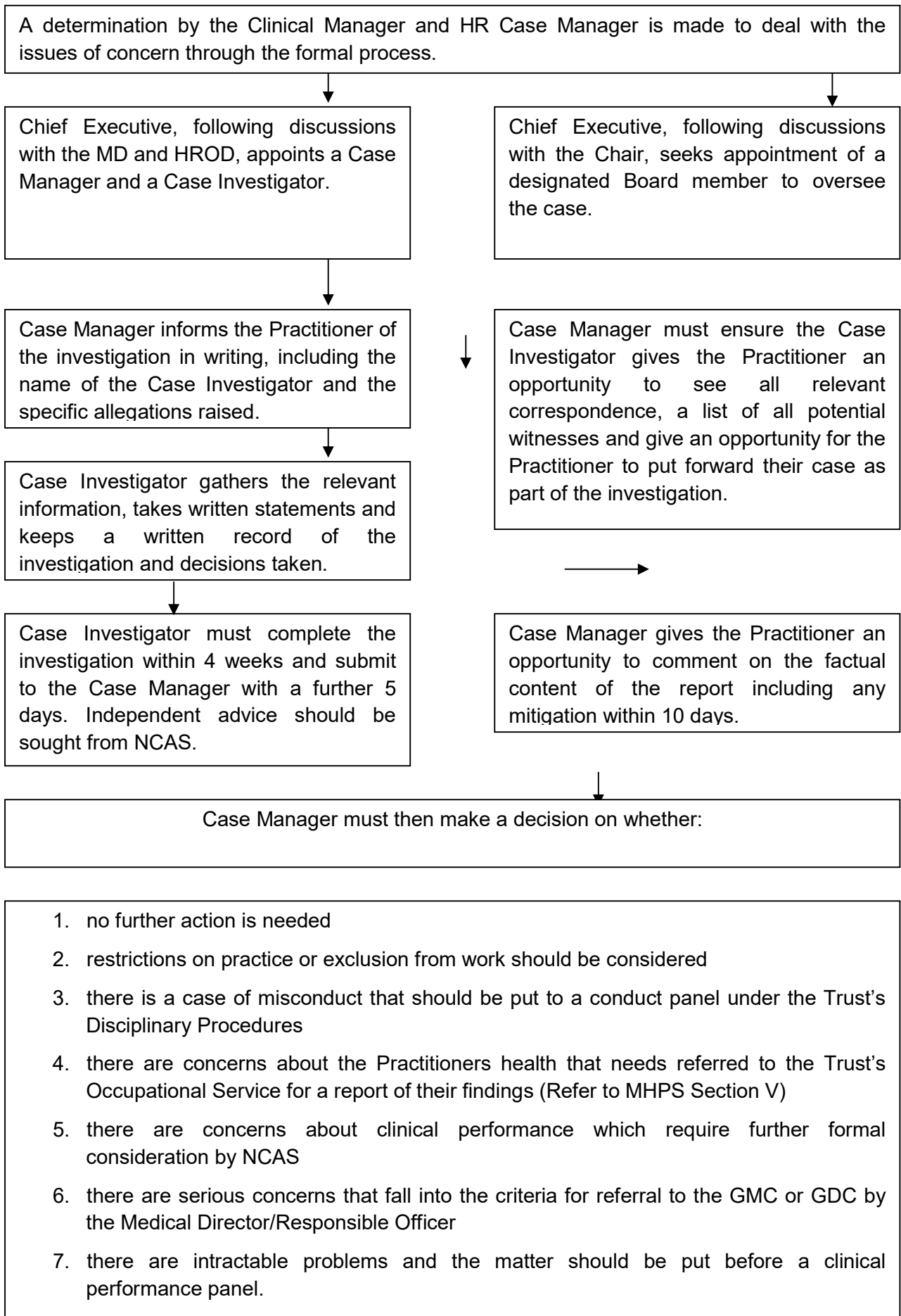
## Appendix 1

**Step 1 Screening Process**

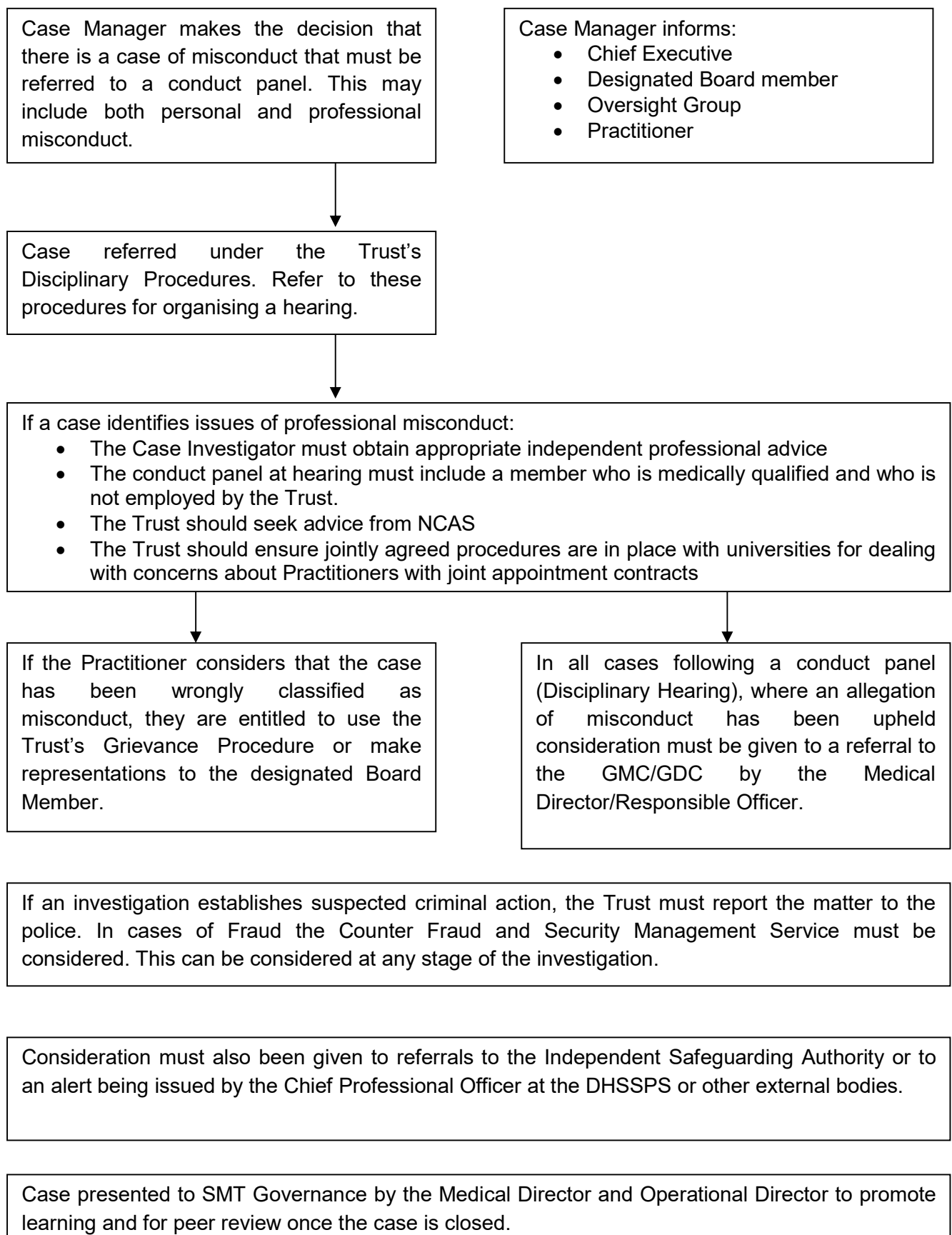
## Appendix 1

**Step 2 Informal Process**

## Appendix 2

**Formal Process**

## Appendix 3

**Conduct Hearings / Disciplinary Procedures**

## 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

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 Practitioner's 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.

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

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.

Composition of the panel – 3 people:

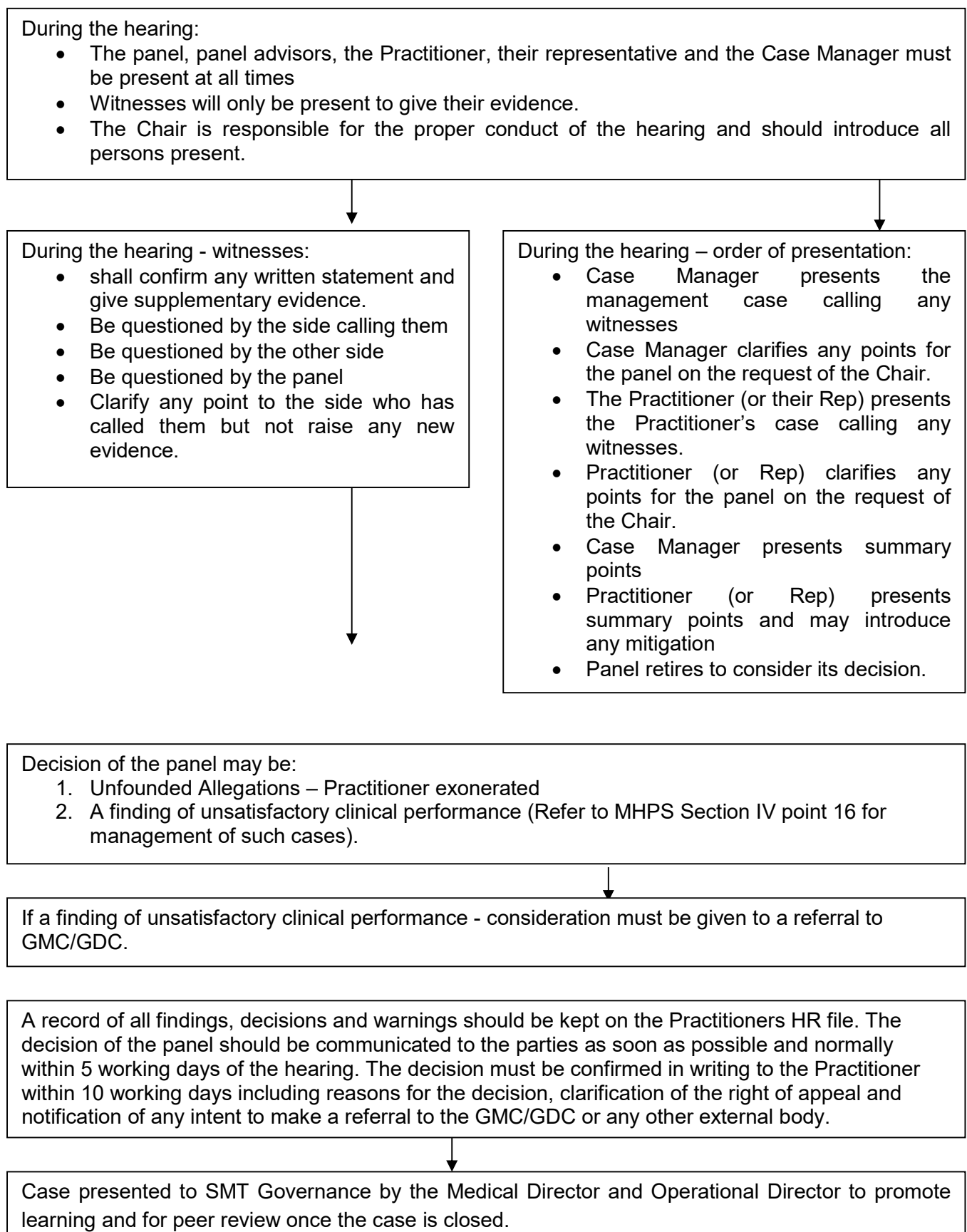
- **Chair** - Executive Director of the Trust (usually the Medical Director)
  - **Panel 1** - Member of Trust Board (usually the Operational Director)
  - **Panel 2** - Experienced medically / dentally qualified member not employed by the Trust
- \*\* for clinical academics including joint appointments 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

## Appendix 3a

**Clinical Performance Hearings**

## 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.

## 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.

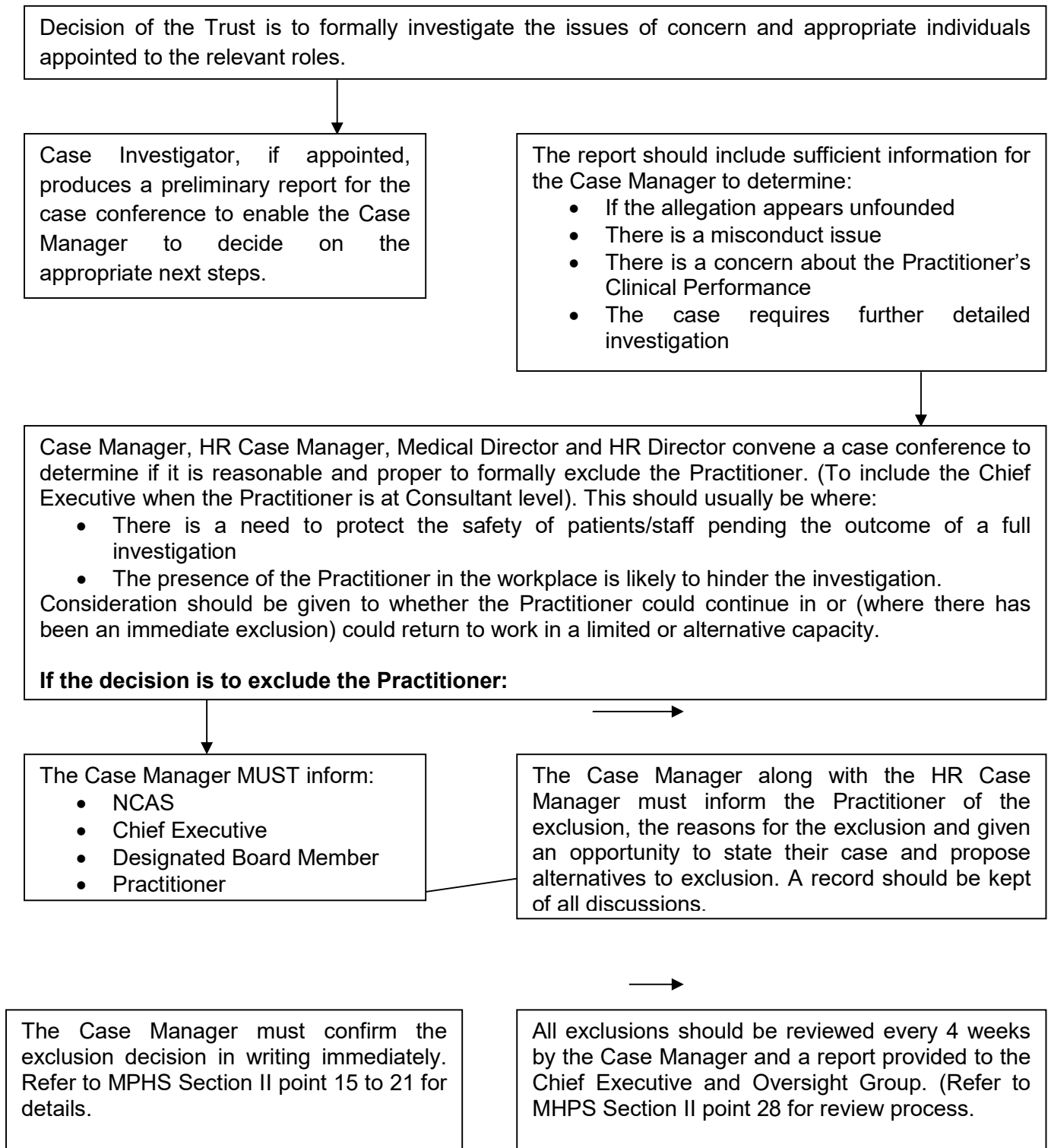
The Clinical Manager along with the HR Case Manager should notify the Practitioner of the decision to immediately exclude them from work and agree a date up to a maximum of 4 weeks at which the Practitioner should return to the workplace for a further meeting.

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).

## Appendix 5

**Restriction of Practice / Exclusion from Work****Formal Exclusion**

**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".

### **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.

# CERTIFICATE OF ATTENDANCE

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It is hereby certified that

Dr Ahmed Khan

attended

*Case investigator training workshop*

for Southern Health and Social Care Trust

delivered by NCAS

on Tuesday 07 – Wednesday 08 March 2017

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***This workshop provides up to 12 hours towards your CPD***

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## **Workshop objectives**

- Explore how concerns about a doctor's practice arise and identify the most common factors affecting performance
- Explain why the decision to investigate is made and suggest other options to resolve performance concerns
- Describe roles and responsibilities of those involved in investigations
- Plan for an investigation which meets national requirements
- Describe the principles of robust and meaningful terms of reference and know how to work within them
- Collect, review and weight evidence
- Conduct an investigative interview using a structured approach, including the PEACE model
- Recognise the key skills and attributes of a case investigator
- Recognise their own limits of competence and access sources of support and expertise
- Reference relevant national/local standards
- Write an investigation report with conclusions
- Describe the potential legal challenges to an investigation

This is to certify that  
Dr Ahmed Khan

Has completed  
Two Day Essential ABCs of the  
Effective Investigation Workshop  
(13 hrs learning)

At  
Seagoe Parish Centre  
For  
Southern Health and Social Care Trust

Date  
7-8 March 2016

Signed

*Maria Dineen, Director*



The effective investigations company  
[www.consequenceuk.com](http://www.consequenceuk.com)

CUK Ref: Q10-01-688

CONFIDENTIAL: PERSONAL



## Resolution

**Practitioner Performance Advice (formerly NCAS)**  
 2nd Floor, 151 Buckingham Palace Road  
 London

Advice line:

Fax:

[www.resolution.nhs.uk](http://www.resolution.nhs.uk)

 SW1W 0S7  
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 USI

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**6 November 2018**

### PRIVATE AND CONFIDENTIAL

Dr Ahmed Khan  
 Medical Director  
 Southern Health and Social Care Trust  
 Craigavon Area Hospital  
 68 Lurgan Road  
 Portadown  
 BT63 5QQ

**Ref: 18665 (Please quote in all correspondence)**

Dear Dr Khan,

Further to our follow up telephone conversation of 31 October 2018 in which Ms Siobhan Hynds and Mr Simon Gibson also participated, and your email of 5 November 2018 to me, I am writing to summarise the issues we discussed and my understanding of the position for all of our records. Please let me know if any of the information is incorrect.

I rang to apprise you of conversations which I had over a period of time with Dr 18665 (and his son), and to ascertain whether you felt that a meeting would be helpful. Dr 18665 had consented that I would share details of our conversations.

I told you that Dr 18665 has recently become aware of correspondence between what was then NCAS – now Practitioner Performance Advice – and the Trust in September 2016. Dr 18665 felt that between September 2016 and December 2016, he was not afforded an opportunity to address the concerns which had been raised, and this may have avoided the need for a formal investigation. Dr 18665 also told me that he was never supported to address the concerns, and that whilst he accepts some of the criticism in the investigative report, he also considers that the management failure identified should be scrutinised before he is subject to a conduct hearing.

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Accredited



**Review date: 31 December 2018**

**Yours sincerely,**

Personal Information redacted by the USI

**Grainne Lynn**  
**Adviser**  
**Practitioner Performance Advice**

**Stinson, Emma M**

---

**From:** Khan, Ahmed  
**Sent:** 27 September 2018 17:27  
**To:** Toal, Vivienne  
**Subject:** Re: NCAS report  
**Attachments:** LETO+180921+Advice+letter+18665.pdf

Viv, see attached.

Thanks  
Ahmed

## Resolution

### Practitioner Performance Advice (formerly NCAS)

2nd Floor, 151 Buckingham Palace Road

London

SW1W 9SZ

Advice line: Personal Information redacted by the USI

Fax: Personal Information redacted by the USI

[www.ncas.nhs.uk](http://www.ncas.nhs.uk)

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**21 September 2018**

### PRIVATE AND CONFIDENTIAL

Dr Ahmed Khan  
Medical Director  
Southern Health and Social Care Trust  
Beechfield House  
68 Lurgan Road  
Portadown  
BT63 5QQ

**Ref: 18665 (Please quote in all correspondence)**

Dear Dr Khan,

Further to our telephone conversation on 20 September 2018, I am writing to summarise the issues which we discussed for both of our records. Please let me know if any of the information is incorrect.

Practitioner Performance Advice (formerly NCAS) encourages transparency in the management of cases and advises that practitioners should be informed when their case has been discussed with us. I am happy for you to share this letter with Dr 18665 if you consider it appropriate to do so. The practitioner is also welcome to contact us for a confidential discussion regarding the case. We have recently launched a new guide for practitioners, which sets out information about our role and services which may be of interest and is available on our website under publications.

In summary, this reopened case, which I had previously discussed with your colleague, Dr Wright, involves Dr 18665, a senior consultant urologist about whom there had been increasing concerns. An investigation, for which you are the Case Manager, has now been completed – it was very delayed because of the complexities and extent of the issues – and you are considering the options as set out in paragraph 38 of Part I MHPS (Maintaining High Professional Standards in the Modern HPSS). You wanted to seek advice around this. You indicated that since February 2017, Dr 18665 has been working

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to an agreed action plan with on-going monitoring so that any risks to patients have been addressed.

There were 5 Terms of Reference for the investigation (although the last related to the extent to which the managers knew of or had previously managed the concerns). You told me that having read the report, the factual accuracy of which Dr 18665 has had a chance to comment on, you have concluded that there was evidence to support many of the allegations with regards to Dr 18665. Specifically, following detailed consideration, you noted that:

- a) There were clear issues of concern about Dr 18665's way of working and his management of his workload. There has been potential harm to a large number of patients (783) and actual harm to at least 5 patients;
- b) Dr 18665's reflection throughout the investigation process was concerning and in particular in respect of the 5 patients diagnosed with cancer;
- c) As a senior member of staff within the Trust Dr 18665 had a clear obligation to ensure managers within the Trust were fully and explicitly aware that he was not undertaking routine and urgent triage as was expected;
- d) There has been significant impact on the Trust in terms of its ability to properly manage patients, manage waiting lists and the extensive look back exercise which was required to identify patients who may have been affected by the deficiencies in Dr 18665's practice (and to address these issues for patients);
- e) There is no evidence of concern about Dr 18665's clinical ability with individual patients;
- f) Dr 18665 had advantaged his own private patients over HSC patients on at least 9 occasions;
- g) The issues of concern were known to some extent for some time by a range of managers and no proper action was taken to address and manage the concerns;

You told me that the SAI (serious adverse incident) investigation, which has patient involvement, is looking at the issue where patients have, or may have been, harmed as a result of failings. You are aware that patients are entitled to know this.

We discussed the current situation and the overriding need to ensure patients are protected. I note that you have a system in place within the Trust to safeguard patients, but we discussed that this needs to be mirrored in the private sector. You explained that Dr 18665 saw private patients at his home and did not have a private sector employer. I would suggest that as paragraph 22 of Section II MHPS states that "*where a HPSS employer has placed restrictions on practice, the practitioner should agree not to undertake any work in that area of practice with any other employer*" Dr 18665 should not currently be working privately.

We discussed that the issues identified in the report were serious, and that whilst there are clearly systemic issues and failings for the Trust to address, it is unlikely that in these circumstances the concerns about Dr 18665 could be managed without formal action. We also discussed that whilst the issues did have clinical consequences for patients, as some of the concerns appear to be due to a failure to follow policies and protocols, and possibly also a breach of data protection law, these might be considered to be matters of conduct rather than capability. We noted therefore that it would be open to you in your

role as Case Manager to put the matter forward to a conduct hearing, but that Dr 18665 could also be offered support going forward to ensure that in future he is able to meet and sustain the required and expected standards. You told me that the local GMC ELA is aware of the issue and I advised that you may wish to update her on the position. In the majority of cases, the GMC prefers Trust to conclude their own processes before considering referral, and early referral is only indicated in a minority of cases; but the ELA would be best placed to advise on this.

I told you that, whilst there are no noted clinical performance concerns, Practitioner Performance Advice could offer support via the Professional Support and Remediation (PSR) team by drafting a robust action plan with input both from Dr 18665 and the Trust to address some of the deficiencies which have been identified (around the management of workload, administrative type of issues, for example). The purpose of the plan would be to ensure oversight and supervision of Dr 18665's work so that the Trust is satisfied there is no risk to patients, but also to provide support for Dr 18665, to afford him the best opportunity of meeting the objectives of the plan. We noted that this might involve job planning issues such as reducing Dr 18665's workload, and enhanced appraisal.

Since we spoke, I have talked to PSR, and we will arrange for the forms, which must be completed to formally request PSR support with a plan, to be sent out.

I note you said that there are no reported health concerns. However, as this is likely to continue to be a stressful time for Dr 18665, he should be offered any additional support deemed appropriate (access to staff counselling, mentoring, etc.).

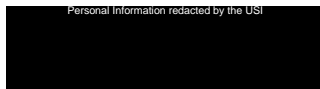
As discussed, we will keep this case open. Please feel free to call at any stage, if you have queries.

**Relevant regulations/guidance:**

- Local procedures
- General Medical Council Guide to Good Medical Practice
- Maintaining High Professional Standards in the Modern NHS (MHPS)
- The Medical Profession (Responsible Officer) Regulations 2010 and Amendment 2013

**Review date:** 24 September 2018

Yours sincerely,

Personal Information redacted by the UoI  


Dr Grainne Lynn

**Adviser**

**Practitioner Performance Advice**

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**From:** Khan, Ahmed Personal information redacted by USI  
**Sent:** 26 September 2018 10:23  
**To:** Shane Devlin; Vivienne Toal (SHSCT)  
**Cc:** Elaine Wright Southern Trust  
**Subject:** Re; MHPS case  
**Attachments:** Draft Case Manager Determination AO'B 250918.docx  
**Importance:** High

Dear Shane & Vivienne,

Please find attached final draft of the Mr O'Brien's MHPS case recommendations. I have also written to him this morning with number of possible dates to meet (from end of this week onwards). Please feel free to add any final comments/suggestions in the attached draft report. We can pick this after SMT if required.

Many thanks,  
Ahmed

**Final Draft****Confidential**

25/09/18

**Case Manager Determination****Formal Investigation under the Maintaining High Professional Standards Framework in respect of Mr Aiden O'Brien, Consultant Urologist**

Following conclusion of the formal investigation, the Case Investigator's report has been shared with Mr O'Brien for comment on the factual accuracy of the report. I am in receipt of Mr O'Brien's comments and therefore the full and final documentation in respect of the investigation.

**Responsibility of the Case Manager:**

In line with Section 1 Paragraph 38 of the MHPS Framework, as Case Manager I am responsible for making 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
4. There are concerns about the practitioner's health that should be considered by the HSS body's occupational health service, and the findings reported to the employer
5. There are concerns about the practitioner's 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
7. There are intractable problems and the matter should be put before a clinical performance panel.

**Formal Investigation Terms of Reference**

The terms of reference for the formal investigation were:

1. (a) To determine if there have been any patient referrals to Mr A O'Brien which were un-triaged in 2015 or 2016 as was required in line with established practice / process.

- (b) To determine if any un-triaged patient referrals in 2015 or 2016 had the potential for patients to have been harmed or resulted in unnecessary delay in treatment as a result.
  - (c) To determine if any un-triaged referrals or triaging delays are outside acceptable practice in a similar clinical setting by similar consultants irrespective of harm or delays in treatment.
  - (d) To determine if any un-triaged patient referrals or delayed tri-ages in 2015 or 2016 resulted in patients being harmed as a result.
2. (a) To determine if all patient notes for Mr O'Brien's patients are tracked and stored within the Trust.
- (b) To determine if any patient notes have been stored at home by Mr O'Brien for an unacceptable period of time and whether this has affected the clinical management plans for these patients either within Urology or within other clinical specialties.
- (c) To determine if any patient notes tracked to Mr O'Brien are missing.
3. (a) To determine if there are any undictated patient outcomes from patient contacts at outpatient clinics by Mr O'Brien in 2015 or 2016.
- (b) To determine if there has been unreasonable delay or a delay outside of acceptable practice by Mr O'Brien in dictating outpatient clinics.
- (c) To determine if there have been delays in clinical management plans for these patients as a result.
4. To determine if Mr O'Brien has seen private patients which were then scheduled with greater priority or sooner outside their own clinical priority in 2015 or 2016.
5. To determine to what extent any of the above matters were known to line managers within the Trust prior to December 2016 and if so, to determine what actions were taken to manage the concerns.

### **Investigation Findings**

In answering each of the set terms of reference of the investigation, the Case Investigator concluded:

- 1. (a) It was found that Mr O'Brien did not undertake non-red flag referral triage during 2015 and 2016 in line with the known and agreed process that was in

place. In January 2017, it was found that 783 referrals were un-triaged by Mr O'Brien. Mr O'Brien accepts this fact.

(b) It was found that there was the potential for 783 patients to have been added to the incorrect waiting list. A look back exercise of all referrals by other Consultant Urologists determined that of the 783 un-triaged referrals, 24 would have been upgraded to red-flag status, meaning the timescales for assessment and implementation of their treatment plans was delayed. All un-triaged referrals were added to Trust waiting lists based on the GP referral assessment.

(c) It was found that all other Consultant Urologists undertook triage of all referrals in line with established practice.

(d) It was found that of the 24 upgraded patient referrals, 5 patients have a confirmed cancer diagnosis. All 5 patients have been significantly delayed commencing appropriate treatment plans.

2. (a) It was found that in January 2017 Mr O'Brien returned 307 sets of patient notes which had been stored at his home. Mr O'Brien accepts that there were in excess of 260 patient notes returned from his home in January 2018.

(b) The notes dated as far back as November 2014. It was found that Mr O'Brien returned patient notes as requested and he asserts therefore there was no impact on patient care.

(c) It was found that there are 13 sets of patient notes missing. The Case Investigator was satisfied these notes were not lost by Mr O'Brien.

3. (a) It was found that there were 66 undictated clinics by Mr O'Brien during the period 2015 and 2016. Mr O'Brien's accepts this.

(b) It was accepted by Mr O'Brien that he did not dictate at the end of every care contact but rather dictated at the end of the full care episode. This is not the practice of any other Consultant Urologist. The requirements of the GMC is that all notes / dictation are contemporaneous.

(c) There are significant waiting list times for routine Urology patients. It is therefore unclear as to the impact of delay in dictation as the patients would have had a significant wait for treatment. The delay however meant that the actual waiting lists were not accurate and the look back exercise to ensure all patients had a clear management plan in place was done at significant additional cost and time to the Trust.

6. It has been found that Mr O'Brien scheduled 9 of his private patient's sooner and outside of clinical priority in 2015 and 2016.
7. Concerns about Mr O'Brien's practice were known to senior managers within the Trust in March 2016 when a letter was issued to Mr O'Brien regarding these concerns. The extent of the concerns was not known. No action plan was put in place to address the concerns. It was found that a range of managers, senior managers and Directors within the Acute Service Directorate were aware of concerns regarding Mr O'Brien's practice dating back a number of years. There was no evidence available of actions taken to address the concerns.

### **Other findings / context**

Other important factors in coming to a decision in respect of the findings are:

### **Triage**

1. Mr O'Brien provided a detailed context to the history of the Urology service and the workloads pressures he faced. Mr O'Brien noted that he agreed to the triage process but very quickly found that he was unable to complete all triage. Mr O'Brien noted that he had raised this fact with his colleagues on numerous occasions to no avail. Mr O'Brien accepts that he did not explicitly advise anyone within the Trust that he was not undertaking routine or urgent referral triage. Mr O'Brien did undertake red-flag triage.
2. It was known to a range of staff within the Directorate that they were not receiving triage back from Mr O'Brien. A default process was put in place to compensate for this whereby all patients were added to the waiting lists according to the GP categorisation. This would have been known to Mr O'Brien.
3. Mr Young is the most appropriate comparator for Mr O'Brien as both have historical long review lists which the newer Consultants do not have. Mr Young managed triage alongside his other commitments. Mr Young undertook Mr O'Brien's triage for a period of time to ease pressures on him while he was involved in regional commitments.

### **Notes**

1. There was no proper Trust transport and collection system for patient notes to the SWAH clinic in place.
2. There was no review of notes tracked out by individual to pick up a problem.
3. Notes were returned as requested by Mr O'Brien from his home.

4. It was known that Mr O'Brien stored notes at home by a range of staff within the Directorate.

### **Undictated clinics**

1. Mr O'Brien's secretary did not flag that dictation was not coming back to her from clinics. Mr O'Brien's secretary was of the view that this was a known practice to managers within the Directorate.
2. Mr O'Brien indicated that he did not see the value of dictating after each care contact.
3. Mr O'Brien was not using digital dictation during the relevant period and therefore the extent of the problem was not evident.

### **Case Manager Determination**

My determination about the appropriate next steps following conclusion of the formal MHPS investigation:

- There is no evidence of concern about Mr O'Brien's clinical ability with patients.
- There are clear issues of concern about Mr O'Brien's way of working, his administrative processes and his management of his workload. The resulting impact has been potential harm to a large number of patients (783) and actual harm to at least 5 patients.
- Mr O'Brien's reflection on his practice throughout the investigation process was of concern to the Case Investigator and in particular in respect of the 5 patients diagnosed with cancer.
- As a senior member of staff within the Trust Mr O'Brien had a clear obligation to ensure managers within the Trust were fully and explicitly aware that he was not undertaking routine and urgent triage as was expected. Mr O'Brien did not adhere to the known and agreed Trust practices regarding triage and did not advise any manager of this fact.
- There has been significant impact on the Trust in terms of its ability to properly manage patients, manage waiting lists and the extensive look back

exercise which was required to address the deficiencies in Mr O'Brien's practice.

- Mr O'Brien did not adhere to the requirements of the **GMC's; Good Medical Practice**, specifically in terms of recording his work clearly and accurately, recording clinical events at the same time of occurrence or as soon as possible afterwards.
- Mr O'Brien has advantaged his own private patients over HSC patients on 9 known occasions.
- The issues of concern were known to some extent for some time by a range of managers and no proper action was taken to address and manage the concerns.

***This determination is completed without the findings from the Trust's SAI process which is not yet complete.***

### **Advice Sought**

Before coming to a conclusion in this case, I discussed the investigation findings with the Trust's Chief Executive, the Director of Human Resources & Organisational Development. I also sought advice from the National Clinical Assessment Service (NCAS).

### **My determination:**

#### **1. No further action is needed**

Given the findings of the formal investigation, this is not an appropriate outcome.

#### **2. Restrictions on practice or exclusion from work should be considered**

There are 2 elements of this option to be considered:

##### **a. A restriction on practice**

At the outset of the formal investigation process, Mr O'Brien returned to work following a period of immediate exclusion working to an agreed action plan from February 2017. The purpose of this action plan was to ensure risks to patients were

removed and his practice was monitored during the course of the formal investigation process. Mr O'Brien worked successfully to the action plan during this period.

It is my view that in order to ensure the Trust continues to have an assurance about Mr O'Brien's administrative practice/s and management of his workload, an action plan should be reviewed and should remain in place. The action plan should be reviewed and monitored on an on-going basis by Mr O'Brien's Clinical Director (CD), with escalation to the Associate Medical Director (AMD) should any concerns arise. The CD must provide the Trust with the necessary assurances about Mr O'Brien's practice. The action plan must address any issues with regards to patient related admin duties and there must be an accompanying agreed balanced job plan to include appropriate levels of administrative time.

#### **b. An exclusion from work**

A decision was taken to not to exclude Mr O'Brien at the outset of the formal investigation process rather to implement and monitor an action plan in order to mitigate patient safety risk.

Mr O'Brien has successfully worked to the agreed action plan during the course of the formal MHPS investigation. I therefore do not consider exclusion from work to be a necessary action now.

### **3. There is a case of misconduct that should be put to a conduct panel**

The formal investigation has concluded there have been failures on the part of Mr O'Brien to adhere to known and agreed Trust practices and that there have also been failures by Mr O'Brien in respect of '**Good Medical Practice**' as set out by the GMC.

These include:

- Failing to undertake non red flag triage. This was known to Mr O'Brien to be an agreed practice and expectation of the Trust.
- Failing to properly make it known to his line manager/s that he was not undertaking all triage, as would be expected and required of a senior clinician.
- Knowingly advantaging his private patients over HSC patients.
- Failing to undertake contemporaneous dictation of his clinical contacts with patients in line with 'Good Medical Practice'

- Failing to ensure the Trust had a clear picture of the extent of his waiting lists by ensuring all patients were properly added to waiting lists in chronological order.

Given the issues above, I have concluded that Mr O'Brien's failings must be put to a conduct panel for consideration of an appropriate decision / sanction.

**4. There are concerns about the practitioner's health that should be considered by the HSS body's occupational health service, and the findings reported to the employer.**

There are no evident concerns about Mr O'Brien's health. I do not consider this to be an appropriate option.

**5. There are concerns about the practitioner's clinical performance which require further formal consideration by NCAS**

*Before coming to a conclusion in this regard, I sought advice from NCAS.*

The formal investigation report does not highlight any concerns about Mr O'Brien's clinical ability. The concerns highlighted throughout the investigation are wholly in respect of Mr O'Brien's administrative practices. The report highlights the impact of Mr O'Brien's failings in respect of his administrative practices which had the potential to cause harm to patients and which caused actual harm in 5 instances.

I am satisfied, taking into consideration advice from NCAS, that this option is not required.

**6. There are serious concerns that fall into the criteria for referral to the GMC or GDC**

I refer to my conclusion above. I am satisfied that the concerns do not fall into the criteria for referral to the GMC at this time.

**7. There are intractable problems and the matter should be put before a clinical performance panel.**

I refer to my conclusion under option 6. I am satisfied there are no concerns highlighted about Mr O'Brien's clinical ability.

Mr O'Brien has been working to an action plan and has been safely practicing during the course of the investigation process.

**Final Conclusions / Recommendations:**

This MHPS formal investigation focused on the administrative practice/s of Mr O'Brien. The investigation report presented to me focused centrally on the specific terms of reference set for the investigation.

Within the report, as outlined above, there have been failings identified on the part of Mr O'Brien which require to be addressed, through a Trust conduct panel and a formal action plan.

The investigation report also highlights issues regarding systemic failures by managers at all levels, both clinical and operational, within the Acute Services Directorate. The report identifies there were missed opportunities by managers to fully assess and address the deficiencies in practice of Mr O'Brien. No-one assessed the extent of the issues or properly identified the potential risks to patients. Default processes were put in place to work around the deficiencies in practice rather than address them.

I am therefore of the view there are wider issues of concern, other than administrative practice concerns by Mr O'Brien, that must be considered and addressed. The findings of the report should not solely focus on one individual, Mr O'Brien.

In order for the Trust to understand completely the failings in this case, I recommend the Trust to carry out an independent review of the administrative processes with clarity of roles & responsibilities at all level within Acute Directorate, to look at the full system wide problems and to learn from the findings.



*Quality Care - for you, with you*

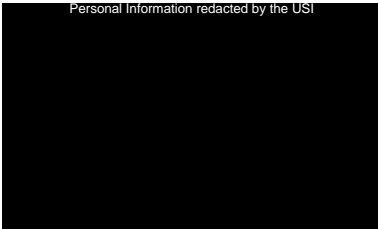
14 June 2017

**STRICTLY PRIVATE & CONFIDENTIAL**

**BY E-MAIL ONLY**

Mr Aidan O'Brien

Personal Information redacted by the USI



Dear Mr O'Brien

**Re: Formal investigation under Maintaining High Professional Standards Framework (MHPS)**

I refer to the on-going investigation under the Maintaining High Professional Standards Framework.

You will have received the witness list from me at an earlier date in the investigation and I can advise that I have now met with all witnesses I feel are appropriate to the investigation. If you feel there are any other relevant witnesses please let me know to ensure I can consider if I need to speak with them.

The next step of the investigation is to meet with you and therefore I would like to meet with you on Wednesday 28 June 2017 at 9.30am in the HR Meeting Room, Ground Floor, Hill Building, St Luke's Hospital site, Armagh.

I am sending you this as early notice of the meeting to enable you to arrange accompaniment should you wish to do so. You are entitled to be accompanied to this meeting as per Section 1 paragraph 30 of the Maintaining High Professional Standards Framework.

I would be grateful if you could confirm your attendance at this meeting as soon as possible via e-mail with Personal Information redacted by the USI

Prior to our meeting I will send you details of the matters I wish to discuss with you to enable you to prepare for our meeting. You should expect to receive this information from Siobhan Hynds at the beginning of week commencing 19 June 2017.

Yours sincerely

---

Dr Neta CHada  
Associate Medical Director &  
Case Investigator

Copy to: Dr A Khan, Case Manager



*Quality Care - for you, with you*

06 February 2017

**STRICTLY PRIVATE & CONFIDENTIAL**

**BY E-MAIL ONLY**

Mr Aidan O'Brien

Personal Information redacted by the USI

Dear Mr O'Brien

**Re: Formal investigation under Maintaining High Professional Standards Framework (MHPS)**

The purpose of this correspondence is to put on record the decision of the case conference on 26 January 2017.

As per our telephone discussion on Thursday 26 January 2017, a case conference meeting to review your immediate exclusion from work which had been in place from 30 December 2016 took place on 26 January.

Mr Weir, Case Investigator provided the case conference with an update from the preliminary scoping exercise into 4 concerns previously notified to you. Based on this information, I have determined that you do have a case to answer in respect of the 4 concerns and that a formal investigation of the issues of concern is required.

The matter of your immediate exclusion from clinical duties was also discussed in detail and a decision was taken to lift the immediate exclusion with effect from 27 January 2017 as a formal exclusion is not required at this time. However this may be implemented at any time if all monitoring requirements are not met after you return to work. This is to ensure patient safety, to safeguard the investigation and to ensure you are protected from any further allegation of concern during the investigation process.

Please note you will be returning to work with a clear management plan for supervision and monitoring of key aspects of your work. The case conference members are satisfied that you can return to your full role with safeguards in place.

To discuss the detail of the monitoring arrangements, I would be grateful if you could meet with Siobhan Hynds and I, on Thursday 9 February at 4pm in the meeting room, Clanrye House, Daisy Hill Hospital.

I understand you are also due to be assessed by the Trust's Occupational Health department on the same date and we can therefore discuss your fitness for work when we meet.

If this date is not suitable, please contact Siobhan on Personal Information redacted by the USI or via e-mail at Personal Information redacted by the USI to arrange an alternative date.

Yours sincerely

Personal Information redacted by the USI

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Dr Ahmed Khan  
Associate Medical Director &  
Case Manager

Copy to: Colin Weir, Siobhan Hynds

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**From:** Khan, Ahmed  
**Sent:** 12 June 2018 18:06  
**To:** Toal, Vivienne  
**Cc:** Devlin, Shane  
**Subject:** Re; MHPS Case

Vivienne, I discussed this with Shane today, we agreed that its best if I come out of case manger's role and delegate to someone else. I have spoken to Dr Tariq (AMD for cancer services) & considering delegating this role to him. Talk soon.

Regards,  
Ahmed

---

**From:** Khan, Ahmed  
**Sent:** 07 June 2018 17:16  
**To:** Toal, Vivienne  
**Subject:** Re; MHPS Case

Viv, As discussed recently, have you received any legal advise regarding case manager role for AOB MHPS case with my current responsibilities . I am not comfortable having both roles therefore have discussed with Dr Tariq (AMD cancer care) & he would be happy to take case manager role for this case. I know he was also trained last year with me. What do you think?

Regards,  
Ahmed

---

**From:** Khan, Ahmed  
**Sent:** 12 June 2018 18:06  
**To:** Toal, Vivienne  
**Cc:** Devlin, Shane  
**Subject:** Re; MHPS Case

Vivienne, I discussed this with Shane today, we agreed that its best if I come out of case manger's role and delegate to someone else. I have spoken to Dr Tariq (AMD for cancer services) & considering delegating this role to him. Talk soon.

Regards,  
Ahmed