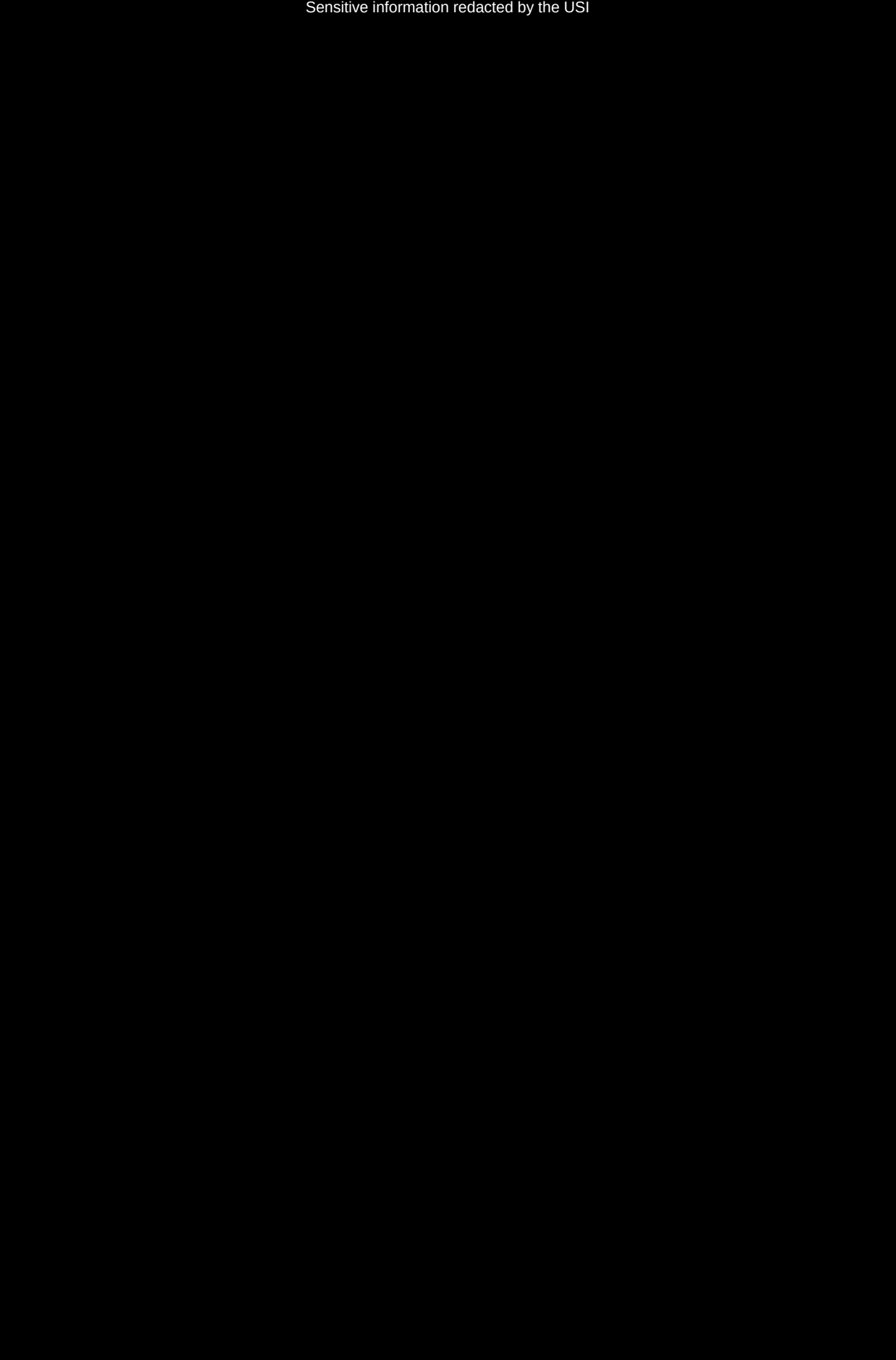
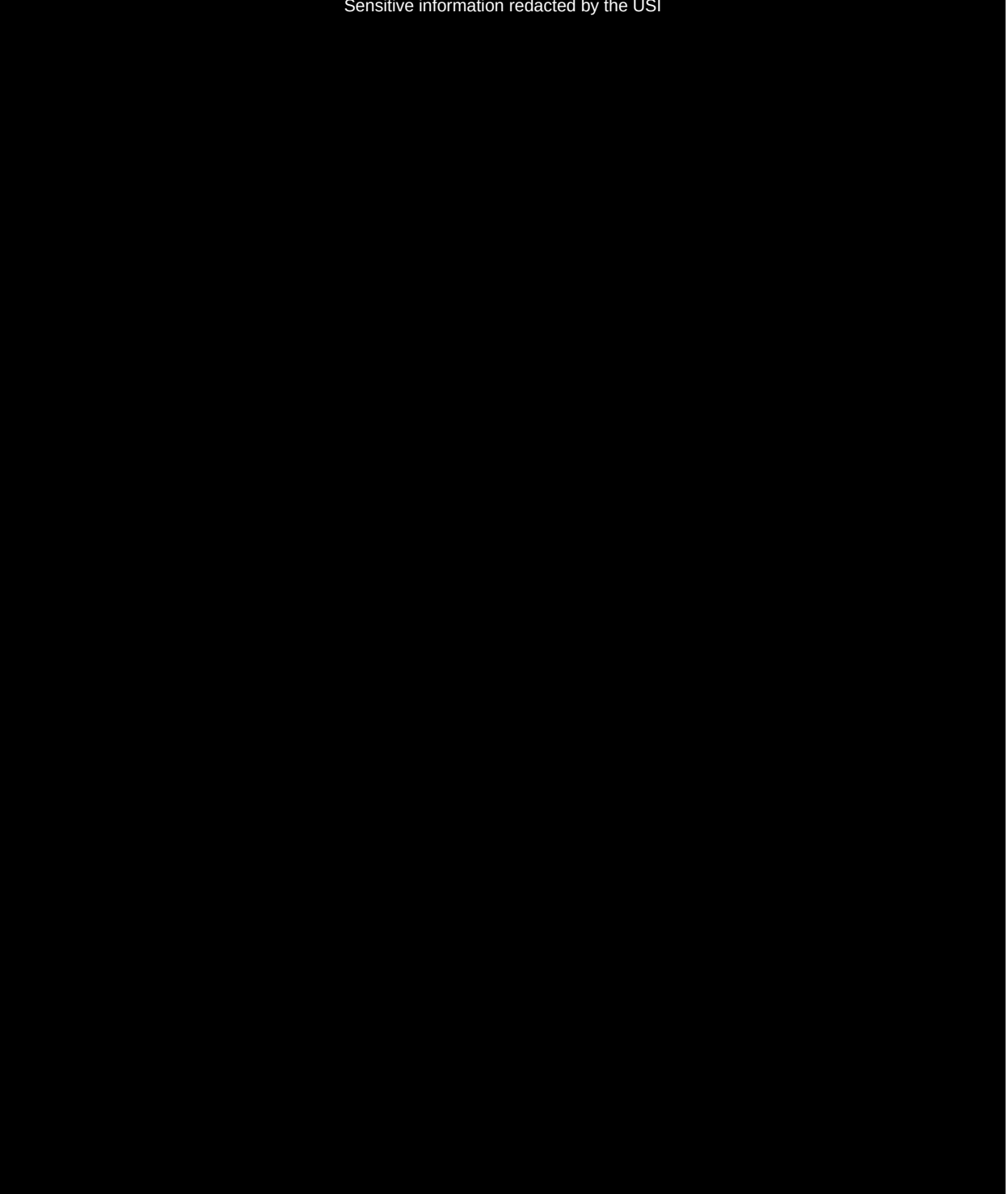


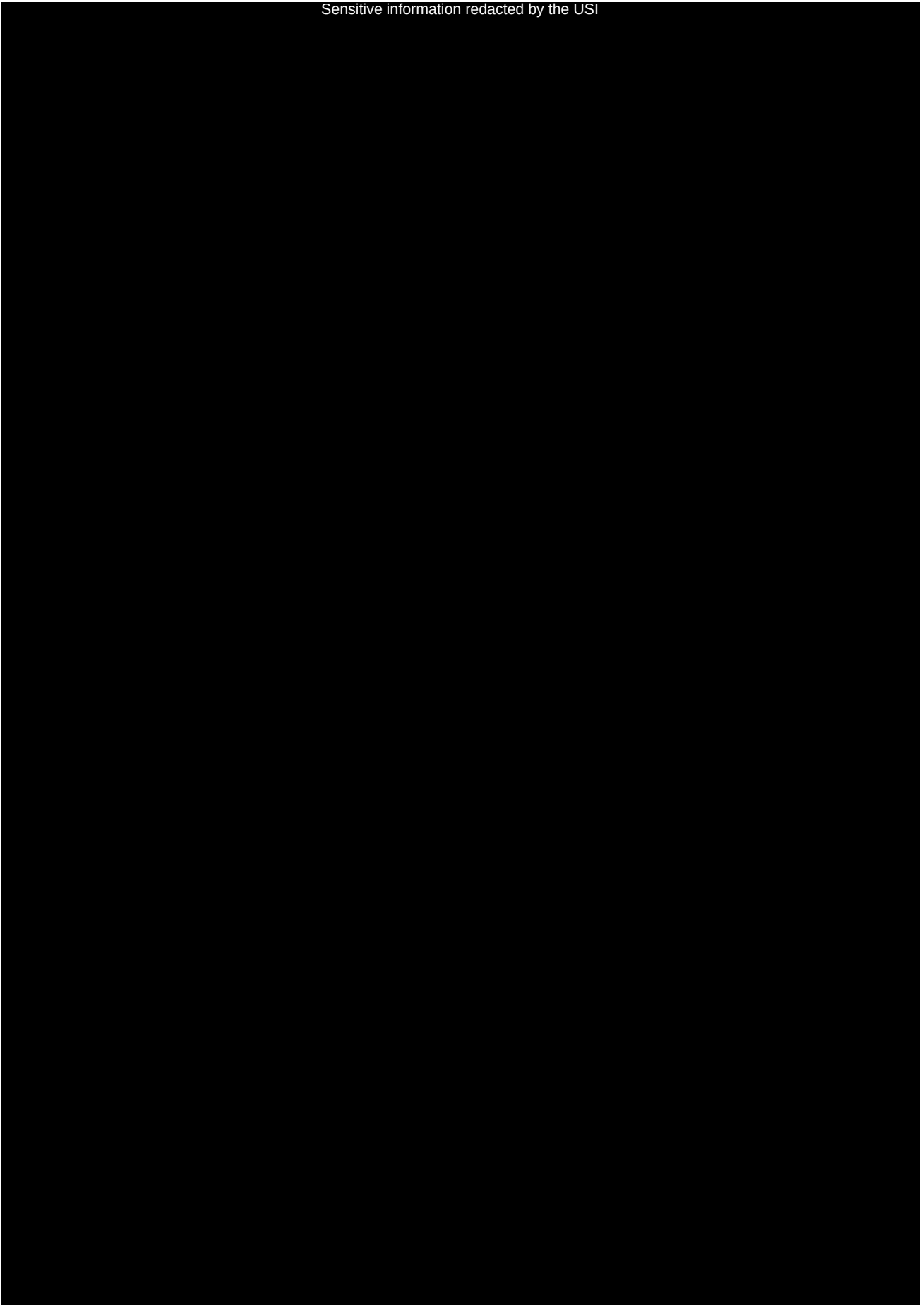
Sensitive information redacted by the USI



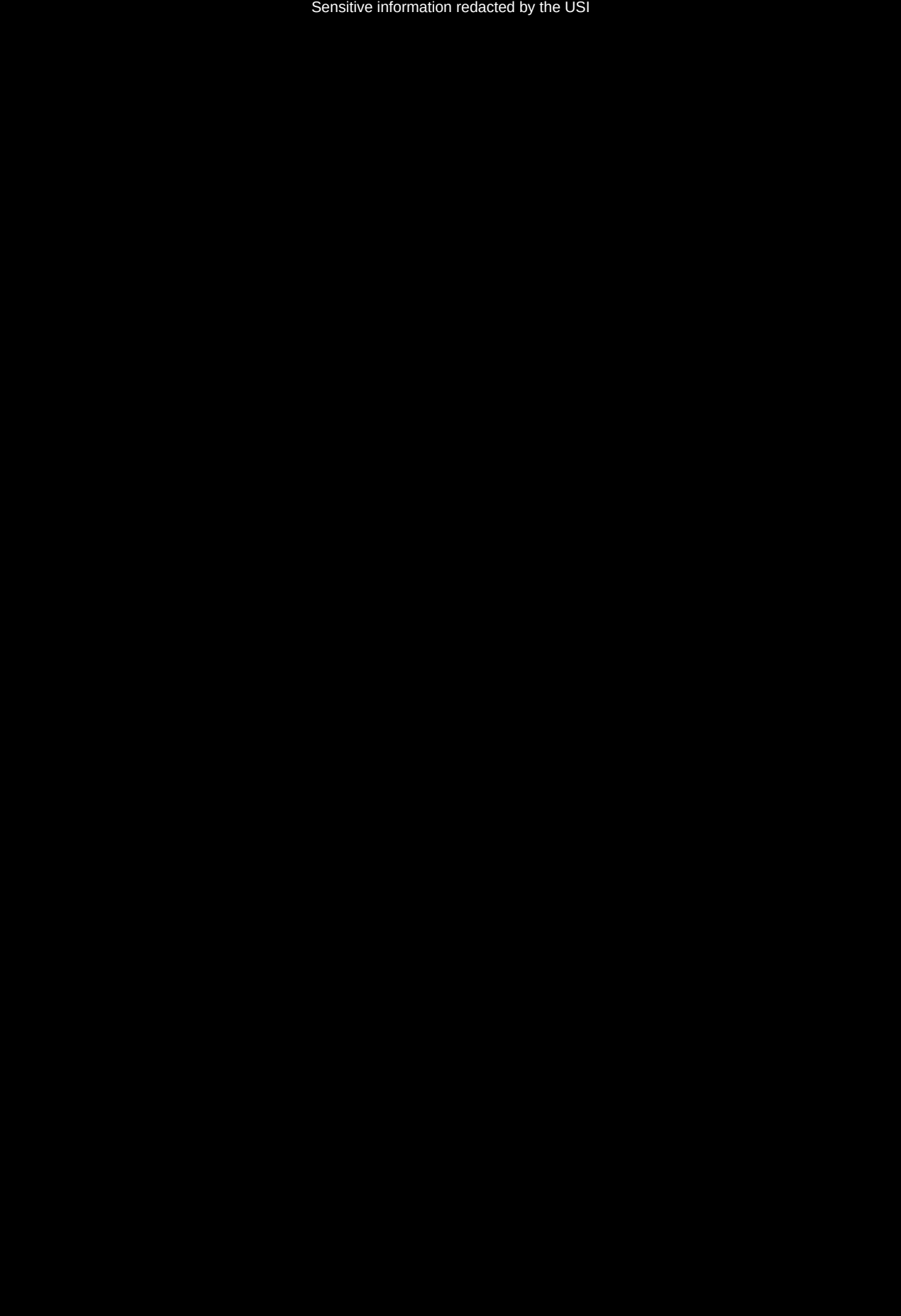
Sensitive information redacted by the USI



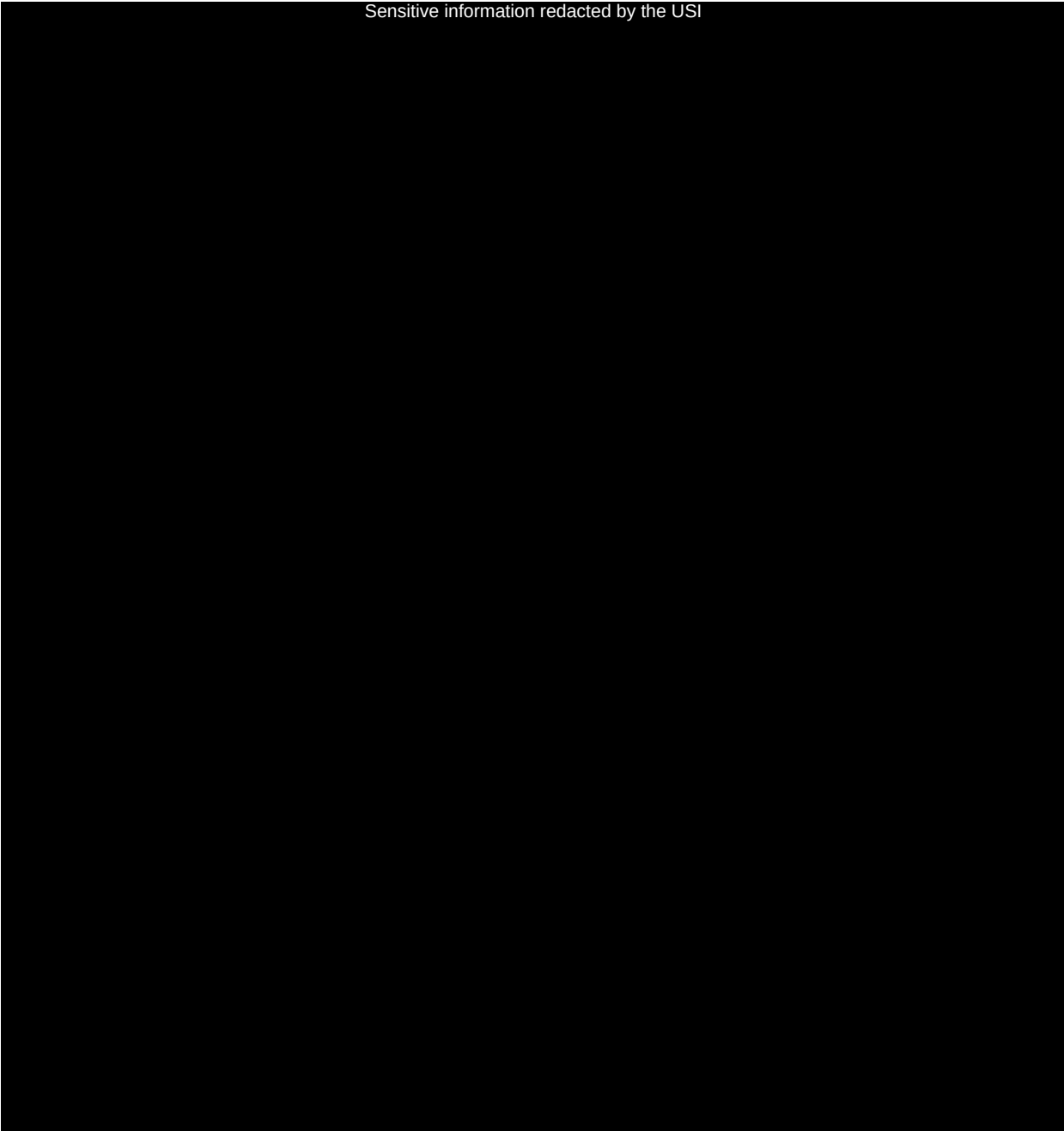
Sensitive information redacted by the USI



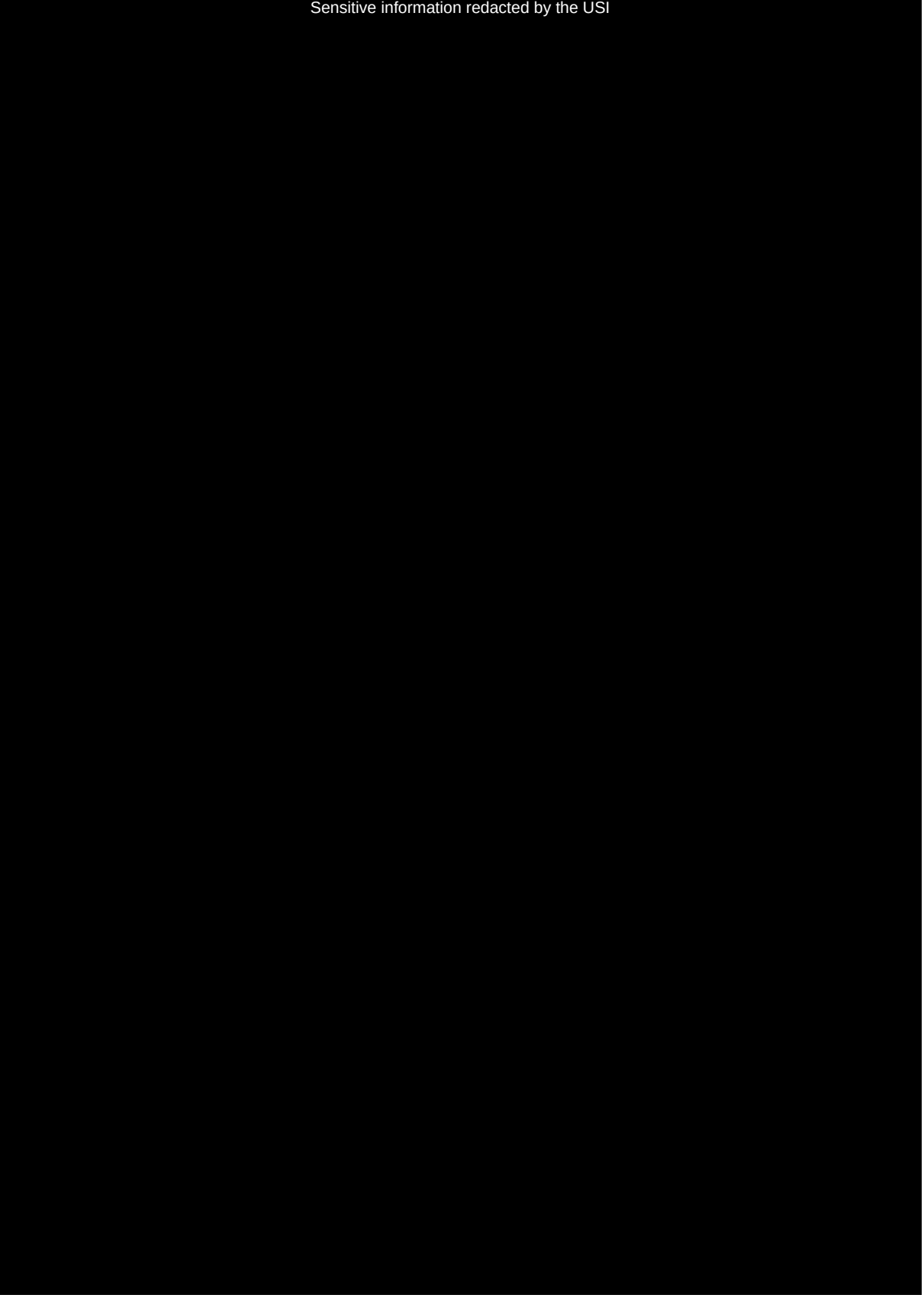
Sensitive information redacted by the USI



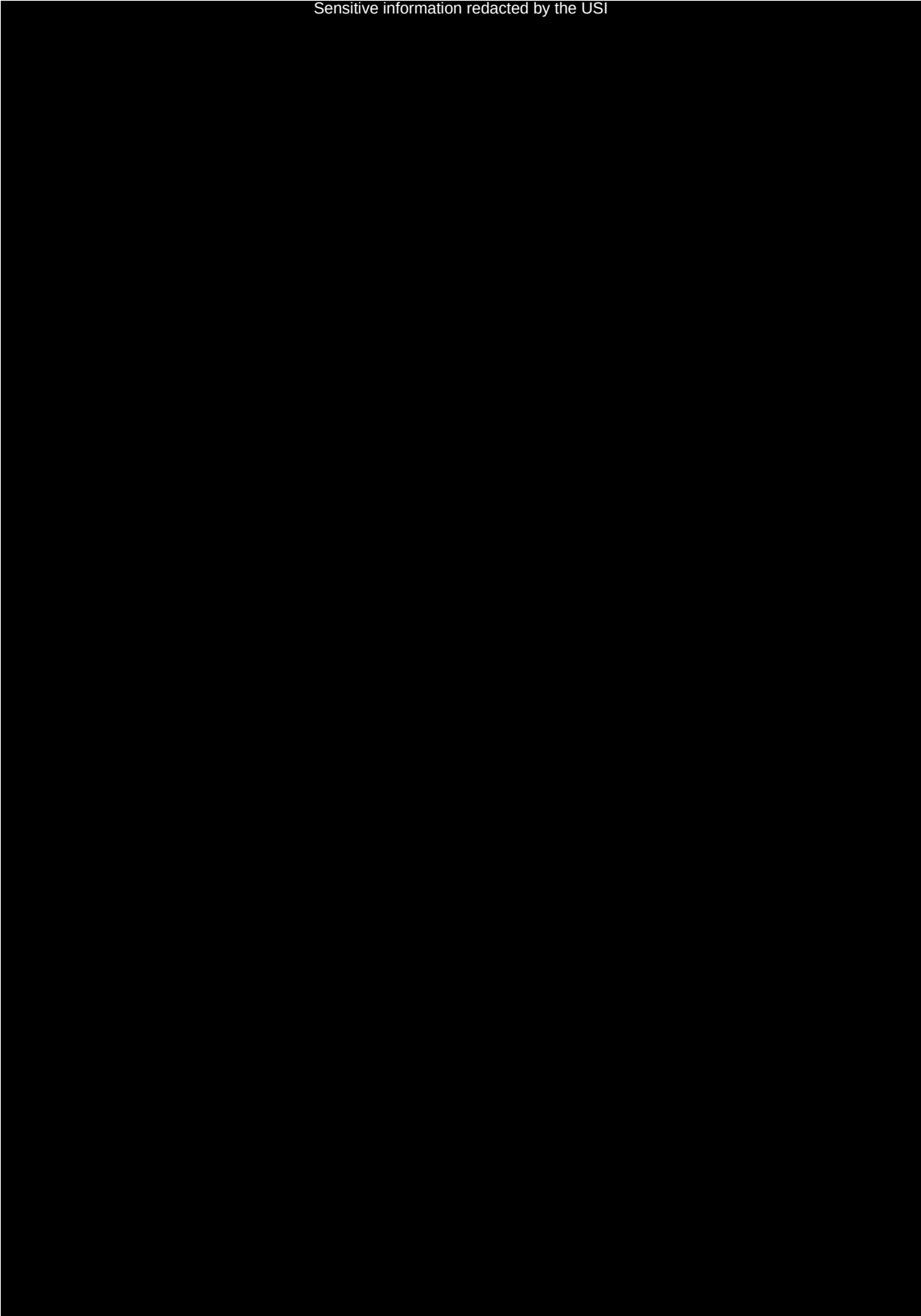
Sensitive information redacted by the USI



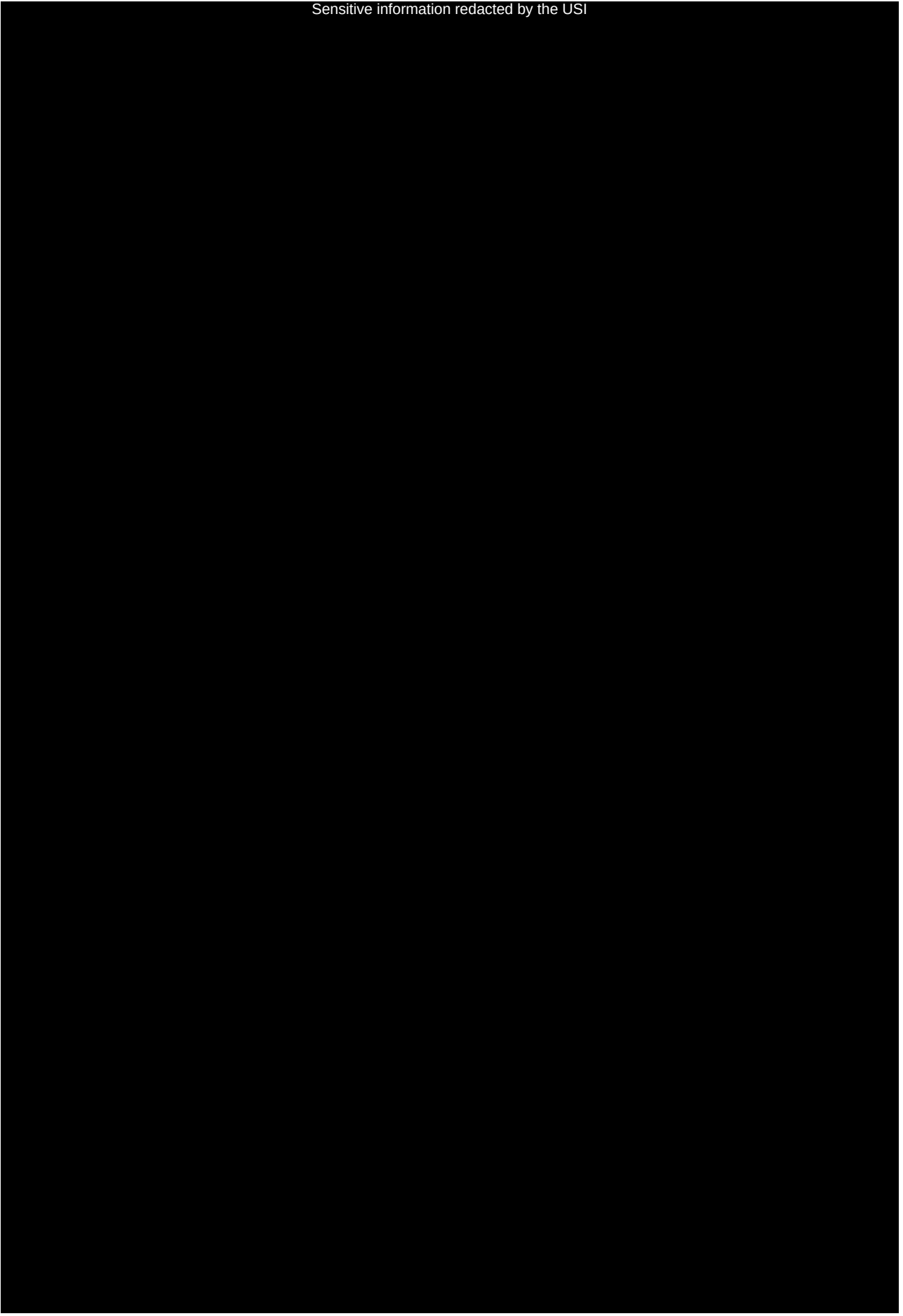
Sensitive information redacted by the USI



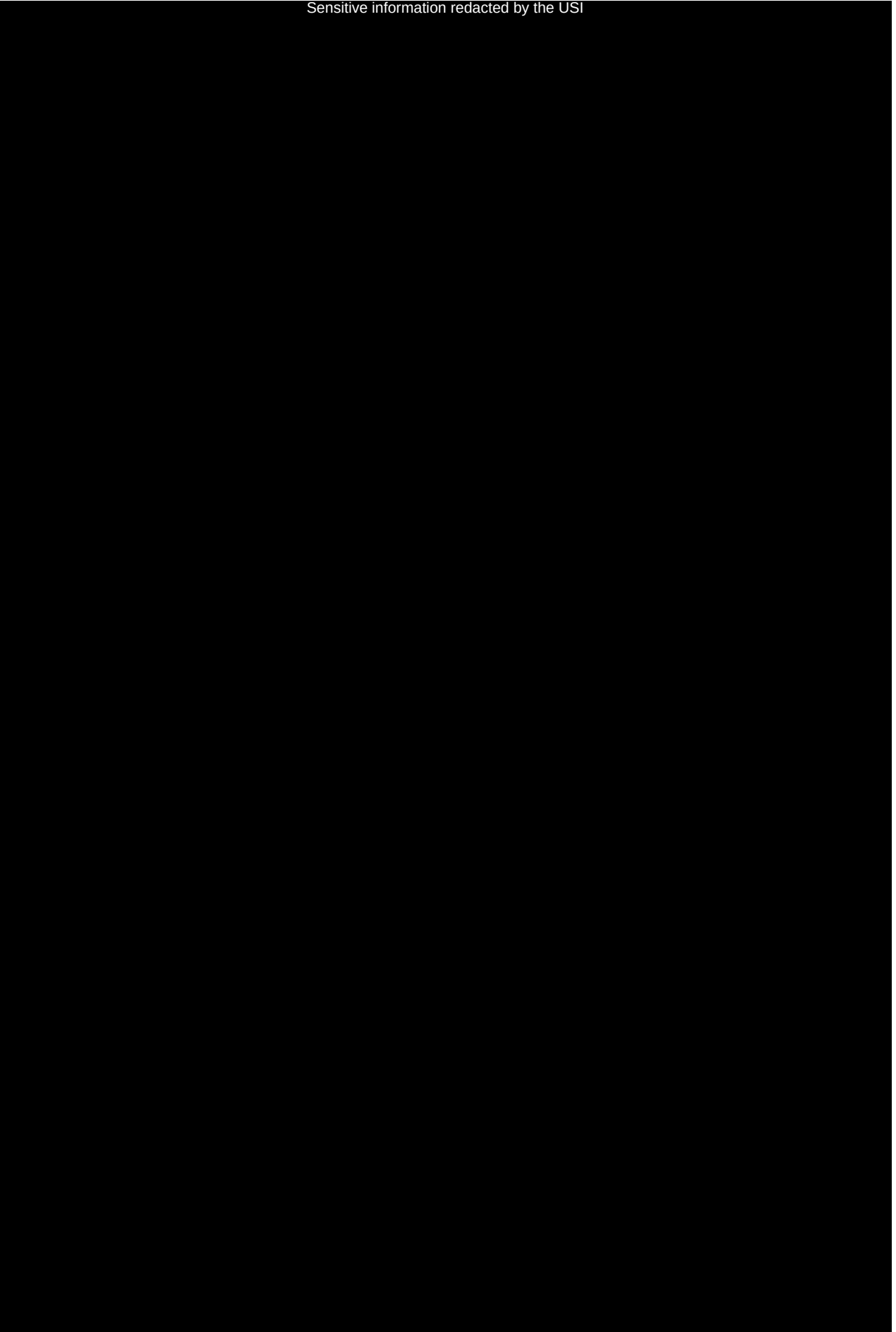
Sensitive information redacted by the USI



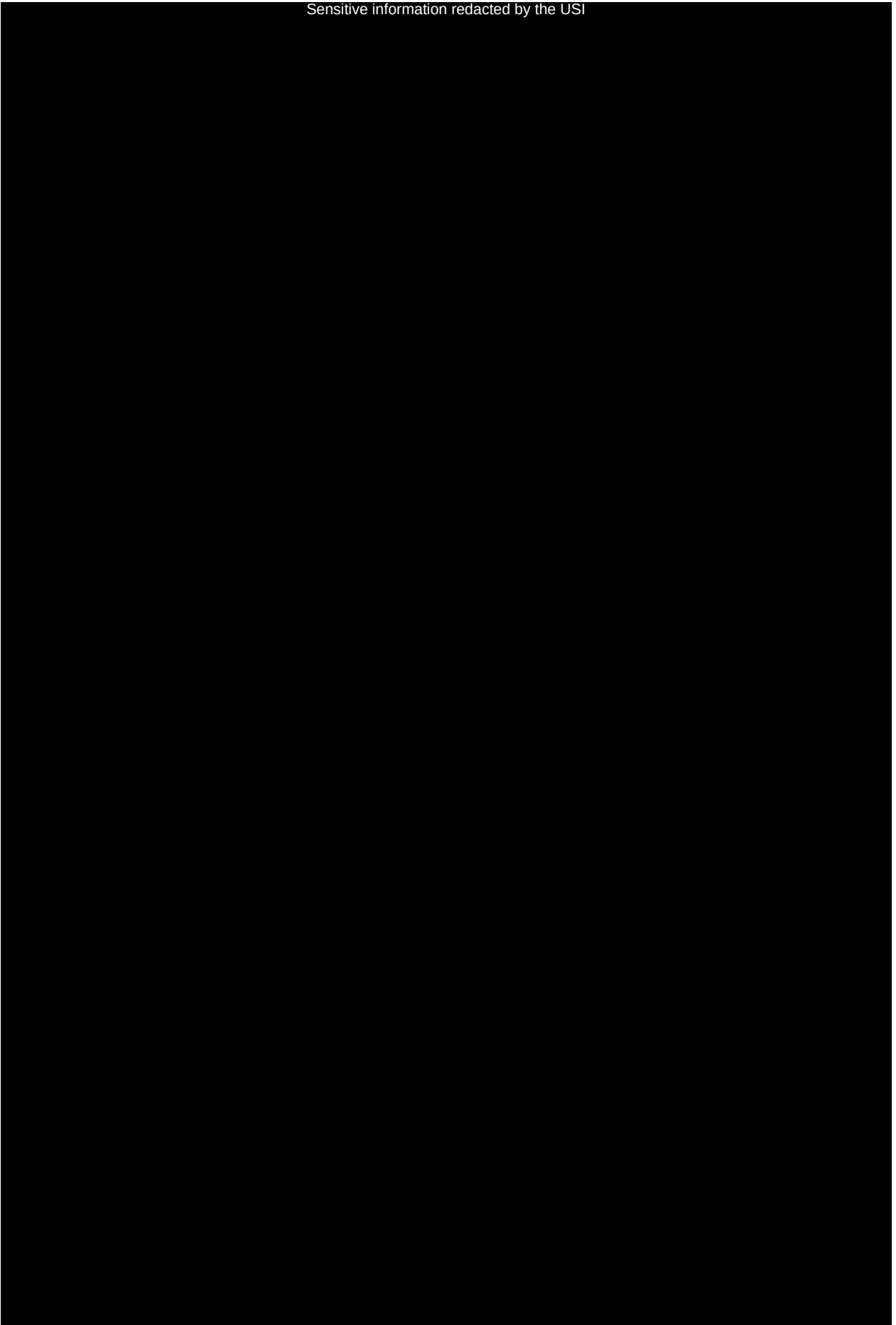
Sensitive information redacted by the USI



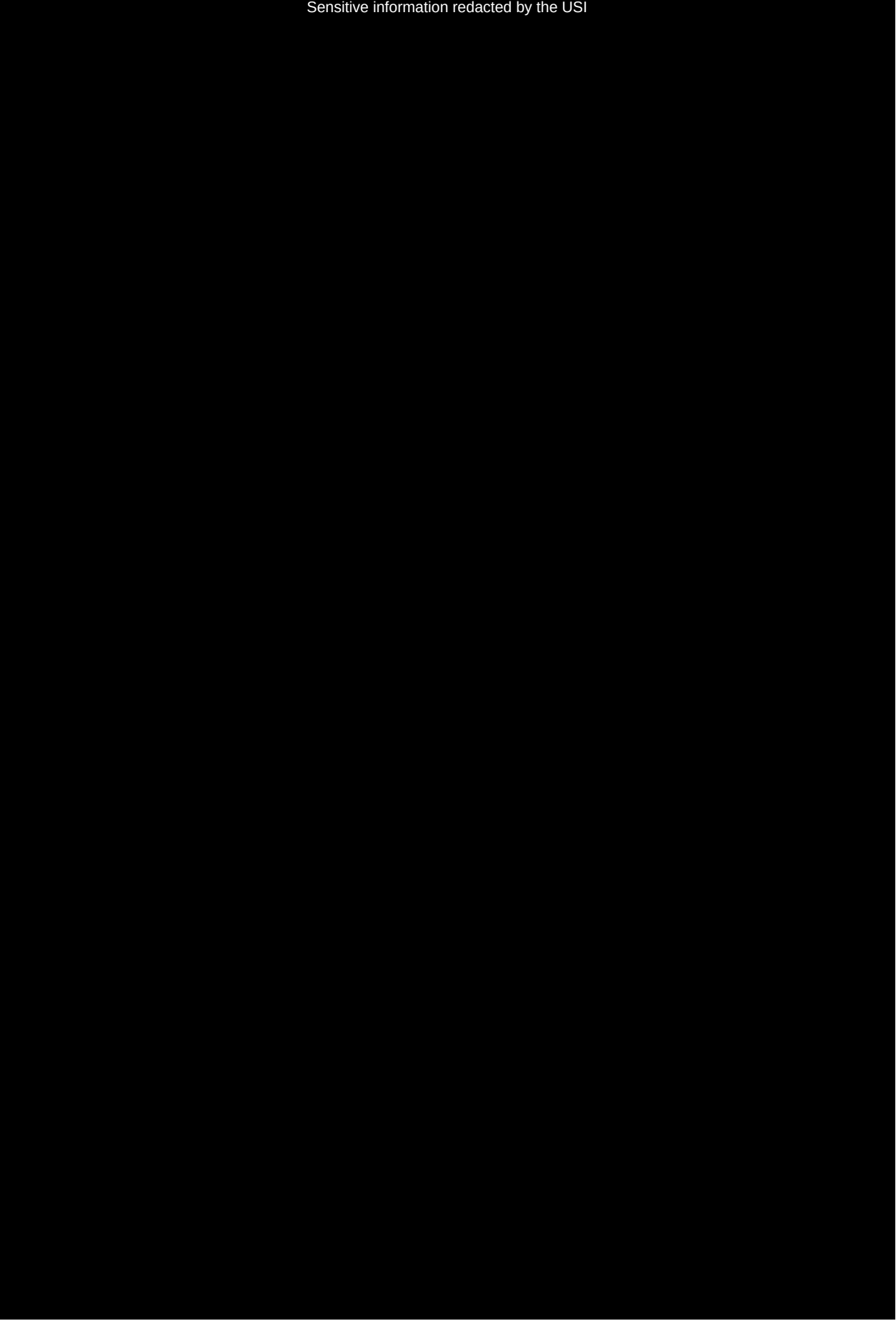
Sensitive information redacted by the USI



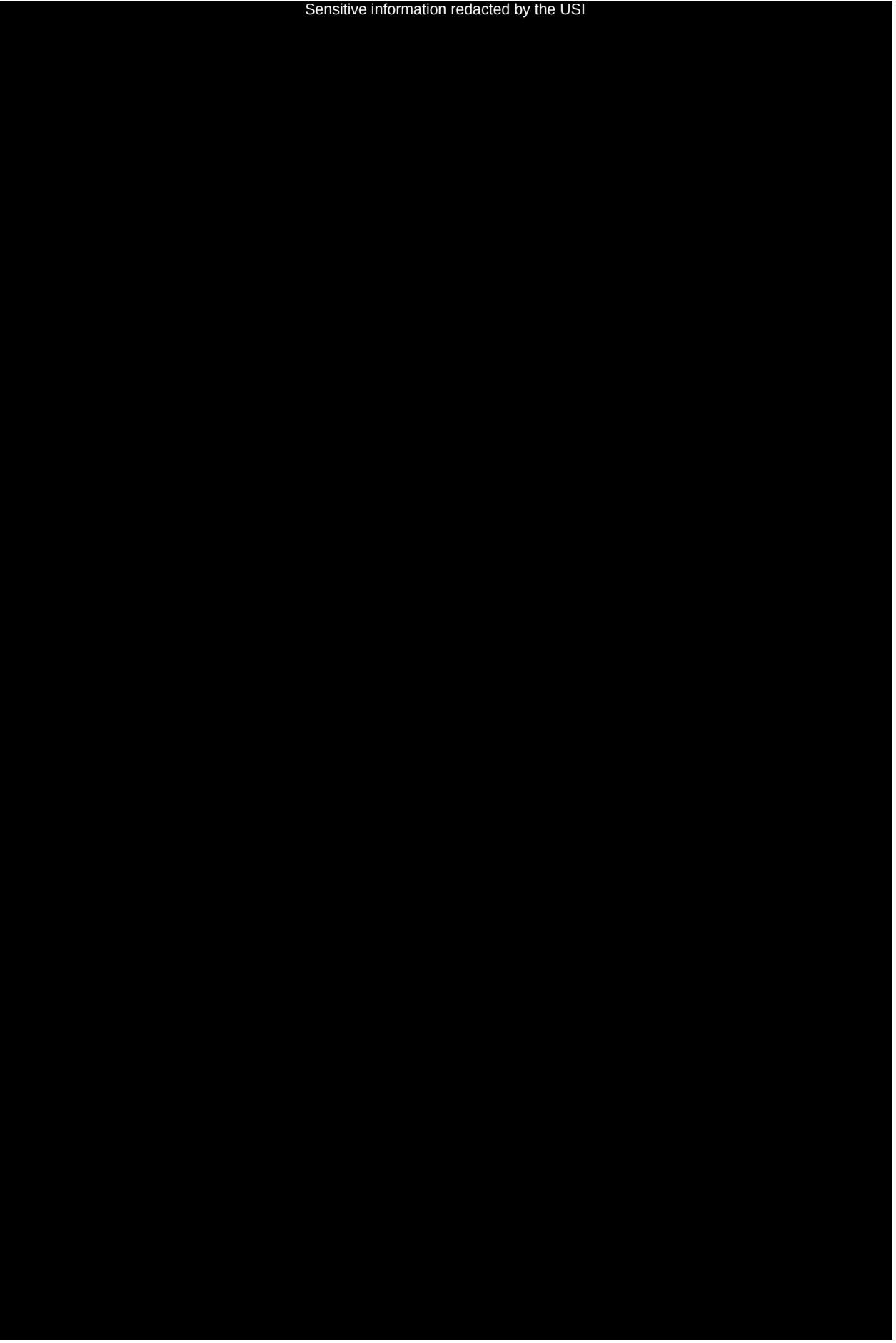
Sensitive information redacted by the USI



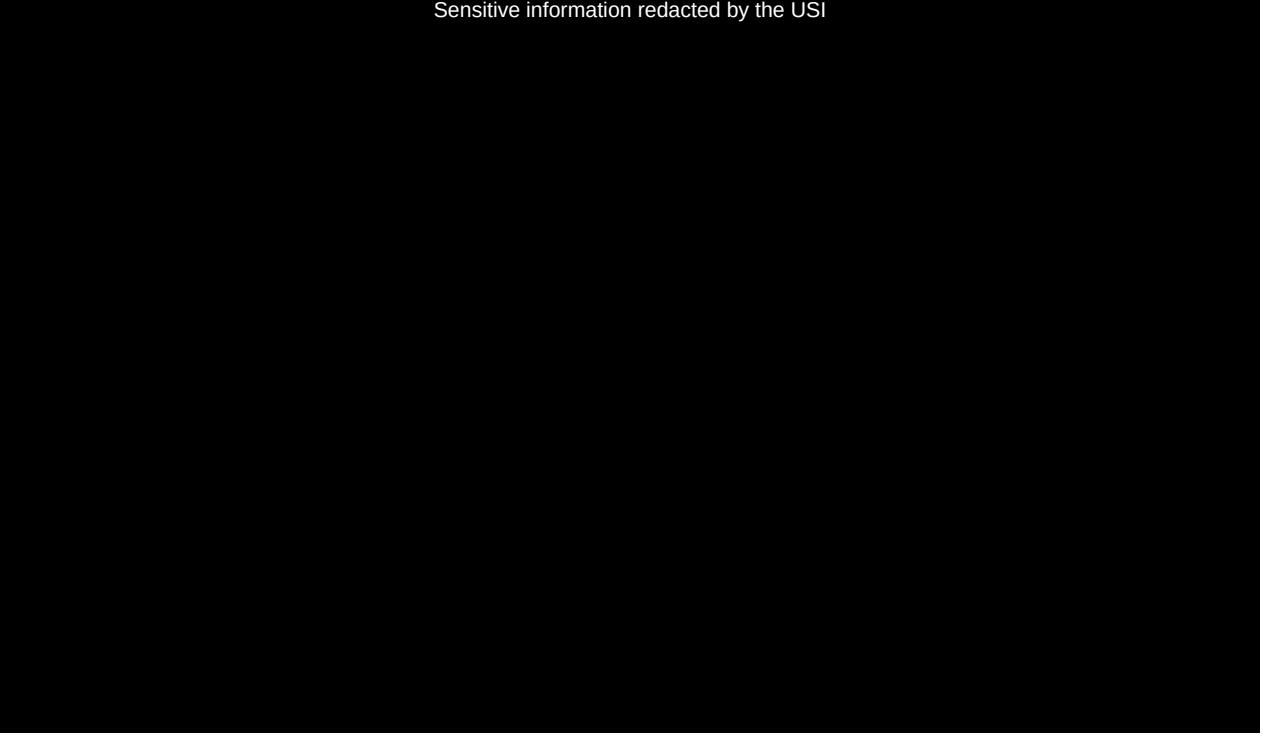
Sensitive information redacted by the USI



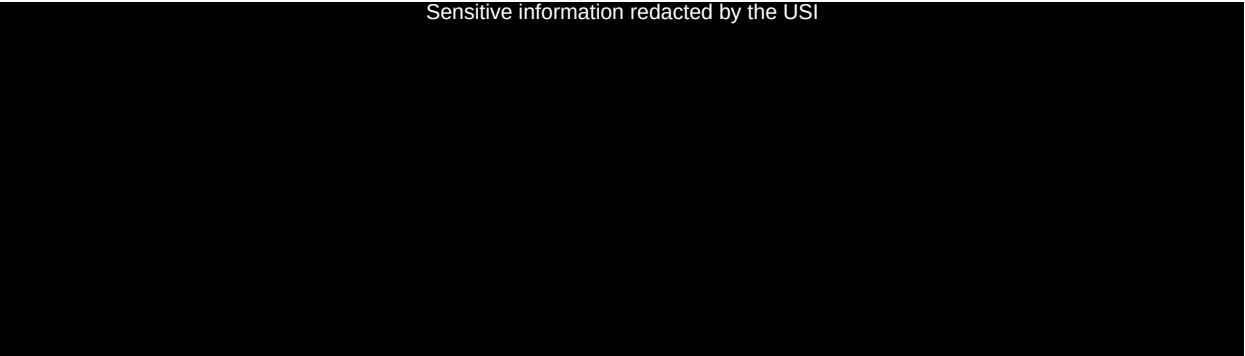
Sensitive information redacted by the USI



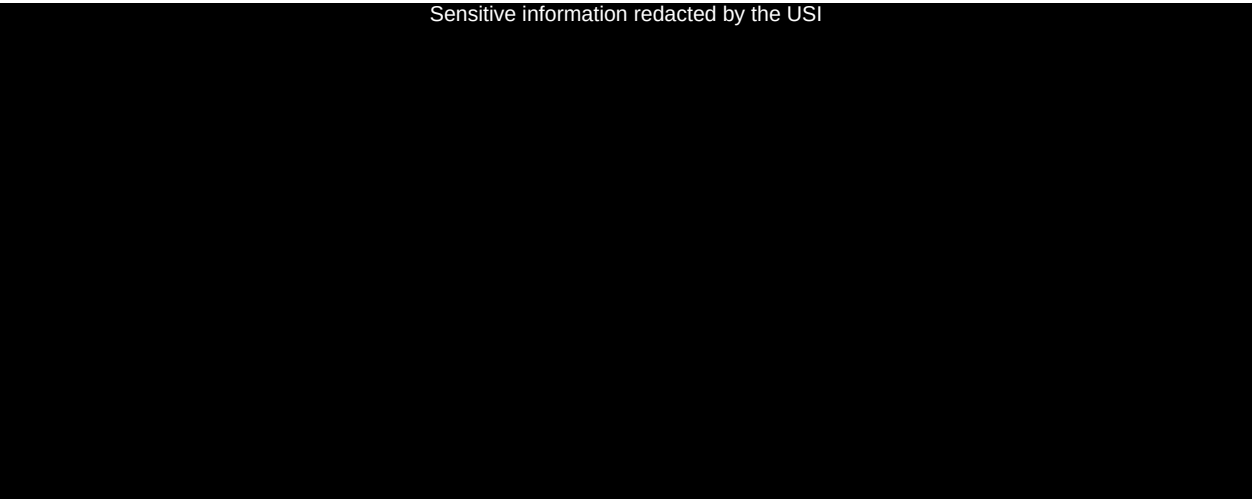
Sensitive information redacted by the USI

A large rectangular black box redacting the majority of the first page of the document.

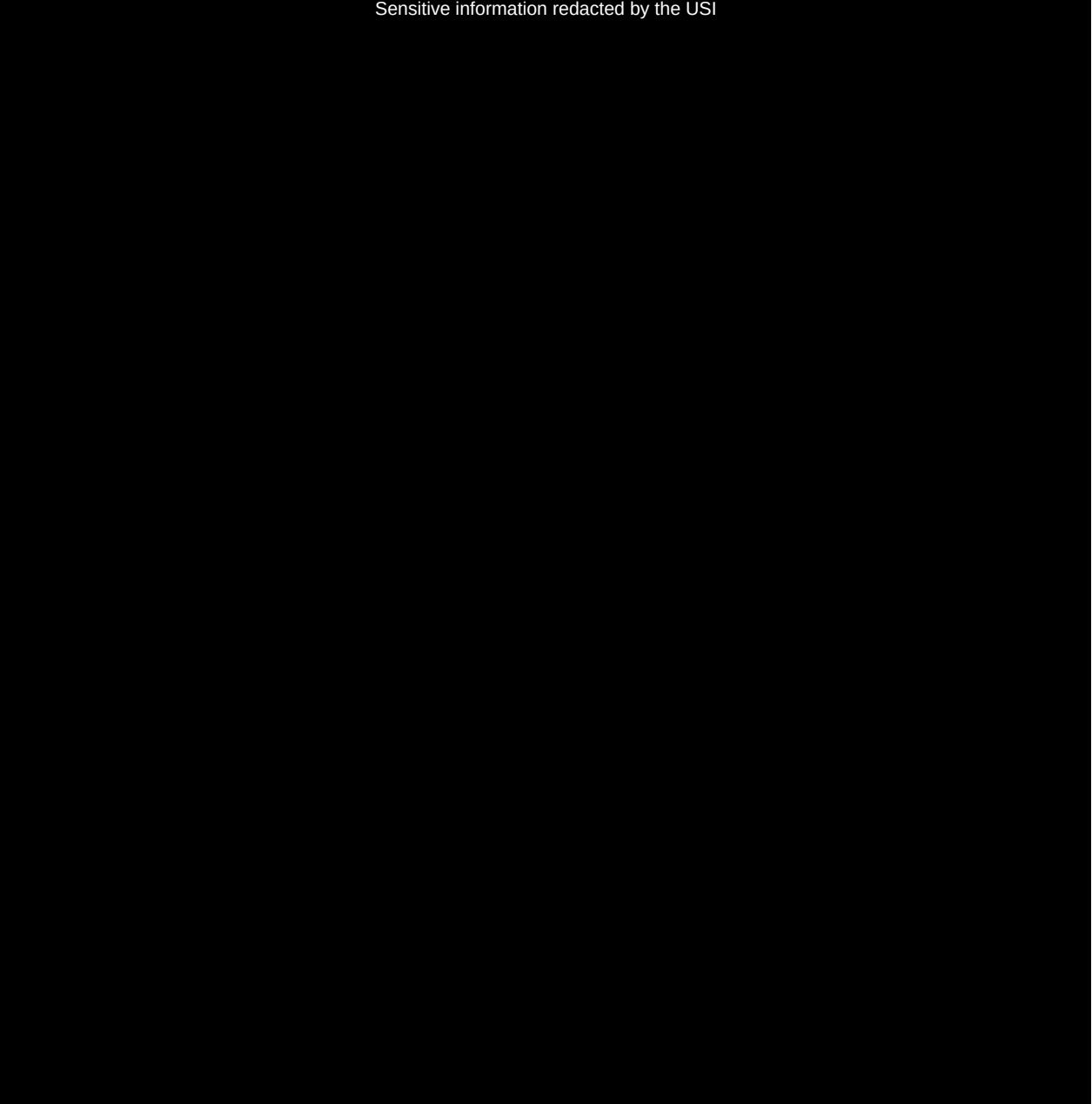
Sensitive information redacted by the USI

A medium-sized rectangular black box redacting the middle section of the document.

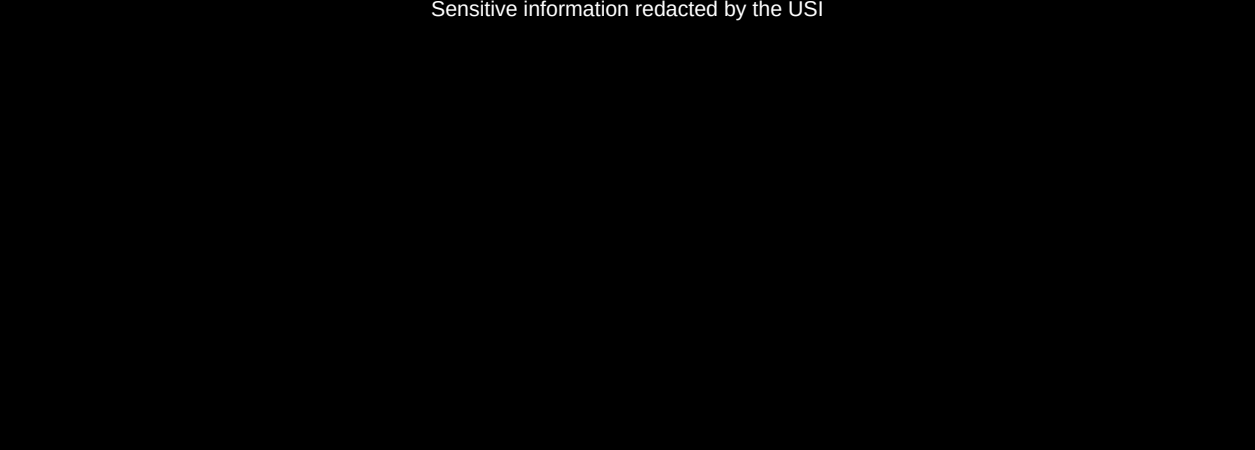
Sensitive information redacted by the USI

A large rectangular black box redacting the bottom section of the document.

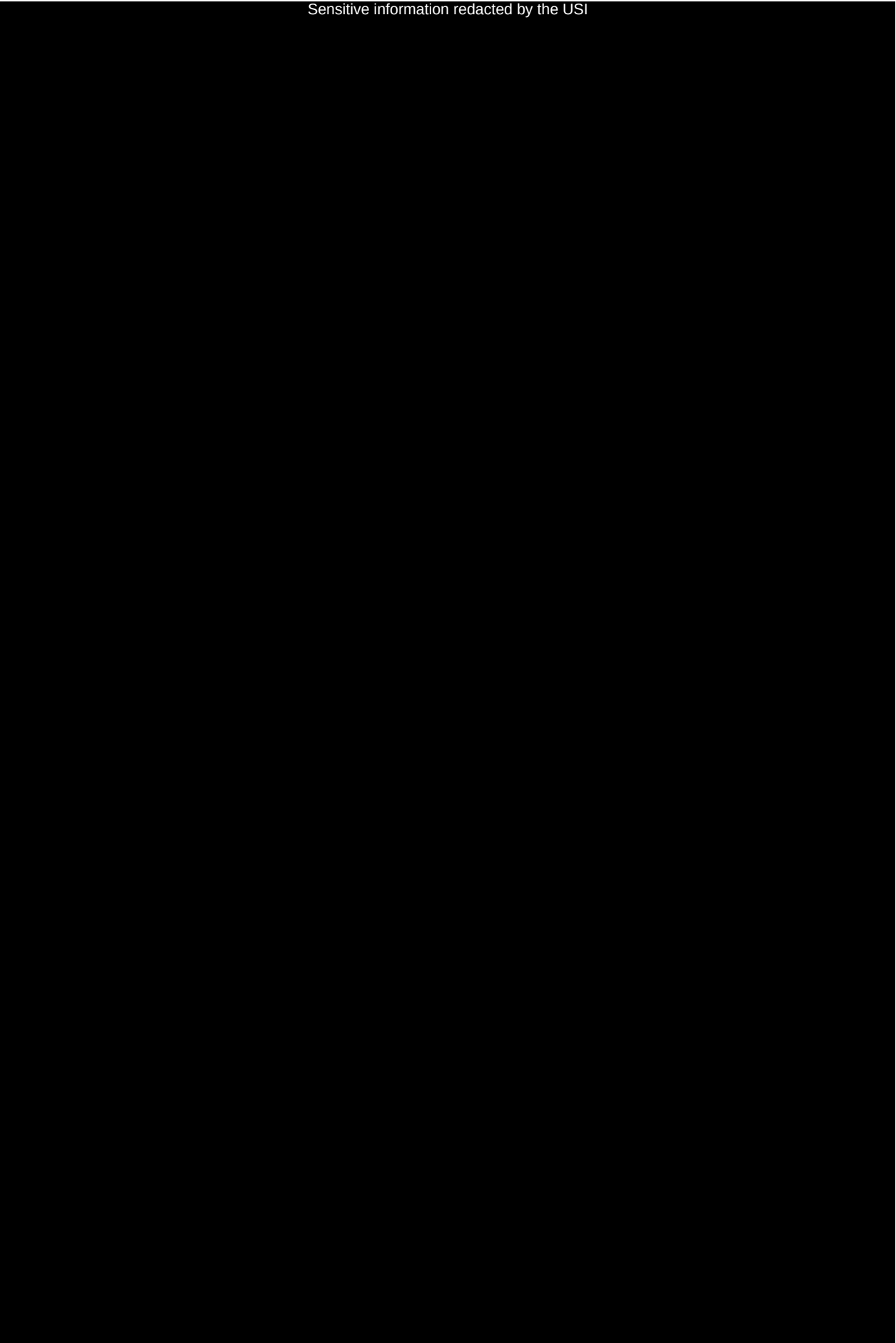
Sensitive information redacted by the USI



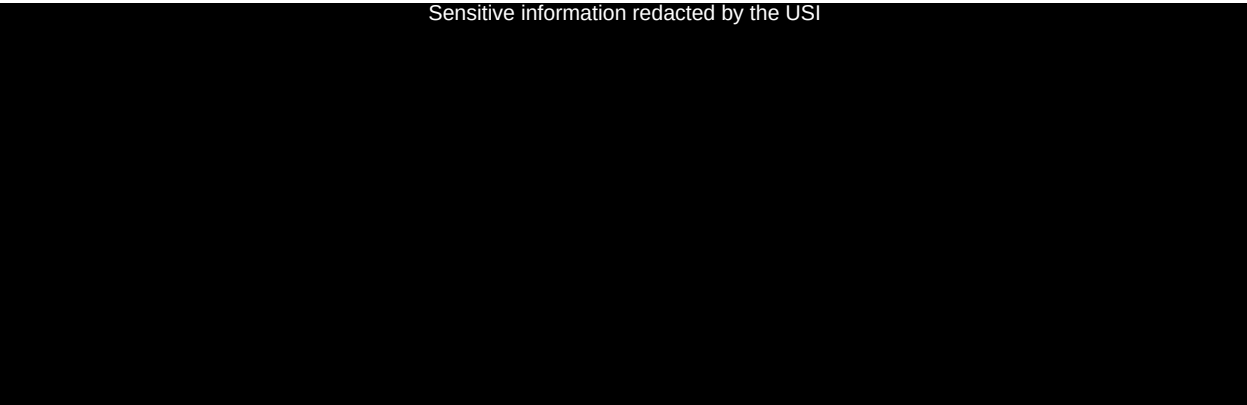
Sensitive information redacted by the USI



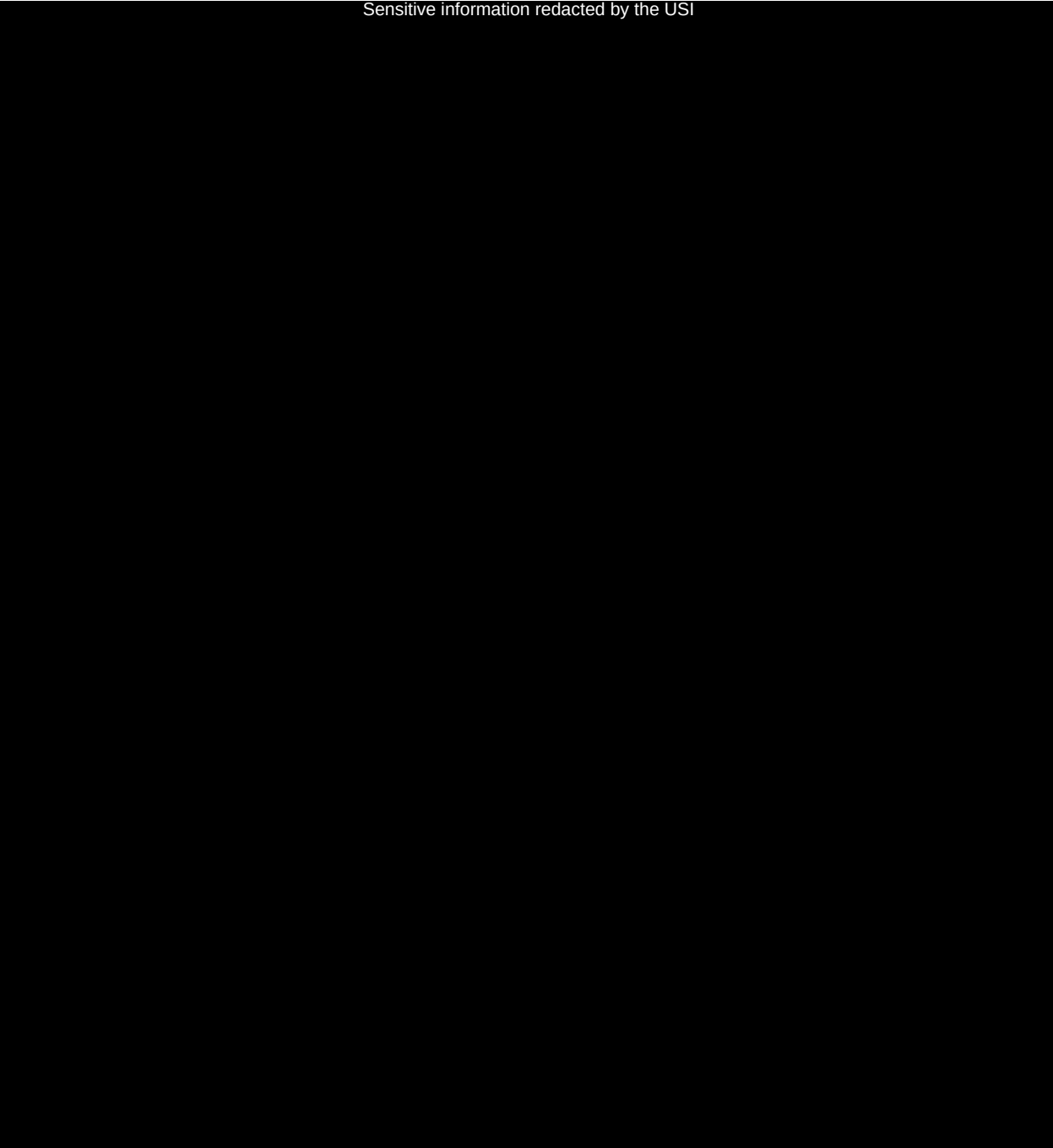
Sensitive information redacted by the USI



Sensitive information redacted by the USI



Sensitive information redacted by the USI



Sensitive information redacted by the USI



Jim Livingstone

Director of Safety, Quality and Standards



Department of

**Health, Social Services
and Public Safety**

www.dhsspsni.gov.uk

AN ROINN

**Sláinte, Seirbhísí Sóisialta
agus Sábháilteachta Poiblí**

MÁNNYSTRIE O

**Poustie, Resydènter Heisin
an Fowk Siccar**

POLICY CIRCULAR

Subject:

Circular Reference: HSC (SQSD) 10/2010

Early Alert system

Date of Issue: 28 May 2010

For action by:

- Chief Executives, HSC Trusts
- Chief Executive, HSC Board
- Chief Executive, Public Health Agency
- Chief Executive, NIBTS
- Chief Executive, Business Services Organisation
- General Medical, Community Pharmacy
- General Dental & Ophthalmic Practices

For Information to:

- Chief Executive, Patient and Client Council
- Director of Public Health, PHA
- Director of Performance Management and Service Improvement, HSC Board
- Directors of Social Care and Children in HSC Board and HSC Trusts
- Directors of Nursing and AHP in PHA and HSC Trusts
- Director of Integrated Care in HSC Board
- Medical Directors in HSC Trusts
- Chair, Regional Area Child Protection Committee
- Chair, Regional Adult Protection Forum
- Chief Executive, Regulation & Quality Improvement Authority
- CSCG/Risk management leads
- Unscheduled care improvement managers

Summary of Contents:

The Circular provides guidance on the operation of an Early Alert System, designed to ensure that the Department is made aware in a timely fashion of significant events occurring within HSC organisations.

Enquiries:

Related documents

HSC (SQSD) 22/2009: Phase 1 - Learning from Adverse Incidents and Near Misses reported by HSC organisations and FPS

HSC (SQSD) 08/2010: Phase 2 – Learning from Adverse Incidents and Near Misses reported by HSC organisations and FPS

Superseded documents

Status of Contents:

Action

Implementation:

Any enquiries about the content of this Circular should be addressed initially to:

Safety & Quality Unit

DHSSPS

Room D1

Castle Buildings

Stormont

BELFAST

BT4 3SQ

Tel: [Personal Information redacted by the USI]

E-mail: [Personal Information redacted by the USI]

From 1 June 2010

Additional copies:

Available to download from

<http://www.dhsspsni.gov.uk/index/phealth/sqs/sqsd-guidance.htm>

Dear Colleague

ESTABLISHMENT OF AN EARLY ALERT SYSTEM

In March 2009, I wrote to you about the initial steps being taken to phase out the reporting of Serious Adverse Incidents (SAIs) to the Department, and the implementation of the Regional Adverse Incident and Learning (RAIL) system (Circular HSC (SQSD) 22/2009).

Circular HSC (SQSD) 08/2010, which issued on 30 April 2010, advised of the transfer of responsibility for managing SAIs from the Department to the HSC Board and Public Health Agency with effect from 1st May 2010, and the revised reporting arrangements which will be in place until the new RAIL system is fully implemented.

The purpose of this circular is to provide specific guidance on the arrangements which should be followed with effect from 1st June to ensure that the Department (and thus the Minister) receive prompt and timely details of events (these may include potential serious adverse incidents), which may require urgent attention or possible action by the Department.

You are asked to ensure that this circular is communicated to relevant staff within your organisation.

Yours sincerely

Dr Jim Livingstone
Director Safety, Quality and Standards Directorate

Introduction of an Early Alert System

Purpose of the Early Alert System

- 1.1 The Early Alert System will provide a channel which will enable Chief Executives and their senior staff (Director level or higher) in Health and Social Care (HSC) organisations to notify the Department in a prompt and timely way of events or incidents which have occurred in the services provided or commissioned by their organisations, and which may require immediate attention by Minister, Chief Professional Officers or policy leads, and/or require urgent regional action by the Department.

It is important to note that this reporting system is intended to complement, not replace, existing channels of communication, both formal and informal.

- 1.2 While it is likely that some of the notifications reported as Early Alerts will also require to be managed as adverse incidents by HSC organisations, **many adverse incidents will NOT need to be reported through this channel.**

Criteria for using the Early Alert System

- 1.3 The established communications protocol between the Department and HSC organisations emphasises the principles of 'no surprises', and an integrated approach to communications. Accordingly, HSC organisations should notify the Department promptly (within 48 hours of the event in question) of any event which has occurred within the services provided or commissioned by their organisation, or relating to Family Practitioner Services, and which meets one or more of the following criteria:

- 1. Urgent regional action may be required by the Department, for example, where a risk has been identified which could potentially impact on the wider HSC service or systems;**
- 2. The HSC organisation is going to contact a number of patients or clients about harm or possible harm that has occurred as a result of the care they received. Typically, this does not include contacting an individual patient or client unless one of the other criteria is also met;**
- 3. The HSC organisation is going to issue a press release about harm or potential harm to patients or clients. This may relate to an individual patient or client;**
- 4. The media have inquired about the event;**
- 5. The PSNI is involved in the investigation of a death or serious harm that has occurred in the HSC service, where there are concerns that a HSC service or practice issue (whether by omission or commission) may have contributed to or caused the death of a patient or client.**

This does not include any deaths routinely referred to the Coroner, unless:

- i. there has been an event which has caused harm to a patient or client and which has given rise to a Coroner's investigation; or***
- ii. evidence comes to light during the Coroner's investigation or inquest which suggests possible harm was caused to a patient or client as a result of the treatment or care they received, or***
- iii. the Coroner's inquest is likely to attract media interest.***

6. The following should always be notified:

- i. the death of, or significant harm to, a child, and abuse or neglect are known or suspected to be a factor;***
- ii. the death of, or significant harm to, a Looked After Child or a child on the Child Protection Register;***
- iii. allegations that a child accommodated in a children's home has committed a serious offence; and***
- iv. any serious complaint about a children's home or persons working there.***

7. There has been an immediate suspension of staff due to harm to patient/client or a serious breach of statutory duties has occurred.

- 1.4 Family Practitioner Services should notify the HSC Board about events within the services they provide that meet one or more of these criteria. The HSC Board will then notify the Department.

Operational Arrangements

- 1.5 It is the responsibility of the reporting HSC organisation to ensure that a senior person from the organisation (at Director level or higher) communicates with a senior member of staff in the Department (i.e. the Permanent Secretary, Deputy Secretary, Chief Professional Officer, or Assistant Secretary) regarding the event, and also an equivalent senior executive in the HSC Board, and the Public Health Agency, as appropriate, and any other relevant bodies.
- 1.6 It is the responsibility of the reporting Family Practitioner Service practice to ensure that a senior person from the practice speaks in person to the Director of Integrated Care (or deputy) in the HSC Board regarding the event.
- 1.7 The next steps will be agreed during the call and appropriate follow-up action taken by the relevant parties. In **all** cases, however, the reporting organisation must arrange for the content of the initial contact to be recorded on the pro forma attached at **Annex A**, and forwarded, within 24 hours of notification of the event, to the Department at earlyalert@dhsspsni.gov.uk and the HSC Board at earlyalert@hscni.net

ANNEX A

☒ Initial call made to (DHSSPS) on
(DATE)

Follow-up Proforma for Early Alert Communication:**Details of Person making Notification:**

Name Organisation

Position Phone

Criteria (from para 1.3) under which event is being notified (tick as appropriate)

- 1. urgent regional action***
- 2. contacting patients/clients about possible harm***
- 3. press release about harm***
- 4. regional media interest***
- 5. police involvement in investigation***
- 6. events involving children***
- 7. suspension of staff or breach of statutory duty***

Brief summary of event being communicated: **If this relates to a child please specify DOB, legal status, placement address if in RCC. If there have been previous events reported of a similar nature please state dates and reference number. In the event of the death or serious injury to a child - Looked After or on CPR - please confirm report has been forwarded to Chair of Regional CPC.*

Appropriate contact within the organisation should further detail be required:

Name of appropriate contact

Contact details: Telephone (work or home)

Mobile (work or home)

Email address (work or home)

Forward proforma to the Department at: earlyalert@dhsspsni.gov.uk and the HSC Board at: earlyalert@hscni.net

FOR COMPLETION BY DHSSPS:

Early Alert Communication received by: Office:
.....

Forwarded for consideration and appropriate action to: Date:
.....

Detail of follow-up action (if applicable)
.....

From: [Johnston, Jackie \(DoH\)](#)
To: [Olive MacLeod](#); [Paul Cavanagh](#)
Cc: [McBride, Michael](#); [Wilson, Ryan \(DoH\)](#)
Subject: RE: HPRM: MM/0121/2020 - Email from Maria O'Kane - CONFIDENTIAL EARLY ALERT - Urology
Date: 24 August 2020 15:54:26
Attachments: [image001.png](#)

Olive and Paul

I took part in a Zoom call with Maria and Stephen this afternoon. There are four issues to address:

- (1) Finalising a decision on requesting the Royal College of Surgeons to carry out a lookback exercise. I advised that central to this decision would be agreeing the TOR for the exercise including whether this should cover an initial representative sample or a larger group of patients. I further advised that Southern Trust colleagues should seek advice from the HSCB and PHA on drafting the TOR. I understand that Maria has had a preliminary conversation with Brid Farrell and Hugo but not specifically on drafting TOR;
- (2) Consideration to be given to an appropriate process for investigating the conduct of the Doctor concerned. I will consider and revert to Trust colleagues on our next call;
- (3) Consideration to be given to inviting an expert patient to sit on the panel to be established to review the three SAI cases. Could HSCB/PHA provide advice to the Trust on this proposal? and,
- (4) The timing of external communications given the need to finalise decisions on the various strands and informing the patient families of the SAI review.

A further Zoom call has been arranged for Friday 28th August at 12.30pm.

Regards

Jackie Johnston



To: HSS Boards
Chief Executive
Director of Public Health
Director of Dental Services

File ref: BP823/98

HSS Trusts
Chief Executive
Medical Director
Director of Personnel/Human Resources

28 August 1998

British Medical Association
British Dental Association
NI Council for Postgraduate Medical & Dental Education

Dear Colleague

**ISSUE OF ALERT LETTERS ABOUT HOSPITAL AND COMMUNITY
MEDICAL AND DENTAL STAFF UNDER INVESTIGATION BY THE HPSS**

Summary

1. This circular advises HSS Boards and HSS Trusts of the arrangements for notifying the HSS Executive about hospital and community medical and dental staff who have been dismissed, who are under suspension by their employer, or where there are sufficient, reasonable grounds to support the view that they could be considered to be a potential danger to the safety of patients, other staff or themselves, and where there is reason to believe they will seek work elsewhere. The purpose of these arrangements is so that consideration can be given to the issue of a confidential letter alerting other employers about the action taken.
2. It also reminds HSS Board and HSS Trust Chief Executives of the need to make adequate checks on doctors' and dentists' registration, qualifications and references. There is no substitute for rigorous pre-employment checks. In particular, references should be taken up with previous employers and account should be taken of any gaps in employment.



3. The guidance in this circular complements the guidance in HSS(TC8) 15/91 on *'Disciplinary procedures for hospital and community medical and dental staff'*.

Action

4. HSS Board and HSS Trust Chief Executives are asked to ensure that systems are put in place to:
 - (a) consider whether action should be taken to alert other employers of the dismissal or suspension of a member of medical or hospital dental staff;
 - (b) retain alert letters so that staffing officers are aware of all current warnings.
 - (c) withdraw and formally cancel alert letters if the doctor or dentist is exonerated.

Confidentiality must be strictly maintained throughout the enactment of any part of this guidance.

Background

5. The objective of the alert letter system (often referred to as grey letters) is to protect patients by ensuring that employers of doctors or dentists are aware of any who have been dismissed or suspended in the most serious disciplinary cases or where the prospect of their continuing in practice gives rise to a concern for patient safety. The system has been in existence for some time but has recently been reviewed with a view to clarifying the actions to be taken by the HSS Executive and HPSS employers.
6. Alert letters are issued to ensure that information about doctors and dentists who have been dismissed by or are under suspension from HPSS employers and contracting Authorities is disseminated appropriately so as to safeguard health service patients during the (often lengthy) period that inquiries or police investigations of alleged offences are taking place. An alert letter should also be issued where serious doubts have been raised about a locum doctor or dentists and a report is being sent to the General Medical Council (GMC) or General Dental Council (GDC). HSS Boards and HSS Trusts (as well as locum agencies and private healthcare providers) have a legitimate interest in being informed that a prospective employee has been dismissed or suspended by another HPSS employer. Although employing HSS Boards and HSS Trusts should call for references from previous employers they cannot be assured that they will be told about previous employment in which the doctor or dentist

gave unsatisfactory service or was suspended or dismissed. The public would be justifiably concerned if suspended doctors or dentists - who may also be under police investigation that may lead to serious criminal charges being laid - were able to continue to work with patients in another part of the HPSS. The Department must take steps to ensure that prospective employers are notified of such suspensions.

7. The system recognizes that suspension is a neutral act and will occur before any allegations have been fully investigated. It is intended to provide immediate protection of the interest of patients, other staff, or the practitioner and to assist the investigative process. Doctors or dentists who are suspended may be exonerated in due course. The system covers doctors in training who may be suspended whilst their suitability is assessed or their training needs reviewed, and who may seek work during their suspension. Alert letters are only issued following consultation with employers and after taking into account professional advice from the Chief Medical Officer. Alert letters are usually issued when a report to the GMC or GDC has or will be made. It may be appropriate to issue an alert letter as an interim measure where serious criminal proceedings are expected to be brought. HSS Boards as well as HSS Trusts may also be asked to pass the alert letter onto the private health sector in order to cover the possibility of someone trying to gain work outside the HPSS eg in a private hospital or nursing home.
8. The employer must notify doctor or dentist (by writing to their last known address if necessary) that they have become the subject of an alert letter, and give an indication of the reasons for this action.
9. The alert usually takes the form of a letter from the Chief Medical Officer to HSS Boards and Trusts asking them to contact somebody at the originating Trust for a reference if the subject of the alert letter contacts them with a view to obtaining employment (example at Annex A). The form of the letter has been cleared by the Department's solicitors.
10. There is no need for an alert letter if the GMC or GDC has already suspended or placed conditions upon the doctor's or dentist's registration on an interim or substantive basis - the doctor's or dentist's registration will be "tagged" by the GMC or GDC so that on enquiry the employer will be referred to the person dealing with the case; and the HPSS will be notified in due course.

Role of the HPSS

11. HPSS employers will need to put systems in place to consider whether the alert letter system should be triggered. In appropriate cases the Medical Director should ensure that the Chief Medical Officer is urgently advised of the name of

the doctor or dentist about which they have concern. This will normally be done by telephone when sufficient details of the case should be discussed to enable the Chief Medical Officer to make a decision to pursue the matter with colleagues in the HSS Executive. The criteria to be used are attached as Annex B. The criteria are not meant to be exhaustive and cases not falling within the criteria should also be discussed with the Chief Medical Officer.

12. The employer which triggers the alert letter system must ensure that it monitors the progress of the case so that should the doctor or dentist be exonerated, the alert letter can be withdrawn. Where an employer has been able to notify a doctor or dentist of the issuing of an alert letter they should also notify the doctor or dentist when, after due process, an alert letter is withdrawn. The alert letters are purely factual and are not intended to debar a doctor or dentist from employment as a doctor or dentist. The alert letter ensures that prospective employers are put in contact with previous employers whose names might not be included on application forms.
13. The Chief Medical Officer is available to provide informal, confidential support to Medical Directors for dealing with matters of this nature.
14. A summary of the process to be followed is at Annex C.

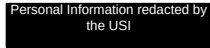
Checks on the Registration and previous employment of doctors and dentists

15. HSS Boards and HSS Trusts are reminded of the need for those with responsibility for the recruitment or other employment of medical and dental staff to take all possible steps to ensure the validity of certificates or other qualifications and that a minimum of two professional references are taken up. The good practice guidance booklet that accompanied the issue of the HSS (Appointment of Consultants) Regulations 1996 provides a checklist to cover all elements of consultant appointments procedure. This guidance, which also sets out the steps to be taken in the pre-interview process, is strongly commended to HPSS employers for incorporation into any local procedures and could equally be applied to other practitioner appointments as a useful checklist.
16. HPSS employers are asked to satisfy themselves that their procedures for employing doctors and dentists, including locum doctors and dentists:
 - involve checks which ensure their registration status with the General Medical or General Dental Council is valid.
 - The GMC provides a telephone inquiry service which is available 24 hours a day, seven days a week, on Personal Information redacted by the USI Calls

outside office hours (09.00 to 17.00 on week days) are answered by an automated service which will provide confirmation of full registrations to callers who have a touch tone keypad on their telephones and who know the registration numbers of the practitioner about whom they are enquiring. Alternatively, callers out of hours can leave a message which will be answered the next working day.

- The GDC's Registration Department for checking registration validity may be contacted on Personal Information
redacted by the USI during office hours.
 - ensures that the doctor's or dentist's registration certificate covers the tasks they are expected to undertake.
17. It is illegal to practice as a physician, surgeon or other medical officer in the HPSS without the appropriate registration with the General Medical Council [Sections 47 and 49, Medical Act 1983]. Doctors with *limited registration* are issued with certificates which indicate the range of posts or the type of employment which such doctors may undertake. Limited registration is granted for a specified period. Doctors who are required to provide medical cover for colleagues must be appropriately registered. Doctors who work outside the limitations of their registration are practising illegally.
 18. It is illegal to practice as a dentist without the appropriate registration with the General Dental Council unless practised by a registered medical practitioner [Section 38, Dentists Act 1984]. Dentists with full registration have access to all areas of dental practice unless their Annual Practising Certificate specifies otherwise. Dentists eligible for *temporary registration* may apply only for substantive, locum or honorary posts in hospitals which have been approved by the GDC for that purpose. On appointment an application should be made by the dentist to the GDC for a Direction to cover this practice. Temporary registration is granted for a limited period and does not, of itself, lead to full registration. Initial practice under temporary registration should be under full supervision. A dentist practising outside the conditions of their registration is practising illegally.
 19. The advice in circular HSS(TC8) 22/87 as extended in HSS(TC8) 7/93 continues to apply until further notice.

20. Enquiries about this circular should be addressed to:

Mr Paul Cassidy
Medical and Dental Unit
Room 3D, Dundonald House
Upper Newtownards Road
Belfast, BT4 3SF
Telephone 

Yours sincerely


Personal information redacted by USI

P W LYNCH
Deputy Director
[HSG(97)36]

Annex A

STANDARD LETTER TO BE SENT BY CMO

MANAGEMENT IN STRICT CONFIDENCE

Addressed to: Trust Chief Executives

Dear Chief Executive

Dr John Smith:
Formerly worked at Newtown Hospital HSS Trust

The above person formerly worked as a locum doctor in Orthopedics at Newtown Hospital HSS Trust.

If the above-named person makes an application for a permanent post or locum work with your Trust, you are advised to contact Rodney Jones, Personnel Director at Newtown Hospital HSS Trust on 0101 222 3333 before offering him employment.

Yours sincerely

Chief Medical Officer

STANDARD LETTER TO BE SENT BY CMO

MANAGEMENT IN STRICT CONFIDENCE

Addressed to: HSS Board Chief Executives

Dear Chief Executive

Dr John Smith:

Formerly worked at Newtown Hospital HSS Trust

The above person formerly worked as a locum doctor in Orthopedics at Newtown Hospital HSS Trust.

Please could you write as a matter of urgency to all independent hospitals registered with your area advising them to contact Rodney Jones, Personnel Director at Newtown Hospital HSS Trust on 0101 222 3333, should Dr Smith apply for a permanent post or locum work.

Yours sincerely

Chief Medical Officer

Annex B**CRITERIA TO BE APPLIED IN DECIDING TO ISSUE AN ALERT LETTER****The criteria should include:-**

the employee is a potential danger to the safety of patients, as identified by suspension, dismissal or police investigation, usually with report to GMC or GDC;

or there are sufficient, reasonable grounds to support the view that the employee could be a potential danger to the safety of patients;

and

the HSS Board or Trust have reason to believe that he/she would seek work elsewhere (either in a permanent position or as a locum).

In considering whether the doctor or dentist is a potential danger to the safety of patients the factors to be taken into account as appropriate should include:

- whether the allegation concerns an offence against the person (eg indecent assault)
- whether there has been an alleged failing in professional performance (eg inappropriate treatment, failure to attend)
- the doctor's or dentist's health problems (including mental health and transmissible infections)
- whether the doctor or dentist is willing to accept constructive criticism and retraining
- whether a report is being made to the GMC or GDC.

Annex C**THE PROCESSES FOR ISSUING AN ALERT LETTER**

Typically, the issue of an alert letter will follow the processes below while confidentiality is maintained at all times:

- a. The doctor or dentist is considered to be a potential danger to the safety of patients as outlined in Annex B above;

and

In all cases, it is considered that the doctor or dentist will seek employment elsewhere, either permanently or as a locum;

- b. Internal consultation within the employing body, involving only those with a need to know, as to whether an alert letter should be issued;
- c. In appropriate cases, and in consideration of the criteria at Annex B, employers should ensure the Chief Medical Officer is urgently advised of the name of the doctor or dentist and the details of the case;
- d. The Chief Medical Officer makes the decision as to whether to pursue the matter with HSS Executive and, if appropriate, issues the alert letter;
- e. Employers monitor the case under HSS(TC8)/ 15/91 and ensure that the Chief Medical Officer is advised that the alert letter should be withdrawn if the doctor or dentist is exonerated;
- f. If the doctor or dentist is exonerated the Chief Medical Officer withdraws and formally cancels the alert letter and informs HSS Executive; the doctor is advised that the letter has been withdrawn;

The Chief Medical Officer, in consultation with the HSS Executive, will oversee the implementation of this guidance and report any critical incidents to the Department.

Initial call made to Ryan Wilson (DoH) on 15th October 2020 DATE

Follow-up Pro-forma for Early Alert Communication:**Details of Person making Notification:**

Name Dr Maria O'Kane Organisation Southern Health and Social Care Trust
Position Medical Director Telephone Personal Information redacted by the USI

Criteria (from paragraph 1.3) under which event is being notified (tick as appropriate)

1. Urgent regional action
2. Contacting patients/clients about possible harm
3. Press release about harm
4. Regional media interest
5. Police involvement in investigation
6. Events involving children
7. Suspension of staff or breach of statutory duty

Brief summary of event being communicated: **If this relates to a child please specify DOB, legal status, placement address if in RCC. If there have been previous events reported of a similar nature please state dates and reference number. In the event of the death or serious injury to a child - Looked After or on CPR - Please confirm report has been forwarded to Chair of Regional CPC.*

Further to Early Alert dated 31st July 2020 (attached for ease of reference) relating to the provision of Trust Urology Services additional significant concerns have been brought to the attention of the Trust regarding prescribing practices regarding the medication Bicalutamide by the individual consultant who is no longer employed by Health and Social Care Services.

These additional concerns have been identified following an initial meeting of the Serious Adverse Incident review team which occurred this week. Concerns have been raised regarding the subject's prescribing practices which include use of unlicensed and sub-therapeutic dosages of Bicalutamide which we consider a significant and potentially wide patient safety risk requiring immediate action. Trust staff are working with the HSCB medications team to gain a better understanding of the implications of this latest development in terms of scale and scope and to identify patient groups that may be at risk. It is recognised that this prescribing issue involves medicines that are prescribed by primary care providers on advice from the secondary care team.

In addition to this early alert senior staff at HSCB, PHA and Department of Health have been briefed directly of this development. The Trust is continuing to liaise directly with colleagues in each organisation in order to take appropriate action.

Appropriate contact within the organisation should further detail be required:

Name of appropriate contact: Dr Maria O'Kane

Contact details:

Email address (work or home) Personal Information redacted by the USI

Mobile (work or home) Personal Information redacted by the USI Telephone (work or home)

Forward pro-forma to the Department at: earlyalert@health-ni.gov.uk and the HSC Board at: earlyalert@hscni.net

FOR COMPLETION BY DoH:

Early Alert Communication received by: Office:

Forwarded for consideration and appropriate action to: Date:

Detail of follow-up action (if applicable)

UROLOGY ASSURANCE GROUP (UAG)**Monday 1 November 2021 at 2.00pm, by Zoom****Minutes**

FOI Implications: May not be disclosed Section 22 Information intended for future publication, Section 33 audit functions, Section 35 formulation of Government policy refers.

Jim Wilkinson, DoH (Chair)	Aidan Dawson, PHA
Lourda Geoghegan, DoH	Brid Farrell, PHA
Robbie Davis, DoH	Shane Devlin, Southern Trust
Anne-Marie Bovill, DoH	Stephen Wallace, Southern Trust
Sharon Gallagher, DoH	Maria O’Kane, Southern Trust
Ryan Wilson, DoH	Heather Trouton, Southern Trust
Paula Ferguson, DoH	Martina Corrigan, Southern Trust
Paul Cavanagh, HSCB	Melanie McClements, Southern Trust
Caroline Cullen, HSCB	

Apologies: Richard Pengelly, DoH, Michael McBride, DoH, David Gordon, DoH,

Welcome and apologies

1. The group was welcomed and apologies noted.

Minutes of previous meeting

2. The draft minutes of the previous meeting were agreed.

Actions from previous meeting

3. Action: Southern Trust (Shane Devlin / Stephen Wallace) to continue to engage with RQIA regarding possible assistance in gaining accessing Mr O’Brien’s Private patients.
Action: Southern Trust agreed to liaise further with DLS, to provide clarity on presentational concerns and to ensure that the letter to Mr O’Brien issues in early course.

Update: Shane Devlin advised this work is still ongoing. The Trust has no right to gain access to the information on private patients. There is potential the USI may be able to access this through law. [REDACTED]

4. Action: DoH to arrange a meeting with Trust Staff in October 2021.

Update: Jim Wilkinson advised a meeting will be arranged between Richard Pengelly and the SHSCT staff.

5. Action: DoH to meet with HSCB and the Trust to agree urology recall/lookback review terminology and revise future UAG agenda items accordingly.

Update: Robbie Davis advised this meeting took place and the agreed terminology is "lookback".

6. Any other actions arising from the previous meeting were addressed during the course of the meeting.

Trust Update (Southern Trust)

7. The update report provided by the Southern Trust and circulated to UAG members prior to the meeting was noted by the group. This paper included a summary of progress relating to the Patient Record Scoping Exercise, SAls , Structured Clinical Record Reviews and Private Sector issues. The following matters were discussed by the group:

USI

8. Heather Trouton advised that the Trust had received the Section 21 notice from the USI and had commenced collating the information requested. The group noted the reference to "recall" being used and it was agreed to confirm the terminology as "lookback" with the USI team.

Action: DoH to confirm terminology with USI team.

9. Heather confirmed that the USI are intending to make contact with all patients involved in the lookback. The group discussed, noting the Trusts intention to minimise any distress to patients. Heather confirmed the Trust will commence making contact with those patients involved in the lookback.

Action: SHSCT to contact all patients involved in the lookbackLookback Review

10. Heather informed the group that the lookback review was progressing slowly. It was noted that the Trust have completed the Risk Assessment from the Lookback Guidance and have formally written to HSCB to request that the other Urology Teams help out with their current new patients until they have reviewed all of the patients in the current cohort of patients. The group noted this is a regional priority and best endeavours must be given to resolve.
11. Melanie McClements advised that interviews will be held on 8th December for 2 urologist vacancies. The group noted should they be successful it will still be a couple of months before they would be in place.

Private Practice

12. The group noted the Trust discussed mechanisms for obtaining private practice records with RQIA and the DoH on the 28th September. [REDACTED]

[REDACTED]
[REDACTED].

Cohort 1 Outcomes Report

13. A paper on the Outcomes Report was provided by Paul Cavanagh and shared with the group prior to the meeting. Paul advised that as this is recognised as a “lookback” that will determine the structure of the report.

14. Paul advised that nine questions are being asked as part of the lookback and each question will be reported on within the Outcomes Report. The report will focus on the cohort of patients who had been under the care of the Consultant for the period January 2019 to June 2020. Paul advised the intention is that an outcomes report will be completed for the Cohort by May 2022.
15. The group noted concerns that nine questions was a large number and may not be feasible to report on. The group noted:
 - Qualitative questions can become complicated when reporting;
 - Learnings from Neurology – use of 3 questions;
 - Time it may take for larger number of questions given current pressures; and;
 - Recommended consideration be given to streamlining questions.

It was agreed the Trust and HSCB should reconsider questions.

Action: HSCB and SHSCT to reconsider lookback questions and agree final methodology.

Preparations for extending the Urology Review

16. The group noted there is no intention to extend the lookback at this point in time.
17. Heather informed the group that the Royal College of Surgeons are continuing to look at 100 patient records, this exercise will inform any extension.

Public Inquiry

18. The group noted the USI was now live and the evidence gathering process underway. The DoH are currently aligning staff structures to ensure a separation between review staff and inquiry liaison staff. Shane Devlin advised they are trying to mirror this structure within the Trust with a separate team for the Inquiry, Lookback and Improvements.

19. The group agreed as the Inquiry is now live, it should be removed as an agenda item from the UAG meetings.

Action: Public Inquiry to be removed as agenda item

Communications

20. No communication issues.

Any other business

21. The Trust noted the use of the SJR process for aspects not falling under SAI was non-routine practice, and suggested quality assurance of its use would be appropriate.

Action: Jim Wilkinson to discuss with the Permanent Secretary to request RQIA quality assure the Trust SJR process.

Date of next meeting

22. The next UAG meeting will be held mid December. Date to be confirmed in due course.

Action Log

Action	Date of Meeting	Owner	Actioned
DoH to confirm terminology with USI team.	1/11/2021	DoH (Robbie Davis)	
SHSCT to contact all patients involved in the lookback.	1/11/2021	Southern Trust	
HSCB and SHSCT to reconsider lookback questions and agree final methodology.	1/11/2021	HSCB / Southern Trust	
Public Inquiry to be removed as agenda item.	1/11/2021	DoH	
Jim Wilkinson to ask the Permanent Secretary to request RQIA quality assure the Trust SJR process.	1/11/2021	DoH (Jim Wilkinson)	
To continue to engage with RQIA regarding possible assistance in gaining accessing Mr O'Brien's Private patients.	6/9/2021	Southern Trust (Shane Devlin / Stephen Wallace)	Ongoing – DoH issued paper to DSO November 2021

To liaise further with DLS, to provide clarity on presentational concerns and to ensure that the letter to Mr O'Brien issues in early course.	6/9/2021	Southern Trust	Closed
To meet with HSCB and the Trust to agree urology recall/lookback review terminology and revise future UAG agenda items accordingly.	6/9/2021	DoH (Robbie Davis)	Completed
To prepare a paper to present Urology Outcomes Report options for UAG consideration at the next meeting.	6/9/2021	Paul Cavanagh	Completed
To liaise with Christine Smith to discuss issuing a communique to SHSCT staff on the USI Terms of Reference.	6/9/2021	DoH (Jim Wilkinson and Robbie Davis)	Ongoing
To approach Belfast and Western Trusts to accept the repatriation of Urology patients as a formal request from the Urology Assurance Group.	18/6/2021	Southern Trust	Completed

To consider Outcomes Report learnings.	18/6/2021	DoH (Michael O'Neill) and Paul Cavanagh (HSCB)	Ongoing
Outcomes Report to become standing agenda item.	18/6/2021	DoH	Completed
To amend UAG agenda to reflect changes agreed.	18/6/2021	DoH	Completed
To consider other relevant reports (NI Audit Office, Patterson Inquiry Report and RQIA Report) in conjunction with the SAI recommendations.	14/5/2021	DoH (Michael O'Neill/Anne-Marie Bovill) and Southern Trust (Shane Devlin)	Ongoing
To explore if GDPR exemptions can be applied in order to gain direct access to Mr O'Brien's private patients.	14/5/2021	Southern Trust (Shane Devlin)	Ongoing
To consider the letters of apology being issued to SAI families and the potential for further wider media communications with private patients and GPs.	14/5/2021	DoH (David Gordon) and Southern Trust (Shane Devlin)	Ongoing

To provide an outline of the overarching themes within the draft Inquiry ToR.	14/5/2021	DoH (Michael O'Neill) and Southern Trust (Shane Devlin)	Completed
To consider the Patient Review form going forward and retrospectively to ensure a comprehensive and consistent review.	16/4/2021	Southern Trust (Melanie / Maria)	Ongoing
To consider the MDM issues raised at a system level and on a Trust wide basis.	16/4/2021	HSCB (Paul Cavanagh / Sharon Gallagher)	Ongoing
To establish a suitable date for Trust staff engagement meeting with Mr Pengelly and Dr McBride.	16/4/2021	Southern Trust (Shane Devlin)	Ongoing
Prepare the Trust to support and service a full Public Inquiry in adherence to the Inquiry Rules 2006.	19/3/2021	Southern Trust (Shane Devlin)	Ongoing

UROLOGY ASSURANCE GROUP (UAG)**Wednesday 23rd February at 3.00pm, by Zoom****Minutes**

FOI Implications: May not be disclosed Section 22 Information intended for future publication, Section 33 audit functions, Section 35 formulation of Government policy refers.

Richard Pengelly, DoH (Chair)	Maria O’Kane, Southern Trust
Jim Wilkinson, DoH	Melanie McClements, Southern Trust
Sharon Gallagher, DoH	Martina Corrigan, Southern Trust
Robbie Davis, DoH	Damian Gormley, Southern Trust
Ryan Wilson, DoH	Jane McKimm, Southern Trust
Anne-Marie Bovill, DoH	Paul Cavanagh, HSCB
Paula Ferguson, DoH	Sophie Lusby, HSCB

Apologies: Lourda Geoghegan, DoH, Michael McBride, DoH, David Gordon, DoH, Brid Farrell, PHA, Stephen Wallace, Southern Trust, Shane Devlin, Southern Trust
Aidan Dawson, PHA

Welcome and apologies

1. The group was welcomed and apologies noted.

Minutes of previous meeting

2. The draft minutes of the previous meeting were agreed.

Actions from previous meeting

3. Any actions arising from the previous meeting were addressed during the course of the meeting.

Trust Update (Southern Trust)

4. The update report provided by the Southern Trust and circulated to UAG members prior to the meeting was noted by the group. This paper included a

summary of progress relating to the Patient Record Scoping Exercise, SAls, Structured Clinical Record Reviews and Private Sector issues. The following matters were discussed by the group:

Structured Clinical Record Review (SCRR)

5. The group noted the SCRR progress with 77 cases identified as meeting the SCRR threshold with 57 letters issued to patients. It is expected this number will rise in the coming weeks. The group discussed the purpose of the SCRR process against the learning identified to date, the role of the USI and the resource required going forward.
6. The group agreed the process should pause at this stage (77 cases) and a summary paper produced. The paper should include learnings to date, positives and negatives for continuing the process beyond the 77 cases and a recommendation for the group. The group will consider the report and options at the next meeting.

Action: Southern Trust to arrange meeting with Paul Cavanagh, Brid Farrell and Lourda Geoghegan to assess the SCRR process and learnings to date.

Action: Southern Trust to produce a paper on the SCRR process and next steps for consideration at the next UAG meeting.

USI

7. Melanie McClements advised that the Trust continues to work with the Urology Service Inquiry Team (USI) on providing evidence. The group noted the Trust concerns regarding staff resources required to service the Inquiry and the impact this may have on patient facing services and practices.

Lookback Review

8. Melanie advised the total number of patients now stands at 2112, to date 2085 patients have received a letter outlining the review of their care. The group

noted a delay in some review appointments and the Trust has a plan in place for all to be seen by early April.

9. The group noted an increase in activity on the patient helpline as a result of letters being issued.

SAI

10. The group noted the SAI recommendations action plan and Melanie outlined the active progress on implementation of the SAI recommendations.
11. The group noted that the Southern Trust SAI report had a recommendation on Multi Disciplinary meetings which the Trust is progressing. Paul Cavanagh advised that other Trusts have been asked to take this same action within their own areas and this work is also progressing.

Private Practice

12. The paper outlining possible options to address the concerns relating to Mr O'Brien's private patients was noted by the group. The group agreed that the concerns relating to private patients should be explored further with the GMC.

Action: Southern Trust (Maria O'Kane) to liaise with the Chief Executive of the GMC Northern Ireland to discuss the concerns regarding Mr O'Brien's private practice further.

Action: DoH to consider options for a formal request to the GMC along with a public Ministerial statement regarding Mr O'Brien's private practice.

Urology Lookback Outcomes Report

13. Paul Cavanagh advised the group the Outcomes Report will be developed after the conclusion of the current lookback review.
14. The group noted that the proposed report structure had been reconsidered following feedback from previous UAG meeting and a similar approach to the

Neurology Outcomes Reports is now suggested. The group were advised that an early draft report should be available for consideration in May 2022.

Preparations for extending the Urology Review

15. The group agreed that the preparations for extending the urology lookback review will be determined when collating the outcomes from the current lookback review period. It was highlighted that if the Trust felt there was merit in considering this at an earlier point, the group would be content to consider this.

Communications

16. No communication issues.

Any other business

17. Melanie informed the group that a number of patients had received inaccurate correspondence and confirmed that the Trust are in the process of addressing this through a written apology along with the appropriate corrections, to those involved.

Date of next meeting

18. Date of next meeting to be confirmed in due course.

Action Log

Action	Date of Meeting	Owner	Actioned
Trust to arrange meeting with Paul Cavanagh, Brid Farrell and Lourda Geoghegan to assess the SCRR process and learnings to date	23/2/2022	Southern Trust	
Trust to produce summary report on the SCRR process, including learnings to date and recommendations for continuing the process;	23/2/2022	Southern Trust	
Maria O'Kane to liaise with the Chief Executive of the GMC Northern Ireland to discuss the concerns regarding Mr O'Brien's private practice further.	23/2/2022	Maria O'Kane	
DoH to engage with the Minister to explore a formal request to the GMC along with a public statement regarding Mr O'Brien's private practice.	23/2/2022	DoH	
DoH to confirm terminology with USI team.	1/11/2021	DoH (Robbie Davis)	Closed

SHSCT to contact all patients involved in the lookback.	1/11/2021	Southern Trust	Ongoing
HSCB and SHSCT to reconsider lookback questions and agree final methodology.	1/11/2021	HSCB / Southern Trust	Closed
Public Inquiry to be removed as agenda item.	1/11/2021	DoH	Closed
Jim Wilkinson to ask the Permanent Secretary to request RQIA quality assure the Trust SJR process.	1/11/2021	DoH (Jim Wilkinson)	Ongoing
To continue to engage with RQIA regarding possible assistance in gaining accessing Mr O'Brien's Private patients.	6/9/2021	Southern Trust (Shane Devlin / Stephen Wallace)	Ongoing – DoH issued paper to DSO November 2021
To liaise further with DLS, to provide clarity on presentational concerns and to ensure that the letter to Mr O'Brien issues in early course.	6/9/2021	Southern Trust	Completed
To meet with HSCB and the Trust to agree urology recall/lookback review terminology and revise future UAG agenda items accordingly.	6/9/2021	DoH (Robbie Davis)	Completed

To prepare a paper to present Urology Outcomes Report options for UAG consideration at the next meeting.	6/9/2021	Paul Cavanagh	Completed
To liaise with Christine Smith to discuss issuing a communique to SHSCT staff on the USI Terms of Reference.	6/9/2021	DoH (Jim Wilkinson and Robbie Davis)	Ongoing
To approach Belfast and Western Trusts to accept the repatriation of Urology patients as a formal request from the Urology Assurance Group.	18/6/2021	Southern Trust	Completed
To consider Outcomes Report learnings.	18/6/2021	DoH (Michael O'Neill) and Paul Cavanagh (HSCB)	Completed
Outcomes Report to become standing agenda item.	18/6/2021	DoH	Completed
To amend UAG agenda to reflect changes agreed.	18/6/2021	DoH	Completed
To consider other relevant reports (NI Audit Office, Patterson Inquiry Report and RQIA Report) in conjunction with the SAI recommendations.	14/5/2021	DoH (Michael O'Neill/Ane-Marie Bovill)	Ongoing

		and Southern Trust (Shane Devlin)	
To explore if GDPR exemptions can be applied in order to gain direct access to Mr O'Brien's private patients.	14/5/2021	Southern Trust (Shane Devlin)	Ongoing
To consider the letters of apology being issued to SAI families and the potential for further wider media communications with private patients and GPs.	14/5/2021	DoH (David Gordon) and Southern Trust (Shane Devlin)	Ongoing
To provide an outline of the overarching themes within the draft Inquiry ToR.	14/5/2021	DoH (Michael O'Neill) and Southern Trust (Shane Devlin)	Completed
To consider the Patient Review form going forward and retrospectively to ensure a comprehensive and consistent review.	16/4/2021	Southern Trust (Melanie / Maria)	Completed
To consider the MDM issues raised at a system level and on a Trust wide basis.	16/4/2021	HSCB (Paul Cavanagh / Sharon Gallagher)	Ongoing
To establish a suitable date for Trust staff engagement meeting with Mr Pengelly and Dr McBride.	16/4/2021	Southern Trust (Shane Devlin)	Ongoing

Prepare the Trust to support and service a full Public Inquiry in adherence to the Inquiry Rules 2006.	19/3/2021	Southern Trust (Shane Devlin)	Completed

UROLOGY ASSURANCE GROUP (UAG)**Wednesday 23rd May 2022 at 11.00am, by Zoom****Draft Minutes**

FOI Implications: May not be disclosed Section 22 Information intended for future publication, Section 33 audit functions, Section 35 formulation of Government policy refers.

Jim Wilkinson, DoH (Chair)	Maria O’Kane, Southern Trust
Robbie Davis, DoH	Melanie McClements, Southern Trust
Ryan Wilson, DoH	Margaret O’Hagan, Southern Trust
Paula Ferguson, DoH	Damian Gormley, Southern Trust
Sharon Gallagher, SPGG	Jane McKimm, Southern Trust
Sophie Lusby, SPGG	Martina Corrigan, Southern Trust
Aidan Dawson, PHA	Brid Farrell, PHA

Apologies: Peter May (DoH), Michael McBride (DoH), Lourda Geoghegan (DoH), David Gordon (DoH), Anne-Marie Bovill (DoH), Stephen Wallace (Southern Trust), Paul Cavanagh (SPGG)

Welcome and apologies

1. The group was welcomed and apologies noted.

Minutes of previous meeting

2. The draft minutes of the previous meeting were agreed.

Actions from previous meeting

3. Any actions arising from the previous meeting were addressed during the course of the meeting.

Terms of Reference

4. The revised Urology Assurance Group (UAG) Terms of Reference, circulated in advance of the meeting, were agreed by the group.

Trust Update (Southern Trust)

5. Melanie McClements apologised the Trust update report had not been available prior to the meeting and advised it would be circulated after the meeting.
Melanie provided the group with a verbal update and the following matters were discussed by the group:

USI

6. The Group noted evidence gathering for the Urology Services Inquiry is continuing. The Trust advised, as at May 18th 2022, there are 46 active individual S21 notices requiring response. The Trust highlighted the importance of the notices and confirmed they are liaising with DLS in response to USI requests. Melanie advised that the Trust are actively looking for additional resources in order address resource issues.

SAI Recommendations

7. Melanie advised the Trust continue to meet monthly with service users to work through the SAI recommendations. The group noted a targeted project in relation to Recommendation 1 (the SHSCT must provide high quality urological cancer care for patients) has commenced. A questionnaire has been developed, with input from service users, to focus on post diagnosis clinic experience, an area service users felt needed improved. The aim is to have a questionnaire for the relative/supportive person to compliment the patient feedback and allow the Trust to review experience for all involved. The Trust intends to roll out the questionnaire to other cancer services following this pilot.
8. Melanie confirmed the Task & Finish group to review the SAI recommendations continues to meet on a monthly basis. It was noted the Trust is in the process of appointing a Cancer Information and Audit Officer to support the auditing of MDTs as an action coming out of the SAI recommendations.
9. The group noted of the 11 SAI recommendations, 7 have been categorised “completed” and 4 have been categorised “actioned, nearing completion”.

Lookback Review

10. Melanie confirmed the current cohort stands at 2,112 patients and outlined that originally the review consisted of 4 questions, however on reflection it was felt that the previously suggested 10 questions, to include historic care was more appropriate. The group noted that a total of 1,605 patients have had the 10 question review. 124 patients have had the 4 question review and these patients will now be reviewed against the 10 question review. Melanie advised this is due for completion by the end of May 2022.
11. Melanie confirmed of the 503 patients identified as requiring face to face reviews, 41 patients remain to be seen.

Structured Clinical Record Review (SCRR)

12. Melanie advised 77 records were previously identified as requiring an SCRR. An internal screening process has now confirmed that 22 records do not require a SCRR, 2 remain under consideration and 53 patients have been confirmed as requiring an SCRR.
13. The Proposal for SCRR and SCRR Progression to date papers provided by the Southern Trust and circulated to UAG members prior to the meeting were noted by the group. Maria O’Kane advised the Trust requested that the RQIA undertake a review of the SCRR process to provide quality assurance and recommendations for any improvements. This review commenced in May 2022 and has a target completion date for late June / early July 2022. Maria advised the number of SCRRs could potentially increase to 100.
14. The group discussed the options for the continuation of the SCRR process:
 - Option 1 - Continue with current SCRR Process by utilising in-house Trust expertise;
 - Option 2 – Continue with current SCRR Process with British Association of Urology Surgeons (BAUS) identified Subject Matter Expert’s;
 - Option 3 – Continue with current SCRR Process with support from an Independent Sector Provider; and

- Option 4 – Pause the current SCRR Process at the existing number of identified cases, with no further action.

The group agreed with the Urology SPPG Oversight Group to discount Option 1 due to the impact on the delivery of core patient facing services. The group also discounted Option 4, as it was agreed that there is a duty of care to patients and an expectation that a SCRR process will be completed. The group agreed the two viable options were Option 2 and Option 3. The Trust will explore both of these options further and provide an update at the next UAG meeting.

Action: Southern Trust agreed to explore Option 2 and Option 3 further and provide an update at the next meeting.

Preparations for extending the Urology Review

15. Jim Wilkinson updated the group on recent concerns raised by the Chair of the USI to the Minister, which included need for a further lookback review period. Maria confirmed that initial thoughts were for the 18 months with the potential to extend to 5 years and highlighted the potential that some patients within the extended timeframes, may have been assessed in the current lookback review cohort.
16. The group noted the Trusts considerations for extending the lookback and agreed a paper is required to be presented at the next UAG meeting for consideration.

Action: Southern Trust agreed to prepare a proposal paper for extending the lookback review period, for consideration by UAG at next meeting.

Urology Lookback Outcomes Report

17. Melanie advised the Trust is working with SPGG on developing the lookback Review Outcomes Report, following a similar approach to the Neurology Recall Reports, with an initial draft to be submitted to SPGG early June 2022. The group noted the Trust is responsible for the production of the report, with SPGG

providing quality assurance and UAG providing final sign off, prior to publication.

18. Jim highlighted the importance that the report demonstrates the work completed by the Trust and lesson learned, to ensure public confidence in the process completed.

Private Patients

19. The group discussed the options paper to address the difficulty in accessing private patient records, provided by the DoH and circulated to UAG members prior to the meeting. The group discussed the options and the following noted:

- Primary care – Margaret O'Hagan suggested an option would be to reach out through GPs. [REDACTED]
[REDACTED]
- Option 1 – no further action – the group agreed this is not a viable option;
- Option 2 - The Trust to write to Mr O'Brien's legal representative – [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];
- The group agreed Options 5, 6 and 7 will be considered following the outcome of Option 2;

Action: Southern Trust agreed to action Option 2, (to write to Mr O'Brien's legal representative to seek agreement to access private patients records.)

Communications

20. Jim referred to the recent letter from Christine Smith, Chair of the USI, to the Minister raising concerns in relation to the Urology Lookback Review and patient safety issues. The group noted the Department is considering the concerns raised and how these issues will be addressed moving forward.

Any other business

21. No other business was raised by the group.

Date of next meeting

22. The group agreed the next meeting should be arranged by the end June 2022 and a date will be confirmed in due course.

Action Log

Action	Date of Meeting	Owner	Actioned
Trust to prepare proposal paper for extending the lookback for consideration by UAG at next meeting.	23/5/2022	Southern Trust	
Trust to write to Mr O'Briens legal representative to seeks agreement to access his private patients records.	23/5/2022	Southern Trust	
Trust to arrange meeting with Paul Cavanagh, Brid Farrell and Lourda Geoghegan to assess the SCRR process and learnings to date	23/2/2022	Southern Trust	Closed
Trust to produce summary report on the SCRR process, including learnings to date and recommendations for continuing the process;	23/2/2022	Southern Trust	Completed
Maria O'Kane to liaise with the Chief Executive of the GMC Northern Ireland to discuss the	23/2/2022	Maria O'Kane	Completed

concerns regarding Mr O'Brien's private practice further.			
DoH to engage with the Minister to explore a formal request to the GMC along with a public statement regarding Mr O'Brien's private practice.	23/2/2022	DoH	Closed
DoH to confirm terminology with USI team.	1/11/2021	DoH (Robbie Davis)	Completed
SHSCT to contact all patients involved in the lookback.	1/11/2021	Southern Trust	Ongoing
HSCB and SHSCT to reconsider lookback questions and agree final methodology.	1/11/2021	HSCB / Southern Trust	Completed
Public Inquiry to be removed as agenda item.	1/11/2021	DoH	Completed
Jim Wilkinson to ask the Permanent Secretary to request RQIA quality assure the Trust SJR process.	1/11/2021	DoH (Jim Wilkinson)	Ongoing
To continue to engage with RQIA regarding possible assistance in gaining accessing Mr O'Brien's Private patients.	6/9/2021	Southern Trust (Shane Devlin / Stephen Wallace)	Ongoing – DoH issued paper to DSO November 2021

To liaise further with DLS, to provide clarity on presentational concerns and to ensure that the letter to Mr O'Brien issues in early course.	6/9/2021	Southern Trust	Completed
To meet with HSCB and the Trust to agree urology recall/lookback review terminology and revise future UAG agenda items accordingly.	6/9/2021	DoH (Robbie Davis)	Completed
To prepare a paper to present Urology Outcomes Report options for UAG consideration at the next meeting.	6/9/2021	Paul Cavanagh	Completed
To liaise with Christine Smith to discuss issuing a communique to SHSCT staff on the USI Terms of Reference.	6/9/2021	DoH (Jim Wilkinson and Robbie Davis)	Ongoing
To approach Belfast and Western Trusts to accept the repatriation of Urology patients as a formal request from the Urology Assurance Group.	18/6/2021	Southern Trust	Completed
To consider Outcomes Report learnings.	18/6/2021	DoH (Michael O'Neill) and Paul Cavanagh (HSCB)	Completed

Outcomes Report to become standing agenda item.	18/6/2021	DoH	Completed
To amend UAG agenda to reflect changes agreed.	18/6/2021	DoH	Completed
To consider other relevant reports (NI Audit Office, Patterson Inquiry Report and RQIA Report) in conjunction with the SAI recommendations.	14/5/2021	DoH (Michael O'Neill/Anne-Marie Bovill) and Southern Trust (Shane Devlin)	Ongoing
To explore if GDPR exemptions can be applied in order to gain direct access to Mr O'Brien's private patients.	14/5/2021	Southern Trust (Shane Devlin)	Ongoing
To consider the letters of apology being issued to SAI families and the potential for further wider media communications with private patients and GPs.	14/5/2021	DoH (David Gordon) and Southern Trust (Shane Devlin)	Ongoing
To provide an outline of the overarching themes within the draft Inquiry ToR.	14/5/2021	DoH (Michael O'Neill) and Southern Trust (Shane Devlin)	Completed

To consider the Patient Review form going forward and retrospectively to ensure a comprehensive and consistent review.	16/4/2021	Southern Trust (Melanie / Maria)	Completed
To consider the MDM issues raised at a system level and on a Trust wide basis.	16/4/2021	HSCB (Paul Cavanagh / Sharon Gallagher)	Ongoing
To establish a suitable date for Trust staff engagement meeting with Mr Pengelly and Dr McBride.	16/4/2021	Southern Trust (Shane Devlin)	Ongoing
Prepare the Trust to support and service a full Public Inquiry in adherence to the Inquiry Rules 2006.	19/3/2021	Southern Trust (Shane Devlin)	Completed

UROLOGY ASSURANCE GROUP TERMS OF REFERENCE

Background

The Department received a confidential Early Alert (EA 182/20) from the Southern Health and Social Care Trust on 31 July 2020 regarding potential safety concerns that were initially raised on 7 June 2020 about a consultant urologist who retired at the end of June 2020.

The Trust took a number of initial actions relating to these concerns, including restricting the consultant's clinical practice and access to patient information, notifying the GMC and discussing the matters with the Royal College of Surgeons Invited Review Service to understand the scope and scale of any further independent review.

In order to fully define the areas for concern and quantify the number of patients potentially impacted, the Trust has undertaken an internal scoping exercise of all patients who were under the care of the consultant, initially for an 18 month period. This involves a review of all case notes to identify those which provide any cause for concern.

From 10 September 2020, officials from the Department, SPPG and PHA participated in weekly progress update calls with the Trust. Upon request a report was provided to the Department on 15 October 2020 summarising the current position, including the quantity of patient case notes that need to be reviewed and progress so far, confirmed SAls to date, and advising of additional patient safety concerns identified in the course of this exercise.

Objectives

In light of the concerns identified the Permanent Secretary led Urology Assurance Group (UAG) will provide external oversight of the various work streams arising from the ongoing scoping exercise Trust. Specifically the Group will:

- review the progress of the initial scoping exercise;
- consider emerging strategic issues;
- commission and direct further work as necessary;
- monitor the impact on urology and related services;
- ensure coordination with other associated reviews / investigations; and
- oversee communication across all stakeholder groups.

The UAG will receive updates from the Southern Urology Oversight Steering Group as appropriate. The Steering Group will continue to review the findings of the initial lookback exercise and scope the potential need for a further lookback exercise.

Membership

The UAG will be chaired by the Permanent Secretary. Membership will include:

- Chief Medical Officer, DoH
- Deputy Secretary Strategic Planning and Performance Group, DoH
- Deputy Secretary Healthcare Policy Group, DoH
- Chief Executive, PHA

- Director of Commissioning, Strategic Planning and Performance Group, DoH
- Assistant Director of Service Development, Safety and Quality, PHA
- Chief Executive, Southern Trust
- Medical Director, Southern Trust
- Director Acute Services, Southern Trust
- Deputy Chief Medical Officer, DoH
- Director of Communications, DoH
- Director of Secondary Care, DoH
- Director of General Healthcare Policy, DoH,
- Head of General Healthcare Review, DoH

Support

Secretariat will be provided by General Healthcare Policy Directorate and meetings will be held every 4-6 weeks, or at longer intervals as determined by the Chair.

Ministerial Statement

Urology: Southern Health and Social Care Trust

Mr Speaker: I have received notice from the Minister of Health that he wishes to make a statement. Before I call the Minister, I remind Members that, in light of social distancing being observed by the parties, the Speaker's ruling that Members must be in the Chamber to hear a statement if they wish to ask a question has been relaxed. Members still have to make sure that their name is on the speaking list if they wish to be called, but they can do this by rising in their places as well as notifying the Business Office or the Speaker's Table directly. I remind Members to be concise in asking their questions. This is not a debate per se, and long introductions should not be entered into.

Mr Swann (The Minister of Health): Mr Speaker, it is with deep regret that I inform the House of a further occurrence of serious concerns about the clinical practice of a hospital consultant notified to my Department by one of our health and social care trusts. The incident concerns the clinical practice of a urology consultant, Mr Aidan O'Brien, who retired from the Southern Trust earlier this year.

On 31 July 2020, the Southern Trust contacted my Department to report an early alert concerning the clinical practice of the consultant. The trust informed my Department that, on 7 June, it became aware of potential concerns regarding delays in the treatment of surgery patients who were under the care of the consultant urologist employed by the trust. The trust became aware that two out of 10 patients listed for surgery under the care of the consultant were not on the hospital's patient administration system at that time. As a result of those potential patient safety concerns, an initial look-back exercise in relation to the consultant's work was conducted to ascertain whether there were other areas of potential concern.

The initial look back, which considered cases over an 18-month period of the consultant's work in the Southern Trust from 1 January 2019 to 30 June 2020, concentrated on whether patients had had a stent inserted during a particular procedure and if the stent had been removed within the clinically recommended time frame. The initial look back identified concerns with 46 cases out of a total of 147 patients who had the procedure and were listed as being under the care of the consultant during the period addressed by the initial look-back exercise.

When my Department was contacted on 31 July, the trust confirmed that the following actions had already been taken: discussions with the GMC's employer liaison service had been conducted; the case had been discussed with NHS Resolution, which recommended restrictions of clinical practice; restrictions were put in place by the trust preventing the consultant from undertaking clinical work in the trust and denying him the access or ability to process patient information; the trust requested that the consultant voluntarily undertake to refrain from seeing any private patients at their home or any other setting and that he confirm the same in writing; and a preliminary discussion was undertaken with the Royal College of Surgeons' invited review service regarding the consultant's practice and the potential scope and scale of any further look-back exercise that may be required.

The trust also established a review group to assess the further findings of the initial look-back exercise and to explore the potential need for a further look-back exercise in the context of the

emerging concerns. That group has been working diligently since August, and I am now in a position to inform the Assembly of its most recent findings. Whilst Mr O'Brien has worked in the Southern Trust for 28 years, in consultation with the Royal College of Surgeons, the review group has looked at the time frame from 1 January 2019 until 30 June 2020. During that time, 2,327 patients were under his care. The review group identified the most vulnerable group of urology patients in that cohort and concentrated on those patients initially.

There are areas of concern relating to elective and emergency activity; radiology, pathology and cytology results; patients whose cases were considered in multidisciplinary team meetings; oncology; and the safe prescribing of an anti-androgen drug outside established NICE guidance in the management of prostate cancer. Across those areas, to date, 1,159 patients' records have been reviewed, and 271 patients or families have been contacted by the trust. The group's work continues across those areas of concern. Further details of the various review strands are appended to the statement.

So far, nine cases have been identified that meet the threshold for a serious adverse incident (SAI) review, and all nine patients and/or their families have been contacted by the trust to inform them of the position of their respective cases. A further six cases are being reviewed in more detail to establish whether those patients have come to harm.

The consultant also had a significant amount of private practice. Much of that was carried out in private domestic premises and, therefore, sat outside the regulatory framework that requires the registration and external assurance of facilities in the independent sector in which clinicians may undertake private practice. That is also of significant concern to me, as many of those patients may be unknown to the Southern Trust or the wider Health and Social Care (HSC) system.

Following a recent media report about the developing situation, the trust has issued a statement and has advised patients that, if they are concerned about aspects of their urology care and require further advice, they should contact the Southern Trust by email or through its urology information phone line. That information line is available from Monday to Friday between 10.00 am and 3.00 pm, and the number is 0800 4148520.

I am sure that the House will agree that the issues identified by the trust's review group are of the gravest concern. The impact of the concerns will be felt most severely by the patients and families affected, and, unfortunately, we are only at the start of what is likely to become a long and detailed investigation of the matter. As Health Minister, I want first to unreservedly apologise to the patients and their families for any upset and distress that has been caused. I wish to reassure them that I will endeavour to ensure that they obtain appropriate treatment and support and the care that they need over the coming weeks and months.

I propose to take a number of actions to uncover how the situation developed over a number of years without any apparent action being taken by the trust to deal with the practice of the consultant before now. I need to determine quickly whether a further look-back exercise is required that might necessitate a significant review and recall of a larger group of patients, other than those identified to date, who require a review of their clinical care and treatment. In addition to that, given the large number of cases that have been identified as meeting the threshold for an SAI review, particular action will be required to ensure that matters relating to those patients and their care and treatment are dealt with in an effective and timely way.

I have therefore taken the following actions. First, I have established a urology assurance group, chaired by the permanent secretary of my Department, to provide external oversight of the various work streams arising from the initial look-back exercise initiated by the Southern Trust. Specifically, that group will review the progress of the initial look-back exercise; consider emerging strategic issues; commission and direct further work as necessary; monitor the impact on urology and related services in the Southern Trust; ensure coordination with other associated reviews or investigations; and oversee communication across all stakeholder groups, with patient care being the central focus throughout. I have published the terms of reference for the group alongside the statement. Secondly, the Royal College of Surgeons has been commissioned to carry out an independent review of a sample of the clinical cases included in the initial look-back exercise to determine whether a further, more extensive look-back or patient recall by the trust is required. Thirdly, in relation to the consultant's private patients who are not known to the Southern Trust, I have requested that Mr O'Brien's solicitors outline how he intends to provide a similar independent process to ensure that those private patients are alerted to issues arising and that their immediate healthcare needs are being met. While the Department has no explicit duty to take this particular matter forward, as part of our wider healthcare responsibilities, I want to do all that I can to safeguard patients who may have received care or treatment in a private capacity from the consultant.

The remaining issues to be addressed relate to the management of all past, present and future cases that would meet the threshold for an SAI review, as well as establishing why this happened and whether action could have been taken by the Southern Trust to identify and address the apparent deficiencies in the consultant's clinical practice. Given the large number of cases already identified as meeting the threshold for an SAI review and my concerns that there may be more to come, a different and specific approach is required. The fourth action, therefore, that I intend to take is to establish a statutory public inquiry under the Inquiries Act 2005. I believe that that is the best way to ensure that the full extent of the concerns is identified and for the patients and families affected to see that those and all relevant issues are pursued in a transparent and independent way. My officials are preparing the way to get the inquiry up and running as soon as possible. That will take some time, and I would expect that the respective families and patients will have the opportunity to influence the inquiry's terms of reference. I must also be mindful of the statutory duties placed on me to discuss the issues with the appointed chair in advance of establishing the inquiry. Further details will be provided in that regard when they are available.

Inevitably, this type of work leads to a range of statistics relating to patient numbers, records reviewed, patient contacts and so on. Members will know that, behind every statistic, there is a patient, a family and their story and experience. These types of exercise can cause upset, distress and anxiety.

A significant element in all this work, therefore, will be to communicate with and support patients and their families as much as possible in the coming weeks and months. To help with that, the Southern Trust is developing a patient support package to include any counselling and psychological support that is needed, alongside the provision of family liaison and related support services.

10.45 am

Members will be all too aware that these significant concerns come hard on the heels of the recall of neurology patients by the Belfast Trust, and I am sure that Members will be keen to see the outcomes

of that inquiry in due course. I recently met patients and families affected by the neurology recall and reiterated my apology to them for how they had been let down by the Health and Social Care system. To address those cases, as Members will know, an independent inquiry was initiated by the Department. That inquiry was established in the absence of Ministers, when it was not possible to constitute the inquiry under the Inquiries Act. To date, the work of that independent inquiry has been largely unaffected by that non-statutory approach, and I take the opportunity to thank Brett Lockhart QC and his team for their immense efforts in recent months. However, to ensure that, in the closing stages of the neurology inquiry, Mr Lockhart and his team have timely and unfettered access to all relevant information, I also announce that I intend to convert the Independent Neurology Inquiry to a statutory public inquiry under the Inquiries Act 2005. It is important to note that the inquiry team is at a very advanced stage of its evidence-gathering process, and I want to be clear that I do not intend this decision to add to or alter the work or timescales of the neurology inquiry team, nor do I expect to see changes in the way that evidence has been gathered or public access has been provided. That would not be in the interests of the patients and families affected. They have already waited too long for answers. My officials will be in contact with Mr Lockhart as soon as possible to ensure that the transition is as seamless as it can be.

The emerging situation in the Southern Trust causes me and my Department the gravest of concerns. While I remain convinced that the experience of patients who use our health service is overwhelmingly that of a safe and quality service, these incidents, regrettably, dent the confidence of service users. I fully acknowledge that, and I will do all that I can to ensure that lessons are learned to prevent situations such as these occurring again. I trust that Members will agree that what I have announced today constitutes robust and timely action in a deeply concerning situation. I commend my statement to the Assembly.



Department of

**Health, Social Services
and Public Safety**

An Roinn

**Sláinte, Seirbhísí Sóisialta
agus Sábháilteachta Poiblí**

www.dhsspsni.gov.uk

Room D.1
Castle Buildings,
Stormont Estate,
BELFAST BT4 3SR

Tel: Personal Information redacted by the
USI

Fax: redacted by the USI

eMail: redacted by the USI

HUMAN RESOURCES DIRECTORATE PAY AND EMPLOYMENT UNIT

Chief Executive of each HSS Board, HSS Trust and Special Agency

For information:

Director of Human Resources;
Director of Medical Services,
Director of Public Health,
Director of Dental Services,
of each body

British Medical Association
British Dental Association
NI Medical & Dental Training Agency
NI Regulation & Improvement Authority

Circular HSS(TC8) 6/2005

Our Reference: **BP 117/04**

30 November 2005

Dear Colleague

Maintaining High Professional Standards in the Modern HPSS - A framework for the handling of concerns about doctors and dentists employed in the HPSS

1. The Directions on Disciplinary Procedures 2005 direct HPSS organisations to comply with the framework contained within the attached document *"Maintaining High Professional Standards in the Modern HPSS"*. This document introduces a new framework for handling concerns about the conduct, clinical performance and health of medical and dental employees. The new framework is effective from 1 December 2005.
2. As an aid to employing organisations, the document includes two flow charts outlining the main points of both the informal and formal processes described in the framework.
3. HSS Trusts, HSS Boards and Special Agencies are required to notify the Department of the action they have taken to comply with the framework by 31 January 2006.
4. The framework has been agreed with the BMA and BDA.

5. The new disciplinary framework will replace the following guidance:
- HSS (TC8) 3/75 Disciplinary Proceedings in cases relating to hospital medical and dental staff (currently only applies to salaried primary care dental staff);
 - HSS (TC8) 1/84 Health Services Management: Prevention of harm to patients resulting from physical or mental disability of hospital or community medical or dental staff;
 - HSS (TC8) 15/91 Disciplinary Procedures for Hospital and Community Medical and Dental Staff, including the right of certain consultants to appeal to the Department under "Paragraph 190" of the HPSS Terms & Conditions of Service;
 - HSS (TC8) 3/95 Disciplinary Procedures for Hospital and Community Medical and Hospital Dental Staff - Suspensions.

Further Copies

6. Copies of this circular and framework can be obtained from the Department's website at <http://extranet/dhsspsni.gov.uk>.

Enquiries

7. Employees should direct enquiries to their employers. Any enquiries that cannot be resolved locally should be directed to Pay and Employment Unit or by e-mail to Irrelevant information redacted by the USI

Yours faithfully

Personal Information redacted by the USI

ALAN PRESTON
Deputy Director

**THE HEALTH AND PERSONAL SOCIAL SERVICES
(NORTHERN IRELAND) ORDER 1972**

**THE HEALTH AND PERSONAL SOCIAL SERVICES
(SPECIAL AGENCIES) (NORTHERN IRELAND) ORDER 1990**

**THE HEALTH AND PERSONAL SOCIAL SERVICES
(NORTHERN IRELAND) ORDER 1991**

**THE HEALTH AND PERSONAL SOCIAL SERVICES ACT
(NORTHERN IRELAND) 2001**

DIRECTIONS ON DISCIPLINARY PROCEDURES 2005

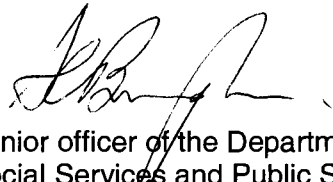
The Department of Health, Social Services and Public Safety^a in exercise of the powers conferred on it by Article 17 of the Health and Personal Social Services (Northern Ireland) Order 1972^b, Article 4(4) of the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990^c, paragraph 6(2) of Part II of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991^d, and of all other powers enabling it in that behalf, hereby directs as follows:

Citation, commencement, application and interpretation

1. -(1) This direction is given to all HSS bodies.
- (2) This direction shall come into force on 1 December 2005.
- (3) This direction shall be referred to as "Directions on Disciplinary Procedures 2005".
- (4) In this direction "HSS body" means:
 - (i) a Health and Social Services Board;
 - (ii) a Health and Social Services Trust;
 - (iii) a Special Agency.

Compliance with Framework

2. - Each HSS body shall comply with "Maintaining High Professional Standards in the Modern HPSS – A framework for the handling of concerns about doctors and dentists employed in the HPSS"- ("the framework") as set out in the schedule and promulgated in Circular HSS(TC8) 6/2005.
3. – Each HSS body shall notify the Department of the action they have taken to comply with the framework by 31 January 2006.


A senior officer of the Department of
Health, Social Services and Public Safety^e
29 November 2005

^a See Article 3(6) of S.I. 1999/283 (N.I. 1)

^b S.I. 1972/1265 (N.I.14)

^c S.I. 1990/247 (N.I.3)

^d S.I. 1991/194 (N.I.1) as amended by section 44(2) of 2001 c.3 (NI)

^e See Article 4(3)(b) of S.I. 1999/283 (N.I. 1)

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*

CONTENTS	<i>Page</i>
INTRODUCTION	1
SECTION I. ACTION WHEN A CONCERN FIRST ARISES	5
Introduction	5
Summary of key actions needed	5
Protecting the public	6
Definition of roles	6
Involvement of NCAS	7
Informal approach	8
Immediate exclusion	9
Formal approach	10
Confidentiality	12
Transitional arrangements	12
SECTION II. RESTRICTION OF PRACTICE & EXCLUSION FROM WORK	13
Introduction	13
Managing the risk to patients	13
The exclusion process	14
<i>Key aspects of exclusion from work</i>	14
<i>Exclusion other than immediate exclusion</i>	15
<i>Exclusion from the premises</i>	16
<i>Keeping in contact and availability for work</i>	17
<i>Informing other organisations</i>	17
<i>Existing suspensions & transitional arrangements</i>	18
Keeping exclusions under review	18
<i>Informing the board of the employer</i>	18
<i>Regular review</i>	18
<i>The role of the Department in monitoring exclusions</i>	20
Return to work	20

SECTION III. GUIDANCE ON CONDUCT HEARINGS AND DISCIPLINARY PROCEDURES	21
Introduction	21
Codes of Conduct	21
Examples of misconduct	22
Allegations of criminal acts	22
<i>Action when investigations identify possible criminal acts</i>	22
<i>Cases where criminal charges are brought not connected with an investigation by an HPSS employer</i>	23
<i>Dropping of charges or no court conviction</i>	23
 SECTION IV. PROCEDURES FOR DEALING WITH ISSUES OF CLINICAL PERFORMANCE	 25
Introduction & general principles	25
<i>How to proceed where conduct & performance issues involved</i>	25
<i>Duties of Employers</i>	26
Hearing procedure	26
<i>The pre-hearing process</i>	26
<i>The hearing framework</i>	27
<i>Representation at clinical performance hearing</i>	28
<i>Conduct of the clinical performance hearing</i>	28
<i>Decisions</i>	29
Appeals procedures in clinical performance cases	31
<i>Introduction</i>	31
<i>The appeal process</i>	31
<i>The appeal panel</i>	32
<i>Powers of the appeal panel</i>	33
<i>Conduct of appeal hearing</i>	33
<i>Decision</i>	34
<i>Action following hearing</i>	34
Annex A- Appeal panels in clinical performance cases	35

SECTION V.	HANDLING CONCERNS ABOUT PERFORMANCE ARISING FROM A PRACTITIONER'S HEALTH	37
	Introduction	37
	Handling health issues	37
	Retaining the services of individuals with health problems	38
	Disability Discrimination Act	38
SECTION VI.	FORMAL PROCEDURES – GENERAL PRINCIPLES	41
	Training	41
	Handling of illness during formal proceedings	41
	Process for smaller organisations	41
	Termination of employment with procedures unfinished	42
	Guidance on agreeing terms for settlement on termination of employment	42
FLOW CHARTS		
	Informal Process	43
	Formal Process	44

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:
 - appraisal¹ 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 Bodies² 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.

¹ 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.

² 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. 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 staff³ 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

³ 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 employer⁴.
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

⁴ 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 Executive⁵. 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.

⁵ 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)	Before the end of each exclusion (of up to 4 weeks) the Case Manager reviews the position. • The Case Manager decides on the next steps as appropriate. Further renewal may be for up to 4 weeks at a time. • Case Manager submits advisory report of outcome to CE and Medical Director. • Each review is a formal matter and must be documented as such. • The practitioner must be sent written notification of the outcome of the review on each occasion.
Third review	If the practitioner has been excluded for three periods: • A report must be made by the Medical Director to the CE: - outlining the reasons for the continued exclusion and why restrictions on practice would not be an appropriate alternative; - and if the investigation has not been completed - a timetable for completion of the investigation. • The CE must report to the Director of Human Resources at the Department, who will involve the CMO if appropriate. • The case must be formally referred back to the NCAS explaining: - why continued exclusion is thought to be appropriate; - what steps are being taken to complete the investigation at the earliest opportunity. • The NCAS will review the case and advise the HSS body on the handling of the case until it is concluded.
6 month review	If the exclusion has been extended over 6 months, • A further position report must be made by the CE to

	the Department indicating: - the reason for continuing the exclusion; - anticipated time scale for completing the process; - actual and anticipated costs of the exclusion. The Department will consider the report and provide advice to the CE if appropriate.

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.⁶
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

⁶ 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 body⁷;

- 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

⁷ 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 question⁸.
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

⁸ 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.⁹ 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;

⁹ 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.¹⁰ 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 Trust¹¹ 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 employer¹²;
 - 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.

¹⁰ See Annex A.

¹¹ 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.

¹² 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)¹³. 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

¹³ 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.

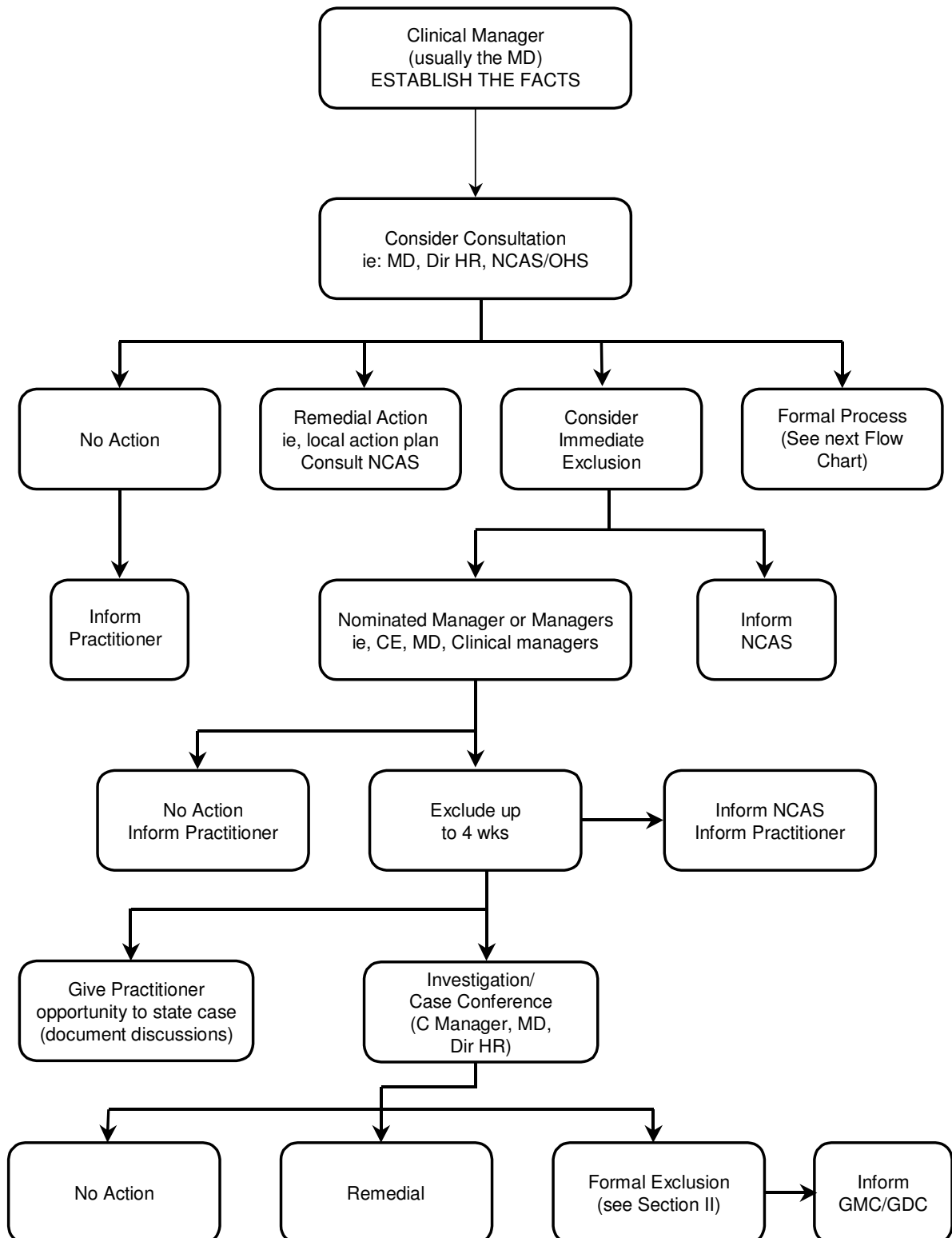
TERMINATION OF EMPLOYMENT WITH PROCEDURES UNFINISHED

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).

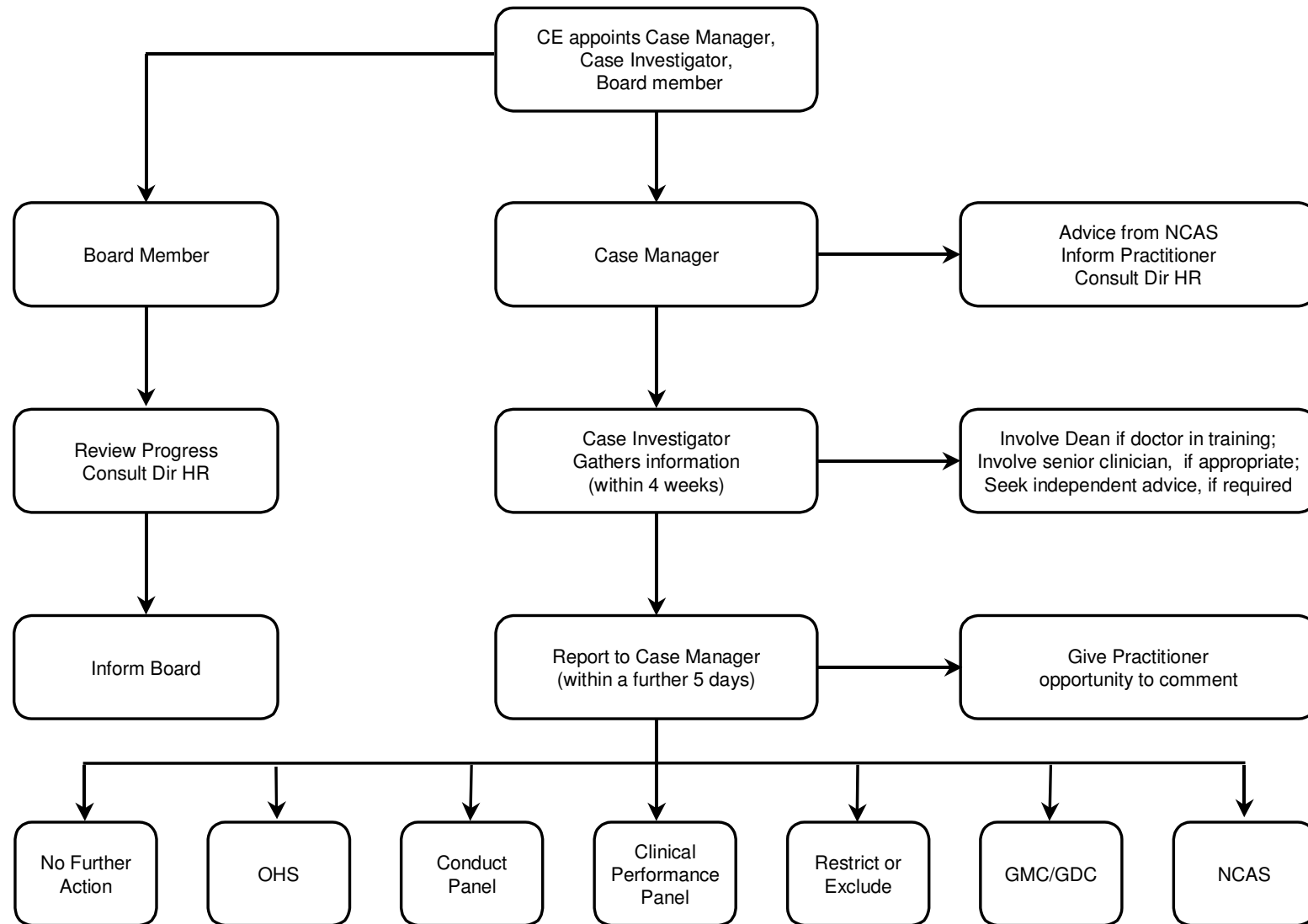
GUIDANCE ON AGREEING TERMS FOR SETTLEMENT ON TERMINATION OF EMPLOYMENT

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



**THE HEALTH AND PERSONAL SOCIAL SERVICES
(NORTHERN IRELAND) ORDER 1972**

**THE HEALTH AND PERSONAL SOCIAL SERVICES
(SPECIAL AGENCIES) (NORTHERN IRELAND) ORDER 1990**

**THE HEALTH AND PERSONAL SOCIAL SERVICES
(NORTHERN IRELAND) ORDER 1991**

**THE HEALTH AND PERSONAL SOCIAL SERVICES ACT
(NORTHERN IRELAND) 2001**

DIRECTIONS ON DISCIPLINARY PROCEDURES 2005

The Department of Health, Social Services and Public Safety^a in exercise of the powers conferred on it by Article 17 of the Health and Personal Social Services (Northern Ireland) Order 1972^b, Article 4(4) of the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990^c, paragraph 6(2) of Part II of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991^d, and of all other powers enabling in that behalf hereby directs as follows:-

Citation, commencement, application and interpretation

1. – (1) This direction is given to all HSS bodies.
- (2) This direction shall come into force on 1 December 2005.
- (3) This direction shall be referred to as “Directions on Disciplinary Procedures 2005”.
- (4) In this direction “HSS body” means:
 - (i) a Health and Social Services Board;
 - (ii) a Health and Social Services Trust;
 - (iii) a Special Agency.

Compliance with Framework

- 2.- Each HSS body shall comply with “Maintaining High Professional Standards in the Modern HPSS – A framework for the handling of concerns about doctors and dentists employed in the HPSS” – (“the framework”) as set out in the schedule and promulgated in Circular HSS(TC8) 6/2005.
3. Each HSS body shall notify the Department of the action they have taken to comply with the framework by 31 January 2006.

[Signed]
A senior officer of the Department of
Health, Social Services and Public Safety^e

29 November 2005

^a See Article 3(6) of S.I. 1999/283 (N.I.1)

^b S.I. 1972/1265 (N.I.14)

^c S.I. 1990/247 (N.I.3)

^d S.I. 1991/194 (N.I.1) as amended by section 44(2) of 2001 c.3 (NI)

^e See Article 4(3)(b) of S.I. 1999/283 (N.I.1)

SCHEDULE

**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*

CONTENTS	<i>Page</i>
INTRODUCTION	1
SECTION I. ACTION WHEN A CONCERN FIRST ARISES	5
Introduction	5
Summary of key actions needed	5
Protecting the public	6
Definition of roles	6
Involvement of NCAS	7
Informal approach	8
Immediate exclusion	9
Formal approach	10
Confidentiality	12
Transitional arrangements	12
SECTION II. RESTRICTION OF PRACTICE & EXCLUSION FROM WORK	13
Introduction	13
Managing the risk to patients	13
The exclusion process	14
<i>Key aspects of exclusion from work</i>	14
<i>Exclusion other than immediate exclusion</i>	15
<i>Exclusion from the premises</i>	16
<i>Keeping in contact and availability for work</i>	17
<i>Informing other organisations</i>	17
<i>Existing suspensions & transitional arrangements</i>	18
Keeping exclusions under review	18
<i>Informing the board of the employer</i>	18
<i>Regular review</i>	18
<i>The role of the Department in monitoring exclusions</i>	20
Return to work	20

SECTION III. GUIDANCE ON CONDUCT HEARINGS AND DISCIPLINARY PROCEDURES	21
Introduction	21
Codes of Conduct	21
Examples of misconduct	22
Allegations of criminal acts	22
<i>Action when investigations identify possible criminal acts</i>	22
<i>Cases where criminal charges are brought not connected with an investigation by an HPSS employer</i>	23
<i>Dropping of charges or no court conviction</i>	23
 SECTION IV. PROCEDURES FOR DEALING WITH ISSUES OF CLINICAL PERFORMANCE	 25
Introduction & general principles	25
<i>How to proceed where conduct & performance issues involved</i>	25
<i>Duties of Employers</i>	26
Hearing procedure	26
<i>The pre-hearing process</i>	26
<i>The hearing framework</i>	27
<i>Representation at clinical performance hearing</i>	28
<i>Conduct of the clinical performance hearing</i>	28
<i>Decisions</i>	29
Appeals procedures in clinical performance cases	31
<i>Introduction</i>	31
<i>The appeal process</i>	31
<i>The appeal panel</i>	32
<i>Powers of the appeal panel</i>	33
<i>Conduct of appeal hearing</i>	33
<i>Decision</i>	34
<i>Action following hearing</i>	34
Annex A- Appeal panels in clinical performance cases	35

SECTION V.	HANDLING CONCERNS ABOUT PERFORMANCE ARISING FROM A PRACTITIONER'S HEALTH	37
	Introduction	37
	Handling health issues	37
	Retaining the services of individuals with health problems	38
	Disability Discrimination Act	38
SECTION VI.	FORMAL PROCEDURES – GENERAL PRINCIPLES	41
	Training	41
	Handling of illness during formal proceedings	41
	Process for smaller organisations	41
	Termination of employment with procedures unfinished	42
	Guidance on agreeing terms for settlement on termination of employment	42

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:
- appraisal¹ 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 Bodies² 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.

Under these new mechanisms, exclusion from work must be used only in the most exceptional circumstances.

¹ 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.

² In the Direction and Framework "HSS bodies" means: HSS Trusts, HSS Boards and Special Agencies

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. 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 staff³ 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

³ 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 employer⁴.
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 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.

⁴ 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.

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 Executive⁵. 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.

Stage	Activity
First and second reviews (and reviews after the third review)	Before the end of each exclusion (of up to 4 weeks) the Case Manager reviews the position. • The Case Manager decides on the next steps as appropriate. Further renewal may be for up to 4 weeks at a time. • Case Manager submits advisory report of outcome to CE and Medical Director.

⁵ 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.

	- Each review is a formal matter and must be documented as such. - The practitioner must be sent written notification of the outcome of the review on each occasion.
Third review	If the practitioner has been excluded for three periods: - A report must be made by the Medical Director to the CE: - outlining the reasons for the continued exclusion and why restrictions on practice would not be an appropriate alternative; - and if the investigation has not been completed - a timetable for completion of the investigation. - The CE must report to the Director of Human Resources at the Department, who will involve the CMO if appropriate. - The case must be formally referred back to the NCAS explaining: - why continued exclusion is thought to be appropriate; - what steps are being taken to complete the investigation at the earliest opportunity. - The NCAS will review the case and advise the HSS body on the handling of the case until it is concluded.
6 month review	If the exclusion has been extended over 6 months, - A further position report must be made by the CE to the Department indicating: - the reason for continuing the exclusion; - anticipated time scale for completing the process; - actual and anticipated costs of the exclusion. The Department will consider the report and provide advice to the CE if appropriate.

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.⁶
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 doctors and dentists by their regulatory body⁷;

⁶ 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

⁷ In case of doctors, *Good Medical Practice*. In the case of dentists, *Maintaining Standards*.

- 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 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 question⁸.
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 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

⁸ see paragraphs 5 and 6 in section 6I on arrangements for small organisations

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.⁹ 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;
 - a representative of a university if provided for in any protocol agreed between the employer and the university.

⁹ 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.

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.¹⁰ 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 Trust¹¹ 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 employer¹²;
 - 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.

¹⁰ See Annex A.

¹¹ 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.

¹² 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)¹³. 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 to

¹³ 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.

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.

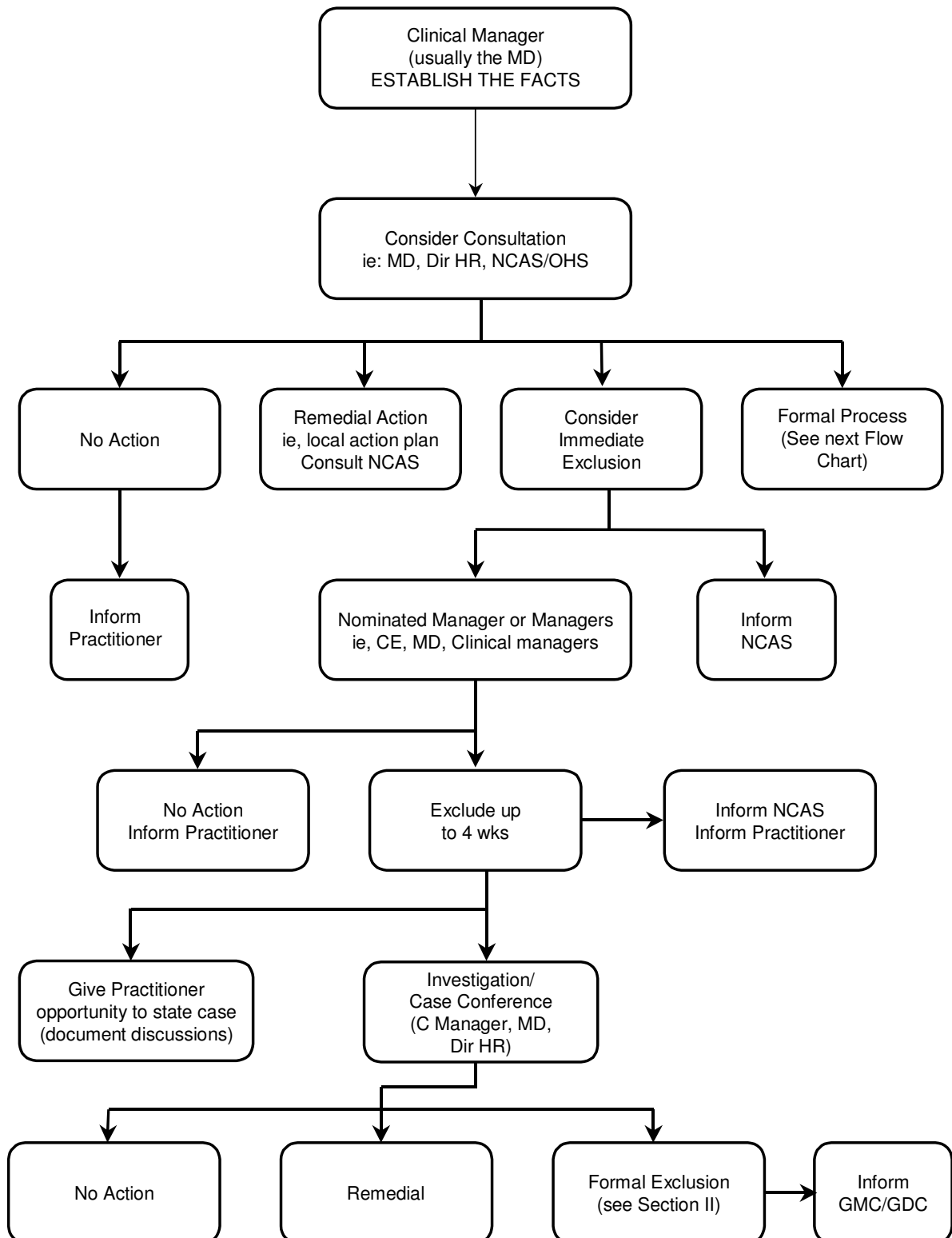
TERMINATION OF EMPLOYMENT WITH PROCEDURES UNFINISHED

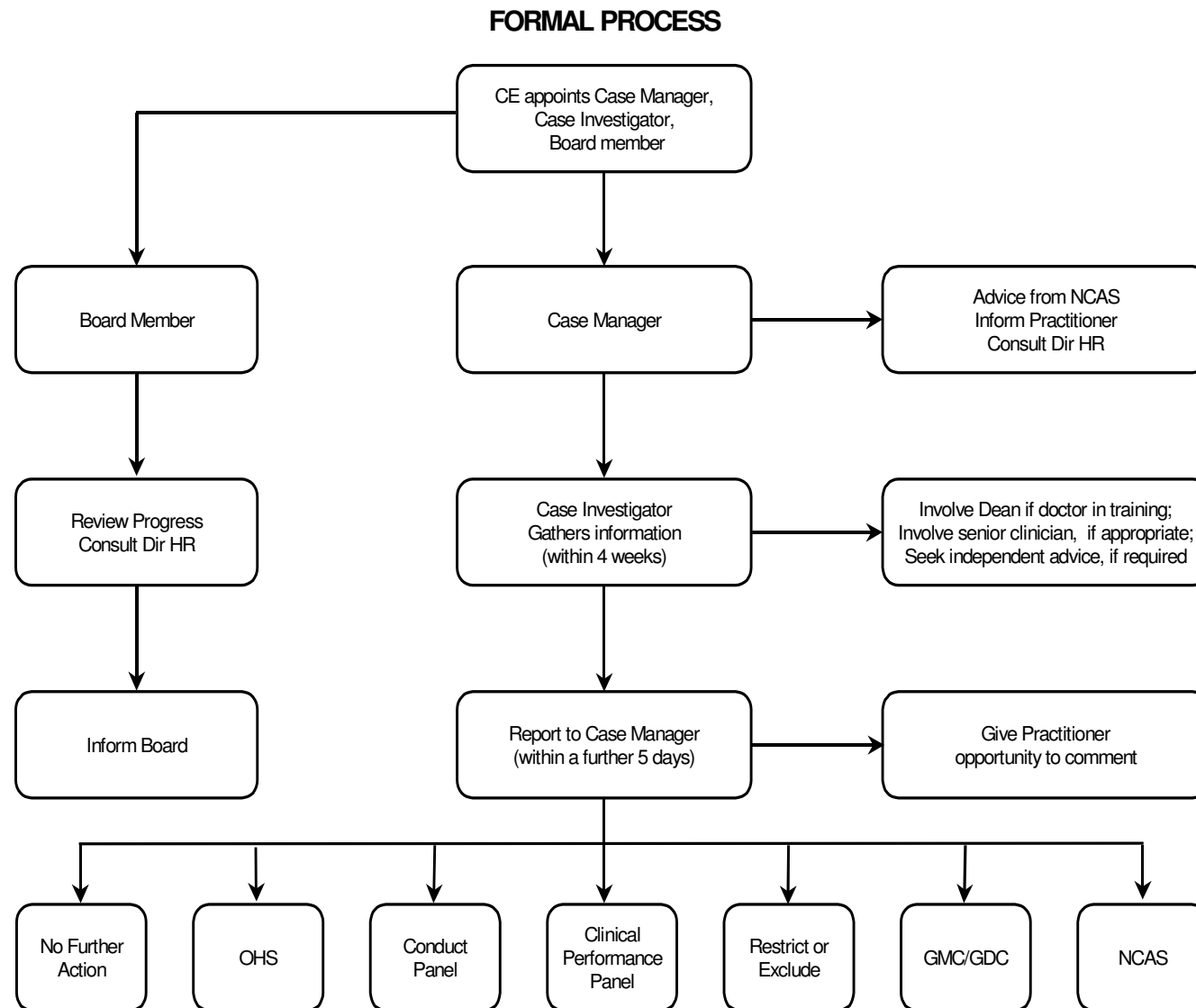
7. Where the employee leaves employment before formal procedures have been completed, the investigation must be taken to a final conclusion in all cases and performance proceedings must be completed wherever possible, whatever the personal circumstances of the employee concerned.
8. There will be circumstances 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





<i>Memo</i>	<i>Human Resources Directorate</i> <i>Pay & Employment Unit</i>	<i>DHSSPS</i> <i>Strategic Planning &</i> <i>Modernisation Group</i>

From: Paul Cassidy

Date: 22 November 2005

Mr Nesbitt
Mr Bingham

Suspensions Framework

1. The new suspensions framework is with the BMA for final agreement. The text has been agreed at several meetings so we are not anticipating any changes.
2. The Direction requiring Trusts etc to comply with the framework is attached for signature. We will issue the framework this week as it is effective from 1 December 2005.

PAUL CASSIDY

Roberts, Naomi

From: Ruddy, Donna
Sent: 14 October 2020 16:48
To: 'Zoe.Parks' [Personal Information redacted by the USI]
Cc: Chada, Naresh; 'Rocks, Dennis'; 'Simon.Gibson' [Personal Information redacted by the USI]; 'Stephen.Morrison' [Personal Information redacted by the USI]
Subject: FW: Alert letters
Attachments: TC8 6.98 ISSUE OF ALERT LETTERS ABOUT MEDICAL STAFF UNDER INVESTIGATION.PDF

Zoe

Apologies in the delay in replying to your email to Naresh of 18 September 2020.

I can confirm that the two processes are different in that the Early Alert process normally only refers to the incident itself rather than giving details of clinician(s) or professional staff involved. The purpose of both systems are detailed in the circular attached and web link below.

There may be occasions where the Early Alert process may interlink with the Alert Letters process which is about Hospital and Community Medical and Dental Staff under Investigation.

I have provided some bullet points below in relation to the local alert letter process

Regarding Local Northern Ireland Alert Letters.

- NI Alert Letters are issued when the HSC Trusts contact CMO office.
- Trusts will email/write to the Chief Medical Officer / Deputy Chief Medical Officer with concerns and details of the issue.
- CMO/DCMO considers all the available information and then makes the decision to issue an alert letter or not.

It's important to note that the alert letter mechanism is only an early warning of a potential cause of concern; it does not necessarily stop an individual securing employment and does not act in place of appropriate pre-employment checks.

I trust you will find this response useful in providing some clarification on the two processes, however, contact me if you have any further queries.

Best wishes,
Donna

EARLY ALERT SYSTEM – Reference HSC (SQSD) 5/19 –

<http://www.hscbusiness.hscni.net/pdf/DoH%20Letter%20regarding%20Early%20Alert%20System%20-%202027.02.19.pdf>

ALERT LETTERS – Reference Circular HSS(TC8) 6/98 – Attached

From: Parks, Zoe [Personal Information redacted by the USI]
Sent: 18 September 2020 16:45
To: Chada, Naresh [Personal Information redacted by the USI]
Cc: Gibson, Simon [Personal Information redacted by the USI]; Morrison, Stephen
[Personal Information redacted by the USI]
Subject: Alert letters

Naresh,

I would be really grateful if you could clarify around the two processes: **Issue of Alert Letters** and **Early Alert system**. Attached

Can you advise – are they two separate and distinct processes? I would be grateful for some clarity about when it would be expected that one or other of these processes would apply.

Many thanks;



Parks
Head of Medical HR
Southern Health & Social Care Trust
Tel: [Personal Information redacted by the USI]
Mob: [Personal Information redacted by the USI]
[Personal Information redacted by the USI]



From: OKane, Maria
Sent: 04 September 2020 22:05
To: Wallace, Stephen; Parks, Zoe
Subject: Fwd: alert letters

----- Forwarded message -----

From: "Chada, Naresh" [Personal Information redacted by the USI]
Date: 4 Sep 2020 17:49
Subject: alert letters
To: "OKane, Maria" [Personal Information redacted by the USI]
Cc: "Ruddy, Donna" [Personal Information redacted by the USI], "Johnston, Jackie (DoH)" [Personal Information redacted by the USI], "Geoghegan, Lourda" [Personal Information redacted by the USI], "Wilson, Ryan (DoH)" [Personal Information redacted by the USI]

Maria

Here is the extant guidance on the issue of alert letters as requested and discussed last week. I shall be on leave next week but the process can be further discussed and coordinated with Departmental colleagues.

Thank you

Naresh

Dr Naresh Chada MBChB, FFPH

Deputy Chief Medical Officer, Public Health (CMO Group, Department of Health, Northern Ireland)

Telephone Personal Information redacted by the USI

The Information and the Material transmitted is intended only for the person or entity to which it is addressed and may be Confidential/Privileged Information and/or copyright material.

Any review, transmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you receive this in error, please contact the sender and delete the material from any computer.

Southern Health & Social Care Trust archive all Email (sent & received) for the purpose of ensuring compliance with the Trust 'IT Security Policy', Corporate Governance and to facilitate FOI requests.

Southern Health & Social Care Trust IT Department Personal Information redacted by the USI



To: HSS Boards
Chief Executive
Director of Public Health
Director of Dental Services

File ref: BP823/98

HSS Trusts
Chief Executive
Medical Director
Director of Personnel/Human Resources

28 August 1998

British Medical Association
British Dental Association
NI Council for Postgraduate Medical & Dental Education

Dear Colleague

**ISSUE OF ALERT LETTERS ABOUT HOSPITAL AND COMMUNITY
MEDICAL AND DENTAL STAFF UNDER INVESTIGATION BY THE HPSS**

Summary

1. This circular advises HSS Boards and HSS Trusts of the arrangements for notifying the HSS Executive about hospital and community medical and dental staff who have been dismissed, who are under suspension by their employer, or where there are sufficient, reasonable grounds to support the view that they could be considered to be a potential danger to the safety of patients, other staff or themselves, and where there is reason to believe they will seek work elsewhere. The purpose of these arrangements is so that consideration can be given to the issue of a confidential letter alerting other employers about the action taken.
2. It also reminds HSS Board and HSS Trust Chief Executives of the need to make adequate checks on doctors' and dentists' registration, qualifications and references. There is no substitute for rigorous pre-employment checks. In particular, references should be taken up with previous employers and account should be taken of any gaps in employment.



3. The guidance in this circular complements the guidance in HSS(TC8) 15/91 on *'Disciplinary procedures for hospital and community medical and dental staff'*.

Action

4. HSS Board and HSS Trust Chief Executives are asked to ensure that systems are put in place to:
 - (a) consider whether action should be taken to alert other employers of the dismissal or suspension of a member of medical or hospital dental staff;
 - (b) retain alert letters so that staffing officers are aware of all current warnings.
 - (c) withdraw and formally cancel alert letters if the doctor or dentist is exonerated.

Confidentiality must be strictly maintained throughout the enactment of any part of this guidance.

Background

5. The objective of the alert letter system (often referred to as grey letters) is to protect patients by ensuring that employers of doctors or dentists are aware of any who have been dismissed or suspended in the most serious disciplinary cases or where the prospect of their continuing in practice gives rise to a concern for patient safety. The system has been in existence for some time but has recently been reviewed with a view to clarifying the actions to be taken by the HSS Executive and HPSS employers.
6. Alert letters are issued to ensure that information about doctors and dentists who have been dismissed by or are under suspension from HPSS employers and contracting Authorities is disseminated appropriately so as to safeguard health service patients during the (often lengthy) period that inquiries or police investigations of alleged offences are taking place. An alert letter should also be issued where serious doubts have been raised about a locum doctor or dentists and a report is being sent to the General Medical Council (GMC) or General Dental Council (GDC). HSS Boards and HSS Trusts (as well as locum agencies and private healthcare providers) have a legitimate interest in being informed that a prospective employee has been dismissed or suspended by another HPSS employer. Although employing HSS Boards and HSS Trusts should call for references from previous employers they cannot be assured that they will be told about previous employment in which the doctor or dentist

gave unsatisfactory service or was suspended or dismissed. The public would be justifiably concerned if suspended doctors or dentists - who may also be under police investigation that may lead to serious criminal charges being laid - were able to continue to work with patients in another part of the HPSS. The Department must take steps to ensure that prospective employers are notified of such suspensions.

7. The system recognizes that suspension is a neutral act and will occur before any allegations have been fully investigated. It is intended to provide immediate protection of the interest of patients, other staff, or the practitioner and to assist the investigative process. Doctors or dentists who are suspended may be exonerated in due course. The system covers doctors in training who may be suspended whilst their suitability is assessed or their training needs reviewed, and who may seek work during their suspension. Alert letters are only issued following consultation with employers and after taking into account professional advice from the Chief Medical Officer. Alert letters are usually issued when a report to the GMC or GDC has or will be made. It may be appropriate to issue an alert letter as an interim measure where serious criminal proceedings are expected to be brought. HSS Boards as well as HSS Trusts may also be asked to pass the alert letter onto the private health sector in order to cover the possibility of someone trying to gain work outside the HPSS eg in a private hospital or nursing home.
8. The employer must notify doctor or dentist (by writing to their last known address if necessary) that they have become the subject of an alert letter, and give an indication of the reasons for this action.
9. The alert usually takes the form of a letter from the Chief Medical Officer to HSS Boards and Trusts asking them to contact somebody at the originating Trust for a reference if the subject of the alert letter contacts them with a view to obtaining employment (example at Annex A). The form of the letter has been cleared by the Department's solicitors.
10. There is no need for an alert letter if the GMC or GDC has already suspended or placed conditions upon the doctor's or dentist's registration on an interim or substantive basis - the doctor's or dentist's registration will be "tagged" by the GMC or GDC so that on enquiry the employer will be referred to the person dealing with the case; and the HPSS will be notified in due course.

Role of the HPSS

11. HPSS employers will need to put systems in place to consider whether the alert letter system should be triggered. In appropriate cases the Medical Director should ensure that the Chief Medical Officer is urgently advised of the name of

the doctor or dentist about which they have concern. This will normally be done by telephone when sufficient details of the case should be discussed to enable the Chief Medical Officer to make a decision to pursue the matter with colleagues in the HSS Executive. The criteria to be used are attached as Annex B. The criteria are not meant to be exhaustive and cases not falling within the criteria should also be discussed with the Chief Medical Officer.

12. The employer which triggers the alert letter system must ensure that it monitors the progress of the case so that should the doctor or dentist be exonerated, the alert letter can be withdrawn. Where an employer has been able to notify a doctor or dentist of the issuing of an alert letter they should also notify the doctor or dentist when, after due process, an alert letter is withdrawn. The alert letters are purely factual and are not intended to debar a doctor or dentist from employment as a doctor or dentist. The alert letter ensures that prospective employers are put in contact with previous employers whose names might not be included on application forms.
13. The Chief Medical Officer is available to provide informal, confidential support to Medical Directors for dealing with matters of this nature.
14. A summary of the process to be followed is at Annex C.

Checks on the Registration and previous employment of doctors and dentists

15. HSS Boards and HSS Trusts are reminded of the need for those with responsibility for the recruitment or other employment of medical and dental staff to take all possible steps to ensure the validity of certificates or other qualifications and that a minimum of two professional references are taken up. The good practice guidance booklet that accompanied the issue of the HSS (Appointment of Consultants) Regulations 1996 provides a checklist to cover all elements of consultant appointments procedure. This guidance, which also sets out the steps to be taken in the pre-interview process, is strongly commended to HPSS employers for incorporation into any local procedures and could equally be applied to other practitioner appointments as a useful checklist.
16. HPSS employers are asked to satisfy themselves that their procedures for employing doctors and dentists, including locum doctors and dentists:
 - involve checks which ensure their registration status with the General Medical or General Dental Council is valid.
 - The GMC provides a telephone inquiry service which is available 24 hours a day, seven days a week, on Personal Information redacted by the USI Calls

outside office hours (09.00 to 17.00 on week days) are answered by an automated service which will provide confirmation of full registrations to callers who have a touch tone keypad on their telephones and who know the registration numbers of the practitioner about whom they are enquiring. Alternatively, callers out of hours can leave a message which will be answered the next working day.

- The GDC's Registration Department for checking registration validity may be contacted on Personal Information
redacted by the USI during office hours.
 - ensures that the doctor's or dentist's registration certificate covers the tasks they are expected to undertake.
17. It is illegal to practice as a physician, surgeon or other medical officer in the HPSS without the appropriate registration with the General Medical Council [Sections 47 and 49, Medical Act 1983]. Doctors with *limited registration* are issued with certificates which indicate the range of posts or the type of employment which such doctors may undertake. Limited registration is granted for a specified period. Doctors who are required to provide medical cover for colleagues must be appropriately registered. Doctors who work outside the limitations of their registration are practising illegally.
 18. It is illegal to practice as a dentist without the appropriate registration with the General Dental Council unless practised by a registered medical practitioner [Section 38, Dentists Act 1984]. Dentists with full registration have access to all areas of dental practice unless their Annual Practising Certificate specifies otherwise. Dentists eligible for *temporary registration* may apply only for substantive, locum or honorary posts in hospitals which have been approved by the GDC for that purpose. On appointment an application should be made by the dentist to the GDC for a Direction to cover this practice. Temporary registration is granted for a limited period and does not, of itself, lead to full registration. Initial practice under temporary registration should be under full supervision. A dentist practising outside the conditions of their registration is practising illegally.
 19. The advice in circular HSS(TC8) 22/87 as extended in HSS(TC8) 7/93 continues to apply until further notice.

20. Enquiries about this circular should be addressed to:

Mr Paul Cassidy
Medical and Dental Unit
Room 3D, Dundonald House
Upper Newtownards Road
Belfast, BT4 3SF
Telephone Personal Information redacted by the USI

Yours sincerely

Personal Information redacted by the
USI

P W LYNCH
Deputy Director
[HSG(97)36]

Annex A

STANDARD LETTER TO BE SENT BY CMO

MANAGEMENT IN STRICT CONFIDENCE

Addressed to: Trust Chief Executives

Dear Chief Executive

Dr John Smith:

Formerly worked at Newtown Hospital HSS Trust

The above person formerly worked as a locum doctor in Orthopedics at Newtown Hospital HSS Trust.

If the above-named person makes an application for a permanent post or locum work with your Trust, you are advised to contact Rodney Jones, Personnel Director at Newtown Hospital HSS Trust on 0101 222 3333 before offering him employment.

Yours sincerely

Chief Medical Officer

STANDARD LETTER TO BE SENT BY CMO

MANAGEMENT IN STRICT CONFIDENCE

Addressed to: HSS Board Chief Executives

Dear Chief Executive

Dr John Smith:

Formerly worked at Newtown Hospital HSS Trust

The above person formerly worked as a locum doctor in Orthopedics at Newtown Hospital HSS Trust.

Please could you write as a matter of urgency to all independent hospitals registered with your area advising them to contact Rodney Jones, Personnel Director at Newtown Hospital HSS Trust on 0101 222 3333, should Dr Smith apply for a permanent post or locum work.

Yours sincerely

Chief Medical Officer

Annex B**CRITERIA TO BE APPLIED IN DECIDING TO ISSUE AN ALERT LETTER****The criteria should include:-**

the employee is a potential danger to the safety of patients, as identified by suspension, dismissal or police investigation, usually with report to GMC or GDC;

or there are sufficient, reasonable grounds to support the view that the employee could be a potential danger to the safety of patients;

and

the HSS Board or Trust have reason to believe that he/she would seek work elsewhere (either in a permanent position or as a locum).

In considering whether the doctor or dentist is a potential danger to the safety of patients the factors to be taken into account as appropriate should include:

- whether the allegation concerns an offence against the person (eg indecent assault)
- whether there has been an alleged failing in professional performance (eg inappropriate treatment, failure to attend)
- the doctor's or dentist's health problems (including mental health and transmissible infections)
- whether the doctor or dentist is willing to accept constructive criticism and retraining
- whether a report is being made to the GMC or GDC.

Annex C**THE PROCESSES FOR ISSUING AN ALERT LETTER**

Typically, the issue of an alert letter will follow the processes below while confidentiality is maintained at all times:

- a. The doctor or dentist is considered to be a potential danger to the safety of patients as outlined in Annex B above;

and

In all cases, it is considered that the doctor or dentist will seek employment elsewhere, either permanently or as a locum;

- b. Internal consultation within the employing body, involving only those with a need to know, as to whether an alert letter should be issued;
- c. In appropriate cases, and in consideration of the criteria at Annex B, employers should ensure the Chief Medical Officer is urgently advised of the name of the doctor or dentist and the details of the case;
- d. The Chief Medical Officer makes the decision as to whether to pursue the matter with HSS Executive and, if appropriate, issues the alert letter;
- e. Employers monitor the case under HSS(TC8)/ 15/91 and ensure that the Chief Medical Officer is advised that the alert letter should be withdrawn if the doctor or dentist is exonerated;
- f. If the doctor or dentist is exonerated the Chief Medical Officer withdraws and formally cancels the alert letter and informs HSS Executive; the doctor is advised that the letter has been withdrawn;

The Chief Medical Officer, in consultation with the HSS Executive, will oversee the implementation of this guidance and report any critical incidents to the Department.

Roberts, Naomi

From: Rocks, Dennis
Sent: 08 September 2021 11:14
To: Galway, Stephen
Cc: Murphy, Anne Marie
Subject: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Stephen

You have previously been very helpful with advice on our review of the Professional Alert circular. Please see Dr Geoghegan email below.

You have previously (some months back) provided us with copy of your submission and legal advice to inform our review.

I would be very grateful for any advice on the highlighted section below of Lourda's email.

Thank You

Dennis

From: Geoghegan, Lourda [Personal Information redacted by the USI]
Sent: 24 August 2021 19:39
To: Rocks, Dennis [Personal Information redacted by the USI]; Woods, Paddy (Dr) [Personal Information redacted by the USI]
Cc: Murphy, Anne Marie [Personal Information redacted by the USI]; Brown, Angela [Personal Information redacted by the USI]
[Personal Information redacted by the USI] Dawson, Andrew [Personal Information redacted by the USI]
Subject: RE: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Dennis, Paddy

I note reference to the work undertaken/progressing by WPD on the nursing alerts policy. I would suggest our work on review/assessment of this circular relating to medical professionals will need to be informed by summary of the main items being addressed in the work reviewing the nursing alerts policy, the changes planned and the legal/other considerations in relation to these items.

I think it also would be helpful to seek feedback at this point from the Medical Directors and Responsible Officers regarding this circular and how they use/invoke it, so that we can identify potential areas and any issues to be worked through as part of this review.

Many thanks for progressing.

Lourda

Due to my current schedule I may be working through emails out side usual working hours, if you are receiving this email out-of-hours please do not feel obliged to respond by return.



From: Rocks, Dennis
Sent: 24 August 2021 15:00
To: Woods, Paddy (Dr) [Personal Information redacted by the USI]

Cc: Geoghegan, Lourda [Personal Information redacted by the USI]; Murphy, Anne Marie [Personal Information redacted by the USI]
[Personal Information redacted by the USI] Brown, Angela [Personal Information redacted by the USI]

Subject: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Paddy

I know you have previously discussed with Donna the review of the Professional Alert Process. As a start we have produced a word version attached of the original circular
I have tracked changes to the Circular and made some comments.

Attached is copy of legal advice received by Workforce Policy Directorate Business Support, on issues raised by the Human Rights Commission, in relation to the review of Nursing alerts circular.
This may also be relevant to our rewriting/updating of Professional Alert circular.

Attached also is copy of legal advice received by Donna in relation to the issue of a recent alert iro NHSCT Radiologist

WPD have previously advised us that they will not be including Doctors / Dentists in relation to an alerts policy for all professionals in relation to their review of the Nursing Alerts Policy.

As a first step in the updating of the Circular, would be grateful for your review of attached and any comments/suggested amendments before progressing further.

Lourda is on leave the first two weeks in September and I would hope to pick up again then. In the meantime I will also be drafting branch guidance around the operational aspects of issuing the letters and review/monitoring of the process.

Thank You

Dennis

Roberts, Naomi

From: Rocks, Dennis
Sent: 08 September 2021 11:59
To: Chris Hagan; [Redacted]; Seamus O'Reilly; [Redacted]; Maria O'Kane; Joanne Murdock; [Redacted]; Ruddell, Nigel; camille.harron; [Redacted]; Stephen Bergin; [Redacted]; Brid Farrell; O'Brien, Margaret (HSCNI); richard.wright; [Redacted]; 'Charlie Martyn'; Catherine McDonnell
Cc: Brown, Angela; Murphy, Anne Marie; Waterworth, Claire
Subject: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98
Attachments: TC8 6.98 ISSUE OF ALERT LETTERS ABOUT MEDICAL STAFF UNDER INVESTIGATION.PDF

Dear Colleagues

The Department is currently reviewing the circular on the issuing of alert letters.

In order to identify potential areas and any issues to be worked through as part of this review, we are seeking feedback at this point from the Medical Directors and Responsible Officers regarding this circular, for example how it is used/invoked within your organisation

Other areas you may wish to comment on might be human rights issues arising; the grounds for issuing an alert (based on the facts of individual cases); the referral process from employers; and the review process.

Please feel free to comment on any aspect of the circular.

I would be grateful if all comments could please be emailed to [Redacted] by Monday 20th September 2021.

Thank You

Dennis

Dennis Rocks
Quality, Regulation and Improvement Branch
Department of Health,
D1 Castle Buildings,
Stormont.

[Redacted]
[Redacted]

Roberts, Naomi

From: Rocks, Dennis
Sent: 09 September 2021 11:25
To: Murphy, Anne Marie
Subject: Trimming
Attachments: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98; Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Annemarie

Would you trim in the alert circular review container please

Thanks

Dennis

Roberts, Naomi

From: Rocks, Dennis
Sent: 09 September 2021 11:25
To: Murphy, Anne Marie
Subject: Trimming
Attachments: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98; Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Annemarie

Would you trim in the alert circular review container please

Thanks

Dennis

Roberts, Naomi

From: Rocks, Dennis
Sent: 16 September 2021 04:15
To: 'O'Reilly, Seamus'
Subject: RE: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98
Attachments: HE1 20 625995 Alert Letters - Review - word version of Circular for review and updating(4).DOCX

Seamus

Word version attached

Dennis

From: O'Reilly, Seamus [Personal Information redacted by the USI]
Sent: 15 September 2021 14:37
To: Rocks, Dennis [Personal Information redacted by the USI]
Subject: RE: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Dennis

You wouldn't have this in word so that I could track changes ?

Regards

Seamus

From: Rocks, Dennis [Personal Information redacted by the USI]
Sent: 08 September 2021 11:59
To: Chris Hagan [Personal Information redacted by the USI]; O'Reilly, Seamus [Personal Information redacted by the USI]; Joanne [Personal Information redacted by the USI]; Maria O'Kane [Personal Information redacted by the USI]; Murdock [Personal Information redacted by the USI]; [camille.harron](#) [Personal Information redacted by the USI]; Stephen Bergin [Personal Information redacted by the USI]; Ruddell, Nigel [Personal Information redacted by the USI]; Brid Farrell [Personal Information redacted by the USI]; O'Brien, Margaret (HSCNI) [Personal Information redacted by the USI]; [richard.wright](#) [Personal Information redacted by the USI]; 'Charlie Martyn' [Personal Information redacted by the USI]; Catherine McDonnell [Personal Information redacted by the USI]; Cc: Brown, Angela [Personal Information redacted by the USI]; Murphy, Anne Marie [Personal Information redacted by the USI]; [Personal Information redacted by the USI] Waterworth, Claire [Personal Information redacted by the USI]
Subject: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Forwarded to Grainne

Dear Colleagues

The Department is currently reviewing the circular on the issuing of alert letters.

In order to identify potential areas and any issues to be worked through as part of this review, we are seeking feedback at this point from the Medical Directors and Responsible Officers regarding this circular, for example how it is used/invoked within your organisation

Other areas you may wish to comment on might be human rights issues arising; the grounds for issuing an alert (based on the facts of individual cases); the referral process from employers; and the review process.

Please feel free to comment on any aspect of the circular.

I would be grateful if all comments could please be emailed to [REDACTED] by Monday 20th September 2021.

Personal Information redacted by the USI

Thank You

Dennis

Dennis Rocks
Quality, Regulation and Improvement Branch
Department of Health,
D1 Castle Buildings,
Stormont.

Personal Information redacted by
the USI

Personal Information redacted by the
USI

Dear Colleague

ISSUE OF ALERT LETTERS ABOUT HOSPITAL AND COMMUNITY MEDICAL AND DENTAL STAFF UNDER INVESTIGATION BY THE HPSS

Summary

1. This circular advises HSS Boards and HSS Trusts of the arrangements for notifying the HSS Executive about hospital and community medical and dental staff who have been dismissed, who are under supervision by their employer, or where there are sufficient, reasonable grounds to support the view that they could be considered to be a potential danger to the safety of patients, other staff or themselves, and where there is reason to believe they will seek work elsewhere. The purpose of these arrangements is so that consideration can be given to the issue of a confidential letter alerting other employers about the action taken.
2. It also reminds HSS Board and HSS Trust Chief Executives of the need to make adequate checks on doctors' and dentists' registration, qualifications and references. There is no substitute for rigorous pre-employment checks. In particular, references should be taken up with previous employers and account should be taken of any gaps in employment.
3. The guidance in this circular complements the guidance in HSS(TC8) 15/91 on *'Disciplinary procedures for hospital and community medical and dental staff.'*

Action

4. HSS Board and HSS Trust Chief Executives are asked to ensure that systems are put in place to:
 - (a) Consider whether action should be taken to alert other employers of the dismissal or suspension of a member of medical or hospital dental staff;
 - (b) Retain alert letters so that staffing officers are aware of all current warnings;
 - (c) Withdraw and formally cancel alert letters if the doctor or dentist is exonerated.

Confidentiality must be strictly maintained throughout the enactment of any part of this guidance.

Background

5. The objective of the alert letter system (often referred to as grey letters) is to protect patients by ensuring that employers of doctors or dentists are aware of any who have been dismissed or suspended in the most serious disciplinary cases or where the prospect of their continuing in practice gives rise to a concern for patient safety. The system has been in existence for some time but has recently been reviewed with a view to clarifying the actions to be taken by the HSS Executive and HPSS employers.
6. Alert letters are issued to ensure that information about doctors and dentists who have been dismissed by or are under supervision from HPSS employers and contracting authorities is disseminated appropriately so as to safeguard health service patients during the (often lengthy) period that inquiries or police investigations of alleged offences are taking place. An alert letter should also be issued where serious doubts have been raised about a locum doctor or dentists and a report is being sent to the General Medical Council (GMC) or General Dental Council (GDC). HSS Boards and HSS Trusts (as well as locum agencies and private healthcare providers) have a legitimate interest in being informed that a prospective employee has been dismissed or suspended by another HPSS employer. Although employing HSS Boards and HSS Trusts should call for references from previous employers, they cannot be assured they will be told about previous employment in which the doctor or dentist gave unsatisfactory service or was dismissed or suspended. The public would be justifiably concerned if suspended doctors or dentists – who may also be under police investigation that may lead to serious criminal charges being laid – were able to continue to work with patients in another part of the HPSS. The Department must take steps to ensure that prospective employers are notified of such suspensions.
7. The system recognises that suspension is a neutral act and will occur before any allegations are fully investigated. It is intended to provide immediate protection of the interest of patients, other staff, or the practitioner, and to assist the investigative process. Doctors or dentists who are suspended may be exonerated in due course. The system covers doctors in training who may be suspended whilst their suitability is assessed or their training needs reviewed, and who may seek work during their suspension. Alert letters are only issued following consultation with employers and after taking into account professional advice from the Chief Medical Officer. Alert letters are usually issued when a report to the GMC or GDC has or will be made. It may be appropriate to issue an alert letter as an interim measure where serious criminal proceedings are expected to be brought. HSS Boards as well as HSS Trusts may also be asked to pass the alert letter onto the private health sector in order to cover the possibility of someone trying to gain work outside the HPSS e.g. in a private hospital or nursing home.
8. The employer must notify doctor or dentist (by writing to their last known address if necessary) that they have become the subject of an alert letter, and give an indication of the reasons for this action.

9. The alert usually takes the form of a letter from the Chief Medical Officer to HSS Boards and Trusts asking them to contact somebody at the originating Trust for a reference if the subject of the alert letter contacts them with a view to obtaining employment (example at Annex A). The form of the letter has been cleared by the Department's solicitors.
10. There is no need for an alert letter if the GMC or GDC has already suspended or placed conditions upon the doctor's or dentist's registration on an interim or substantive basis – the doctor's or dentist's registration will be "tagged" by the GMC or GDC so that on enquiry the employer will be referred to the person dealing with the case and the HPSS will be notified in due course.

Role of the HPSS

11. HPSS employers will need to put systems in place to consider whether the alert letter system should be triggered. In appropriate cases the Medical Director should ensure that the Chief Medical Officer is urgently advised of the name of the doctor or dentist about which they have concern. This will normally be done by telephone when sufficient details of the case should be discussed to enable the Chief Medical Officer to make a decision to pursue the matter with colleagues in the HSS Executive. The criteria to be used are attached as Annex B. The criteria are not meant to be exhaustive and cases not falling within the criteria should also be discussed with the Chief Medical Officer.
12. The employer which triggers the alert letter system must ensure that it monitors the progress of the case so that should the doctor or dentist be exonerated, the alert letter can be withdrawn. Where an employer has been able to notify a doctor or dentist of the issuing of an alert letter they should also notify the doctor or dentist when, after due process, an alert letter has been withdrawn. The alert letters are purely factual and are not intended to debar a doctor or dentist from employment as a doctor or dentist. The alert letter ensures that prospective employers are put in contact with previous employers who whose names might not be included on application forms.
13. The Chief Medical Officer is available to provide informal, confidential support to Medical Directors for dealing with matters of this nature.
14. A summary of the process to be followed is at Annex C.

Checks on the Registration and previous employment of doctors and dentists.

15. HSS Boards and HSS Trusts are reminded of the need for those with responsibility for the recruitment or other employment of medical and dental staff to take all possible steps to ensure the validity of certificates or other qualifications and that a minimum of two professional references are taken up. The good practice guidance booklet that accompanied the issue of the HSS (Appointment of Consultants) Regulations 1996 provides a checklist to cover all elements of consultant appointments procedures. This guidance, which also set out the steps to be taken in the pre-interview process, is strongly commended to HPSS employers for incorporation into any local procedures and could equally be applied to other practitioner appointments as a useful checklist.
16. HPSS employers are asked to satisfy themselves that their procedures for employing doctors and dentists, including locum doctors and dentists:
 - Involve checks which ensure their registration status with the General Medical or General Dental Council is valid.
 - The GMC provides a telephone inquiry service which is available 24 hours a day, seven days a week, on 0171 9153630. Calls outside office hours (09:00 to 17:00 on week days) are answered by an automated service which will provide confirmation of full registrations to callers who have a touch tone keypad on their telephones and who know the registration numbers of the practitioner about whom they are enquiring. Alternatively, callers out of hours can leave a message which will be answered the next working day.
 - The GDC's Registration Department for checking registration validity may be contacted on 0171 486 2171 during office hours.
 - Ensures that the doctor's or dentist's registration certificate cover the tasks they are expected to undertake.
17. It is illegal to practice as a physician, surgeon or other medical officer in the HPSS without the appropriate registration with the General Medical Council [Sections 47 and 49, Medical Act 1983]. Doctors with *limited registration* are issued with certificates which indicate the range of posts or the type of employment which such doctors may undertake. Limited registration is granted for a specified period. Doctors who are required to provide medical cover for colleagues must be appropriately registered. Doctors who work outside the limitations of their registration are practising illegally.
18. It is illegal to practice as a dentist without the appropriate registration with the General Dental Council unless practiced by a registered medical practitioner [Section 38, Dentists Act 1984]. Dentists with full registration have access to all

areas of dental practice unless their Annual Practising Certificate specifies otherwise. Dentists eligible for *temporary registration* may apply only for substantive, locum or honorary posts in hospitals which have been approved by the GDC for that purpose. On appointment an application should be made by the dentist to the GDC for a Direction to cover this practice. Temporary registration is granted for a limited period and does not, of itself, lead to full registration. Initial practice under temporary registration should be under full supervision. A dentist practising outside the conditions of their registration is practising illegally.

19. The advice in circular HSS(TC8) 22/87 as extended in HSS(TC8) 7/93 continues to apply until further notice.
20. Enquiries about this circular should be addressed to:

Mr Paul Cassidy
Medical and Dental Unit
Room 3D, Dundonald House
Upper Newtownards Road
Belfast, BT4 3SF
Telephone Personal Information redacted by the
USI

Your sincerely

P W LYNCH
Deputy Director
[HSG(97)36]

ANNEX A

STANDARD LETTER TO BE SENT BY CMO

MANAGEMENT IN STRICT CONFIDENCE

Addressed to: Trust Chief Executives

Dear Chief Executive

Dr John Smith:
Formerly worked at Newtown Hospital HSS Trust

The above person formerly worked as a locum doctor in orthopaedics at Newtown Hospital HSS Trust.

If the above named person makes an application for a permanent post or locum work with your Trust, you are advised to contact Rodney Jones, Personnel Director at Newtown Hospital HSS Trust on 0101 222 3333 before offering employment.

Yours sincerely

Chief Medical Officer

STANDARD LETTER TO BE SENT BY CMO

MANAGEMENT IN STRICT CONFIDENCE

Addressed to: HSS Board Chief Executives

Dear Chief Executive

Dr John Smith:
Formerly worked at Newtown Hospital HSS Trust

The above person formerly worked as a locum doctor in orthopaedics at Newtown Hospital HSS Trust.

Please could you write as a matter of urgency to all independent hospitals registered with your area advising them to contact Rodney Jones, Personnel Director at Newtown Hospital HSS Trust on 0101 222 3333, should Dr Smith apply for a permanent post or locum work.

Yours sincerely

Chief Medical Officer

ANNEX B**CRITERIA TO BE APPLIED IN DECIDING TO ISSUE AN ALERT LETTER****The criteria should include:-**

the employee is a potential danger to the safety of patients, as identified by suspension, dismissal or police investigation, usually with report to GMC or GDC:

or there are sufficient, reasonable grounds to support the view that the employee could be a potential danger to the safety of patients;

and

the HSS Board or Trust have reason to believe that he/she would seek work elsewhere (either in a permanent position or as a locum).

In considering whether the doctor or dentist is a potential danger to the safety of patients the factors to be taken into account as appropriate should include:

- whether the allegation concerns an offence against the person (e.g. indecent assault)
- whether there has been an alleged failing in professional performance (e.g. inappropriate treatment, failure to attend)
- the doctor's or dentist's health problems (including mental health and transmissible infections)
- whether the doctor or dentist is willing to accept constructive criticism and retraining
- whether a report is being made to the GMC or GDC.

ANNEX C**THE PROCESSES FOR ISSUING AN ALERT LETTER**

Typically, the issuing of an alert letter will follow the processes below while confidentiality is maintained at all times:

- a. The doctor or dentist is considered to be a potential danger to the safety of patients as outlined in Annex B above:

and

In all cases, it is considered that that doctor or dentist will seek employment elsewhere, either permanently or as a locum;

- b. Internal consultation within the employing body, involving only those with a need to know, as to whether an alert should be issued;
- c. In appropriate cases, and in consideration of the criteria at Annex B, employers should ensure the Chief Medical Officer is urgently advised of the name of the doctor or dentist and the details of the case;
- d. The Chief Medical Officer makes the decision as to whether to pursue the matter with HSS Executive and, if appropriate, issues the alert letter;
- e. Employers monitor the case under HSS(TC8) 15/91 and ensure that the Chief Medical Officer is advised that the alert letter should be withdrawn if the doctor or dentist is exonerated;
- f. If the doctor or dentist is exonerated the Chief Medical Officer withdraws and formally cancels the alert letter and informs HSS Executive; the doctor is advised that the letter has been withdrawn;

The Chief Medical Officer, in consultation with the HSS Executive, will oversee the implementation of this guidance and report any critical incidents to the Department.

Feedback table

Belfast Health and Social Care Trust

Mr Christopher Hagan (Chris)

Northern Health and Social Care Trust

Dr James O'Reilly (Seamus)

Southern Health and Social Care Trust Dr Ellen O'Kane (Maria)

South Eastern Health and Social Care Trust Dr Charlie Martyn

**Western Health and Social Care Trust
Dr Catherine McDonnell**

**Public Health Agency
Dr Stephen Bergin**

**Public Health Agency
Dr Brid Farrell**

**Health and Social Care Board
Dr Margaret O'Brien**

NI Blood Transfusion Service Agency Dr Joanne Murdock
Northern Ireland Ambulance Service HSC Trust Dr Nigel Ruddell
RQIA Regualtion & Quality Improvement Authority Richard Wright
Northern Ireland Medical & Dental Training Agency Dr Camille Harron

**Addition Comments from
Dr Ian Steele the
Postgraduate Dean at
NIMDTA**

for review of Circular HSS (TC8) 6/98 regarding Issue of Alert Letters**Awaiting Return****Awaiting Return**

RE: Issue of Alert Letters about Medical and Dental Staff under Investigation

Thank you for providing the opportunity to comment on the review of Circular HSS (TC8) 6/98 regarding Issue of Alert Letters about Medical and Dental Staff under Investigation. I have sought comments from Trust colleagues which have been summarised below.

As part of this process we have given consideration to the NHS Resolution system for issuing alert notices¹ which has been reviewed more recently and is in operation in NHS England. We feel that benchmarking against principles of the alert processes used by NHS Resolutions would be useful as an initial step.

Specific comments on the circular:

☐ The current circular does not contain any process for the affected practitioner to challenge the issuing of an alert – we feel this is an important part in the process given the impact on the individual.

1 <https://resolution.nhs.uk/services/practitioner-performance-advice/hpans/>

☐ A standardised form for requesting the alert would make the process clearer and allow for inclusion of all relevant information which will enable a decision to be made by the relevant Department Officials as to if an alert is to be issued. An example of a form can be found on the NHS Resolution website (available here)

<https://resolution.nhs.uk/services/practitioner-performance-advice/hpans/>

☐ A robust review process for alerts would be beneficial to ensure alerts are still required; for example a definitive time period for review; what employers will be asked for in respect of the review process; can the alert be withdrawn once the regulator imposes conditions?

☐ There should be explicit clarity on the process regarding who will issue the alert to which particular groups, i.e. who the DOH will issue to, who HSCB will issue to etc.

☐ Clarity would be welcome around the responsibility for central management of the alerts and also the process for removal of them, as this is currently not well defined. A centrally controlled and searchable system could prove to be a more efficient way of managing the alerts and provide greater confidence across Trusts as the current manual system requires each organization to add an alert letter notification to their own internal database.

☐ Any new guidance should also take into account the changes now in place regarding Revalidation requirements and Responsible Officers. Trusts have other means to flag early communications (i.e. via GMC ELAs) however there is no location currently on the GMC register to flag early concerns or information from

Awaiting Return**Awaiting Return**

Anne Marie / Denis

We have a relatively small number (circa 30) of medica/public health staff within the PHA (whereas some Trusts have several hundred) - the public health (PH) medical group, being small scale, is relatively well connected from a national perspective. We all fall under one umbrella group (in terms of the relevant professional body – Faculty of Public Health).

In addition to above, the existing appraisal / revalidation system provides ongoing insight as to individual PH doctor performance – and therefore the ability to intervene early before problems become significant / serious.

I don't recollect that we have had to invoke this system within our organisation.

Regards

Awaiting Return

DOH Alerts Policy – DOIC – 20th September 2021

Operating Context

Under the NI PMPL Regulations (2004), a doctor is required to be listed as a primary medical services performer in order to treat health service patients within primary care. GPs on the Performers List are **not** employed by the HSCB but are independent contractors and deliver services via a number of contractual methods, primarily the General Medical Services (GMS) contracts - in place between the HSCB and the 320 general practices throughout NI. There are approximately 1800 GPs included in the NI PMPL and providing primary medical services at any given time.

Inclusion in the Performers List results in a GP having a 'prescribed connection' to the HSCB Responsible Officer (RO) under the "The Medical Profession (Responsible Officers) Regulations (Northern Ireland) 2010 ("the RO regulations").

The HSCB is responsible for managing the NI PMPL– including admission to and removal from the List. GPs applications are reviewed against strict criteria specified in the Regulations. Applications are considered by the HSCB's Performers List Committee, an advisory committee to the Responsible Officer.

The Primary Medical Services Performers Lists (Amendment) Regulations (Northern Ireland) 2008 introduced **local regulation** of the NI PMPL. They enable the HSCB to include a doctor in the Performers List with conditions ([conditional inclusion](#)), to retain a doctor on the list subject to compliance with conditions ([contingent removal](#)), or to [suspend](#) a doctor. The application of conditions and suspension on a practitioner's registration is underpinned by patient safety and protection considerations.

In accordance with [Regulation 14](#), the Board is required to notify relevant NHS bodies of its decision to

However, it is an integral part of the system for pre-employment checks. It provides a means of alerting prospective employers to check that the applicant's employment record is complete and appropriate references are obtained, and that information relevant to safe employment is known in advance of an appointment being made.

Therefore the alert letters system can operate in support of the Performers List requirements and the Responsible Officer's responsibilities.

The RO is legally responsible for a range of duties relating to the evaluation of the fitness to practise of every medical practitioner who has a prescribed connection with the HSCB, namely doctors that are included in the NI PMPL.

General Practitioners

Where an alert letter is issued in respect of a GP, the HSCB checks whether they are included in the NI Primary Medical Performers List and takes any appropriate action.

Any practice seeking to appoint a new partner or sessional doctor can be assured that the necessary action has been taken in respect of alert letters.

Practices themselves are advised to check both the GMC registration of any doctor that they intend to employ to ensure that they are registered with GMC, on the GP register and licensed to practice using the online register at www.gmc-uk.org and the NI Performers List at <https://hscbusiness.hscni.net/services/1813.htm>

Alert letters are treated in confidence and shared only on a need to know basis. Withdrawal / cancellation of an alert is enacted as appropriate.

Awaiting Return

Awaiting Return

Awaiting Return

Dear Anne-Marie, Thank you for the email. My comments are as below.

I took up the role of NIMDTA Medical Director for SLE in April 21 and Responsible Office on 1st July. To date, I have not had any personal experience with regard to alert letters.

I have consulted with the Postgraduate Dean and Education Manager at NIMDTA. Alert letters have only been issued on rare occasions for NIMDTA trainees. NIMDTA adheres to good practice with regard to pre-employment checks and would expect to be alerted to any significant issues through GMC registration or the Fitness to Practice declarations made by trainees on entry to training. Any significant concerns during training regarding conduct, performance or health which require more than an educational approach, are reviewed regularly at the NIMDTA Doctor and Dentist review group. If a trainee is leaving a trainee

Dear Anne-Marie, I had some additional comments from Dr Ian Steele the Postgraduate Dean at NIMDTA which were:

4c cancel has been mistyped as cancer

5 grey letter should not be used as a term

8 as employer has to make the doctor or dentist know they are the subject of a letter we would expect an applicant to declare this in any self declaration at the time of applying for a post

Is there a central repository for these alert letters that needs to be checked or a list that is circulated on a regular basis? Does the system rely on remembering that someone had an alert letter sent out about them some months/years ago? In present format it may only be of use in making sure that the person who is

~~named in an alert letter doesn't get offered a post in the few days after it is circulated. How do organisations~~

Roberts, Naomi

From: Galway, Stephen
Sent: 17 September 2021 08:45
To: Rocks, Dennis
Cc: Murphy, Anne Marie; McClurg, Melanie
Subject: RE: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Dennis

Unfortunately this has not got the priority it deserves at the moment – we have had advice from DSO, however, we are still waiting on Nursing to respond to the DSO advice.

Whatever we end up with as a final version we will be happy to share with you.

Stephen

Stephen Galway
Business Support
Workforce Policy Directorate
Room D2.11
Castle Buildings
Belfast BT4 3SX
Tel: Personal Information redacted by the USI

From: Rocks, Dennis
Sent: 08 September 2021 11:14
To: Galway, Stephen Personal Information redacted by the USI
Cc: Murphy, Anne Marie Personal Information redacted by the USI
Subject: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Stephen

You have previously been very helpful with advice on our review of the Professional Alert circular. Please see Dr Geoghegan email below.

You have previously (some months back) provided us with copy of your submission and legal advice to inform our review.

I would be very grateful for any advice on the highlighted section below of Lourda's email.

Thank You

Dennis

From: Geoghegan, Lourda Personal Information redacted by the USI
Sent: 24 August 2021 19:39
To: Rocks, Dennis Personal Information redacted by the USI; Woods, Paddy (Dr) Personal Information redacted by the USI
Cc: Murphy, Anne Marie Personal Information redacted by the USI; Brown, Angela Personal Information redacted by the USI
Personal Information redacted by the USI Dawson, Andrew Personal Information redacted by the USI
Subject: RE: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Dennis, Paddy

I note reference to the work undertaken/progressing by WPD on the nursing alerts policy. I would suggest our work on review/assessment of this circular relating to medical professionals will need to be informed by summary of the main items being addressed in the work reviewing the nursing alerts policy, the changes planned and the legal/other considerations in relation to these items.

I think it also would be helpful to seek feedback at this point from the Medical Directors and Responsible Officers regarding this circular and how they use/invoke it, so that we can identify potential areas and any issues to be worked through as part of this review.

Many thanks for progressing.

Lourda

Due to my current schedule I may be working through emails out side usual working hours, if you are receiving this email out-of-hours please do not feel obliged to respond by return.



From: Rocks, Dennis

Sent: 24 August 2021 15:00

To: Woods, Paddy (Dr)

Cc: Geoghegan, Lourda

Brown, Angela

Murphy, Anne Marie

Subject: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Paddy

I know you have previously discussed with Donna the review of the Professional Alert Process. As a start we have produced a word version attached of the original circular
I have tracked changes to the Circular and made some comments.

Attached is copy of legal advice received by Workforce Policy Directorate Business Support, on issues raised by the Human Rights Commission, in relation to the review of Nursing alerts circular.
This may also be relevant to our rewriting/updating of Professional Alert circular.

Attached also is copy of legal advice received by Donna in relation to the issue of a recent alert iro NHSC Radiologist

WPD have previously advised us that they will not be including Doctors / Dentists in relation to an alerts policy for all professionals in relation to their review of the Nursing Alerts Policy.

As a first step in the updating of the Circular, would be grateful for your review of attached and any comments/suggested amendments before progressing further.

Lourda is on leave the first two weeks in September and I would hope to pick up again then. In the meantime I will also be drafting branch guidance around the operational aspects of issuing the letters and review/monitoring of the process.

Thank You

Dennis

Roberts, Naomi

From: Rocks, Dennis
Sent: 22 September 2021 14:11
To: Woods, Paddy (Dr)
Cc: Murphy, Anne Marie
Subject: RE: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98
Attachments: FW: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Categories: Priority 1

Paddy

I am getting returns from ROs to attached email. I'll hold off till they have all responded or not. Attached is response from Margaret O'Brien and Maria O Kane has responded. Seamus has confirmed that he is working on his.

Going give them extension to Monday 27. I'll give you access to the trim container as well

Sort out tomorrow and email you links etc. Annemarie is our new member of staff at EOII (FTE 0.6) and will be providing support on this.

Nursing alerts revision is put on hold and I will send you legal advice received from [irrelevant redacted by the USI] and his response on the nursing alert review

Thank you

Dennis

From: Woods, Paddy (Dr) [Personal Information redacted by the USI]
Sent: 22 September 2021 13:25
To: Rocks, Dennis [Personal Information redacted by the USI]
Subject: RE: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Dennis

Apologies – only beginning to look at this now.

Could you forward the documents highlighted below, please?

Also can you track down the previous nursing alerts policy which was the subject of revision?

P

From: Rocks, Dennis
Sent: 26 August 2021 10:18
To: Geoghegan, Lourda [Personal Information redacted by the USI]
Cc: Murphy, Anne Marie [Personal Information redacted by the USI]; Brown, Angela [Personal Information redacted by the USI]
[Personal Information redacted by the USI] Dawson, Andrew [Personal Information redacted by the USI]; Woods, Paddy (Dr) [Personal Information redacted by the USI]
Subject: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Lourda

I will follow up with Stephen Galway WPD Business Support who was working with Nursing Branch on the revision of the CNO Professional Nursing Alerts Policy and Scheme.

They have previously provided us with copy of **their submission** and legal advice and I will seek the latest position in relation to these to inform our review.

I will also follow up with MDs/ROs and aim to have an update for you by end of week of your return from leave.

Dennis

From: Geoghegan, Lourda [Personal Information redacted by the USI]
Sent: 24 August 2021 19:39
To: Rocks, Dennis [Personal Information redacted by the USI]; Woods, Paddy (Dr) [Personal Information redacted by the USI]
Cc: Murphy, Anne Marie [Personal Information redacted by the USI]; Brown, Angela [Personal Information redacted by the USI]
[Personal Information redacted by the USI] Dawson, Andrew [Personal Information redacted by the USI]
Subject: RE: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Dennis, Paddy

I note reference to the work undertaken/progressing by WPD on the nursing alerts policy. I would suggest our work on review/assessment of this circular relating to medical professionals will need to be informed by summary of the main items being addressed in the work reviewing the nursing alerts policy, the changes planned and the legal/other considerations in relation to these items.

I think it also would be helpful to seek feedback at this point from the Medical Directors and Responsible Officers regarding this circular and how they use/invoke it, so that we can identify potential areas and any issues to be worked through as part of this review.

Many thanks for progressing.

Lourda

Due to my current schedule I may be working through emails out side usual working hours, if you are receiving this email out-of-hours please do not feel obliged to respond by return.



From: Rocks, Dennis
Sent: 24 August 2021 15:00
To: Woods, Paddy (Dr) [Personal Information redacted by the USI]
Cc: Geoghegan, Lourda [Personal Information redacted by the USI]; Murphy, Anne Marie [Personal Information redacted by the USI]
[Personal Information redacted by the USI] Brown, Angela [Personal Information redacted by the USI]
Subject: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Paddy

I know you have previously discussed with Donna the review of the Professional Alert Process. As a start we have produced a word version attached of the original circular

I have tracked changes to the Circular and made some comments.

Attached is copy of legal advice received by Workforce Policy Directorate Business Support, on issues raised by the Human Rights Commission, in relation to the review of Nursing alerts circular.

This may also be relevant to our rewriting/updating of Professional Alert circular.

Attached also is copy of legal advice received by Donna in relation to the issue of a recent alert iro NHSCT Radiologist

WPD have previously advised us that they will not be including Doctors / Dentists in relation to an alerts policy for all professionals in relation to their review of the Nursing Alerts Policy.

As a first step in the updating of the Circular, would be grateful for your review of attached and any comments/suggested amendments before progressing further.

Lourda is on leave the first two weeks in September and I would hope to pick up again then. In the meantime I will also be drafting branch guidance around the operational aspects of issuing the letters and review/monitoring of the process.

Thank You

Dennis

Roberts, Naomi

From: Murphy, Anne Marie
Sent: 22 September 2021 12:28
To: Rocks, Dennis
Subject: FW: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98
Attachments: TC8 6.98 ISSUE OF ALERT LETTERS ABOUT MEDICAL STAFF UNDER INVESTIGATION.PDF; 21.09.20_U_DOIC Comments on DOH Alerts Policy_Final.docx

Hi Dennis

2nd reply reviewing the circular on the issuing of alert letters received from HSCB.

Take care
Annemarie

From: Margaret O'Brien (Dr) [Personal Information redacted by the USI]
Sent: 22 September 2021 11:31
To: Murphy, Anne Marie [Personal Information redacted by the USI]
Cc: Rocks, Dennis [Personal Information redacted by the USI]
Subject: FW: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

"This email is covered by the disclaimer found at the end of the message."

Annemarie

With apologies I am only getting to respond now but please find attached some comments from myself as HSCB RO.

Bw
Margaret

From: Rocks, Dennis [Personal Information redacted by the USI]
Sent: 08 September 2021 11:59
To: Chris Hagan [Personal Information redacted by the USI]; Seamus O'Reilly [Personal Information redacted by the USI]; Maria O'Kane; Joanne Murdock [Personal Information redacted by the USI]; Nigel Ruddell; Camille Harron; Stephen Bergin; Brid Farrell; Margaret O'Brien (Dr); Richard Wright; [Charlie.Martyn](#) [Personal Information redacted by the USI]; Catherine McDonnell
Cc: Brown, Angela; Murphy, Anne Marie; Waterworth, Claire
Subject: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Dear Colleagues

The Department is currently reviewing the circular on the issuing of alert letters.

In order to identify potential areas and any issues to be worked through as part of this review, we are seeking feedback at this point from the Medical Directors and Responsible Officers regarding this circular, for example how it is used/invoked within your organisation

Other areas you may wish to comment on might be human rights issues arising; the grounds for issuing an alert (based on the facts of individual cases); the referral process from employers; and the review process.

Please feel free to comment on any aspect of the circular.

I would be grateful if all comments could please be emailed to [REDACTED] by Monday 20th September 2021.

Personal Information redacted by the USI

Thank You

Dennis

Dennis Rocks
Quality, Regulation and Improvement Branch
Department of Health,
D1 Castle Buildings,
Stormont.

Personal Information redacted by the USI

Personal Information redacted by the USI

"The information contained in this email and any attachments is confidential and intended solely for the attention and use of the named addressee(s). No confidentiality or privilege is waived or lost by any mistransmission. If you are not the intended recipient of this email, please inform the sender by return email and destroy all copies. Any views or opinions presented are solely those of the author and do not necessarily represent the views of HSCNI. The content of emails sent and received via the HSC network may be monitored for the purposes of ensuring compliance with HSC policies and procedures. While HSCNI takes precautions in scanning outgoing emails for computer viruses, no responsibility will be accepted by HSCNI in the event that the email is infected by a computer virus. Recipients are therefore encouraged to take their own precautions in relation to virus scanning. All emails held by HSCNI may be subject to public disclosure under the Freedom of Information Act 2000."

DOH Alerts Policy – DOIC – 20th September 2021

Operating Context

Under the NI PMPL Regulations (2004), a doctor is required to be listed as a primary medical services performer in order to treat health service patients within primary care. GPs on the Performers List are **not** employed by the HSCB but are independent contractors and deliver services via a number of contractual methods, primarily the General Medical Services (GMS) contracts - in place between the HSCB and the 320 general practices throughout NI. There are approximately 1800 GPs included in the NI PMPL and providing primary medical services at any given time.

Inclusion in the Performers List results in a GP having a 'prescribed connection' to the HSCB Responsible Officer (RO) under the "The Medical Profession (Responsible Officers) Regulations (Northern Ireland) 2010 ("the RO regulations").

The HSCB is responsible for managing the NI PMPL– including admission to and removal from the List. GPs applications are reviewed against strict criteria specified in the Regulations. Applications are considered by the HSCB's Performers List Committee, an advisory committee to the Responsible Officer.

The Primary Medical Services Performers Lists (Amendment) Regulations (Northern Ireland) 2008 introduced **local regulation** of the NI PMPL. They enable the HSCB to include a doctor in the Performers List with conditions (**conditional inclusion**), to retain a doctor on the list subject to compliance with conditions (**contingent removal**), or to **suspend** a doctor. The application of conditions and suspension on a practitioner's registration is underpinned by patient safety and protection considerations.

In accordance with **Regulation 14**, the Board is required to notify relevant NHS bodies of its decision to suspend practitioner from its Performers List. Detailed in the Regulations, these bodies include; DoH, CMOs, PSAS, Secretaries of Local Medical Committees (LMCs). Notification of withdrawal also applies.

A flag is placed against the practitioner's name on the Performers List, advising that the doctor has been conditioned or suspended and contact details provided for an HSCB officer should further advice be required.

Alert Letters

The alert letter system is a way in which employers are made aware of a health professional whose performance or conduct could place patients, staff or the public at serious risk. Alert letters are issued by the Chief Professional Officers of DoH. The system is intended to cover those situations where an HSC employer considers that a member of their healthcare staff may pose a threat to patient safety if they worked in that professional capacity. It should be noted that the alert system is not part of either the HSC employees' disciplinary process or statutory regulatory framework.

However, it is an integral part of the system for pre-employment checks. It provides a means of alerting prospective employers to check that the applicant's employment record is complete and appropriate references are obtained, and that information relevant to safe employment is known in advance of an appointment being made.

Therefore the alert letters system can operate in support of the Performers List requirements and the Responsible Officer's responsibilities.

The RO is legally responsible for a range of duties relating to the evaluation of the fitness to practise of every medical practitioner who has a prescribed connection with the HSCB, namely doctors that are included in the NI PMPL.

General Practitioners

Where an alert letter is issued in respect of a GP, the HSCB checks whether they are included in the NI Primary Medical Performers List and takes any appropriate action.

Any practice seeking to appoint a new partner or sessional doctor can be assured that the necessary action has been taken in respect of alert letters.

Practices themselves are advised to check both the GMC registration of any doctor that they intend to employ to ensure that they are registered with GMC, on the GP register and licensed to practice using the online register at www.gmc-uk.org. and the NI Performers List at <https://hscbusiness.hscni.net/services/1813.htm>

Alert letters are treated in confidence and shared only on a need to know basis. Withdrawal / cancellation of an alert is enacted as appropriate.

General Points for Consideration

- It would be useful to have a single point of issue of alert letters to HSC organisation – e.g. alerts regarding doctors via the Responsible Officers (as is the case with the GMC)
- The system itself is not used very often within HSCB / General Practice
- Given that it is a rarely used system, it would be operated by us on a case by case basis, in line with patient safety considerations / public interest in line with the Performers List and Responsible Officer regulations
- Taking into account of human rights considerations, it should only be used in serious circumstances. Although technically suspension is a neutral act, in reality this is not always seen to be the case.
- Investigations and disciplinary action can last a long time. A corresponding alert for a protracted period of time could be detrimental to a practitioner, particularly in relation to clinical de-skilling – where a practitioner could argue that an alert could impact their ability to be able to secure other employment where appropriate. The key is to balance this against patient safety / public interest considerations.

Roberts, Naomi

From: Margaret O'Brien (Dr) [Personal Information redacted by the USI]
Sent: 22 September 2021 11:31
To: Murphy, Anne Marie
Cc: Rocks, Dennis
Subject: FW: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98
Attachments: TC8 6.98 ISSUE OF ALERT LETTERS ABOUT MEDICAL STAFF UNDER INVESTIGATION.PDF; 21.09.20_U_DOIC Comments on DOH Alerts Policy_Final.docx

"This email is covered by the disclaimer found at the end of the message."

Annemarie

With apologies I am only getting to respond now but please find attached some comments from myself as HSCB RO.

Bw
Margaret

From: Rocks, Dennis [Personal Information redacted by the USI]
Sent: 08 September 2021 11:59
To: Chris Hagan [Personal Information redacted by the USI]; Seamus O'Reilly [Personal Information redacted by the USI]; Maria O'Kane; Joanne Murdock [Personal Information redacted by the USI]; Nigel Ruddell; Camille Harron; Stephen Bergin; Brid Farrell; Margaret O'Brien (Dr); Richard Wright; Charlie.Martyn [Personal Information redacted by the USI]; Catherine McDonnell
Cc: Brown, Angela; Murphy, Anne Marie; Waterworth, Claire
Subject: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Dear Colleagues

The Department is currently reviewing the circular on the issuing of alert letters.

In order to identify potential areas and any issues to be worked through as part of this review, we are seeking feedback at this point from the Medical Directors and Responsible Officers regarding this circular, for example how it is used/invoked within your organisation

Other areas you may wish to comment on might be human rights issues arising; the grounds for issuing an alert (based on the facts of individual cases); the referral process from employers; and the review process.

Please feel free to comment on any aspect of the circular.

I would be grateful if all comments could please be emailed to [Personal Information redacted by the USI] by Monday 20th September 2021.

Thank You

Dennis

Dennis Rocks

Quality, Regulation and Improvement Branch
Department of Health,
D1 Castle Buildings,
Stormont.

Personal Information redacted by
the USI

Personal Information redacted by the
USI

"The information contained in this email and any attachments is confidential and intended solely for the attention and use of the named addressee(s). No confidentiality or privilege is waived or lost by any mistransmission. If you are not the intended recipient of this email, please inform the sender by return email and destroy all copies. Any views or opinions presented are solely those of the author and do not necessarily represent the views of HSCNI. The content of emails sent and received via the HSC network may be monitored for the purposes of ensuring compliance with HSC policies and procedures. While HSCNI takes precautions in scanning outgoing emails for computer viruses, no responsibility will be accepted by HSCNI in the event that the email is infected by a computer virus. Recipients are therefore encouraged to take their own precautions in relation to virus scanning. All emails held by HSCNI may be subject to public disclosure under the Freedom of Information Act 2000."

DOH Alerts Policy – DOIC – 20th September 2021**Operating Context**

Under the NI PMPL Regulations (2004), a doctor is required to be listed as a primary medical services performer in order to treat health service patients within primary care. GPs on the Performers List are **not** employed by the HSCB but are independent contractors and deliver services via a number of contractual methods, primarily the General Medical Services (GMS) contracts - in place between the HSCB and the 320 general practices throughout NI. There are approximately 1800 GPs included in the NI PMPL and providing primary medical services at any given time.

Inclusion in the Performers List results in a GP having a 'prescribed connection' to the HSCB Responsible Officer (RO) under the "The Medical Profession (Responsible Officers) Regulations (Northern Ireland) 2010 ("the RO regulations").

The HSCB is responsible for managing the NI PMPL– including admission to and removal from the List. GPs applications are reviewed against strict criteria specified in the Regulations. Applications are considered by the HSCB's Performers List Committee, an advisory committee to the Responsible Officer.

The Primary Medical Services Performers Lists (Amendment) Regulations (Northern Ireland) 2008 introduced **local regulation** of the NI PMPL. They enable the HSCB to include a doctor in the Performers List with conditions (**conditional inclusion**), to retain a doctor on the list subject to compliance with conditions (**contingent removal**), or to **suspend** a doctor. The application of conditions and suspension on a practitioner's registration is underpinned by patient safety and protection considerations.

In accordance with **Regulation 14**, the Board is required to notify relevant NHS bodies of its decision to suspend practitioner from its Performers List. Detailed in the Regulations, these bodies include; DoH, CMOs, PSAS, Secretaries of Local Medical Committees (LMCs). Notification of withdrawal also applies.

A flag is placed against the practitioner's name on the Performers List, advising that the doctor has been conditioned or suspended and contact details provided for an HSCB officer should further advice be required.

Alert Letters

The alert letter system is a way in which employers are made aware of a health professional whose performance or conduct could place patients, staff or the public at serious risk. Alert letters are issued by the Chief Professional Officers of DoH. The system is intended to cover those situations where an HSC employer considers that a member of their healthcare staff may pose a threat to patient safety if they worked in that professional capacity. It should be noted that the alert system is not part of either the HSC employees' disciplinary process or statutory regulatory framework.

However, it is an integral part of the system for pre-employment checks. It provides a means of alerting prospective employers to check that the applicant's employment record is complete and appropriate references are obtained, and that information relevant to safe employment is known in advance of an appointment being made.

Therefore the alert letters system can operate in support of the Performers List requirements and the Responsible Officer's responsibilities.

The RO is legally responsible for a range of duties relating to the evaluation of the fitness to practise of every medical practitioner who has a prescribed connection with the HSCB, namely doctors that are included in the NI PMPL.

General Practitioners

Where an alert letter is issued in respect of a GP, the HSCB checks whether they are included in the NI Primary Medical Performers List and takes any appropriate action.

Any practice seeking to appoint a new partner or sessional doctor can be assured that the necessary action has been taken in respect of alert letters.

Practices themselves are advised to check both the GMC registration of any doctor that they intend to employ to ensure that they are registered with GMC, on the GP register and licensed to practice using the online register at www.gmc-uk.org. and the NI Performers List at <https://hscbusiness.hscni.net/services/1813.htm>

Alert letters are treated in confidence and shared only on a need to know basis. Withdrawal / cancellation of an alert is enacted as appropriate.

General Points for Consideration

- It would be useful to have a single point of issue of alert letters to HSC organisation – e.g. alerts regarding doctors via the Responsible Officers (as is the case with the GMC)
- The system itself is not used very often within HSCB / General Practice
- Given that it is a rarely used system, it would be operated by us on a case by case basis, in line with patient safety considerations / public interest in line with the Performers List and Responsible Officer regulations
- Taking into account of human rights considerations, it should only be used in serious circumstances. Although technically suspension is a neutral act, in reality this is not always seen to be the case.
- Investigations and disciplinary action can last a long time. A corresponding alert for a protracted period of time could be detrimental to a practitioner, particularly in relation to clinical de-skilling – where a practitioner could argue that an alert could impact their ability to be able to secure other employment where appropriate. The key is to balance this against patient safety / public interest considerations.

Roberts, Naomi

From: Murphy, Anne Marie
Sent: 23 September 2021 08:34
To: Rocks, Dennis
Subject: FW: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98
Attachments: TC8 6.98 ISSUE OF ALERT LETTERS ABOUT MEDICAL STAFF UNDER INVESTIGATION.PDF

Hi Dennis

Another reply received for the review of Alert Letters circular from Dr Bergin and I have added it to the Feedback table.

Take care
Annemarie

From: Stephen Bergin [Personal Information redacted by the USI]
Sent: 22 September 2021 19:30
To: Murphy, Anne Marie [Personal Information redacted by the USI]
Subject: RE: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

"This email is covered by the disclaimer found at the end of the message."

Anne Marie / Denis

We have a relatively small number (circa 30) of medica/public health staff within the PHA (whereas some Trusts have several hundred) - the public health (PH) medical group, being small scale, is relatively well connected from a national perspective. We all fall under one umbrella group (in terms of the relevant professional body – Faculty of Public Health).

In addition to above, the existing appraisal / revalidation system provides ongoing insight as to individual PH doctor performance – and therefore the ability to intervene early before problems become significant / serious.

I don't recollect that we have had to invoke this system within our organisation.

Regards

Dr Stephen Bergin
Director of Public Health and Medical Director (Interim)
Public Health Agency

From: Murphy, Anne Marie [Personal Information redacted by the USI]
Sent: 22 September 2021 16:22
To: 'Chris Hagan' [Personal Information redacted by the USI]; 'Seamus O'Reilly' [Personal Information redacted by the USI]
[Personal Information redacted by the USI]; Maria O'Kane [Personal Information redacted by the USI]

Personal Information redacted by the USI
Nigel Ruddell
Personal Information redacted by the USI
; Camille Harron
Personal Information redacted by the USI
Stephen Bergin
Personal Information redacted by the USI
; Brid Farrell
Personal Information redacted by the USI
Margaret O'Brien (Dr) <Margaret.O'Brien@hscni.net>
Personal Information redacted by the USI
Richard Wright
Personal Information redacted by the USI
[Charlie.Martyn](#)
Personal Information redacted by the USI
'Dr Catherine McDonnell'
Personal Information redacted by the USI
Cc: Brown, Angela
Personal Information redacted by the USI
; Rocks, Dennis
Waterworth, Claire
Personal Information redacted by the USI
Subject: FW: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Please see email below of 08 Sept 2021.

Thank You for all responses to date. Would anyone, who hasn't yet responded, please reply by Wednesday 29 September 2021.

I would be grateful if all comments could please be emailed to

Annemarie Murphy
Quality, Regulation and Improvement Branch
Department of Health,
Castle Buildings,
Stormont.
E-Mail Address :
Tel: Tel: Ext:

From: Rocks, Dennis
Sent: 08 September 2021 11:59
To: Chris Hagan
Seamus O'Reilly
Maria O'Kane
Joanne Murdock
Ruddell, Nigel
Stephen Bergin
O'Brien, Margaret (HSCNI)
Brid Farrell
'Charlie Martyn'
Cc: Brown, Angela
Waterworth, Claire
Subject: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Dear Colleagues

The Department is currently reviewing the circular on the issuing of alert letters.

In order to identify potential areas and any issues to be worked through as part of this review, we are seeking feedback at this point from the Medical Directors and Responsible Officers regarding this circular, for example how it is used/invoked within your organisation

Other areas you may wish to comment on might be human rights issues arising; the grounds for issuing an alert (based on the facts of individual cases); the referral process from employers; and the review process.

Please feel free to comment on any aspect of the circular.

I would be grateful if all comments could please be emailed to [REDACTED] by Monday 20th September 2021.

Personal Information redacted by the USI

Thank You

Dennis

Dennis Rocks
Quality, Regulation and Improvement Branch
Department of Health,
D1 Castle Buildings,
Stormont.

Personal Information redacted by the USI

Personal Information redacted by the USI

"The information contained in this email and any attachments is confidential and intended solely for the attention and use of the named addressee(s). No confidentiality or privilege is waived or lost by any mistransmission. If you are not the intended recipient of this email, please inform the sender by return email and destroy all copies. Any views or opinions presented are solely those of the author and do not necessarily represent the views of HSCNI. The content of emails sent and received via the HSC network may be monitored for the purposes of ensuring compliance with HSC policies and procedures. While HSCNI takes precautions in scanning outgoing emails for computer viruses, no responsibility will be accepted by HSCNI in the event that the email is infected by a computer virus. Recipients are therefore encouraged to take their own precautions in relation to virus scanning. All emails held by HSCNI may be subject to public disclosure under the Freedom of Information Act 2000."

Roberts, Naomi

From: Murphy, Anne Marie
Sent: 28 September 2021 15:33
To: 'Chris Hagan'; 'Seamus O'Reilly'; maria.okane [redacted]
joanne.murdock [redacted] Ruddell, Nigel; camille.harron [redacted] Bergin,
Stephen; Brid Farrell; Margaret O'Brien (Dr); richard.wright [redacted] 'Charlie
Martyn'; 'Dr Catherine McDonnell'
Cc: Brown, Angela; Rocks, Dennis; Waterworth, Claire
Subject: FW: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98
Attachments: TC8 6.98 ISSUE OF ALERT LETTERS ABOUT MEDICAL STAFF UNDER
INVESTIGATION.PDF

Dear All

Please see emails below , the original was issued on 08/09/2021 requesting feedback in relation to the review of Circular HSS(TC8) 6/98 in regards to the issue of Alert Letters.

Thank you for all the responses to date . Would anyone who hasn't respond please reply as if no replies received by Monday 04 October , a nil return (at this stage of review) will be recorded

I would be grateful if all comments could please be emailed to [redacted]

Many thanks
Annemarie
Annemarie Murphy
Quality, Regulation and Improvement Branch
Department of Health,
Castle Buildings,
Stormont.

E-Mail Address : [redacted]

Tel: [redacted] Ext [redacted]

From: Murphy, Anne Marie
Sent: 22 September 2021 16:22
To: 'Chris Hagan' [redacted]; 'Seamus O'Reilly'
[redacted]; 'Maria O'Kane' [redacted]
'joanne.murdock' [redacted] 'Nigel Ruddell - NIAS'
[redacted] 'camille.harron' [redacted] 'Bergin, Stephen'
[redacted] 'Brid Farrell' [redacted]; 'Margaret O'Brien (Dr)'
[redacted] 'richard.wright' [redacted] 'Charlie Martyn'
[redacted] 'Dr Catherine McDonnell' [redacted]
Cc: Brown, Angela [redacted]; Rocks, Dennis [redacted];
Waterworth, Claire [redacted]
Subject: FW: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Please see email below of 08 Sept 2021.

Thank You for all responses to date. Would anyone, who hasn't yet responded, please reply by Wednesday 29 September 2021.

I would be grateful if all comments could please be emailed to [redacted]

Annemarie Murphy
Quality, Regulation and Improvement Branch
Department of Health,
Castle Buildings,
Stormont.

E-Mail Address : [redacted]

Tel: [redacted]

Ext [redacted]

From: Rocks, Dennis [redacted]

Sent: 08 September 2021 11:59

To: Chris Hagan [redacted]

Seamus O'Reilly

Maria O'Kane

; Joanne Murdock

Ruddell, Nigel

[camille.harron](#)

Stephen Bergin

O'Brien, Margaret (HSCNI)

Brid Farrell

; [richard.wright](#)

'Charlie Martyn'

Catherine McDonnell

Cc: Brown, Angela

; Murphy, Anne Marie

Waterworth, Claire

Subject: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Dear Colleagues

The Department is currently reviewing the circular on the issuing of alert letters.

In order to identify potential areas and any issues to be worked through as part of this review, we are seeking feedback at this point from the Medical Directors and Responsible Officers regarding this circular, for example how it is used/invoked within your organisation

Other areas you may wish to comment on might be human rights issues arising; the grounds for issuing an alert (based on the facts of individual cases); the referral process from employers; and the review process.

Please feel free to comment on any aspect of the circular.

I would be grateful if all comments could please be emailed to [redacted] by Monday 20th September 2021.

Thank You

Dennis

Dennis Rocks
Quality, Regulation and Improvement Branch
Department of Health,
D1 Castle Buildings,
Stormont.

Personal Information redacted by
the USI

Roberts, Naomi

From: Rocks, Dennis
Sent: 18 October 2021 09:58
To: Flanagan, Ailish
Cc: Floyd, Lisa; Young, Stephen; Tener, Judith; Murphy, Anne Marie
Subject: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98
Attachments: TC8 6.98 ISSUE OF ALERT LETTERS ABOUT MEDICAL STAFF UNDER INVESTIGATION.PDF

Ailish

We are conducting a review of the attached circular and have sought input from Trust/HSCB/PHA/HSC other responsible officers below.

Please see email below.

I would welcome/be very grateful for any early advice on the circular from a Human Rights aspect with regard to taking into account human rights considerations.

Please contact me with any queries or advice if this would not be your business area.

Thank You

Dennis

From: Rocks, Dennis [Personal Information redacted by the USI]
Sent: 08 September 2021 11:59
To: Chris Hagan [Personal Information redacted by the USI]; Seamus O'Reilly [Personal Information redacted by the USI]; Maria O'Kane; Joanne Murdock [Personal Information redacted by the USI]; Nigel Ruddell; Camille Harron; Stephen Bergin; Brid Farrell; Margaret O'Brien (Dr); Richard Wright; [Charlie.Martyn](#) [Personal Information redacted by the USI]; Catherine McDonnell
Cc: Brown, Angela; Murphy, Anne Marie; Waterworth, Claire
Subject: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Dear Colleagues

The Department is currently reviewing the circular on the issuing of alert letters.

In order to identify potential areas and any issues to be worked through as part of this review, we are seeking feedback at this point from the Medical Directors and Responsible Officers regarding this circular, for example how it is used/invoked within your organisation

Other areas you may wish to comment on might be human rights issues arising; the grounds for issuing an alert (based on the facts of individual cases); the referral process from employers; and the review process.

Please feel free to comment on any aspect of the circular.

I would be grateful if all comments could please be emailed to [Personal Information redacted by the USI] by Monday 20th September 2021.

Thank You

Dennis

Dennis Rocks
Quality, Regulation and Improvement Branch
Department of Health,
D1 Castle Buildings,
Stormont.

Personal Information redacted by
the USI

"The information contained in this email and any attachments is confidential and intended solely for the attention and use of the named addressee(s). No confidentiality or privilege is waived or lost by any mistransmission. If you are not the intended recipient of this email, please inform the sender by return email and destroy all copies. Any views or opinions presented are solely those of the author and do not necessarily represent the views of HSCNI. The content of emails sent and received via the HSC network may be monitored for the purposes of ensuring compliance with HSC policies and procedures. While HSCNI takes precautions in scanning outgoing emails for computer viruses, no responsibility will be accepted by HSCNI in the event that the email is infected by a computer virus. Recipients are therefore encouraged to take their own precautions in relation to virus scanning. All emails held by HSCNI may be subject to public disclosure under the Freedom of Information Act 2000."

Roberts, Naomi

From: Tener, Judith
Sent: 18 October 2021 13:51
To: Rocks, Dennis
Cc: Flanagan, Ailish; Floyd, Lisa; Young, Stephen; Murphy, Anne Marie
Subject: JT comments: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98
Attachments: TC8 6.98 ISSUE OF ALERT LETTERS ABOUT MEDICAL STAFF UNDER INVESTIGATION.PDF; Human Rights Act Impact Assessment - Word template 8 December 2020.docx; Regional facilities for C&YP - Human Rights Impact Assessment V2 - Mar 2....docx; MHO Article 77 OiC - Human Rights Impact Assessment HRIA.DOCX; DAERA Human Rights Synopsis.docx

Dennis

Guidance on Human Rights is available at [NICS Human Rights Guide](#) and I attach some examples of HR Impact Assessments which may assist. I also attach a synopsis of Human Rights legislation which provides some background to the Articles.

Advice is always to engage DSO if there is any doubt or possible HR breach.

The following Articles may require documented consideration in respect of the circular – you may also need to consider from a privacy/ Data Protection perspective when passing on the information? Completion of the HR assessment will help to identify any possible breaches and document your decision making process/ any mitigations considered.

ARTICLE 2 - Right to life – The circular provides for protections for the lives of patients and I would therefore view it as ‘positive’ for this article.

ARTICLE 6 - Right to a fair trial – I do not think there would be a HR impact with regard to ‘presumed innocent until proved guilty according to law’ – the alert letter is only issued in extreme circumstances and no details are given regarding allegations etc.

ARTICLE 7 - No punishment without law – I would think that the safety of others would be paramount in this case.

ARTICLE 8 - Right to respect for private and family life – again, I would think that the safety of others would be paramount in this case.

Don’t hesitate to give me a quick call if you wish to discuss.

Judith

From: Rocks, Dennis
Sent: 18 October 2021 09:58
To: Flanagan, Ailish
Cc: Floyd, Lisa; Young, Stephen; Murphy, Anne Marie; Tener, Judith
Subject: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Ailish

We are conducting a review of the attached circular and have sought input from Trust/HSCB/PHA/HSC other responsible officers below.

Please see email below.

I would welcome/be very grateful for any early advice on the circular from a Human Rights aspect with regard to taking into account human rights considerations.

Please contact me with any queries or advice if this would not be your business area.

Thank You

Dennis

From: Rocks, Dennis [Personal Information redacted by the USI]
Sent: 08 September 2021 11:59
To: Chris Hagan [Personal Information redacted by the USI]; Seamus O'Reilly [Personal Information redacted by the USI]; Maria O'Kane; Joanne Murdock [Personal Information redacted by the USI]; Nigel Ruddell; Camille Harron; Stephen Bergin; Brid Farrell; Margaret O'Brien (Dr); Richard Wright; [Charlie Martyn](#) [Personal Information redacted by the USI]; Catherine McDonnell
Cc: Brown, Angela; Murphy, Anne Marie; Waterworth, Claire
Subject: Alerts Policy for all Professionals - Review of Circular HSS (TC8) 6/98

Dear Colleagues

The Department is currently reviewing the circular on the issuing of alert letters.

In order to identify potential areas and any issues to be worked through as part of this review, we are seeking feedback at this point from the Medical Directors and Responsible Officers regarding this circular, for example how it is used/invoked within your organisation

Other areas you may wish to comment on might be human rights issues arising; the grounds for issuing an alert (based on the facts of individual cases); the referral process from employers; and the review process.

Please feel free to comment on any aspect of the circular.

I would be grateful if all comments could please be emailed to [Personal Information redacted by the USI] by Monday 20th September 2021.

Thank You

Dennis

Dennis Rocks
Quality, Regulation and Improvement Branch
Department of Health,
D1 Castle Buildings,
Stormont.

[Personal Information redacted by the USI]

"The information contained in this email and any attachments is confidential and intended solely for the attention and use of the named addressee(s). No confidentiality or privilege is waived or lost by any mistransmission. If you are not the intended recipient of this email, please inform the sender by return email and destroy all copies. Any views or opinions presented are solely those of the author and do not necessarily represent the views of HSCNI. The content of emails sent and received via the HSC network may be monitored for the purposes of ensuring compliance with HSC policies and procedures. While HSCNI takes precautions in scanning outgoing emails for computer viruses, no responsibility will be accepted by HSCNI in the event that the email is infected by a computer virus. Recipients are therefore encouraged to take their own precautions in relation to virus scanning. All emails held by HSCNI may be subject to public disclosure under the Freedom of Information Act 2000."

**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*

CONTENTS	<i>Page</i>
INTRODUCTION	1
SECTION I. ACTION WHEN A CONCERN FIRST ARISES	5
Introduction	5
Summary of key actions needed	5
Protecting the public	6
Definition of roles	6
Involvement of NCAS	7
Informal approach	8
Immediate exclusion	9
Formal approach	10
Confidentiality	12
Transitional arrangements	12
SECTION II. RESTRICTION OF PRACTICE & EXCLUSION FROM WORK	13
Introduction	13
Managing the risk to patients	13
The exclusion process	14
<i>Key aspects of exclusion from work</i>	14
<i>Exclusion other than immediate exclusion</i>	15
<i>Exclusion from the premises</i>	16
<i>Keeping in contact and availability for work</i>	17
<i>Informing other organisations</i>	17
<i>Existing suspensions & transitional arrangements</i>	18
Keeping exclusions under review	18
<i>Informing the board of the employer</i>	18
<i>Regular review</i>	18
<i>The role of the Department in monitoring exclusions</i>	20
Return to work	20

SECTION III. GUIDANCE ON CONDUCT HEARINGS AND DISCIPLINARY PROCEDURES	21
Introduction	21
Codes of Conduct	21
Examples of misconduct	22
Allegations of criminal acts	22
<i>Action when investigations identify possible criminal acts</i>	22
<i>Cases where criminal charges are brought not connected with an investigation by an HPSS employer</i>	23
<i>Dropping of charges or no court conviction</i>	23
 SECTION IV. PROCEDURES FOR DEALING WITH ISSUES OF CLINICAL PERFORMANCE	 25
Introduction & general principles	25
<i>How to proceed where conduct & performance issues involved</i>	25
<i>Duties of Employers</i>	26
Hearing procedure	26
<i>The pre-hearing process</i>	26
<i>The hearing framework</i>	27
<i>Representation at clinical performance hearing</i>	28
<i>Conduct of the clinical performance hearing</i>	28
<i>Decisions</i>	29
Appeals procedures in clinical performance cases	31
<i>Introduction</i>	31
<i>The appeal process</i>	31
<i>The appeal panel</i>	32
<i>Powers of the appeal panel</i>	33
<i>Conduct of appeal hearing</i>	33
<i>Decision</i>	34
<i>Action following hearing</i>	34
Annex A- Appeal panels in clinical performance cases	35

SECTION V.	HANDLING CONCERNS ABOUT PERFORMANCE ARISING FROM A PRACTITIONER'S HEALTH	37
	Introduction	37
	Handling health issues	37
	Retaining the services of individuals with health problems	38
	Disability Discrimination Act	38
SECTION VI.	FORMAL PROCEDURES – GENERAL PRINCIPLES	41
	Training	41
	Handling of illness during formal proceedings	41
	Process for smaller organisations	41
	Termination of employment with procedures unfinished	42
	Guidance on agreeing terms for settlement on termination of employment	42
FLOW CHARTS		
	Informal Process	43
	Formal Process	44

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:
 - appraisal¹ 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 Bodies² 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.

¹ 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.

² 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. 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 staff³ 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

³ 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 employer⁴.
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

⁴ 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 Executive⁵. 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.

⁵ 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)	Before the end of each exclusion (of up to 4 weeks) the Case Manager reviews the position. • The Case Manager decides on the next steps as appropriate. Further renewal may be for up to 4 weeks at a time. • Case Manager submits advisory report of outcome to CE and Medical Director. • Each review is a formal matter and must be documented as such. • The practitioner must be sent written notification of the outcome of the review on each occasion.
Third review	If the practitioner has been excluded for three periods: • A report must be made by the Medical Director to the CE: - outlining the reasons for the continued exclusion and why restrictions on practice would not be an appropriate alternative; - and if the investigation has not been completed - a timetable for completion of the investigation. • The CE must report to the Director of Human Resources at the Department, who will involve the CMO if appropriate. • The case must be formally referred back to the NCAS explaining: - why continued exclusion is thought to be appropriate; - what steps are being taken to complete the investigation at the earliest opportunity. • The NCAS will review the case and advise the HSS body on the handling of the case until it is concluded.
6 month review	If the exclusion has been extended over 6 months, • A further position report must be made by the CE to

	the Department indicating: - the reason for continuing the exclusion; - anticipated time scale for completing the process; - actual and anticipated costs of the exclusion. The Department will consider the report and provide advice to the CE if appropriate.

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.⁶
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

⁶ 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 body⁷;

- 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

⁷ 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 question⁸.
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

⁸ 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.⁹ 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;

⁹ 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.¹⁰ 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 Trust¹¹ 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 ¹²;
 - 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.

¹⁰ See Annex A.

¹¹ 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.

¹² 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)¹³. 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

¹³ 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.

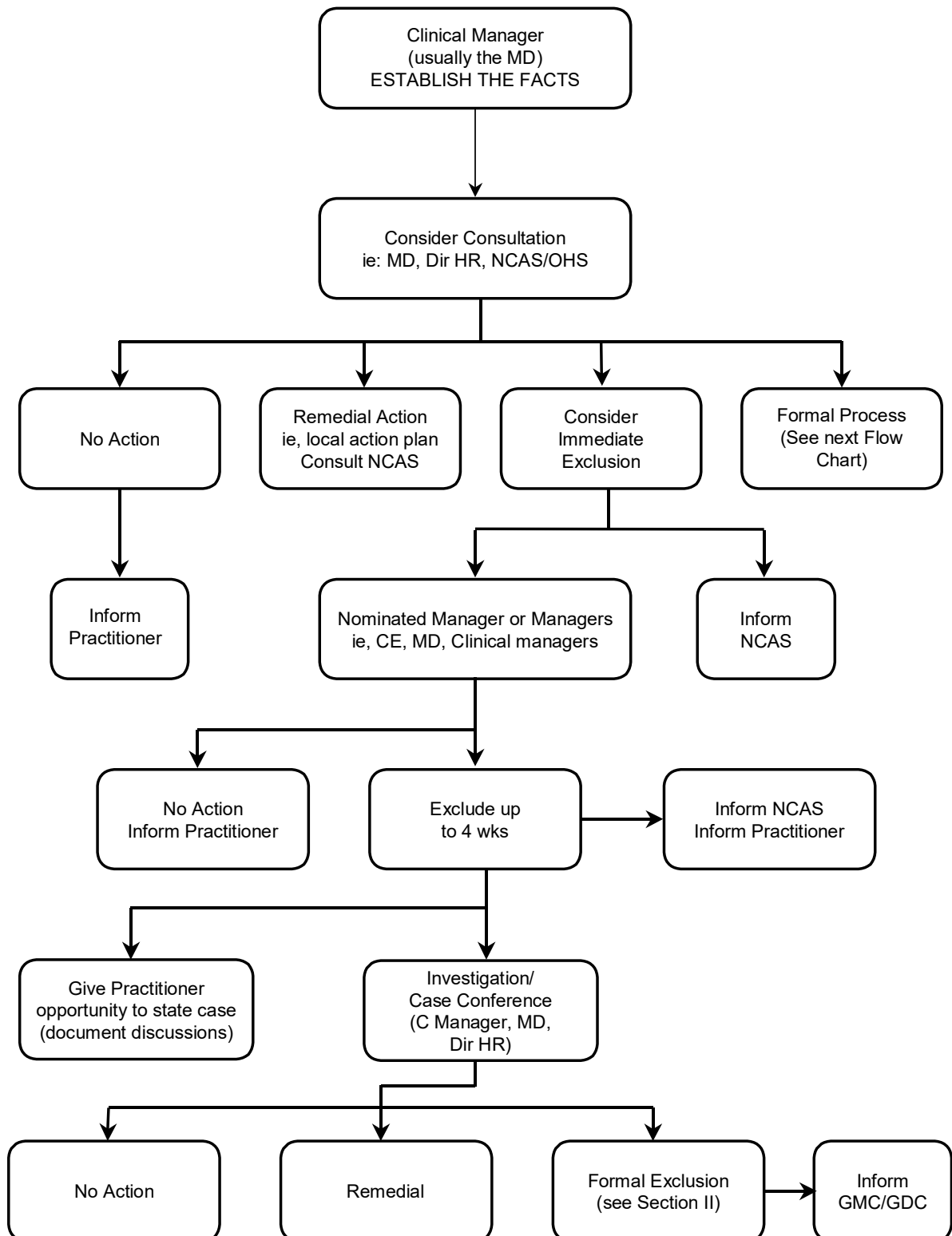
TERMINATION OF EMPLOYMENT WITH PROCEDURES UNFINISHED

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).

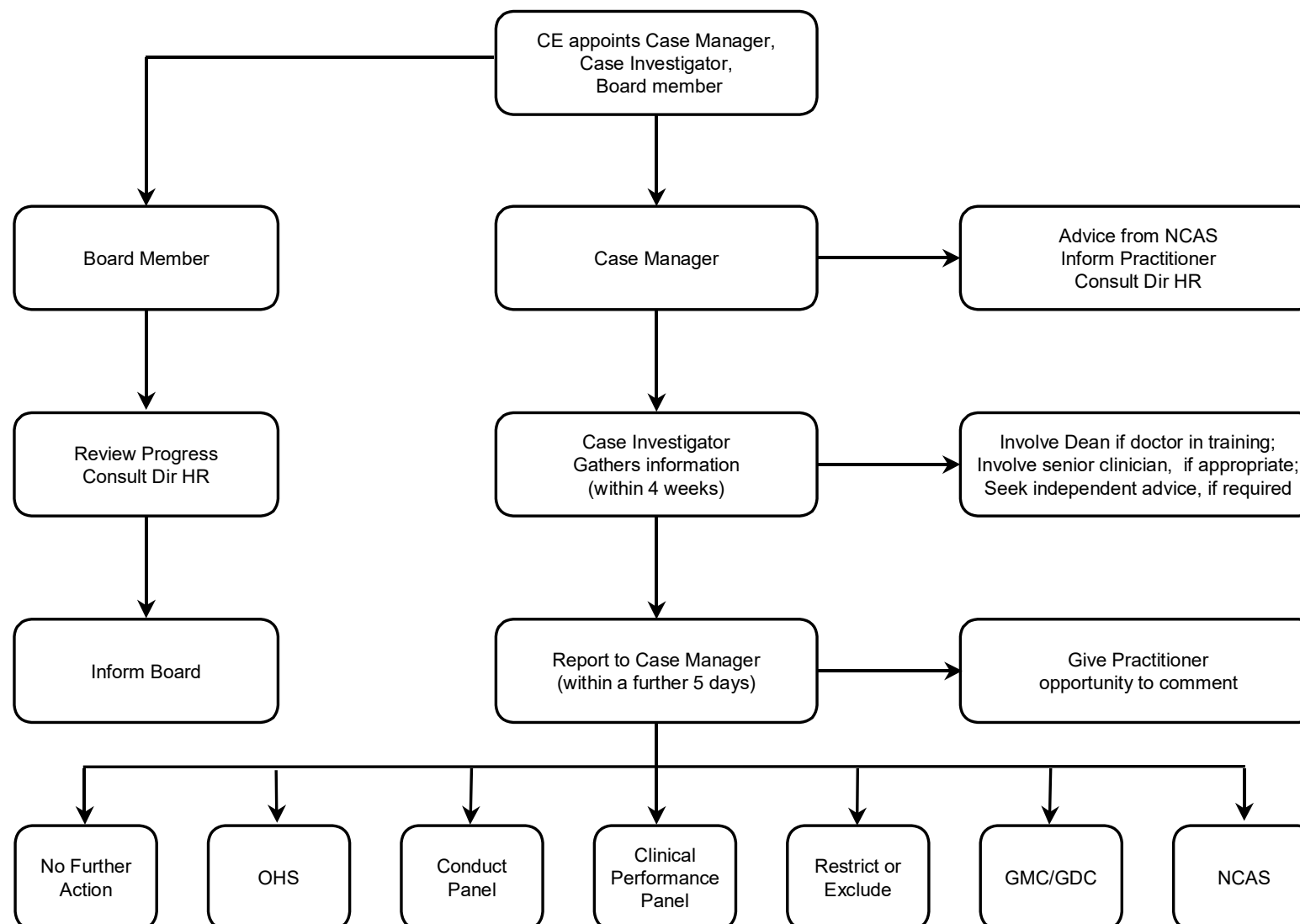
GUIDANCE ON AGREEING TERMS FOR SETTLEMENT ON TERMINATION OF EMPLOYMENT

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

23 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** This 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 patient's harmed.
- 1.3** 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
- 1.4** MHPS states that each Trust should have in place procedures for handling concerns about an individual's performance which reflect the framework.
- 1.5** 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.

1.6 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.

1.7 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.

1.8 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 Concerns¹ 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

¹ Examples of Concerns may include: - when any aspect of a practitioner’s performance or conduct poses a threat or potential threat to patient safety, exposes services to financial or other substantial risks, undermines the reputation or efficiency of services in some significant way, are outside the acceptable practice guidelines and standards.

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

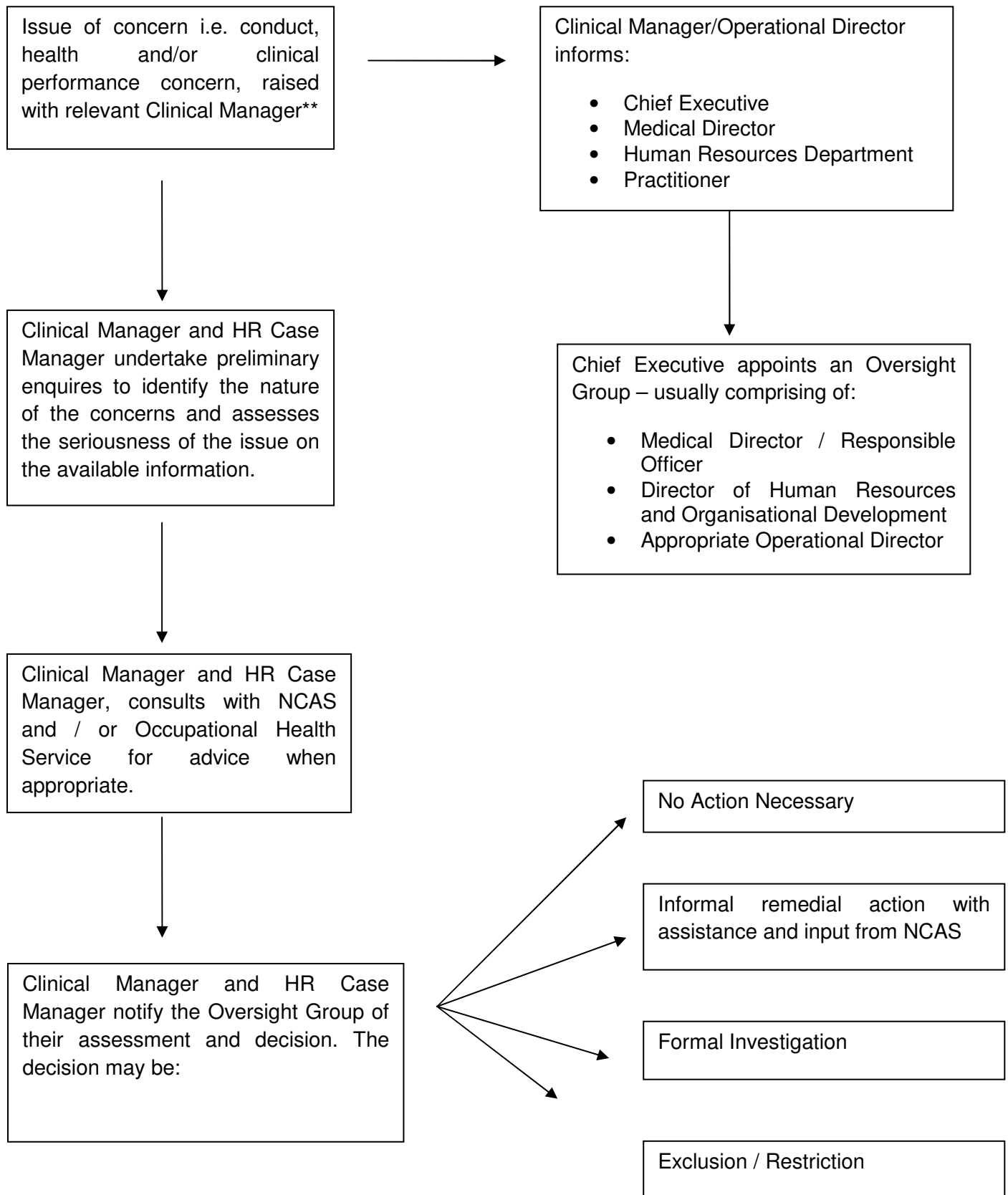
Exclusion can be used at any stage of the process.

Appendix 6

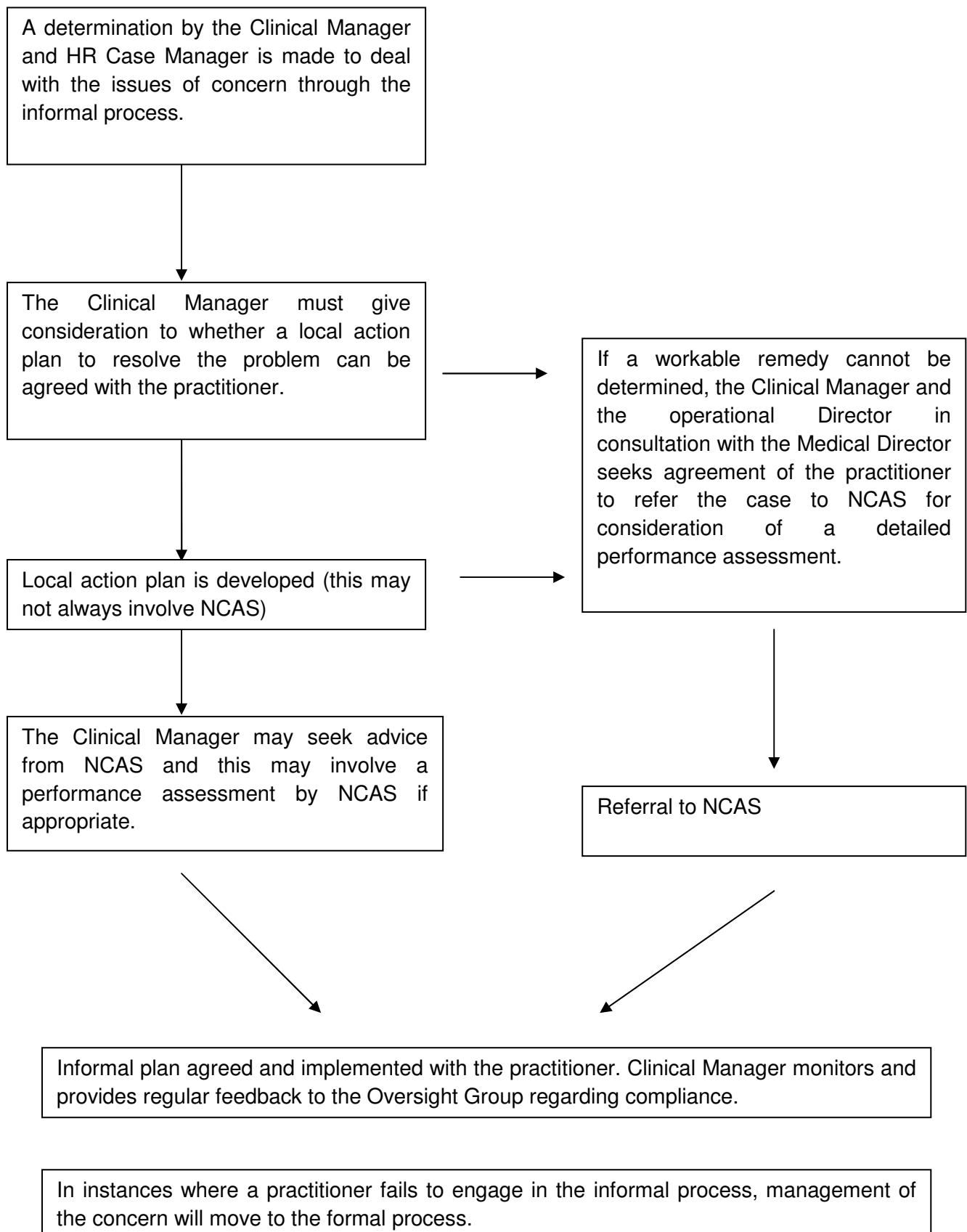
Role definitions

- 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.

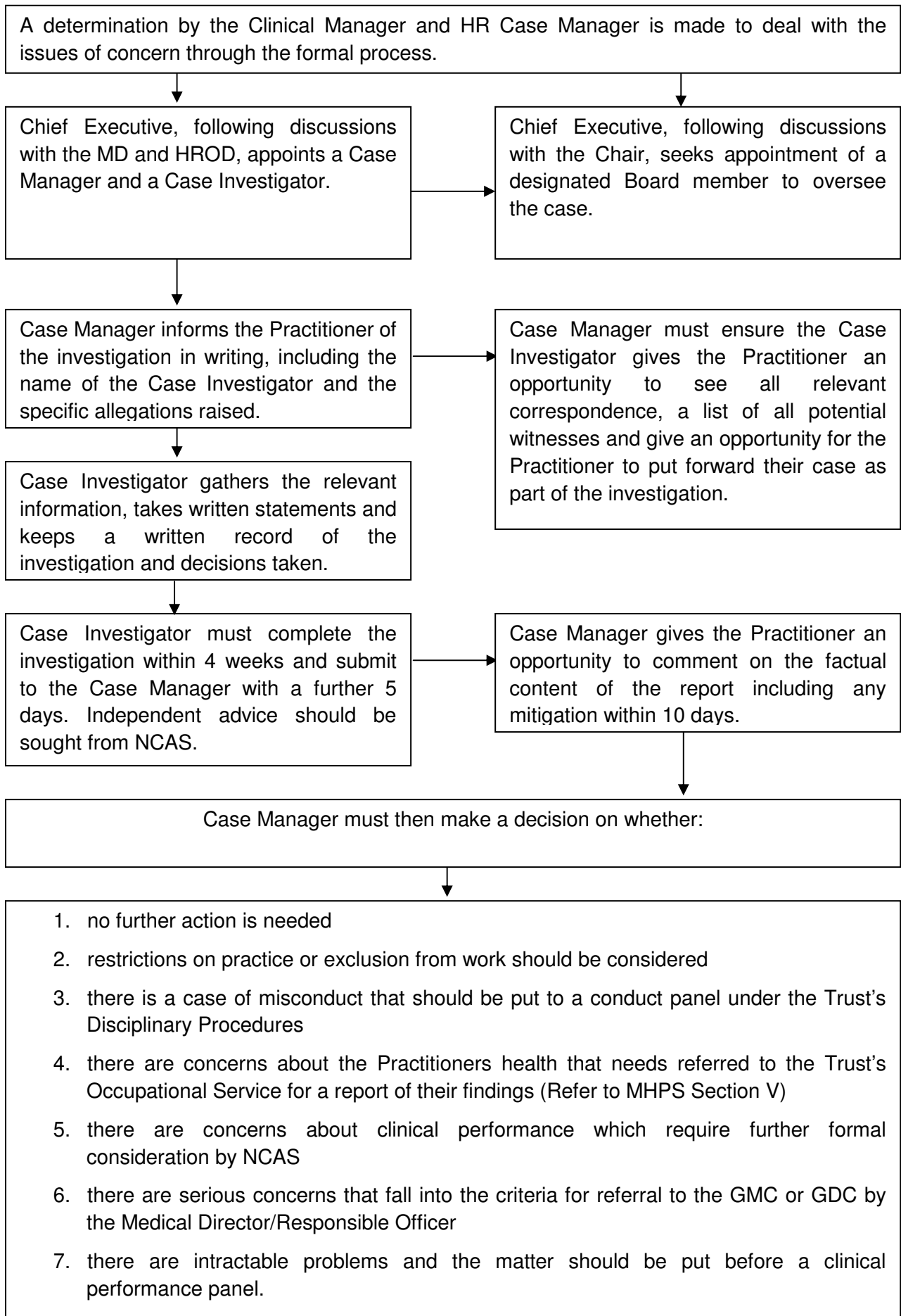
Appendix 1

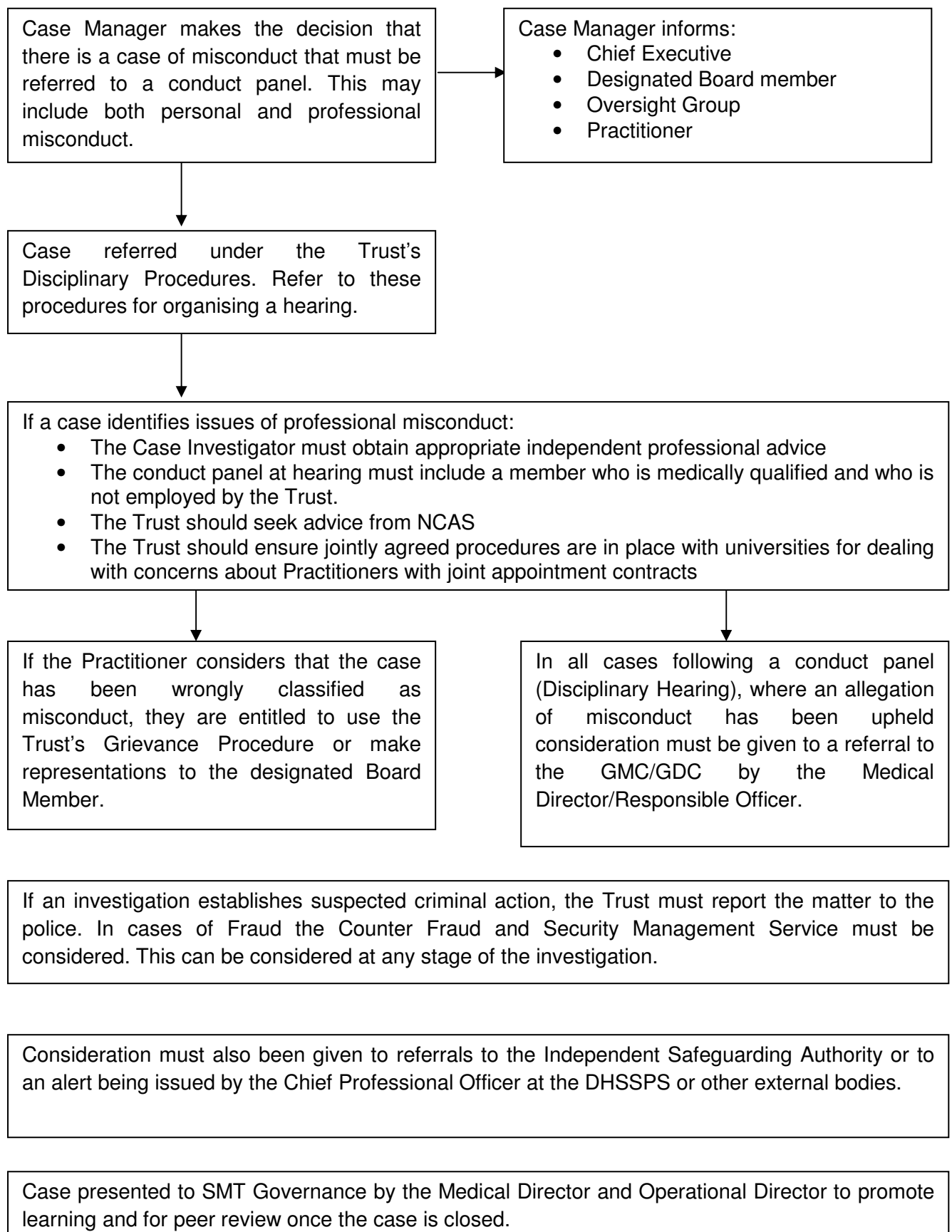
Step 1 Screening Process

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

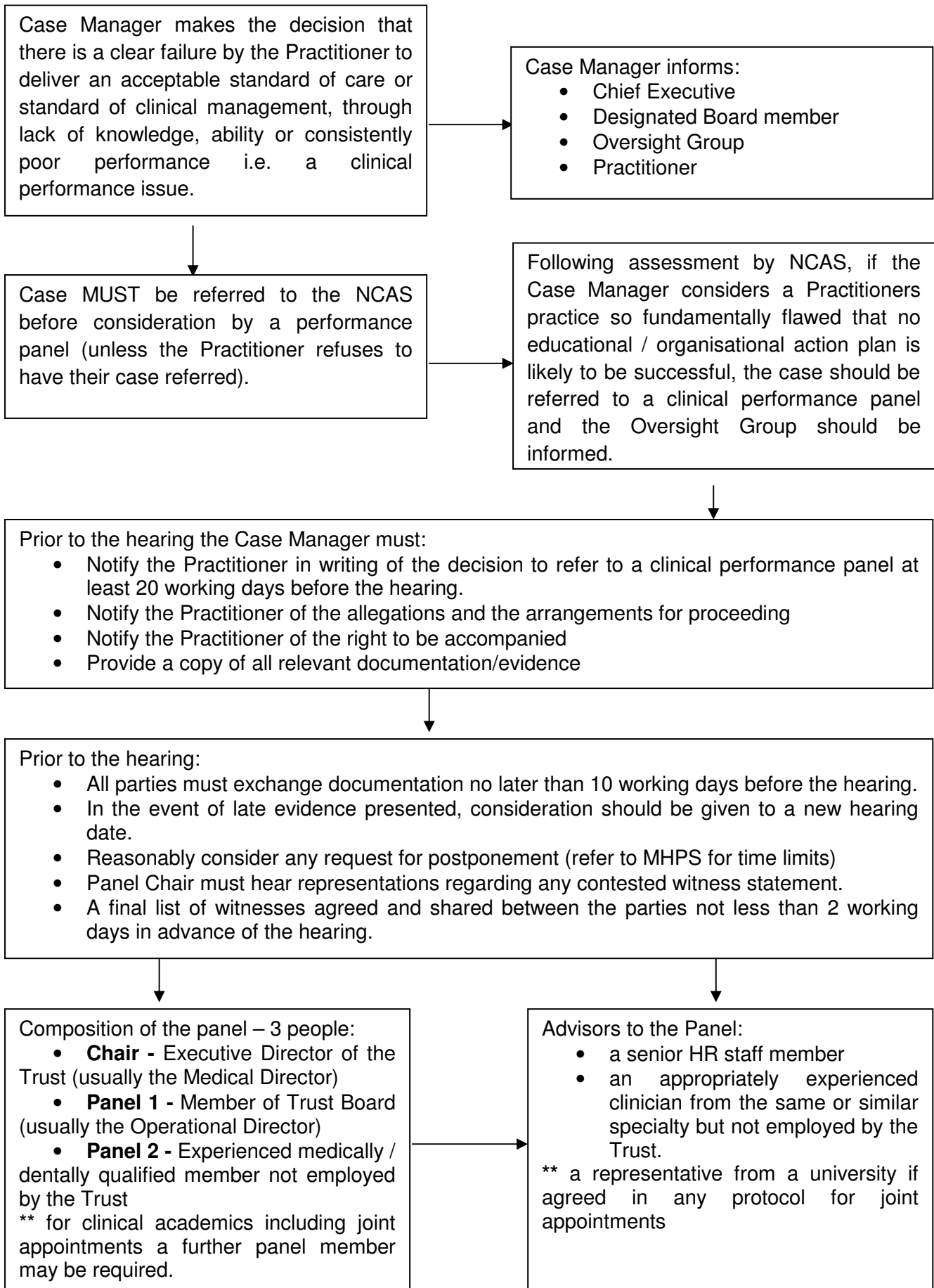
Step 2 Informal Process

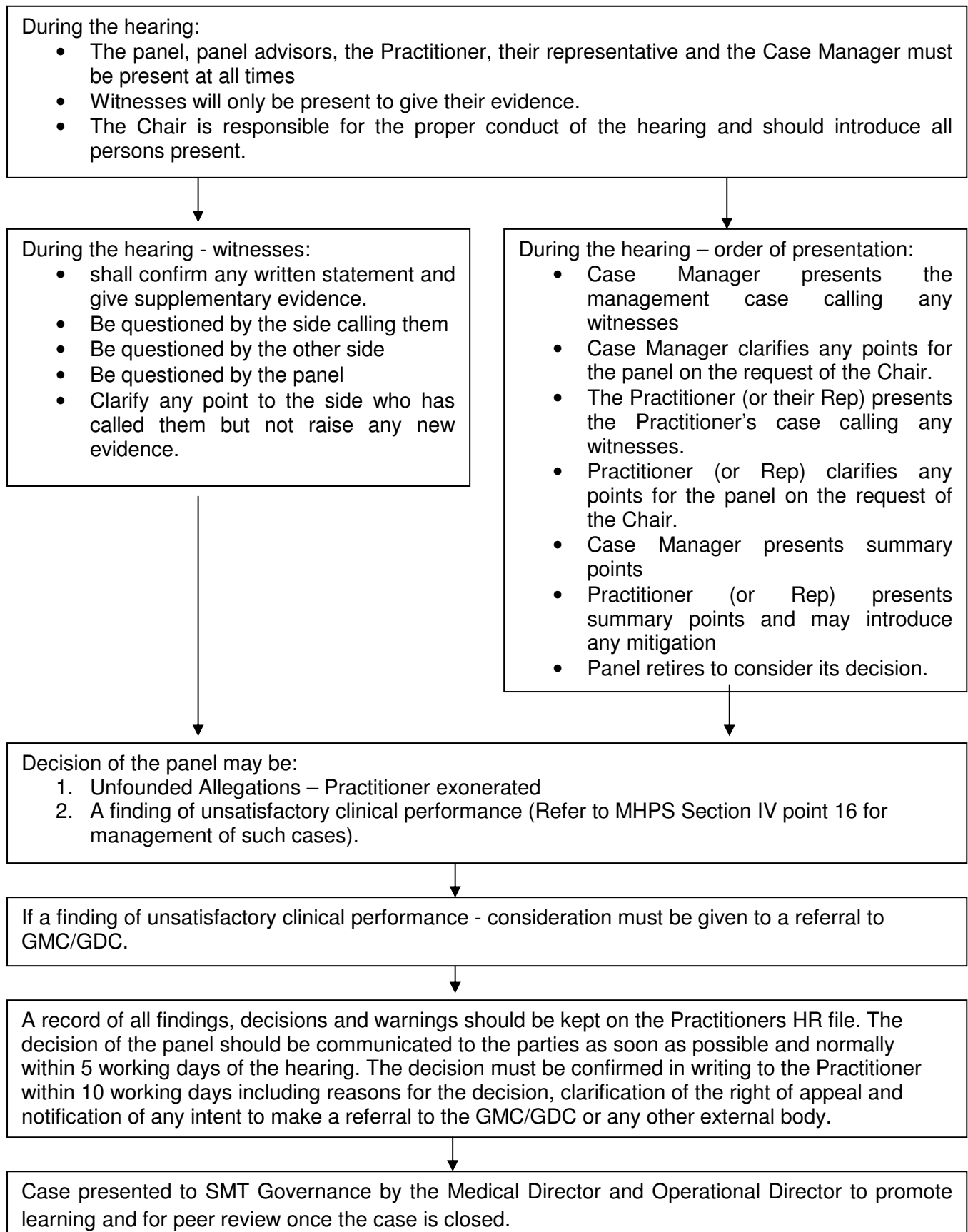
Appendix 2

Formal Process

Conduct Hearings / Disciplinary Procedures

Clinical Performance Hearings



Clinical Performance Hearings

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.

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.

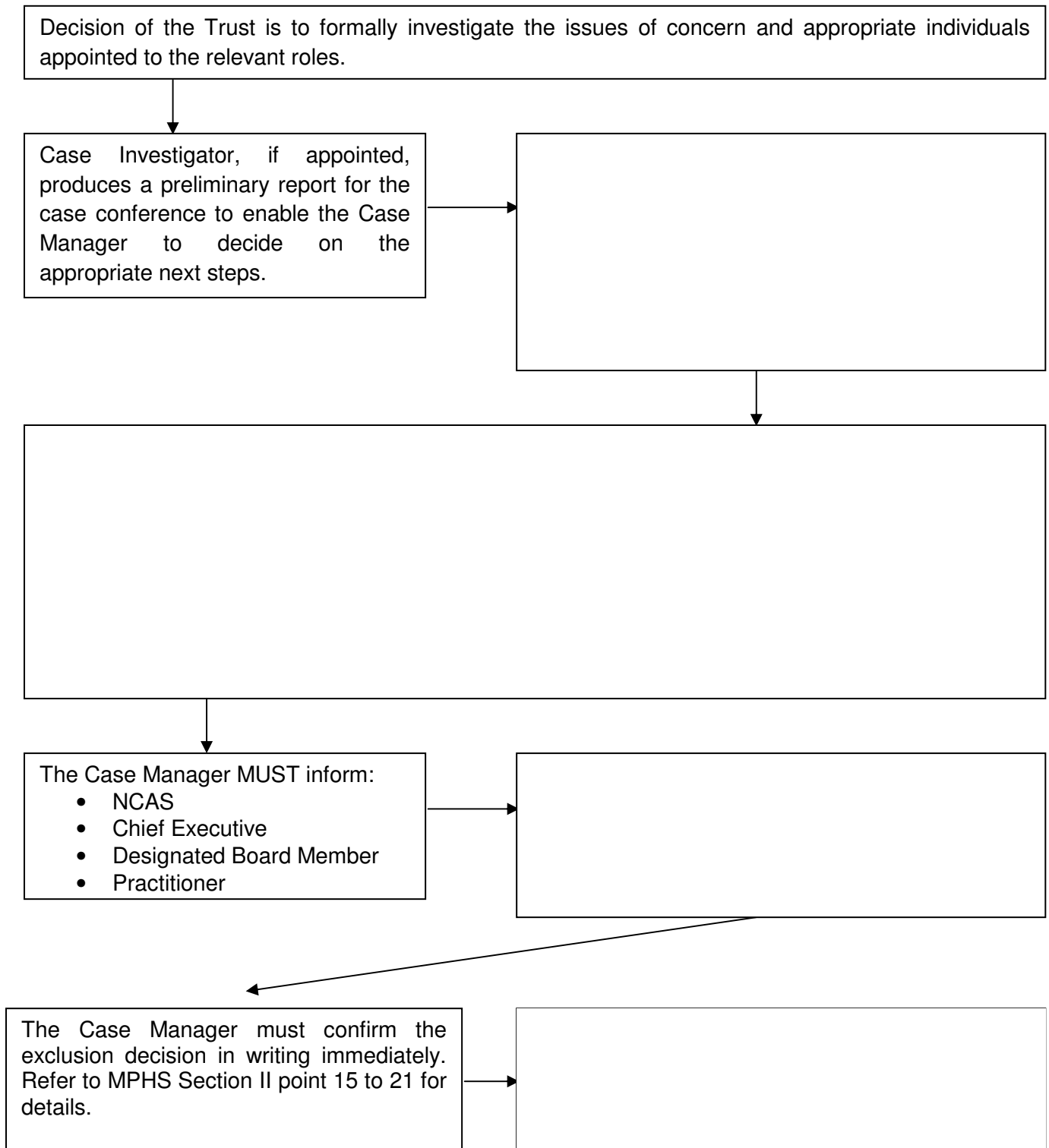
During and up to the 4 week time limit for immediate exclusion, the Clinical Manager and HR Case Manager must:

- 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).

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.

Maintaining High Professional Standards
in the 21st Century Health and Social Care
Organisations

Formatted: Superscript

*A framework for managing concerns about
doctors and dentists in the HSC.*

Department of Health, Social Services & Public Safety
July 2011

MAINTAINING HIGH PROFESSIONAL STANDARDS IN THE 21st
CENTURYMODERN HSC

Formatted: Superscript

A framework for the handling of concerns about doctors and dentists in the HSC

TO BE UPDATED

INTRODUCTION	2
SECTION I STRATEGIC AND REGIONAL CONTEXT	6
Review of Public Administration	6
HSCNI Governance and Accountability	7
Professional Regulation of Doctors and Dentists	8
Revalidation	8
SECTION II IDENTIFYING THE NEED FOR AND PURPOSE OF AN INVESTIGATION	12
How Concerns are Identified	12
Summary of Key Actions Needed	13
Protecting Patients and the Public	14
Preliminary Investigation	14
Involvement of the NCAS	16
SECTION III OPTIONS FOLLOWING PRELIMINARY INVESTIGATION	18
Informal Process	19
Immediate Exclusion	20
Formal Approach	23
General Principles	24 - 28

Outline of Responsibilities	28
Timescale and Decision	30
Confidentiality	31
SECTION IV RESTRICTION OF PRACTICE AND EXCLUSION FROM WORK	33
Introduction	33
Managing the risk to patients	34
The exclusion process	34
<i>Key aspects of exclusion from work</i>	34
<i>Exclusion other than immediate exclusion</i>	35
<i>Exclusion from the premises</i>	38
<i>Keeping in contact and availability for work</i>	38
<i>Informing other organisations</i>	39
<i>Existing suspensions & transitional arrangements</i>	40
Keeping exclusions under review	40
<i>Informing the board of the employer</i>	40
<i>Regular review</i>	41
<i>The role of the Department in monitoring exclusions</i>	43
Return to work	44
SECTION v GUIDANCE ON CONDUCT HEARINGS AND DISCIPLINARY PROCEDURES	45
Introduction	45
Codes of Conduct	46
Examples of misconduct	46

Allegations of criminal acts	47
<i>Action when investigations identify possible criminal acts</i>	47
<i>Cases where criminal charges are brought not connected with an investigation by an HPSS employer</i>	47
<i>Dropping of charges or no court conviction</i>	48
SECTION VI PROCEDURES FOR DEALING WITH ISSUES OF CLINICAL PERFORMANCE	49
Introduction & general principles	49
<i>How to proceed where conduct & performance issues involved</i>	50
<i>Duties of Employers</i>	50
Hearing procedure	51
<i>The pre-hearing process</i>	51
<i>The hearing framework</i>	52
<i>Representation at clinical performance hearing</i>	53
<i>Conduct of the clinical performance hearing</i>	54
<i>Decisions</i>	55
Appeals procedures in clinical performance cases	58
<i>Introduction</i>	58
<i>The appeal process</i>	59
<i>The appeal panel</i>	59
<i>Powers of the appeal panel</i>	61
<i>Conduct of appeal hearing</i>	62
<i>Decision</i>	62
<i>Action following hearing</i>	63

Annex A- Appeal panels in clinical performance cases	64
SECTION VII HANDLING CONCERNS ABOUT PERFORMANCE ARISING FROM A PRACTITIONER'S HEALTH	66
Introduction	66
Handling health issues	66
Retaining the services of individuals with health problems	67
Disability Discrimination Act	68

INTRODUCTION

1. This document introduces the revised framework for managing handling concerns about the conduct, clinical performance and health of medical and dental employees in Northern Ireland's Health and Social Care (HSC) organisations. It covers action to be taken when a concern first arises about a doctor or dentist, and any subsequent action required to ensure patient safety. when deciding whether there needs to be any restriction or suspension placed on a doctor's or dentist's practice.

2.1.

3.2. 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.

4.3. Under the Directions on Disciplinary Procedures 2005, HSC organisations must notify the Department of the action they have taken to comply with the framework by **INSERT DATE**

Commented [PW3]: Would these still apply

5.4. This framework is in 7 sections and covers:

- i. A strategic overview of the system of health and social care delivery in Northern Ireland and regulation of medical and dental employees
- ii. Identifying the need for an investigation
- iii. Options following preliminary investigation
- iv. Restriction of practice and exclusion from work
- v. Guidance on conduct hearing and disciplinary procedures
- vi. Procedures for dealing with issues of clinical performance
- vii. Addressing concerns about a practitioner's health

~~6.5.~~ Local conduct procedures will apply to all concerns about the conduct of a doctor or dentist.

Formatted: Font color: Red

Commented [JL4]: Clarify this with PW

Formatted: Font color: Red

Background

~~7.6.~~ The delivery of safe, effective and high quality care to patients and service users is the priority of every HSC organisation in Northern Ireland. The vast majority of patients receive this standard of care, delivered by healthcare professionals who are up to date, fit to practise and demonstrate commitment to providing excellent healthcare.

~~8.7.~~ For a small number of patients, this is not their experience and it is acknowledged that there are times when delivery of care falls below the standards expected and deserved. These failures can be due to a number of factors and HSC organisations have invested in developing systems and processes to identify, analyse and rectify failures in delivery of care to prevent a reoccurrence. Underperformance of healthcare professionals is one of many factors that can impact on the delivery of quality care.

~~8.~~ The development of *Maintaining High Professional Standards (MHPS)* in 2005 was the response of the Department of Health, Social Services and Public Safety (DHSSPS) to historical concerns about the manner in which complaints about doctors and dentists were addressed. Developing revised arrangements for dealing with medical and dental staff performance has become increasingly important in order to address these concerns and to reflect ~~the new~~ development in systems for quality assurance, quality improvement and patient safety in the HSC.

Formatted: Bullets and Numbering

~~10.8.~~

~~7.~~ Since 2005 there has been significant restructuring in the HSC, along with proposals for new regulatory arrangements for doctors and dentists. This, along with listening to the views of doctors and dentists who have implemented the guidance and procedures of MHPS, has necessitated this revision of the framework.

9. To work effectively this framework should 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 [and transparent](#) approach to reporting and addressing concerns about doctors' and dentists' practice. This 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 revised framework

10. Also included in this revision of MHPS are the recommended reforms to professional regulation emanating from the White Paper, *Trust, Assurance and Safety* (2007)⁴, specifically those recommendations relating to identifying and handling concerns about the performance, conduct and health of healthcare professionals. The tacking concerns recommendations of the White Paper identify a four stage approach:

- (i) identifying issues,
- (ii) investigation,
- (iii) deciding on what action is needed and
- (iv) access (where appropriate) to remediation.

11. Patient safety and the determination of immediate or continuing risk to patients and the public should be the primary consideration at both the identification of a concern and during the investigatory process.

12. All HSC organisations must have procedures for handling concerns about an individual's performance. These procedures must reflect the framework in this

⁴

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_06946

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.

STRATEGIC AND REGIONAL CONTEXT OF THIS FRAMEWORK

13. Since 2005 there has been significant restructuring in the HSC, along with proposals for new regulatory arrangements for doctors and dentists. This, along with listening to the views of doctors and dentists who have implemented the guidance and procedures of MHPS, has necessitated this revision of the framework.

REVIEW OF PUBLIC ADMINISTRATION

14. Since the publication of MHPS in November 2005, the DHSSPS has implemented a major programme of reform and modernisation in health and social care. The recommendations from the review of public administration (RPA) in 2002-05 were designed to establish modern, accountable and effective arrangements for public service delivery in Northern Ireland.

15. There were ~~Within health and social care, there have been~~ two major phases for implementation of ~~RPARPA; the~~ The first involved the establishment of the 5 new integrated HSC Trusts and the retention of the NI Ambulance Trust with effect from 1 April 2007. The second phase included establishing new organisational arrangements to replace the present four HSS Boards, four Health and Social Services Councils and a number of Agencies.

~~15. With effect from 1st April 2009 the following revised structure was implemented:~~
~~a regional Health and Social Care Board (HSCB) which replaced the four Health and Social Services Boards. The focus of the HSCB is commissioning, resource management and performance management and improvement; The HSCB is~~

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

directly accountable to DHSSPS for its own compliance with governance standards and guidelines, and has responsibility for managing the HSC Serious Adverse Incident reporting system.

- ☐ a regional Public Health Agency (PHA) that incorporated and built on the work of the Health Promotion Agency but has much wider responsibility for health protection, health improvement and development to address existing health inequalities and public health issues for all the people of Northern Ireland. The PHA is accountable to DHSSPS and has responsibility to ensure HSC Trusts comply with their statutory duty in relation to improvement of health and wellbeing.
- ☐ a regional Business Services Organisation (BSO) to provide a range of support functions for the whole of health and social care system; and
- ☐ a Patient and Client Council (PCC) to replace the Health and Social Services Councils and is responsible to DHSSPS. The purpose of the PCC is to provide a strong voice for patients, clients and carers and to strengthen public involvement in decisions about health and social care services.

21.16. Establishment of the 5 integrated HSC Trusts presented an unprecedented scale of change in the health and social care landscape in Northern Ireland. Organisations faced many operational challenges and delivered the changes required efficiently with little or no impact on the delivery of care to patients and service users. The amalgamation of organisations required review and refining of processes, policies and systems from the legacy organisations. ~~This work is now complete.~~ HSC Trusts are responsible on behalf of the HSCB for exercising certain statutory functions and have an obligation to ensure arrangements for monitoring and improving the quality of care are in place.

HSCNI GOVERNANCE AND ACCOUNTABILITY

22.17. As their sponsor, the DHSSPS holds all HSC Bodies directly to account for their good governance responsibilities. This accountability runs through to the Minister to the Assembly and its committees.

Formatted: Font: Not Bold

~~6. The DHSSPS holds the HSCB and PHA to account for development and delivery~~

~~7.~~

~~25.18. The structures outlined above describe the accountability arrangements for the delivery of health and social care in Northern Ireland.~~ Those responsible

within HSC organisations for the implementation of the processes in this framework should be aware of these accountability arrangements and ensure that when managing concerns in relation to doctors or dentists, the assessment of risk to patient or public health and wellbeing includes consideration of the need to escalate concerns to the appropriate HSC Body.

Commented [PW5]: OMIT

PROFESSIONAL REGULATION OF DOCTORS AND DENTISTS

~~26.19.~~ The implementation of the processes described in this document should also include consideration of the need to refer the practitioner to their professional regulatory body, for dentists, the General Dental Council (GDC) and for doctors, the General Medical Council (GMC). Referrals made under fitness to practice proceedings should be made promptly where there is information available that indicates this is necessary. Guidance on areas the GDC consider for investigation can be found on their website ⁵ and the GMC have published referral thresholds for doctors, which can also be accessed via their website.⁶

REVALIDATION

~~40.~~ The White Paper, *Trust, Assurance and Safety* reiterated the previously identified requirement for professional regulators to introduce a process of revalidation for their registrants. Revalidation is a process whereby registrants are required to confirm they are keeping up to date, fit to practice and are practicing to the standards required by their regulator. Revalidation is an ongoing process that should provide assurance to employers, other healthcare

Formatted: Bullets and Numbering

⁵ <http://www.gdc-uk.org/Dentalprofessionals/Fitnesstopractise/Pages/Conduct-criminal.aspx>

⁶ http://www.gmc-uk.org/concerns/employers_information.asp

professionals and patients and the public about the performance of doctors and dentists.

20.

Formatted: Font: Not Bold

MEDICAL REVALIDATION AND THE RESPONSIBLE OFFICER

28-21. The GMC will implement a system of revalidation for its registrants in late 2012. All registrants wishing to practise medicine have been issued with a Licence to Practise from the GMC. Renewal of this licence will be subject to the process of revalidation whereby a senior doctor in a healthcare organisation, known as a Responsible Officer (RO), will make a recommendation to the GMC that those doctors with whom they have a prescribed relationship should be revalidated.

22. Legislation Legislation, (and supporting Guidance⁷) –to require all designated organisations to appoint or nominate a Responsible Officer came into operation in Northern Ireland on 1st October 2010. The Medical Profession (Responsible Officers) Regulations (Northern Ireland) 2010⁸ identify the five HSC Trusts as being designated organisations, the Medical Director of each is now the appointed Responsible Officer. The Northern Ireland Medical and Dental Training Agency is also a designated organisation, making the post-graduate Dean the Responsible Officer for doctors in training.

23. The RO role extends beyond making the revalidation recommendation to the GMC. Paragraph,9 of the Regulations defines the responsibilities of the RO in relation to the evaluation of the fitness to practise of every medical practitioner they have a prescribed relationship with, namely :

Formatted: Bullets and Numbering

- a. To ensure that regular appraisals are undertaken
- b. To establish and implement processes to investigate concerns about a medical practitioner's fitness to practise raised by staff or any other source
- c. Where appropriate to refer concerns about the medical practitioner to the GMC
- d. To monitor compliance with any conditions or undertakings agreed with the GMC

⁷ http://www.dhsspsni.gov.uk/index/hss/ahp-confidence_in_care.htm

⁸ <http://www.dhsspsni.gov.uk/cic-ro-regulations-ni.pdf>

To maintain records of medical practitioners fitness to practise evaluations, including appraisals or any other investigations or assessments.

e.

Formatted: Bullets and Numbering

13. The revalidation recommendation the RO will make to the GMC will be based on the outcome of a doctor's annual appraisals over a number of years, combined with supporting information drawn from the organisation or organisations in which the doctor has worked. This supporting information must provide robust, accurate evidence about all aspects of the doctor's practice and should provide assurance that the doctor's performance meets the standards of *Good Medical Practice*.

Formatted: Bullets and Numbering

14. The RO role extends beyond making the revalidation recommendation to the GMC. As defined in the Regulations, the RO is also responsible for the clinical and social care governance systems in their organisation that support doctors and as such should ensure that:

Formatted: Bullets and Numbering

Commented [PW6]: Check regs for actual terminology

➤ doctors who provide care continue to be safe;

➤ doctors are properly supported and managed in sustaining and continually raising their professional standards;

Formatted: Bullets and Numbering

➤ for the very small minority of doctors who fall short of the high professional standards expected, ensure that there are fair and effective local systems to identify them and ensure appropriate action to safeguard patients; and

Formatted: Bullets and Numbering

□ increase public and professional confidence in the regulation of doctors;

Formatted: Bullets and Numbering

Formatted: Font: Bold

Formatted: Indent: Left: 0.63 cm

Formatted: Bullets and Numbering

15. Guidance on the role of the RO has been developed⁹ that describes the role of the RO in addressing concerns about a doctor's performance. The RO will decide whether local processes or remediation are appropriate to manage the

⁹ http://www.dhsspsni.gov.uk/index/hss/confidence_in_care.htm

concern or whether it is serious enough to warrant a referral to the GMC on the grounds of fitness to practise.

~~16. The role of the RO is in this instance is limited to drawing the case to the attention of the GMC and to ensuring that the necessary supporting evidence is available. Final decisions, which may affect the ability of a doctor to continue in practice, will remain, as at present, the sole responsibility of the GMC.~~

Formatted: Bullets and Numbering

REVALIDATION FOR DENTISTS

~~17.24.~~ The GDC recently consulted on their proposals for the revalidation of dentists.

Formatted: Bullets and Numbering

The proposed framework comprises of a five year cycle, at the end of which dentists will be required to demonstrate compliance with their standards. External verifiers will be established and they will be required to review the supporting evidence submitted by dentists and certify the individual's compliance with the Standards.

~~26.~~

REVALIDATION AND MANAGING CONCERNS

25. The primary purpose of revalidation is to provide a positive assurance that the practitioner is meeting the requirements of their professional regulator. There have been some concerns expressed by practitioners that performance concerns may only be identified at the point of a revalidation recommendation being made, resulting in the RO being unable to make [a fitness to practise recommendation to the the recommendations on an individual to the](#) GMC.

26. [A key principle in managing concerns is that they should be addressed](#) ~~It should be noted that concerns should be addressed as~~ [as](#) soon as they are identified ~~and and should not be collated and addressed with presented to~~ the practitioner at the point of a revalidation recommendation. This is a key principle of the GMC's revalidation model, namely that there should be 'no surprises' for individual doctors.

20. The processes upon which revalidation will be based, namely annual appraisal and review of information generated by the organisation in relation to the practitioner's performance, may highlight the presence of a concern at an earlier stage. [The processes in place to manage identified concerns as](#)

~~28-~~

~~29-27. The processes described~~ in this Framework will not change as revalidation is introduced, ~~but however, the~~ [the](#) potential ~~of~~ identification of concerns at an earlier stage ~~could~~ [should](#) allow for ~~earliery~~ [early](#) intervention and remediation (where appropriate). This will allow practitioners opportunity to address the area/s identified and provide opportunity for these to be improved on wherever possible.

28. In developing their models for revalidation, the GMC and GDC will consider options for practitioners undergoing remediation or who are subject to formal processes when the revalidation recommendation is due. This will likely be addressed by the introduction of a deferral process to allow processes to complete.

Formatted: Bullets and Numbering

SECTION 2: IDENTIFYING THE NEED FOR, FOR AND PURPOSE OF, AN INVESTIGATION

HOW CONCERNS ARE IDENTIFIED

29. The management of performance is a continuous process to ensure both quality of service to patients 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 will not necessarily require formal investigation or the implementation of disciplinary procedures.

30. Concerns about a doctor or dentist's performance can come to light in a wide variety of ways, for example:

- concerns expressed by other HSC staff including other professionals, healthcare managers, students and non-clinical 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
- serious adverse incidents, or
- the report of one or more critical clinical incidents or near misses.

31. All professional regulatory bodies define standards of practice they expect from their registrants ~~The ways in which concerns can be raised as described above include what are commonly described as 'hard' and 'soft' concerns. A hard concern can be defined as a written statement, letter of complaint, outcome of an appraisal discussion or job plan review and robust governance data (such as critical incidents and other quality assurance information) in relation to the performance of the practitioner. Soft concerns are generally defined as those relating to an individual practitioner that are not articulated as part of a formal process, often described as 'whispers in the corridor'. Whilst addressing soft concerns with practitioners can prove challenging, , which include the requirement to take action if they perceive a risk to patient safety. Thus, there is an additional burden on health care staff subject to statutory regulation to report concerns. There is also a need to ensure lessons are~~ must be learnt from previously high profile cases where concerns relating to practitioners were widely known by other healthcare professionals but not formally articulated, often resulting in harm to patients ~~and a threat to public safety~~.

32. A ~~Therefore, all~~ concerns, 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.

32.33. ~~Individual practitioners should be protected from unfounded or malicious allegations which can cause lasting damage to their reputation and career. Where allegations raised by a fellow HSC employee are shown to be malicious, that employee should be subject to the relevant disciplinary procedures.~~

SUMMARY OF KEY ACTIONS NEEDED

33.34. When a concern is raised, the key actions needed at the outset can be summarised as follows:

- consider if urgent action such as restriction of practice or exclusion needs to be taken to protect patients and the public ;

➤ consider who should be informed of the investigation

➤ undertake a preliminary investigation to clarify the problem or concern;

➤ consider who should be informed of the investigation;

➤ review findings of preliminary investigation and identify next steps;

☐ consider necessity of completing Serious Adverse Incident proforma;

➤

consider discussing case with NCAS on the way forward;

➤ 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;

➤ consideration should be given to ensuring that all immediately necessary steps have been taken to protect staff, including whistleblowers.

÷

➤ 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.

Formatted: Bulleted + Level: 2 + Aligned at: 1.9 cm + Tab after: 2.54 cm + Indent at: 2.54 cm

Commented [PW7]: ?premature

Formatted: Indent: Left: 1.27 cm

Formatted: Indent: Left: 0.63 cm, Bulleted + Level: 2 + Aligned at: 1.9 cm + Tab after: 2.54 cm + Indent at: 2.54 cm

Formatted: Bullets and Numbering

Commented [PW8]: ?premature

PROTECTING PATIENTS AND THE PUBLIC

34.35. From the outset, the fundamental consideration should be the continued safety of patients and the public. Whilst excluding the practitioner from the workplace may be unavoidable it should not be the only or first approach to ensuring patient safety. Alternative ways to manage risks, avoiding exclusion, include:

- arranging supervision of normal contractual clinical duties- this can range from observation to indirect or opportunistic supervision ;
- 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~~ness absence leave~~ for the investigation of specific health problems.

36. The NCAS *Back on Track*¹⁰ framework defines how they approach work with practitioners who require further training as a means of resolving concerns or supporting a return to work programme.

Formatted: Font: Italic

¹⁰ <http://www.ncas.npsa.nhs.uk/resources/good-practice-guides/back-on-track/>

INVESTIGATING CONCERNS

PRELIMINARY INVESTIGATION

~~35.37.~~ In order to ascertain there is a need for a formal investigation, the organisation should undertake a preliminary investigation, taking account of the evidence to hand, alongside any comments the practitioner wishes to make at this stage and ascertaining if a more detailed, formal investigation would be likely to yield further evidence.

~~36.38.~~ The preliminary investigation should be appropriately documented and recorded from the outset. If a formal investigation is required, the methodology and findings from the preliminary investigation will be critical in establishing the terms of reference of the formal investigation. Robust recording will also provide assurance to the organisation that the appropriate process has been followed and how decisions were reached.

39. The causes of adverse events should not automatically be attributed to the actions, failings or unsafe acts of an individual alone. Root cause analyses of individual adverse events frequently show that these are more broadly based and can be attributed to systems or organisational failures, or demonstrate that they are untoward outcomes which could not have been predicted and are not the result of any individual or systems failure. Each will require appropriate investigation and remedial actions.

~~37.~~

~~7. In order to ascertain there is a need for a formal investigation, the organisation should undertake a preliminary investigation, taking account of the evidence to hand, alongside any comments the practitioner wishes to make at this stage and ascertaining if a more detailed, formal investigation would be likely to yield further evidence.~~

~~2.~~

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 29 + Alignment: Left + Aligned at: 0 cm + Tab after: 0.63 cm + Indent at: 0.63 cm, Allow hanging punctuation, Font Alignment: Auto

Formatted: Bullets and Numbering

Formatted: Indent: Left: 0.63 cm

Formatted: Bullets and Numbering

8. ~~In the vast majority of cases when action other than immediate exclusion can~~

~~be taken, the action should be taken as soon as possible and the investigation should be carried out without any undue delay.~~

~~carried out without any undue delay.~~

Commented [PW9]: ? in the wrong place

3. ~~The preliminary investigation should be appropriately documented and recorded from the outset. If a formal investigation is required, the methodology and findings from the preliminary investigation will be critical in establishing the terms of reference of the formal investigation and robust recording will also provide assurance to the organisation that the appropriate process has been followed and how decisions were reached.~~

Formatted: Bullets and Numbering

38.40. The preliminary investigation should be undertaken by a senior clinician in the HSC organisation and should include:

- Review of relevant clinical or administrative records
- Review of any report or documentation relating to the concern. Formal witness statements may not have been drafted at this stage, but the individuals concerned should always make a written record as soon as possible while matters are still fresh in their minds
- Interviewing of individuals may be appropriate as part of the preliminary investigation where clarification of their comments or nature of their involvement is necessary

39.41. The Clinical Director, Human Resources Director, and Medical Director/Responsible Officer should be informed of the investigation. They may decide to inform the Chief Executive at the stage of the preliminary investigation if there is an apparent risk to patient safety, an/or for reputational damage to the

organisation When commencing an investigation the following persons should be notified:

DISCUSS WITH PW

40-42. The preliminary investigation should be completed as quickly as possible. The practitioner who is the subject of the investigation should always be given the opportunity to comment on the issues as identified at the end of the investigation. Their comments must be taken into consideration before any decision is reached in relation to the next stage of this process.

41-43. INSERT REF/APPENDIX RE INVESTIGATIONS

INVOLVEMENT OF THE NATIONAL CLINICAL ASSESSMENT SERVICE (NCAS)

Commented [PW10]: ? the right place

42-44. The NCAS is a division of the NHS Patient Safety Agency and was established to assist healthcare managers and practitioners to understand, manage and prevent performance concerns.

43-45. At any stage in the handling of a case whether a formal or informal process is being implemented, consideration should be given to the involvement of the NCAS. The NCAS has developed a staged approach to the services it provides HSC 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.

44-46. Employers or practitioners are at liberty to make use of the services of the 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.

45-47. 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 recognise the problem as being more to do with organisational systems than a practitioner's performance, or see a wider problem needing the involvement of an outside body other than the NCAS.

46-48. 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 recognised standards and clinical practice which, if repeated, would put patients seriously at risk;
- alternatively, or additionally, issues which are ongoing or recurrent.

47-49. 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 HSC or private sector other than their main place of HSC employment until the NCAS assessment is complete. The NCAS has issued guidance on its processes, and how to make such referrals in its Handbook.¹¹ See also circular HSS (TC8) 5/04.

48-50. 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.

OPTIONS FOLLOWING PRELIMINARY INVESTIGATION

¹¹ <http://www.ncas.npsa.nhs.uk/about-ncas/>

49.51. At the conclusion of the preliminary investigation, the information collated should be reviewed and a decision made in relation to what, if any, next steps should be taken. As a first step, this preliminary investigation is 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 Responsible Officer, Medical Director and Director of HR, taking advice from the NCAS or Occupational Health Service (OHS) where necessary.

52.

Formatted: Font color: Black, English (United States)

Formatted: Indent: Left: 0.63 cm

Formatted: Bullets and Numbering

SECTION 3: OPTIONS FOLLOWING PRELIMINARY INVESTIGATION

1. At the conclusion of the preliminary investigation, the information collated should be reviewed and a decision made in relation to what, if any, next steps should be taken. As a first step, this preliminary investigation is 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 Responsible Officer, Medical Director and Director of HR, taking advice from the NCAS or Occupational Health Service (OHS) where necessary.

Formatted: Bullets and Numbering

2. The causes of adverse events should not automatically be attributed to the actions, failings or unsafe acts of an individual alone. Root cause analyses of individual adverse events frequently show that these are more broadly based and can be attributed to systems or organisational failures, or demonstrate that they are untoward outcomes which could not have been predicted and are not the result of any individual or systems failure. Each will require appropriate investigation and remedial actions.

Formatted: Bullets and Numbering

3.52. Options available following the preliminary investigation are:

- a. ➤ No action to be taken
- b. ➤ Informal process; remedial action required
- Restriction on practice required
- c. ➤ Immediate exclusion required
- Proceed to Formal Process
- d. Proceed to Formal Process

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 29 + Alignment: Left + Aligned at: 0 cm + Tab after: 0.63 cm + Indent at: 0.63 cm

Formatted: Bullets and Numbering

Formatted: Bulleted + Level: 1 + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

Formatted: Indent: Left: 1.9 cm

Formatted: Indent: Left: 0.63 cm

INFORMAL PROCESS

~~53. NO ACTION REQUIRED~~ 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

NO ACTION REQUIRED

4.54. If, at the conclusion of the preliminary investigation, it has been agreed that no action is required, the practitioner should be informed of this decision as soon as possible. The record of the investigation should be completed and include the rationale for the decision. This record should be held on the practitioner's personnel file for future record. **CHECK POLICY**

REMEDIAL ACTION REQUIRED

~~5.55.~~ If the outcome of the preliminary investigation is the identification of a performance concern (as per definition in paragraph 2 of this Framework-referring to all aspects of a practitioner's work including conduct, health and clinical performance) ~~n-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. If a workable remedy cannot be determined in this way, the Medical Director/Responsible Officer, 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**. ? two types of performance assessment

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

Formatted: Indent: Left: 0.63 cm

Formatted: Indent: Left: 1.25 cm

Formatted: Bullets and Numbering

Formatted: Font: Italic

Formatted: Font: Italic

Formatted: Font: Italic

Commented [JL11]: CLAIRFY

~~6-56.~~ The local action plan should be agreed by both the practitioner and a senior clinician in the organisation. A timescale should be defined for review and completion of the objectives of the action plan and progress documented.

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 55 + Alignment: Left + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm

Formatted: Bullets and Numbering

~~54.~~ Successful completion of the action plan should be documented and this information retained in the practitioner's personnel file.

Formatted: Font color: Black, English (United States)

~~57.~~

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 55 + Alignment: Left + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm

Formatted: Bullets and Numbering

Formatted: Indent: Left: 0.63 cm

Formatted: Font: Bold

RESTRICTIONS ON PRACTICE

IMMEDIATE EXCLUSION

Formatted: Indent: Left: 0.63 cm

~~8-58.~~ When significant issues relating to performance are identified as a result if the preliminary investigation 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 and, obtain relevant undertakings e.g. regarding practice outside the organisation in another HSC organisation or private practice, elsewhere or provide for the temporary exclusion of the practitioner from the workplace.

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 55 + Alignment: Left + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm

Formatted: Bullets and Numbering

IMMEDIATE EXCLUSION

Formatted: Indent: Left: 0.63 cm

Formatted: Indent: Left: 0 cm

~~9.~~ An immediate time limited exclusion from the workplace may be necessary may be necessary

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 55 + Alignment: Left + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm

Formatted: Bullets and Numbering

~~to~~ to protect the interests of patients or other staff; or

~~59.~~ where there has been a breakdown in relationships within a team which has the potential to significantly endanger patient care.

Formatted: Space Before: 0 pt, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 55 + Alignment: Left + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm

~~10-60.~~ 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

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 55 + Alignment: Left + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm

Formatted: Bullets and Numbering

carry out a preliminary situation analysis and to convene a case conference involving the clinical manager, the Medical Director/Responsible Officer and appropriate representation from Human Resources.

~~41-61.~~ 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/Responsible Officer and the Clinical Directors for staff below the grade of consultant. For consultants it should include the CE and Responsible Officer /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.

Formatted: Indent: Left: 1.27 cm

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 55 + Alignment: Left + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm

Formatted: Bullets and Numbering

~~42-62.~~ 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.

Formatted: Indent: Left: 1.27 cm

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 55 + Alignment: Left + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm

Formatted: Bullets and Numbering

~~43-63.~~ 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.

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 55 + Alignment: Left + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm

Formatted: Bullets and Numbering

~~44-64.~~ All these discussions should be minuted, recorded and documented, and a copy given to the practitioner.

Formatted: Indent: Left: 1.27 cm

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 55 + Alignment: Left + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm

Formatted: Bullets and Numbering

~~55-65.~~ The 4 week exclusion period should allow sufficient time for initial [or further](#) investigation to determine a clear course of action, including the need for formal ~~exclusion~~[exclusion, remediation an/or referral to the regulator](#).

Formatted: Indent: Left: 1.27 cm

46. At any point in the process where the Medical Director/Responsible Officer has reached a judgment that a practitioner is to be the subject of exclusion, the regulatory body should be notified. Users of this Framework should refer to the *Guidance DHSSPS Guidance on the process for issuing Alert Letters* (can be found in circular HSS (TC8) (6)/98) and *Guidance on Information Sharing*. This Guidance also sets out additional circumstances when the issue of an alert letter may be considered.

Formatted: Bullets and Numbering

Formatted: Font: Italic

Formatted: Font: Italic

66.

Formatted: Not Highlight

47. 67. Appendix 1 **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.

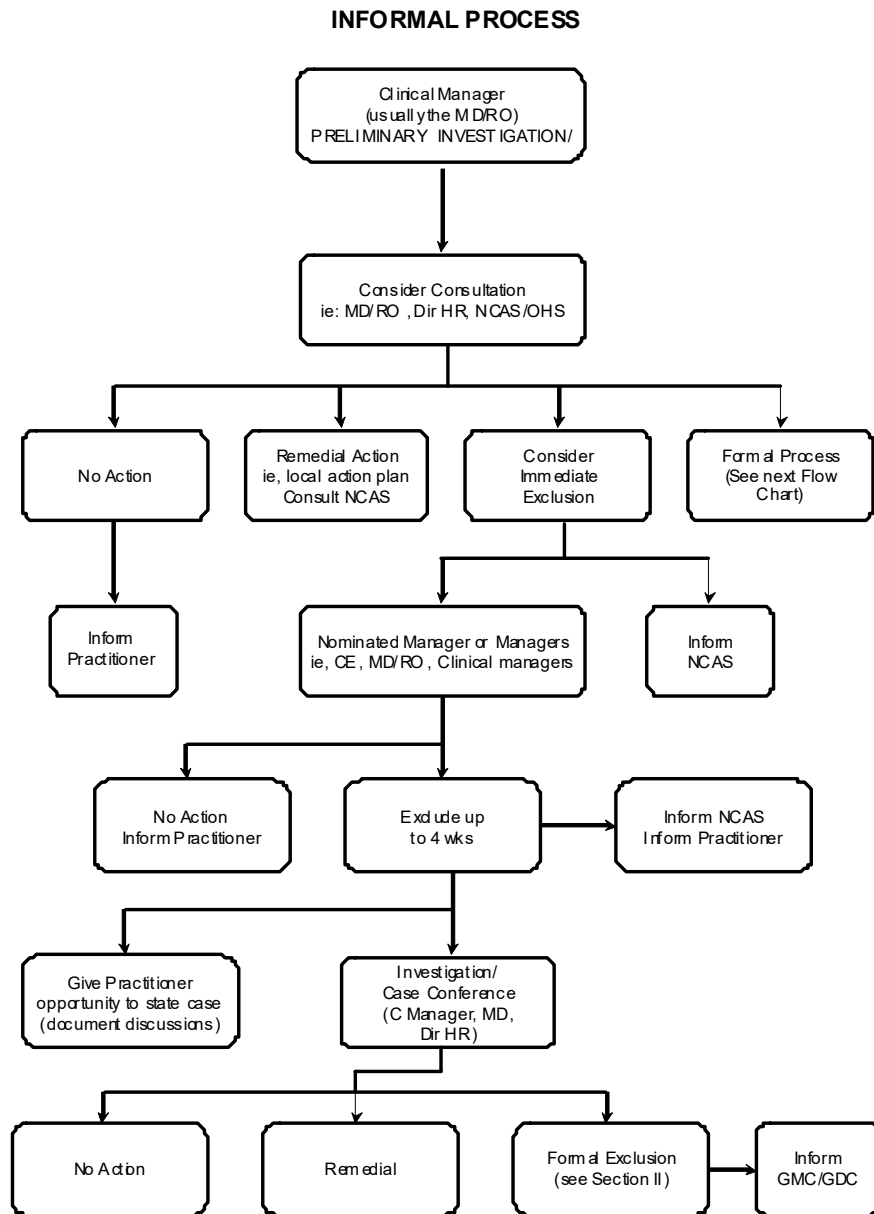
Formatted: Not Highlight

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 55 + Alignment: Left + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm

Formatted: Bullets and Numbering

48. 68. The following diagram provides an overview of the informal process.

Formatted: Bullets and Numbering



FORMAL APPROACH

69. 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 Responsible Officer/Medical Director and Director of HR, appoint a Case Manager, a Case Investigator and a designated Board member. 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.

Commented [JL12]: ? Threshold criteria for formal/ informal proceedings

70. 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.

71. Options within the formal approach are described in this section and include:

- No further action
- Referral to OHS
- Conduct panel
- Clinical Performance Panel
- Restrict or exclude
- Referral to GMC/GDC
- Referral to the NCAS.
-

22. 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 HSC 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.

Formatted: Bullets and Numbering

Formatted: English (United Kingdom)

72.

THE INVESTIGATION PROCESS

73. Where the practitioner is the subject of an ongoing investigation by the Police, Counter Fraud Unit or a regulatory or licensing body then this does not necessarily prevent a local investigation into unrelated matters taking place but it would be advisable to consult the relevant organisation before commencing any local investigations. Where a local investigation is already underway and the PCO becomes aware of another investigation then again liaison with the relevant body should take place.

Formatted: Default, Justified, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 73 + Alignment: Left + Aligned at: 0 cm + Tab after: 0.63 cm + Indent at: 0.63

Formatted: Bullets and Numbering

PURPOSE OF AN INVESTIGATION

74. Determining the purpose of the investigation will ensure the appropriate investigative measures are taken. The purpose is summarised as the terms of reference and in turn these are based on the allegation that a rule or regulation has been breached. The evidence sought will be directed at informing the decision that upholds or refutes that allegation.

Formatted: English (United Kingdom)

Formatted: Line spacing: 1.5 lines

Formatted: Line spacing: 1.5 lines, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 73 + Alignment: Left + Aligned at: 0 cm + Tab after: 0.63 cm + Indent at: 0.63

Formatted: Bullets and Numbering

75. All relevant issues should be encompassed in the terms of reference from the outset. The investigation will lose focus by inquiring into interesting but irrelevant issues that are outside of the terms of reference. If an issue arises that does not fit within the terms of reference, approval should be sought to change them from the case manager or omit the issue from the investigation.

Formatted: Line spacing: 1.5 lines

Formatted: Line spacing: 1.5 lines, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 73 + Alignment: Left + Aligned at: 0 cm + Tab after: 0.63 cm + Indent at: 0.63

Formatted: Bullets and Numbering

76. In all cases the investigation should proceed as quickly as possible and any delays accounted for. Delay will lead to evidence becoming stale and the practitioner under investigation may argue that the delay prejudices his case.

Formatted: Line spacing: 1.5 lines

Formatted: Line spacing: 1.5 lines, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 73 + Alignment: Left + Aligned at: 0 cm + Tab after: 0.63 cm + Indent at: 0.63

Formatted: Bullets and Numbering

COLLECTING EVIDENCE

77. The 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

Formatted: Font: Arial Bold, 12 pt, Not Bold

Formatted: Font: 12 pt, Not Bold

Formatted: Font: 12 pt

Formatted: Line spacing: 1.5 lines, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 77 + Alignment: Left + Aligned at: 0 cm + Tab after: 0.63 cm + Indent at: 0.63

Formatted: Bullets and Numbering

manner. Investigations are not intended to secure evidence against the practitioner as 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 investigator should therefore take account of positive indicators as well as any negative indicators and any relevant national or local benchmarks.

78. It is important that the investigation collects all the evidence that may be available relating to the concerns or allegations being made. This will involve interviewing all those who may be able to provide information and making a careful note of their evidence. Where possible and depending on the circumstances, this will include patients, their relatives and the practitioner concerned.

79. If any case is to proceed, evidence has to be demonstrated, whether to the HSC Trust Board, the Tribunal, the GMC or in the courts. While the rules of evidence can become complicated, there are some simple questions that should always be asked:

➤ What is the evidence and is it written? Written evidence is not superior to oral evidence: it is simply more clearly defined and so less prone to (but not immune from – witnesses do alter statements) being changed. And evidence, even if written, needs careful consideration to be sure of exactly what is being said – and how firmly it is being said. Witness statements are best in the words of the witness, signed by the witness and dated.

➤ How recent is the evidence? The general rule is that the older the evidence the less the weight that should be given to it. So the fact that the practitioner faced a similar allegation in 1997 to that facing him now is likely to carry a lot less weight than if a previous similar allegation was made only three months ago

➤ Is there a pattern to allegations against the practitioner? A pattern of unacceptable behaviour is likely to be more significant evidence than an isolated incident. (But note that if similar allegations have not been

Formatted: Line spacing: 1.5 lines

Formatted: Line spacing: 1.5 lines, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 77 + Alignment: Left + Aligned at: 0 cm + Tab after: 0.63 cm + Indent at: 0.63

Formatted: Bullets and Numbering

Formatted: Line spacing: 1.5 lines

Formatted: Line spacing: 1.5 lines, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 77 + Alignment: Left + Aligned at: 0 cm + Tab after: 0.63 cm + Indent at: 0.63

Formatted: Bullets and Numbering

Formatted: Font: 12 pt

Formatted: Font: 12 pt

Formatted: Font: 12 pt

Formatted: Line spacing: 1.5 lines

Formatted: Line spacing: 1.5 lines, Bulleted + Level: 2 + Aligned at: 1.9 cm + Tab after: 2.54 cm + Indent at: 2.54 cm

Formatted: Bullets and Numbering

Formatted: Indent: Left: 0.63 cm, Line spacing: 1.5 lines

Formatted: Line spacing: 1.5 lines, Bulleted + Level: 2 + Aligned at: 1.9 cm + Tab after: 2.54 cm + Indent at: 2.54 cm

Formatted: Bullets and Numbering

Formatted: Font: 12 pt

Formatted: Font: 12 pt

Formatted: Indent: Left: 0.63 cm, Line spacing: 1.5 lines

Formatted: Line spacing: 1.5 lines, Bulleted + Level: 2 + Aligned at: 1.9 cm + Tab after: 2.54 cm + Indent at: 2.54 cm

Formatted: Bullets and Numbering

dealt with in the past, it may give scope for the practitioner to argue unreasonableness and inconsistency on the part of the HSC organisation and thus offer some defence against the current allegations)

Formatted: Font: 12 pt

➤ How direct is the evidence? Factual evidence is likely to carry more weight than opinions from witnesses and unsupported anecdotal evidence is unlikely to be worth much

Formatted: Indent: Left: 0.63 cm, Line spacing: 1.5 lines

Formatted: Line spacing: 1.5 lines, Bulleted + Level: 2 + Aligned at: 1.9 cm + Tab after: 2.54 cm + Indent at: 2.54 cm

Formatted: Bullets and Numbering

➤ How credible and compelling is the evidence, how cogent is the evidence and how likely is the evidence to be impugned?

Formatted: Indent: Left: 0.63 cm, Line spacing: 1.5 lines

Formatted: Line spacing: 1.5 lines, Bulleted + Level: 2 + Aligned at: 1.9 cm + Tab after: 2.54 cm + Indent at: 2.54 cm

Formatted: Bullets and Numbering

Formatted: Line spacing: 1.5 lines

FORMAL PROCEDURES-GENERAL PRINCIPLES

TRAINING

~~23-6.~~ 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

~~24-7.~~ 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.

~~25-8.~~ 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.

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

26.9. Where a case involves allegations of abuse against a child or a vulnerable adult, the guidance issued to the HSCNI in 2006- *Safeguarding Vulnerable Adults* and the revised framework *Choosing to Protect Children and Vulnerable Adults* 2009. Check ref to Guidance

Formatted: Bullets and Numbering

PROCESS FOR SMALLER ORGANISATIONS

27.10. 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. **WILL HAVE APPOINTED OR NOMINATED RO/ISTHIS PARAGRAPH STILL REQUIRED?**

Formatted: Bullets and Numbering

28.11. Such organisations should consider working in collaboration with other local HSC organisations (e.g. 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 HSC 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.

Formatted: Bullets and Numbering

TERMINATION OF EMPLOYMENT WITH PROCEDURES UNFINISHED

29.12. 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.

Formatted: Bullets and Numbering

~~30-13.~~ 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.

Formatted: Bullets and Numbering

~~31-14.~~ 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 \(held by the Department of Employment and Learning\)](#). **CONFIRM THIS IS STILL CORRECT TITLE ?ISA**

Formatted: Bullets and Numbering

GUIDANCE ON AGREEING TERMS FOR SETTLEMENT ON TERMINATION OF EMPLOYMENT

~~32-15.~~ 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:

Formatted: Bullets and Numbering

- 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.

DEFINITION OF ROLES

~~33.~~16. 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.

Formatted: Bullets and Numbering

34.17. The key individuals that may have a role in the process are summarised below:-

Formatted: Bullets and Numbering

- 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/Responsible Officer 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 / Responsible Officer 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/Responsible Officer 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/Responsible Officer.

OUTLINE OF RESPONSIBILITIES

35.18. The Case Investigator:

Formatted: Bullets and Numbering

- must formally, on the advice of the Medical Director/Responsible Officer, involve a senior member of the medical or dental staff¹² 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 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.

¹² Where no other suitable senior doctor or dentist is employed by the HSC body a senior doctor or dentist from another HSC body should be involved.

~~36-19.~~ 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.

Formatted: Bullets and Numbering

~~37-20.~~ 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.

Formatted: Bullets and Numbering

The Case Manager's role

~~38-21.~~ The Case Manager is the individual who will lead the formal investigation. The Medical Director/Responsible Officer 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/Responsible Officer is the subject of the investigation the Case Manager should be a medically qualified manager of at least equivalent seniority

Formatted: Bullets and Numbering

~~39-22.~~ 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.

Formatted: Bullets and Numbering

~~40-23.~~ 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 HSC body or elsewhere be invited to assist.

Formatted: Bullets and Numbering

Timescale and decision

~~44-24.~~ The Case Investigator should, other than in exceptional circumstances, **aim to 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.

Formatted: Bullets and Numbering

~~42-25.~~ The report should give the Case Manager sufficient information to make a decision on whether:

Formatted: Bullets and Numbering

- 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 the 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.

43.26. Formal processes are illustrated in the diagram on page 42.

Formatted: Bullets and Numbering

CONFIDENTIALITY

44.27. 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.

Formatted: Bullets and Numbering

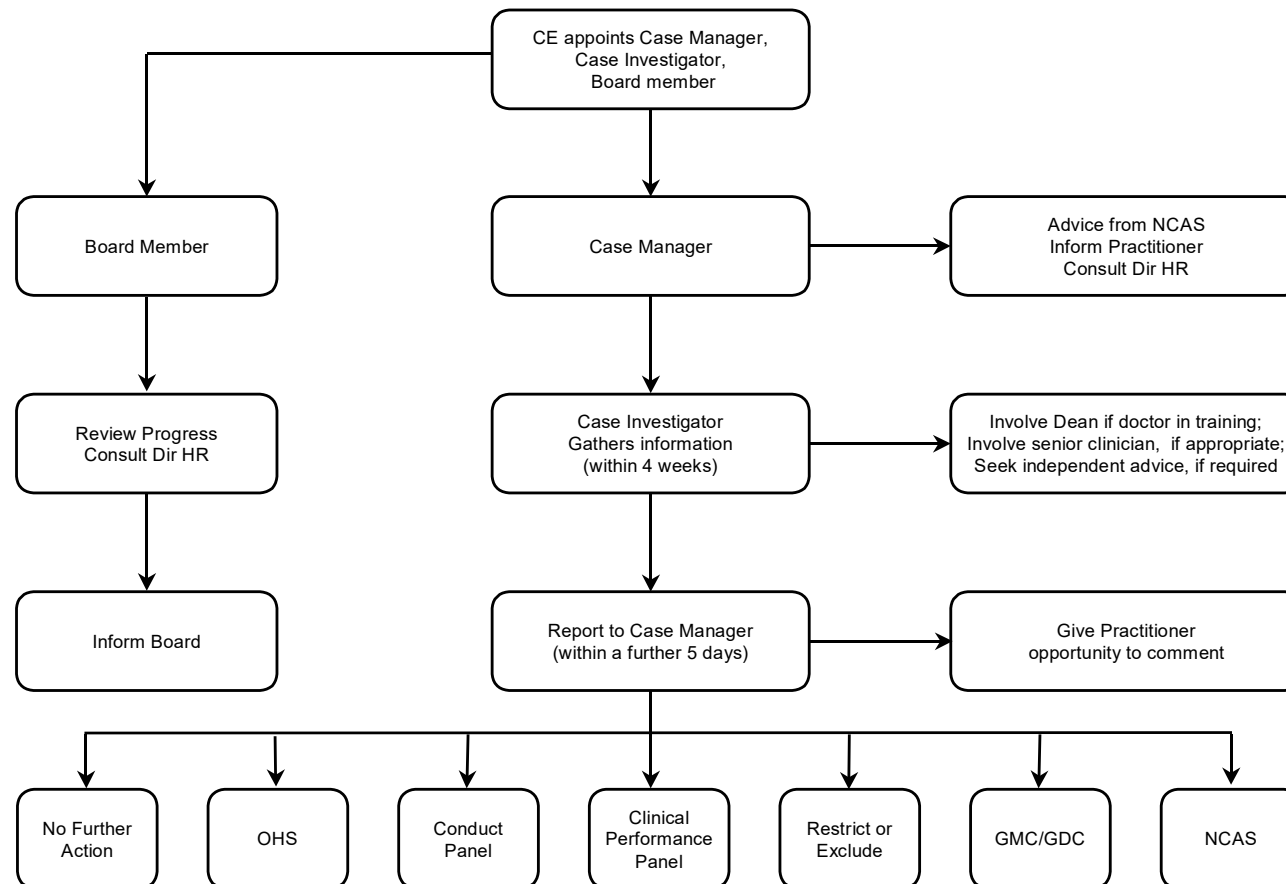
45.28. Personal data released to the Case Investigator for the purposes of the investigation must be fit for the purpose, and not disproportionate to the seriousness of the matter.

Formatted: Bullets and Numbering

TRANSITIONAL ARRANGEMENTS

46.29. 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.

Formatted: Bullets and Numbering

FORMAL PROCESS

APPENDIX 1 SECTION IV: 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 HSC 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 HSC 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/Responsible Officer and the Clinical Directors for staff below the grade of consultant. For consultants it should include the CE and Medical Director/Responsible Officer.

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.

~~13.11.~~ Formal exclusion of one or more clinicians must only be used where:

Formatted: Bullets and Numbering

- 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;

Formatted: Bullets and Numbering

⊕➤ 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 HSC employer. This caveat does not refer to time for which they are not being paid by the HSC 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 (HSC and non-HSC) 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 HSC employer has placed restrictions on practice, the practitioner should agree not to undertake any work in that area of practice with any other employer¹³. [Ref Information Sharing Guidance](#)
23. Where the Case Manager has good grounds to believe that the practitioner is practicing in other parts of the HSC, 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.

¹³ HSCs 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.