Statutory Independent Inquiry into the Urology Services in the Southern Health and Social Care Trust

SUPPLEMENTARY WITNESS STATEMENT OF COLIN FITZPATRICK

I, **COLIN FITZPATRICK** will say as follows:-

1. I make this supplemental statement in order to address some further wider topics raised by the Statutory Independent Inquiry into the Urology Services in the Southern Health and Social Care Trust (the Inquiry), since my witness statement of 22 March 2021. This statement has been prepared with reference to the case file, my earlier witness statement and my own knowledge of the operation of the NCAA/NCAS/ The Advisory Service/Practitioner Performance Advice.

2. Between February 2021 and December 2021, I was on a sabbatical from the Advice Service and worked as a General Practitioner (GP) in Australia. I left the Advice Service in January 2022 and since then I worked for six months as the Interim Deputy Medical Director at Betsi Cadwaladr University Health Board in Wales.

3. Since early July 2022, I have been working as a locum GP and Consultant for various organisations including Practitioner Performance Advice. I am due to re-locate to Personal Information redacted by the USI in November 2022 where I will work full-time as a GP.

Witness Statement dated 22 March 2021

4. My earlier witness statement remains factually correct other than the Practitioner Performance Advice (formerly NCAA, then NCAS) became part of NHSLA in 2013 (not 2014) which was an oversight.

Service Level Agreement

5. NHSLA/NHS Resolution have Service Level Agreements (SLAs) with Northern Ireland, Wales and the Channel Islands as they are outside the scope of the PPA's statutory remit which is primarily for England. The first] NCAS SLA with Northern Ireland

commenced on 1 April 2017 (with a term of 36 months) and is produced at **[CF7].** The current SLA with Northern Ireland commenced on 1 April 2022 (again for a term of 36 months) and is produced at **[CF8].**

6. The SLA enabled to the Southern Health and Social Care Trust to contact NHSLA/ NHS Resolution in the same way that any English Trust could. Advice cases such as this were within the scope of the SLA and there were provisions that if other interventions were requested these could be paid for separately.

Involvement of NCAS/the Advice Service

7. I have taken the opportunity to review further my involvement with this case and comment on some distinct features with regards to both the Investigation by the Trust and the advice provided by PPA.

Prior concerns

8. It occurs to me that there were a number of missed opportunities by the Trust with Dr O' Brien's case. Initially when Simon Gibson telephoned me on 7 September 2016, I recall asking if there were wider concerns with regards to Dr O'Brien's capability and I was told that there were not. My observation is that Simon Gibson cannot have been fully informed at the time he contacted me because find it difficult to believe that there were not prior concerns about capability before this call took place. Anecdotally I understand there are individuals who worked with Dr O'Brien who had concerns about his capability for a long time. I do not have any documentary evidence that these concerns were ever raised formally.

9. I suspect that there had been issues prior to the Trust's contact with NCAS/the Advice Service. I do not know what the Trust was aware of prior to contacting NCAS/the Advice Service but it is possible that within the organisation there may have been concerns relating to Dr O'Brien's capability which ought to have been considered as part of a review. If there were no capability concerns, the matter might have been (and for a period was) viewed as potential disciplinary conduct matter. The process for progressing the case on this basis should have involved a focused and swift investigation. This did not happen. For example issues with regards to taking patients notes home should have been explored immediately upon senior personnel at the Trust becoming aware, strict instructions could have been given to remedy the issues and this did not happen.

10. Whilst I was given an indication of the seemingly disciplinary issues on the initial call in September 2016, I can see that there was then a substantial shift between the initial call and 28 December 2016 by which stage there was a more sizeable problem as by

that point a Serious Adverse Incident had been identified and there was concern about patient harm.

11. Once capability concerns were identified there needed to be a clear diagnosis of the issues and the scope of an investigation defined. That is a stage when the Trust might have taken some wider soundings to be clear it investigated the right issues.

12. Upon being informed of a Serious Adverse Incident and patient harm, I would expect a Medical Director, to carry out a soft investigation in relation to wider concerns around clinical capability, which would then inform the Terms of Reference of any subsequent investigation. This might be considered as another missed opportunity.

13. The categorisation of the initial concern can make a significant difference to how a case progresses, with the distinction between capacity (with options for assessment and remediation) and conduct (which can lead to a disciplinary). If Simon Gibson did not know about any clinical capability concerns in September 2016, that avenue under the MHPS Framework (detailed further below) effectively disappeared.

Failure to progress an effective investigation

14. Even when the case was thought to involve clinical issues and apparent patient harm, there was a failure to progress a timely effective investigation within the Trust. We sent three separate emails chasing progress to the Trust on 1 January, 1 March and 1 May 2017 which were not responded to and as a result the PPA case file was closed in August 2017.

15. The file closure following no response to chasing emails is standard practice. I recognise that this makes the assumption that the Trust is capable of managing the process, however it seems that very little was done in the gap between the call between Richard Wright and my (then) colleague, Grainne Lynn on 28 December 2016 (where patient harm was highlighted) and a call was received from Dr Khan on 17 September 2018.

16. Under the MHPS Framework the investigation should be undertaken within four weeks. The problem with this is that it is almost always unachievable, which results in people having lower expectations about a timely investigation. A much more realistic timetable would be 12 weeks, in order to undertake a proper exploration of all potential concerns.

17. I am familiar with the issue of an investigation getting underway and new concerns coming to light. We now train investigators to think carefully about how to deal with this and whether to modify their Terms of Reference or to start a separate investigation that need not delay or derail the first.

Lack of action plan

18. As discussed earlier, in order to formulate an action plan there needs to be a clear diagnosis of concerns. I am aware that the Trust put in place an action plan but it is not clear to me whether they had a sufficient understanding of the deficits in Dr O'Brien's practice to ensure that this was focused and appropriate.

19. As an organisation NCAS/the Advice Service can be asked to do a performance assessment and develop an action plan. We can develop action plans without doing our own assessment, as long as the Trust has done sufficient investigation to know what the real issues to be addressed are i.e. diagnosed the concerns.

20. At no point during this case did the Trust request the PPA to develop a Professional Support and Remediation (PSR) action plan. This is an extra service provided under the SLA. As shown at page 13 of the SLA produced a **[CF8],** *"the purpose of a PSR action plan is to provide the Practitioner with the opportunity to demonstrate (upon successful completion) that they are practising at the standard reasonably expected for the role they will be practicing. The PPA PSR service develops action plans for Practitioners who have been identified as needing support in order to return to safe and effective clinical practice. The reasons for practitioners needing support are wide ranging, and usually involve:*

    - *Remediation - following the identification of deficiencies in aspects of their clinical practice; and*

    - *Return to work / re-integration (following a period of absence from clinical practice)."*

21. Whilst a PSR action plan is a separate service (and additional cost) under the SLA, if I had been asked to review any action plan drafted by the Trust, I would have been more than willing.

22. I have never seen any action plan drafted or produced by the Trust. It is important to note that the PPA is an advisory service only, who can only act on instructions received. The service is not tasked with being proactive, that rests with the Trust. It would be a very different remit, and require different resources, if the PPA was expected to be more proactive.

23. Another unusual feature of this case is the number of Medical Directors or Interim Medical Directors were employed by the Trust and who therefore had responsibility for this case during the relatively short period 2016-2020. It is evident that this impacted both on the continuity of the handling of the case and a lack of communication

between NCAS/the Advice Service and the Trust. It appears some of the gaps in communication were compounded by Dr O'Brien's extended sick leave.

Escalation

24. This case was only flagged by me for escalation on 7 July 2020 when I was told of the review of over 300 case files with a concern in 46%.

25. In fact MHPS only has one requirement to escalate (after 6 months suspension there has to be a notification to the Department). The Advice service, as I set out above, is reactive so if nothing happens at the Trust we would not currently escalate matters. MHPS does not require other notifications but I would suggest this is something that could be revised so that there were obligations to notify the GMC (via the RO and ELA speaking) and possibly to involve RQIA, if a Trust is not progressing an investigation and there are patient safety concerns.

26. It is not uncommon for these cases to become more complicated, for example in the event of a grievance and/or the practitioner taking sick leave. Such events can cause problems with the progression of an investigation. In this case both these events happened which contributed to delays and gaps in progression and communication. I think MHPS could perhaps give greater guidance to employers about dealing with these events so that cases are progressed and potential harm is mitigated.

Engagement with Dr O'Brien

27. As I mention in my first statement, I was directly contacted by Dr O'Brien and had long conversations both on his own and with his wife. Having direct contact with practitioners, can provide a useful additional source of information about the issues in a case and what is happening at a Trust. However as advisers it can also put us in a difficult, perhaps conflicting position advising two people who may be in dispute with one another. The Advice Service does not normally arrange for a different adviser to be involved if the practitioner is in touch directly. We do not put information barriers in place either.

28. Positive engagement with Dr Aiden O'Brien did mean that as an organisation, we were afforded a more rounded narrative of the issues.

Implementation and Application of the MHPS Framework

29. I have been asked to comment on the MHPS Framework. The MHPS framework in Northern Ireland is slightly different to the framework used in England. A comparison of the two frameworks was prepared by my colleague, Grainne Lynn in an email dated 16 December 2019 which I produce at **[CF9].**

30. Applying the MHPS Framework to this case I consider that there may have been a missed opportunity to deal with capability at an early stage by better understanding the nature of the problem. It is clear that Dr Aiden O'Brien was suffering with workload issues but is not clear whether the concerns could be fully explained by this issue and whether the provision of additional administrative support would be a complete solution. It is not clear how the Trust assessed how his workload may have been putting patients at risk.

31. To me it appears that there was a lack of clarity surrounding what the primary concern was from the outset; as already set out earlier, there were communication gaps, and changes of personnel which may not have helped.

32. The MHPS Framework is, of course, only as good as its application. In my view the most important thing is that Trusts follow MHPS and do so in a proactive and timely way. It seems that in this case there was an emerging problem and MHPS would have been able to support approaching concerns in a sequenced way. MHPS enables an organisation to consider (and perhaps discount) health concerns and then to consider capacity concerns. The concerns about Dr O'Brien did perhaps gravitate towards clinical concerns. Ideally there might have been a greater opportunity to try and understand what the practitioner was facing, to diagnose the issues and to consider solutions. As it was over time an ever increasing number of patients were identified as being at risk of harm (over 700).

33. The MHPS framework overall probably needs updating and re-calibrating, however of greater importance is the implementation of the MHPS framework by the Trusts themselves.

Statement of Truth

I believe the facts stated in this witness statement are true

Signed [redacted]

Dated 6/7/2022

NHS
Litigation Authority

SERVICE LEVEL AGREEMENT (SLA)

BETWEEN:

THE DEPARTMENT OF HEALTH, NORTHERN IRELAND

AND

NHS LITIGATION AUTHORITY (NHS LA)

For the provision of specified NCAS services

This Agreement represents a Service Level Agreement ("SLA") between **THE DEPARTMENT OF HEALTH NORTHERN IRELAND** ("the Department") and **NHS LITIGATION AUTHORITY** (NHS LA)

The Agreement is made pursuant to section 28 of the Northern Ireland Act 1998

BACKGROUND:

The Department and NHS LA wish to enter into an arrangement under Section 28 of the Northern Ireland Act 1998 whereby NCAS, an operating division of NHS LA, will provide support to the Department and its Arm's Length Bodies (ALBs).

Subject to and in accordance with the terms of this agreement:

The members and staff of NHS LA will perform the functions set out in Schedule 1 as service to the Department to deal with practitioners whose performance gives cause for concern.

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement (including the Background), the following terms shall, unless the context otherwise requires, have the following meanings:

"NCAS" means the National Clinical Assessment Service, an Operating Division of the NHS LA;

"the Department" means the Department of Health Northern Ireland;

"HSC" means the Health and Social Care Bodies as defined by Section 1(5) of the Health and Social Care (Reform) Act (NI) 2009;

"In writing" means documented, signed and sent by post or by electronic mail;

"Practitioners" means Doctors, Dentists and Pharmacists;

"Background IPR" means all Intellectual Property used in connection with the NHS LA Services.

1.2 References in this Agreement to numbered clauses are references to the clauses in the Agreement in which the reference bearing that number appears.

2. TERM

2.1 This Agreement shall come into force on the 1 April 2017 and remain in force for a period of 36 months unless terminated in accordance with clause 14 below.

2.2 This agreement will be reviewed at the end of each 12 month period during the term of this agreement for the period set out above at paragraph 2.1. or on an ad-hoc basis where deemed necessary by both parties.

3. FUNCTIONS OF NCAS

3.1 The Department, with a view to accessing the advice and support system for practitioners whose performance gives rise to concern, agrees that NHS LA will exercise the following NCAS functions as more specifically set out in Schedule 1 to this Agreement:

3.1.1 to provide an advisory service to all potential employers/contractors and practitioners and support to the Department and the HSC for advice cases arising and an assessment service on a case by case basis as agreed between the parties;

3.1.2 to provide an assessment and intervention service, including Professional Support and Remediation (PSR) services when required;

3.1.3 to provide support to local efforts to improve good practice in relation to the resolution of difficulties and concerns between doctors, dentists and pharmacists and their employers and contractors, through policy support and website resources;

3.1.4 to provide support for reporting at a local level.

3.2 In addition to the services described above at 3.1, NCAS may provide to the Department on agreement and at an agreed cost, any service included in Schedule 1.

3.3 NCAS shall also provide under this Agreement all ancillary administrative, professional or technical services necessary to enable NCAS to carry out the functions in clauses 3.1 to 3.2 inclusive. Schedule 1 to this Service Level Agreement sets out the services to be provided.

4. STANDARD OF PERFORMANCE

4.1 NHS LA shall exercise all NCAS functions and provide all services in accordance with NHS LA's standard policies or guidance and reflecting the resources and information provided by The Department.

5. ACTIVITY REPORTS

5.1 NCAS shall produce two activity reports each year. A mid-year report will be provided covering the period up to end September of the relevant year and a full annual report covering the full financial year in question. The former report will be received by the Department by end October of the year in question and the annual report by end June.

6. CONDUCT OF BUSINESS

6.1 NHS LA shall carry out its functions under this Agreement having regard to the matters specified in the Schedule 1 to this Agreement.

7. INDEMNITY AND INSURANCE

7.1 Each Party accepts unlimited liability to the other for:

- death or personal injury caused by the negligence of that Party; and
- fraud or fraudulent misrepresentation committed by or on behalf of that Party.

7.2 Save as in Clause 7.1, NHS LA shall not be liable to the Department for (a) any indirect or consequential loss or (b) any loss of use or loss of profits, business, contracts, revenues or anticipated savings whether arising from tort (including,

without limitation, negligence or breach of statutory duty), breach of contract or otherwise.

7.3 Except as otherwise provided in this Agreement, NHS LA limits its liability to the Department in contract, tort (including, without limitation, negligence or breach of statutory duty) or howsoever arising to a maximum limit of the contract price only.

7.4 Save as set out in Clause 7.1 the Department will indemnify NHS LA with any reasonable costs and compensation awarded as a result of civil action in connection with the exercise of its functions described in the Service Level Agreement, provided NHS LA and its employees have acted in good faith and with due care and diligence.

7.6 Each Party hereby acknowledges and agrees that the provisions of this Clause 7 are fair and reasonable having regard to the circumstances as at the date hereof. The provisions of this clause 7 shall survive the termination of this agreement, however arising.

8. FREEDOM OF INFORMATION ACT and DATA PROTECTION ACT

8.1 The parties are subject to the Freedom of Information Act 2000 (FOIA) and may be required to disclose information to ensure compliance with the FOIA. Both parties note and acknowledge the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) as may be amended, updated or replaced from time to time. The parties will act in accordance with the FOIA and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Department from time to time).

8.2 Any decision regarding the application of any exemption to the request for disclosure of recorded information is a decision solely for the body receiving and processing the request. Where a party is managing a request as referred to in this clause, the other party shall co-operate with them if they so request and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.

8.3 The parties must protect personal data in accordance with the provisions and principles of the Data Protection Act 1998. Both parties shall be registered under the DPA and both parties shall comply at all times with Data Protection Legislation and shall not perform their obligations under the Agreement in such a way as to cause either party to breach any of their applicable obligations under Data Protection Legislation. Both parties must promptly notify the other if they breach this clause.

9. INTELLECTUAL PROPERTY

9.1 In this clause 9, "Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

9.2 All Intellectual Property Rights arising from or relating to the services, including without limitation any material prepared by or supplied by NHS LA in connection with NCAS services shall remain the property of NHS LA.

9.3 To the extent that the Department or any individual employed or engaged by the Department, have been involved in the development of or provision of the services ("contribution"), the Department hereby assigns to NHS LA all Intellectual Property Rights in such Contribution by way of present and future assignment with full title guarantee.

9.4 The Department shall have no right or licence to use any Intellectual Property of NHS LA except that it shall be entitled to use any material, information or other documents provided by NHS LA as part of the delivery of the services and for the Departments internal business processes pursuant to the services provided under this agreement only.

10. FINANCIAL ARRANGEMENTS

10.1 NHS LA shall charge the Department for the services described in this agreement, in the following manner:

10.1.1 Commercially Sensitive Information redacted by the USI.

10.1.2 The Department may also request NCAS provide additional services, at an additional cost as specified in Schedule 1.

10.2 Travel, accommodation and further expenses incurred providing services specified in clause 10.1.2. above will be claimed in accordance with the NHS LA expenses policy.

10.3.1 NHS LA shall invoice for the fixed cost at the commencement of this agreement and at the commencement of any subsequent term. Any additional charges for services specified in clauses 10.1.2 above shall be invoiced on agreement to the provision of the service.

11 AUDIT

11.1.1 In the exercise of its functions and provision of services under this agreement. NHS LA shall keep all case related documents for all referrals made by the department.

12 DESIGNATED REPRESENTATIVES

12.1 NHS LA and the Department shall both nominate designated representatives for the day to day operation of the Agreement and senior officers with responsibility for resolving function and service issues of a more serious nature. These contacts shall be set out at Schedule 3 to this agreement.

13 DISPUTE RESOLUTION

13.1 In the first instance any dispute arising under the Agreement shall be discussed by the designated representatives of the parties, as described in clause 12.

13.2 In the event that the dispute is not resolved under clause 13.1, either party shall notify the other within 21 days of the dispute setting out reasonable details of the dispute. The dispute shall then be referred to the Senior Officer of the Department and the NCAS Director, who shall meet reasonably promptly to seek to resolve the matter.

13.3 If the dispute is not resolved in accordance with clause 13.2 above, then the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate mediation the Parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator.

14 TERMINATION

14.1 Either party may terminate this agreement forthwith by notice in writing if the other party is in breach of this agreement and fails to remedy the breach (if capable of remedy) within 30 days of written notice of the breach being given and has not or will not comply with the Dispute resolution procedure as set out above at Clause 13.

14.2 Termination or expiry of this Agreement for any reason shall be without prejudice to any right or remedy of either Party which may have accrued prior to such termination.

14.3 The Department shall return any NHS LA equipment or materials in its possession or control at its own cost to the NHS LA no later than 30 days after the termination or expiry of this Agreement.

14.4 Upon expiry or earlier termination of this Agreement, NHS LA shall continue to be entitled to receive and The Department shall pay the service provider the contract price for any services provided by NHS LA up to and including the date of termination or expiry.

14.5 The provisions of Clauses 7, 8, 9, 13 and 14 shall survive termination of this Agreement.

15 LAW AND JURISDICTION

15.1 The parties shall accept the non-exclusive jurisdiction of the Northern Ireland courts and agree that the contract is to be governed and construed according to Northern Irish law.

16 MISCELLANEOUS

16.1 No variation of this Agreement shall be effective unless it is in writing signed by each of the parties.

16.2 No waiver of any term, provision or condition of this Agreement shall be effective unless it is in writing and signed by the waiving party.

17 ASSIGNMENT AND NOVATION.

17.1 Either party may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

(a) any Contracting Authority; or
(b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the transferring body;

provided that any such assignment, novation or other disposal shall not increase the burden of the other party's obligations under the Contract.

18 ENTIRE AGREEMENT CLAUSE

18.1 This SLA, together with the documents referred to in it/attached to it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

18.2 Each of the parties acknowledges and agrees that in entering into this SLA and the documents referred to in it/attached to it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this SLA. The only remedy available to either party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

18.3 Nothing in this clause shall operate to exclude any liability for fraud.

Signed for and on behalf of the **DEPARTMENT OF HEALTH NORTHERN IRELAND**

By: Personal Information redacted by the USI

Name: PADDY WOODS

Date: 10.10.17

Signed for and on behalf of **NHS LA**

By: Personal Information redacted by the USI

Name:

Date: 17 October 2017

Schedule 1: Agreement Costs

Fee Structure

Commercially Sensitive Information redacted by the USI.

Commercially Sensitive Information redacted by the USI.

Where it is agreed that NCAS will provide a bespoke assessment or a modular assessment/intervention as a pilot, it will be delivered without charge until such time that the service is officially launched by NCAS.

All costs given above are exclusive of VAT. VAT will be charged at the prevailing rate to all invoices (if applicable).

All costs are subject to review at the end of each financial year.

Schedule 2: Service Specification

1. Practitioners Covered

This Agreement covers all doctors, dentists and pharmacists for which the Client has responsibility, including those GPs on the Client GP Performers List.

2. Areas of Clinical Care Covered

- Primary care services
- Secondary care services
- Public Health
- Mental Health and Psychiatric Services

3. Contact/Request for advice

Contact/Request for advice and support to NCAS for any activity/service covered by this Agreement will be made by the Medical Director of the Client or the named designated representative at Schedule 3.

Telephone requests for advice and support directly from practitioners concerned about their own performance are acceptable but NCAS will to make theses callers aware that the relevant employing/contracting body will be informed of the conversation and that no more than telephone advice will be given without the formal involvement of their employing/contracting body.

4. Assessors

NCAS assessments will be carried out by existing members of the NCAS Assessor team. The employing/contracting body may nominate individuals who may be interested in being trained in NCAS assessment methods and, following successful selection and training, may carry out NCAS assessments elsewhere in the UK. All assessors will work within the NCAS assessment framework and guidelines for assessors devised by NCAS.

5. Quality and performance indicators

NCAS will aim to work to the highest standards of quality in all its activities; in particular; all work undertaken by NCAS under the terms of this agreement will be subject to NCAS' programme of evaluation and quality assurance.

6. Timescales

NCAS will undertake to respond to requests from the employing/contracting body in accordance with standard operating procedures. NCAS will complete all case assessments within a reasonable timeframe, taking account of the complexity of each individual case and the requirements outlined within this agreement and the associated service level agreement.

7. Services

Case Management Service

The purpose of the case management service is to provide expert support to local resolution of concerns about the performance of a practitioner. A contact or request for

advice or support from an employing/contracting body will be passed to a member of the adviser team who will then make contact with the employing/contracting body at the agreed time. For the avoidance of doubt, the contact or request for advice will be formally logged as an NCAS case if it requires telephone advice followed up in writing, and in some circumstances supported with a facilitated meeting, and requires review until the case reaches a conclusion.

An NCAS Adviser will provide expert advice and support and will be responsible for directing the management of NCAS' input to the case. The level of support will depend on the nature of the case. The progresses of all active NCAS cases are reviewed at monthly meetings between the adviser and a senior colleague. NCAS' lead and senior advisers provide senior support and quality assurance for the work undertaken by the Adviser.

The method of support provided to employing/contracting bodies will include telephone advice, case conferences and detailed work with the employing/contracting body to ensure that best use is made of local governance procedures. Where specialist interventions are required from NCAS, the adviser will work with the employing/contracting body to ensure that these are tailored to the circumstances of the case.

It is not essential for the identity of a practitioner to be shared with NCAS as part of case management work, although NCAS prefers that this is done. Whether or not the identity of the practitioner is shared, local governance procedures will be required to be robustly able to assure patient safety and public protection, and this point will be addressed explicitly throughout the handling of the case.

The decision to close a case rests with the adviser with the exception of exclusion cases, which must remain open until the exclusion has been brought to an end. It is normally appropriate to close a case in circumstances where:

- The employing/contracting organisation has confirmed the case has been resolved
- Local action is likely to resolve the case and the employer/contractor has a clear plan how to achieve this
- There has been no active contact from the employer/contractor despite follow up requests for a period of 3 months (except where exclusion is involved or where there is felt to be particular risk in closing a case)
- The case is in the process of an intervention such as a behavioural impact agreement which does not require direct surveillance or a PSR plan which again does not require further NCAS monitoring or input unless we wish to do so for evaluation purposes
- The case is subject to external proceedings such as legal/GMC which is not likely to require further NCAS support

As a competent advisory body in this area of work, a key feature of NCAS' involvement is to bring constructive challenge to the local management of concerns and support the resolution of disputes between practitioners and their employing/contracting organisation. NCAS support may also include formal facilitation, assisted mediation or structured action planning. NCAS retains staff who are accredited mediators to provide our Assisted Mediation service.

NCAS Performance Assessments

In a small proportion of cases NCAS will advise use of a performance assessment. In deciding whether to suggest assessment, NCAS will take into account the criteria set out in its Consideration of Assessment policy. In doing this, key considerations are whether the concerns about the practitioner's performance documented by the employing/contracting body are supported by existing evidence, are significant and/or repetitious but do not appear to be sufficiently serious to warrant an immediate referral to the regulator, and if the employing/contracting body appears to have taken steps to manage the case but has not been successful in clarifying the concern(s) and/or bringing them to a resolution. In these circumstances an NCAS performance assessment may clarify the nature of the concerns, identify the strengths and weaknesses of a practitioner's professional practice and help to identify a way forward.

The assessment process is designed to maintain a common threshold and fair treatment across different practitioner groups. Its validity and reliability is supported by wide sampling across a practitioner's scope of practice, using a range of assessment instruments. The assessment team agrees the sampling approach before the assessment, in discussion with an NCAS Assessment and Intervention Adviser. Sampling takes account of the practitioner's field of practice, and the concerns raised about the practitioner. Full performance assessments include an occupational health assessment, a behavioural assessment and multi-source feedback and is followed by a clinical visit conducted by NCAS trained assessors and a lay assessor.

Modular Assessments

Where a full performance assessment is not thought to be appropriate, NCAS is able to offer a range of other specialist interventions, options available include those listed as additional services in Schedule 1 of this agreement. The NCAS adviser will work with the employing/contracting body to ensure that these are tailored to the circumstances of the case.

Health Assessments

NCAS can provide, or can offer advice to referring bodies who may wish to commission their own, specialised occupational health assessment. NCAS will invoice the employing/contracting organisation, who be responsible costs in relation to these services. If Departmental funding is required by the employing/contracting organisation for these services, they must first submit a business case to the Department, highlighting why routinely available services or resources are not appropriate.

Behavioural Assessments

NCAS can offer an assessment on whether there are behavioural factors that are causing performance concerns and make recommendations for addressing issues identified.

Professional Support and Remediation services

NCAS can offer a wide range of bespoke action plans to support practitioners in their return to safe and effective practice. Action plans are developed following a review of the particular circumstances of each case, taking into account any development needs in areas such as leadership, patient or colleague interaction or other behavioural

issues, in addition to supporting the development of knowledge and skills in the context of their clinical practice. NCAS action plans include:

- Remediation action plans - where evidence identifying performance concerns is available either following an NCAS assessment or local assessment
- Return to work action plans - supporting a practitioner's reskilling and/or reintegration into clinical practice following a prolonged absence of time (with or without remediation of any pre-existing performance concerns)
- Professional development action plans - to support practitioners in developing particular areas of their practice further.

Assisted Mediation

Assisted mediation is an independent, voluntary and confidential process in which NCAS accredited mediators will work with the parties on an impartial basis to help resolve difficulties which are impacting on professional relationships at work. In doing so we share our experience of what is realistically likely to work and we can also sign post the parties to other interventions which may help to resolve the difficulties.

Working with difficult teams and Team Reviews

This service is delivered by NCAS' experienced advisers, who have additional training and expertise in conflict resolution and mediation. Outcomes range from a mediated resolution, through agreement of behavioural contracts, to a series of performance management measures. NCAS can also advise on whether a team review may be appropriate.

Regulatory Assessments

NCAS carries out performance assessments on behalf of health profession regulators.

Education services, Workshops and Conferences

NCAS' programme of workshops and conferences aims to share good practice and learning from casework and disseminate the information widely to NHS Medical Directors, Chief Executives, Clinical Directors, Responsible Officers, HR Directors and all those who deal first-hand with concerns about performance. Workshops are interactive, often using case studies. NCAS provides events at national, regional and local level and for audiences defined by specialty and sector interests as well as for multidisciplinary groups.

Further information on all NCAS Services can be found on the NCAS website at www.ncas.nhs.uk.

Schedule 3: Contacts

NCAS

Dr Colin Fitzpatrick
Senior Adviser
National Clinical Assessment Service
NHS Resolution

HSC Leadership Centre
The Beeches
Hampton Manor Drive
Belfast
Co. Antrim
BT7 3EN

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

DoH Northern Ireland

Dr Paddy Woods
Deputy Chief Medical Officer

Castle Buildings
Stormont
Belfast
BT4 3SQ

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

THIS AGREEMENT is made the 22nd day of April 2020.

PARTIES
(1) **NHS LITIGATION AUTHORITY** of 2nd Floor, 151 Buckingham Palace Road, London SW1W 9SZ **("NHS Resolution")**; and (2) **Department of Health Northern Ireland** (**the Department**), Castle Buildings, Stormont, Belfast BT4 3SQ
BACKGROUND
The Department and NHS Resolution wish to enter into an arrangement regarding maintaining high professional standards policy for handling concerns regarding Medical and Dental Staff employed in the Department whereby Practitioner Performance Advice, an operating division of NHS Resolution, will provide support to the Department and their nominated Health and Social Care Trusts. Details of the Health and Social Care Trusts shall be provided in writing by the Department to NHS Resolution during the Term. Subject to and in accordance with the terms of this agreement: The members and staff of NHS Resolution will perform the functions set out in Schedule 2 as services to the Department to deal with practitioners whose performance gives cause for concern.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement (including the Background), the following terms shall, unless the context otherwise requires, have the following meanings:

"Practitioner Performance Advice" an NHS Resolution function that provides impartial advice, assessment and intervention services to health organisations to help the effective management and resolution of performance concerns about the performance of doctors, dentists and pharmacists;

"the Department" means the Department of Health Northern Ireland or their nominated Health and Social Care Trusts;

"In writing" means documented, signed and sent by post or by electronic mail;

"Practitioners" means Doctors, Dentists and Pharmacists;

1.2 References in this Agreement to numbered clauses are references to the clauses in the Agreement in which the reference bearing that number appears.

2. TERM

2.1 This Agreement shall come into force on the 1 April 2020 and remain in force for a period of 36 months unless terminated in accordance with clause 14 below.

2.2 This agreement will be reviewed at the end of each 12 month period during the term of this agreement for the period set out above at paragraph 2.1. or on an ad-hoc basis where deemed necessary by both parties.

3. FUNCTIONS OF PRACTITIONER PERFORMANCE ADVICE

3.1 The Department, with a view to accessing the advice and support system for Practitioners whose performance gives rise to concern, agrees that NHS Resolution will exercise the following Practitioner Performance Advice functions as more specifically set out in Schedule 2 to this Agreement including but not limited to:

3.1.1 provide an advisory service to the Department for advice cases arising and an assessment service on a case by case basis as agreed between the parties;

3.1.2 provide an assessment and intervention service, including Professional Support and Remediation (PSR) services when required;

3.1.3 provide support to local efforts to improve good practice in relation to the resolution of difficulties and concerns between the Practitioners and their employers and contractors, through policy support and website resources;

3.1.4 provide support for reporting at a local level.

3.2 Practitioner Performance Advice shall also provide under this Agreement all ancillary administrative, professional or technical services necessary to enable Practitioner Performance Advice to carry out the functions in clauses 3.1 to 3.2 inclusive. Schedule 2 to this Service Level Agreement sets out the services to be provided.

4. STANDARD OF PERFORMANCE

4.1 NHS Resolution shall exercise all Practitioner Performance Advice functions and provide all services in accordance with NHS Resolution's standard policies or guidance and reflecting the resources and information provided by the Department.

5. ACTIVITY REPORTS

5.1 NCAS shall produce 2 activity reports each year. A mid-year report will be provided covering the period up to the end of September of the relevant year and a full annual report covering the full financial year in question. The former report will be received by the Department by end of October of the year in question and the annual report by end of June.

6. CONDUCT OF BUSINESS

6.1 NHS Resolution shall carry out its functions under this Agreement having regard to the matters specified in the Service Specification at Schedule 2 to this Agreement.

7. INDEMNITY AND INSURANCE

7.1 Each Party accepts unlimited liability to the other for:

- death or personal injury caused by the negligence of that Party; and
- fraud or fraudulent misrepresentation committed by or on behalf of that Party.

7.2 Save as in Clause 7.1, NHS Resolution shall not be liable for (a) any indirect or consequential loss or (b) any loss of use or loss of profits, business, contracts, revenues or anticipated savings whether arising from tort (including, without limitation, negligence or breach of statutory duty), breach of contract or otherwise.

7.3 Except as otherwise provided in this Agreement, NHS Resolution limits its liability to the Department in contract, tort (including, without limitation, negligence or breach of statutory duty) or howsoever arising to a maximum limit of the contract price only.

7.4 (a). Save as set out in Clause 7.1 and subject to the limitation provision in 7.4 (b) the Department will indemnify NHS Resolution with any reasonable costs and compensation awarded as a result of civil action in connection with the exercise of its functions described in the Service Level Agreement, provided NHS Resolution and its employees have acted in good faith and with due care and diligence.

(b). Except as otherwise provided in this Agreement the Department limits its liability to NHS Resolution in contract, tort (including, without limitation negligence or breach of statutory duty) or howsoever arising to a maximum limit of the annual contract price together with five (5) per cent interest on such contract price only.

7.5 Each Party hereby acknowledges and agrees that the provisions of this Clause 7 are fair and reasonable having regard to the circumstances as at the date hereof. The provisions of this clause 7 shall survive the termination of this agreement, however arising.

8. FREEDOM OF INFORMATION ACT and DATA PROTECTION ACT

8.1 NHS Resolution and the Department are subject to the Freedom of Information Act 2000. Both parties may be required to disclose information to ensure compliance with Freedom of Information legislation. Both parties note and acknowledge this legislation and the relevant Codes of Practice. The parties will act in accordance with their respective Freedom of Information legislation and Codes of Practice (and any other applicable codes of practice or guidance).

8.2 Any decision regarding the application of any exemption to the request for disclosure of recorded information is a decision solely for the body receiving and processing the request. Where a party is managing a request as referred to in this clause, the other party shall co-operate with them if they so request and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.

8.3 The parties must protect personal data in accordance with the provisions and principles of the UK Data Protection Act 2018. Both parties shall be registered under their respective legislation and both parties shall comply at all times with the Data Protection Legislation and shall not perform their obligations under the Agreement in such a way as to cause either party to breach any of their applicable obligations under the Data Protection Legislation. Both parties must promptly notify the other if they breach this clause.

9. INTELLECTUAL PROPERTY

9.1 In this clause 9, “Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

9.2 All Intellectual Property Rights arising from or relating to the services, including without limitation any material prepared by or supplied by NHS Resolution in connection with Practitioner Performance Advice services shall remain the property of NHS Resolution.

9.3 To the extent that the Department or any individual employed or engaged by the Department, have been involved in the development of or provision of the services (“contribution”), the Department hereby assigns to NHS Resolution all Intellectual Property Rights in such Contribution by way of present and future assignment with full title guarantee.

9.4 The Department shall have no right or licence to use any Intellectual Property of NHS Resolution except that it shall be entitled to use any material, information or other documents provided by NHS Resolution as part of the delivery of the services and for the Department’s internal business processes pursuant to the services provided under this agreement only.

10. FINANCIAL ARRANGEMENTS

10.1 NHS Resolution shall charge the Department for the services described in this agreement, in the following manner:

10.1.1 Commercially Sensitive Information redacted by the USI.

10.1.2 The Department may also request Practitioner Performance Advice to provide additional services, at an additional cost as specified in Schedule 1.

10.2 Travel, accommodation and further expenses incurred by NHS Resolution staff providing services specified in clause 10.1.2. above will be claimed in accordance with the NHS Resolution expenses policy.

10.3 NHS Resolution shall invoice for the fixed cost at the commencement of this agreement and at the commencement of any subsequent term. Any additional charges for services specified in clauses 10.1.2 above shall be invoiced on agreement to the provision of the service.

11. AUDIT

11.1 In the exercise of its functions and provision of services under this agreement. NHS Resolution shall keep all case related documents for all referrals made by the Department.

12. DESIGNATED REPRESENTATIVES

12.1 NHS Resolution and the Department shall both nominate designated representatives for the day to day operation of the Agreement and senior officers with responsibility for resolving function and service issues of a more serious nature. These contacts shall be set out at Schedule 3 to this agreement.

13. DISPUTE RESOLUTION

13.1 In the first instance any dispute arising under the Agreement shall be discussed by the designated representatives of the parties, as described in clause 12.

13.2 In the event that the dispute is not resolved under clause 13.1, either party shall notify the other within 21 days of the dispute setting out reasonable details of the dispute. The dispute shall then be referred to the Senior Officer of the Department and the Director of Practitioner Performance Advice, who shall meet reasonably promptly to seek to resolve the matter.

13.3 If the dispute is not resolved in accordance with clause 13.2 above, then the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate mediation the Parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator.

14 TERMINATION

14.1 Either party may terminate this agreement forthwith by notice in writing if the other party is in breach of this agreement and fails to remedy the breach (if capable of remedy) within 30 days of written notice of the breach being given and has not or will not comply with the Dispute resolution procedure as set out above at Clause 13.

14.2 Termination or expiry of this Agreement for any reason shall be without prejudice to any right or remedy of either Party which may have accrued prior to such termination.

14.3 The Department shall return any NHS Resolution equipment or materials in its possession or control at its own cost to NHS Resolution no later than 30 days after the termination or expiry of this Agreement.

14.4 Upon expiry or earlier termination of this Agreement, NHS Resolution shall continue to be entitled to receive and the Department shall pay NHS Resolution the contract price for any services provided by NHS Resolution up to and including the date of termination or expiry.

14.5 The provisions of Clauses 7, 8, 9, 13 and 14 shall survive termination of this Agreement.

14.6 Either party may terminate this agreement on 3 months' notice in writing to the other party, unless a shorter timescale is agreed by both parties.

15 MISCELLANEOUS

15.1 No variation of this Agreement shall be effective unless it is in writing signed by each of the parties.

15.2 No waiver of any term, provision or condition of this Agreement shall be effective unless it is in writing and signed by the waiving party.

16 ASSIGNMENT AND NOVATION

16.1 Either party may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

(a) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the transferring body;

provided that any such assignment, novation or other disposal shall not increase the burden of the other party's obligations under the Contract.

17 ENTIRE AGREEMENT CLAUSE

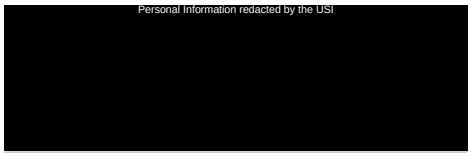
17.1 This SLA, together with the documents referred to in it/attached to it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

17.2 Each of the parties acknowledges and agrees that in entering into this SLA and the documents referred to in it/attached to it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this SLA. The only remedy available to either party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

17.3 Nothing in this clause shall operate to exclude any liability for fraud.

Signed for and on behalf of **Department of Health Northern Ireland**

By:

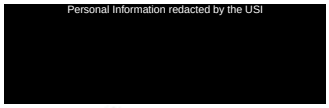


Name: Brian Godfrey

Date: 22 April 2020

Signed for and on behalf of **NHS Resolution**

By:

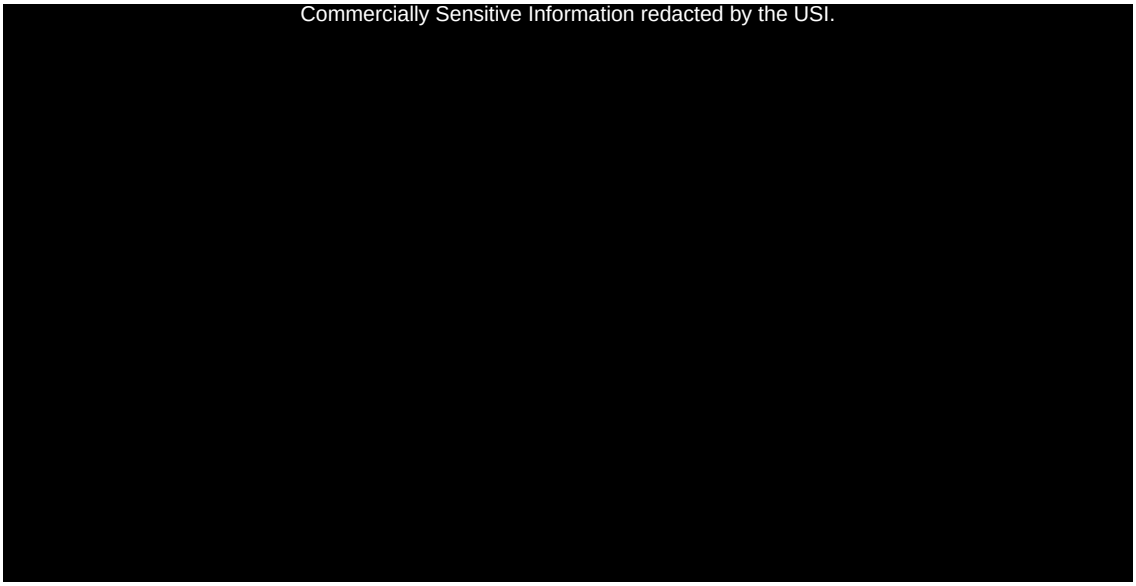


Name: Vicky Voller

Date: 22 April 2020

Schedule 1: Agreement Costs

Fee Structure



* Costs indicated are the current costs per event and may be subject to change in the future. When requesting a training event, the charges applicable will be as stated on our website at that time. This information can be accessed at https://resolution.nhs.uk/ppa-training/

Schedule 2: Service Specification

1. Practitioners Covered

This Agreement covers all doctors, dentists and pharmacists for which the Department has responsibility, including GPs on the Department's GP Performers List.

2. Areas of Clinical Care Covered

- Primary care services
- Secondary care services
- Public Health
- Mental Health and Psychiatric Services

3. Contact/Request for advice

Contact/Request for advice and support to Practitioner Performance Advice for any activity/service covered by this Agreement will be made by the Department's Group Medical Director or by the named designated representative at Schedule 3.

Telephone requests for advice and support directly from Practitioners concerned about their own performance are acceptable but Practitioner Performance Advice will make theses callers aware that the relevant employing/contracting body will be informed of the conversation and that no more than telephone advice will be given without the formal involvement of their employing/contracting body.

4. Assessors

Practitioner Performance Advice assessments will be carried out by members of the Practitioner Performance Advice Assessor team. All assessors will work within the Practitioner Performance Advice assessment framework and guidelines for assessors devised by Practitioner Performance Advice.

5. Quality and performance indicators

Practitioner Performance Advice will aim to work to the highest standards of quality in all its activities, in particular all work undertaken by Practitioner Performance Advice under the terms of this agreement will be subject to Practitioner Performance Advice's programme of evaluation and quality assurance.

6. Timescales

Practitioner Performance Advice will undertake to respond to requests from the Department in accordance with standard operating procedures. Practitioner Performance Advice will complete all case assessments within a reasonable timeframe, taking account of the complexity of each individual case and the requirements outlined within this agreement.

7. Services

Case Management Service

All services provided by Practitioner Performance Advice, including our assessment services, are directed towards supporting the early identification, and fair and effective management and resolution of concerns in relation to the performance of Practitioners. In all cases, patient safety and public protection are our paramount concerns.

A contact or request for advice or support from the Department or nominated Health Trust will be passed to a member of the Adviser team who will then make contact with the Health Board at the agreed time. For the avoidance of doubt, the contact or request for advice will be formally logged as a Practitioner Performance Advice case if it requires telephone advice followed up in writing, and in some circumstances supported with a facilitated meeting, and requires review until the case reaches a conclusion.

A Practitioner Performance Advice Adviser will provide advice and support and will be responsible for directing the management of Practitioner Performance Advice's input to the case. The level of support will depend on the nature of the case. The progress of all active Practitioner Performance Advice cases are reviewed at monthly meetings between the Adviser and a senior colleague. Practitioner Performance Advice's lead and senior Advisers provide senior support and quality assurance for the work undertaken by the Adviser.

The method of support provided to the nominated Health Board will include telephone advice, case conferences and detailed work with the nominated Health Board to ensure that best use is made of local governance procedures. Where specialist interventions are required from Practitioner Performance Advice, the adviser will work with the nominated Health Board to ensure that these are tailored to the circumstances of the case.

It is not essential for the identity of a Practitioner to be shared with Practitioner Performance Advice as part of case management work, although Practitioner Performance Advice prefers that this is done. Whether or not the identity of the Practitioner is shared, local governance procedures will be required to be robustly able to assure patient safety and public protection, and this point will be addressed explicitly throughout the handling of the case.

The decision to close a case rests with the Adviser with the exception of exclusion cases, which must remain open until the exclusion has been brought to an end. It is normally appropriate to close a case in circumstances where:

- The Health Board has confirmed the case has been resolved.
- Local action is likely to resolve the case and the Health Board has a clear plan how to achieve this.
- There has been no active contact from the Health Board despite follow up requests for a period of 3 months (except where exclusion is involved or where there is felt to be particular risk in closing a case).
- The case is in the process of an intervention which does not require direct surveillance or a Professional Support and Remediation (PSR) plan which again does not require further Practitioner Performance Advice monitoring or input unless we wish to do so for evaluation purposes.
- The case is subject to external proceedings such as legal/GMC which is not likely to require further Practitioner Performance Advice support.

As a competent advisory body in this area of work, a key feature of Practitioner Performance Advice's involvement is to bring constructive challenge to the local management of concerns and support the resolution of disputes between Practitioners and the associated Health Board. Practitioner Performance Advice support may also include formal facilitation, assisted mediation or structured action planning. Practitioner Performance Advice retains staff who are accredited mediators to provide our Assisted Mediation service.

Practitioner Performance Advice Clinical Performance Assessments

In a small proportion of cases Practitioner Performance Advice will advise use of an assessment. In deciding whether to recommend an assessment, Practitioner Performance Advice will take into account the criteria set out in its Consideration of Assessment policy. In doing this, key considerations are:

- The nature of the reported concerns, the available evidence for those concerns and any steps that have been taken to resolve the concerns.
- Whether an assessment would appreciably add to what is already known from earlier investigation or other review.
- Whether there are likely to be significant constraints on the nature and scope of any assessment or the feasibility of undertaking assessment.
- The duration of the Practitioner's contract and/or their expectations or plans for future practice.
- The parties' submissions as to whether they wish for an assessment to be undertaken and the benefit they perceive it would bring in terms of managing the concerns.
- The nature and scope of our assessments including their ability to provide robust evidence to help identify any concerns and what might be causing them.

The purpose of a Clinical Performance assessment is to:

- Provide an independent view on the clinical performance of the Practitioner, identifying both satisfactory practice and any areas of poor practice.
- Provide information to assist the referring organisation in decisions about the next steps in their management of the case.

The assessment is carried out through a clinical assessment visit by a trained team of assessors, supported by an Assessment and Intervention Manager. It includes: clinical record review; direct observation of practice and case-based assessment.

Behavioural Assessments

Practitioner Performance Advice can also offer a behavioural assessment. The purpose of which is to:

- Provide an independent view on the behavioural characteristics of the Practitioner, including any areas which require consideration.

- Provide information to assist the referring organisation in decisions about the next steps in their management of the case.

The assessment includes the Practitioner completing two online psychometric questionnaires and then attending an all-day appointment with an occupational psychologist.

Professional Support and Remediation (PSR) action plan

The purpose of a PSR action plan is to:

- Provide the Practitioner with the opportunity to demonstrate (upon successful completion) that they are practising at the standard reasonably expected for the role they will be practicing.

The Practitioner Performance Advice PSR service develops action plans for Practitioners who have been identified as needing support in order to return to safe and effective clinical practice. The reasons for practitioners needing support are wide ranging, and usually involve:

- Remediation - following the identification of deficiencies in aspects of their clinical practice.

- Return to work / re-integration (following a period of absence from clinical practice).

Action plans are based and developed on the information provided to Practitioner Performance Advice by the Department and the Practitioner. The final action plan and programme represents an agreement between the Department and the Practitioner.

Assisted Mediation

Assisted mediation is an independent, voluntary and confidential process in which two Practitioner Performance Advice accredited mediators work with the parties concerned to create a mutual understanding of the issues and to find a way forward that enables a more effective professional working relationship.

The aim of the assisted mediation service is to enable a more professional working relationship between both parties which leads to a positive impact on the immediate team and, ultimately, better patient care.

Team Reviews

The purpose of a team review is to:

- Identify and better understand key issues that are perceived to be contributing to relationship difficulties within a team.
- Identify any barriers to resolving the issues which have been highlighted
- Assist the Department in formulating a plan for improving professional relationships within the team.

The team review does not focus on an individual's clinical performance or the general service provision but concentrates on the behaviours and relationships affecting the ability of the team to work effectively together. The outcome of the team review will, where possible, focus on providing the employing or contracting organisation with possible solutions to assist in the local management of the issues whilst ensuring any governance and safety issues are given priority. The benefit is likely to have a positive impact on the immediate team and patient or public safety.

Team reviews are delivered by trained facilitators who bring extensive experience of casework relating to performance, behaviours and team functioning.
The team review discussion is confidential between Practitioner Performance Advice facilitators and the participants and is conducted on a 'without prejudice basis'. This means that what is discussed during the facilitated discussions cannot be used for other purposes, for example, formal HR or legal processes. The team review report is provided directly to the Department for sharing as they feel appropriate.

Education and training services

Practitioner Performance Advice's programme of workshops and conferences aims to share good practice and learning from casework and disseminate the information widely to NHS Medical Directors, Chief Executives, Clinical Directors, Responsible Officers, HR Directors and all those who deal first-hand with concerns about performance. Workshops are interactive, often using case studies. Practitioner Performance Advice provides events at national, regional and local level and for audiences defined by specialty and sector interests as well as for multidisciplinary groups.

Further information on all Practitioner Performance Advice services can be found on https://resolution.nhs.uk/services/practitioner-performance-advice

Schedule 3: Contacts

Practitioner Performance Advice

Name: Colin Fitzpatrick
Senior Adviser (NI)
Practitioner Performance Advice

Address: NHS Resolution
2nd Floor
151 Buckingham Palace Road
London
SW1W 9SZ

Email: Colin Fitzpatrick's email address
Telephone:

Name: Karen Jeffrey
Department of Health Northern Ireland

Address: Castle Buildings, Stormont, Belfast BT4 3SQ

Email:
Telephone:

Chloe Williams

From: Chloe Williams
Sent: 07 June 2022 20:23
To: Chloe Williams
Subject: MHPS England vs MHPS Northern Ireland comparison

Chloe Williams
Solicitor
D: Personal Information redacted by USI

fieldfisher

From: Grainne Lynn Personal Information redacted by USI
Sent: 16 December 2019 08:04
To: Vicky Voller Personal Information redacted by USI; Colin Fitzpatrick Personal Information redacted by USI
Cc: Karen Wadman Personal Information redacted by USI; Sally Pearson Personal Information redacted by USI
Subject: RE: MHPS England vs MHPS Northern Ireland comparison

Hi,

I can give you a broad outline on the issues which I have found to be different (although the 2 documents are very similar). In summary MHPS in NI is in six sections rather than the 5 parts of the English version. Like the English version there are unfortunately a number of inconsistencies

Section 1

The NI version has a more comprehensive section 1. There is much more detail about the role of the CM and CI, much more guidance on an informal approach and an emphasis on informal resolution. In the informal process it is the clinical manager (and not the case manager) who assesses the seriousness of the issue but they are encouraged not to make a decision alone. In the NI version the CM is said to be usually the MD but in contrast to the English version, NI specifically provides for the role to be delegated in any appropriate case (and does not insist that it should be the MD for CDs or consultants). There is a long explanation in the NI version of immediate exclusion – which can last for up to 4 weeks (English version 2 weeks). They do encourage in NI that the regulatory body should be notified of exclusion (paragraph 26) – probably covered now by ELA role . The CM must give the practitioner the opportunity to comment on the factual content of the report produced by the CI (unlike the English version where this is only a requirement in capability cases).

In section II
In exclusion and restriction from practice, the NI version would appear to suggest that the person can undertake paid or voluntary work when excluded in time not paid for by the employer, although they must not engage in any medical duties consistent within the terms of the exclusion. In England you must seek consent to work.
An exclusion of over 6 months must be referred to the DOH.

In section III in NI there is no reference to doctors in training being treated differently (in England there is a paragraph encouraging that allegations of misconduct against a doctor or dentist should be treated initially as a training issue and dealt with via Ed supervisor etc)

Section IV is broadly the same but is called handling concerns about clinical performance in NI (as opposed to capability)- thus avoiding the confusion with the employment law reference to capability (health termination)

Section V in NI has a section on the DDA (which is still relevant as we don't have the Equality Act)

Section VI is on general principles and covers some issues discussed in other parts of the English version eg settlement and termination, handling of illness arising during formal processes, but also has a paragraph on training and process for smaller organisations

There is no guidance on clinical academics in the NI version, but there is a flowchart setting out the formal and informal processes which I know some people are partial to as a helpful summary (although the flowchart for the informal process suggests the clinical manager would usually be the MD- one of the inconsistencies!).

I hope this is helpful but happy to discuss

Kind regards,
Grainne

Grainne Lynn
Adviser
Practitioner Performance Advice Service
NHS Resolution
151 Buckingham Palace Road
London
SW1W 9SZ
Advice Line 0207 811 2600
Mobile no Personal Information redacted by the USI
Grainne Lynn's email address
CST-A@resolution.nhs.uk

Please note I work part time and am not usually available on Thursdays or Fridays

We have reviewed our assessment services to ensure that we continue to provide an effective service. If you would like to know more about our services, including the changes to our assessments, then please visit Advice or Assessment or contact us on 020 7811 2600 or advice@resolution.nhs.uk

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From: Vicky Voller Personal Information redacted by the USI
Sent: 11 December 2019 20:06
To: Colin Fitzpatrick Personal Information redacted by the USI
Cc: Karen Wadman Personal information redacted by USI; Sally Pearson Personal Information redacted by the USI; Grainne Lynn Personal Information redacted by the USI
Subject: Re: MHPS England vs MHPS Northern Ireland comparison

Yes pls!

Sent from my iPhone

On 11 Dec 2019, at 19:33, Colin Fitzpatrick Personal Information redacted by the USI wrote:

> No, but Grainne and I could summarise the differences
>
> Colin

Dr Colin Fitzpatrick FRCGP, FRACGP
Senior Advisor (Northern Ireland)
Practitioner Performance Advice Service (formerly NCAS)

Mobile telephone number [redacted]

NHS Resolution

EMAIL: [redacted]

We have reviewed our assessment services to ensure that we continue to provide an effective service. If you would like to know more about our services, including the changes to our assessments, then please visit Advice or Assessment or contact us on 020 7811 2600 or advice@resolution.nhs.uk

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From: Vicky Voller [redacted]
Sent: 11 December 2019 18:32
To: Karen Wadman [redacted]; Colin Fitzpatrick [redacted]; Sally Pearson [redacted]
Subject: Fwd: MHPS England vs MHPS Northern Ireland comparison

Hi both- see below. Do we have anything? V

Sent from my iPhone

Begin forwarded message:

> **From:** "Andy Lewis [redacted])" [redacted]
> **Date:** 11 December 2019 at 17:41:22 GMT
> **To:** Vicky Voller [redacted], "Sally Pearson [redacted] [redacted]
> **Subject: MHPS England vs MHPS Northern Ireland comparison**
>
> Hi Vicky, Sally
>
> I am after a favour ….. I don't suppose you have to hand a comparison between the MHSP frameworks in England and Northern Ireland that would highlight the key differences? Is this something that the advisory service teaches new advisers who may bridge the gap between the two systems?
>
> Best wishes
>
> Andy
>
> Andy Lewis DFC | Assistant Director Employer Liaison Service |General Medical Council | [redacted]
>
> Working with doctors Working for patients
>
> The General Medical Council helps to protect patients and improve medical education and practice in the UK by setting standards for students and doctors. We support them in achieving (and exceeding) those standards, and take action when they are not met.
>
> _____
>
> ___

General Medical Council

3 Hardman Street, Manchester M3 3AW

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