

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

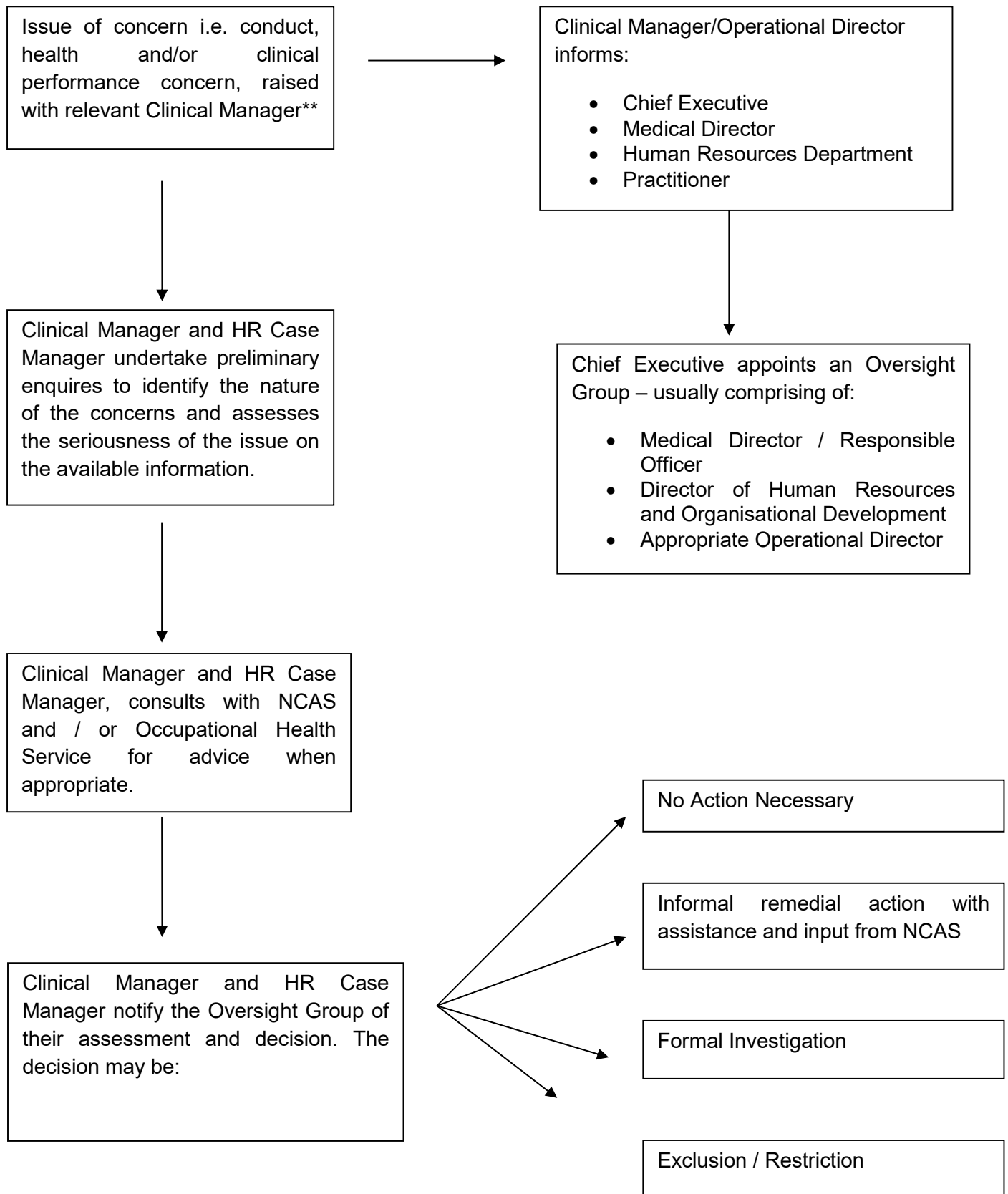
Exclusion can be used at any stage of the process.

## Appendix 6

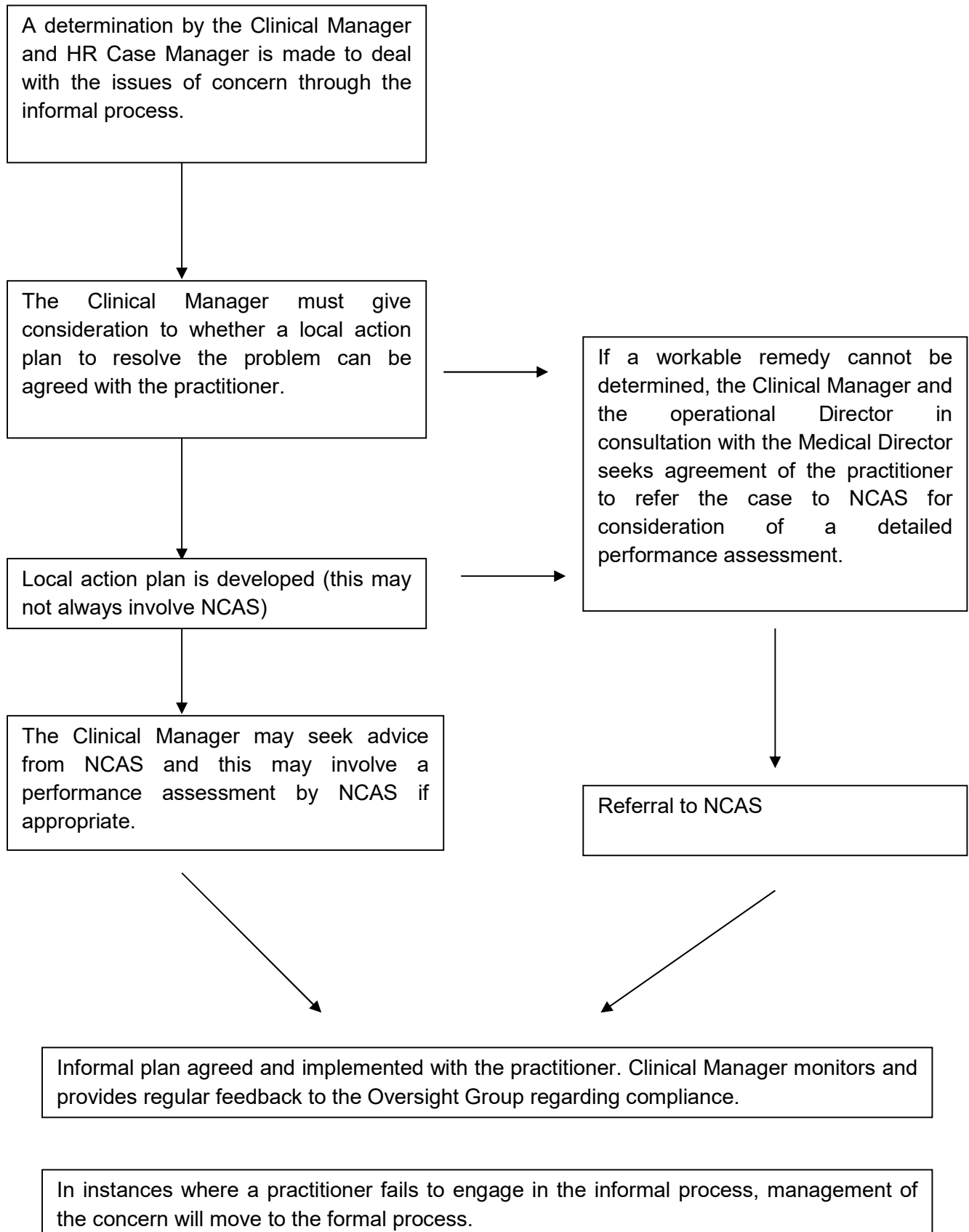
### Role definitions

- 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.

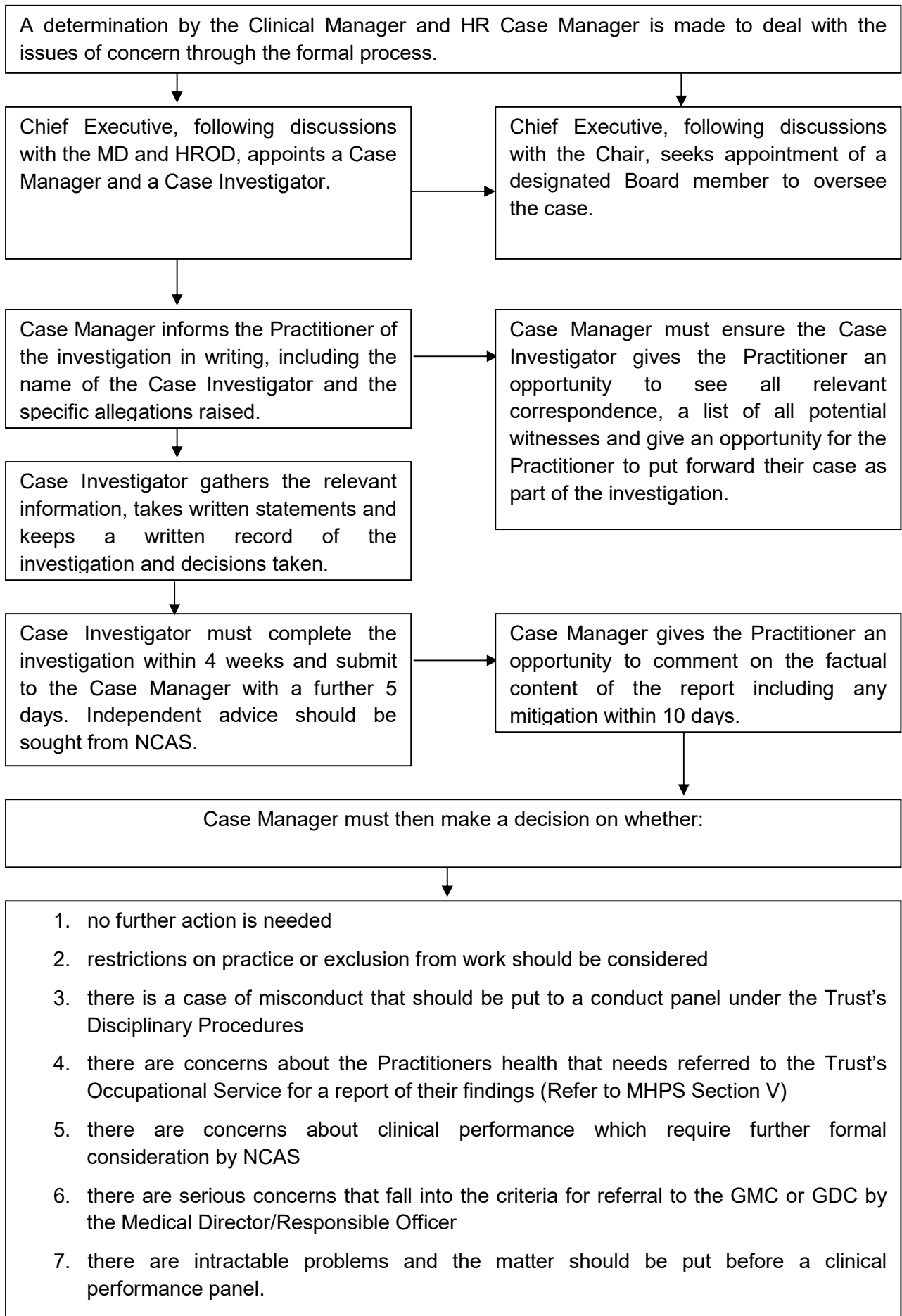
## Appendix 1

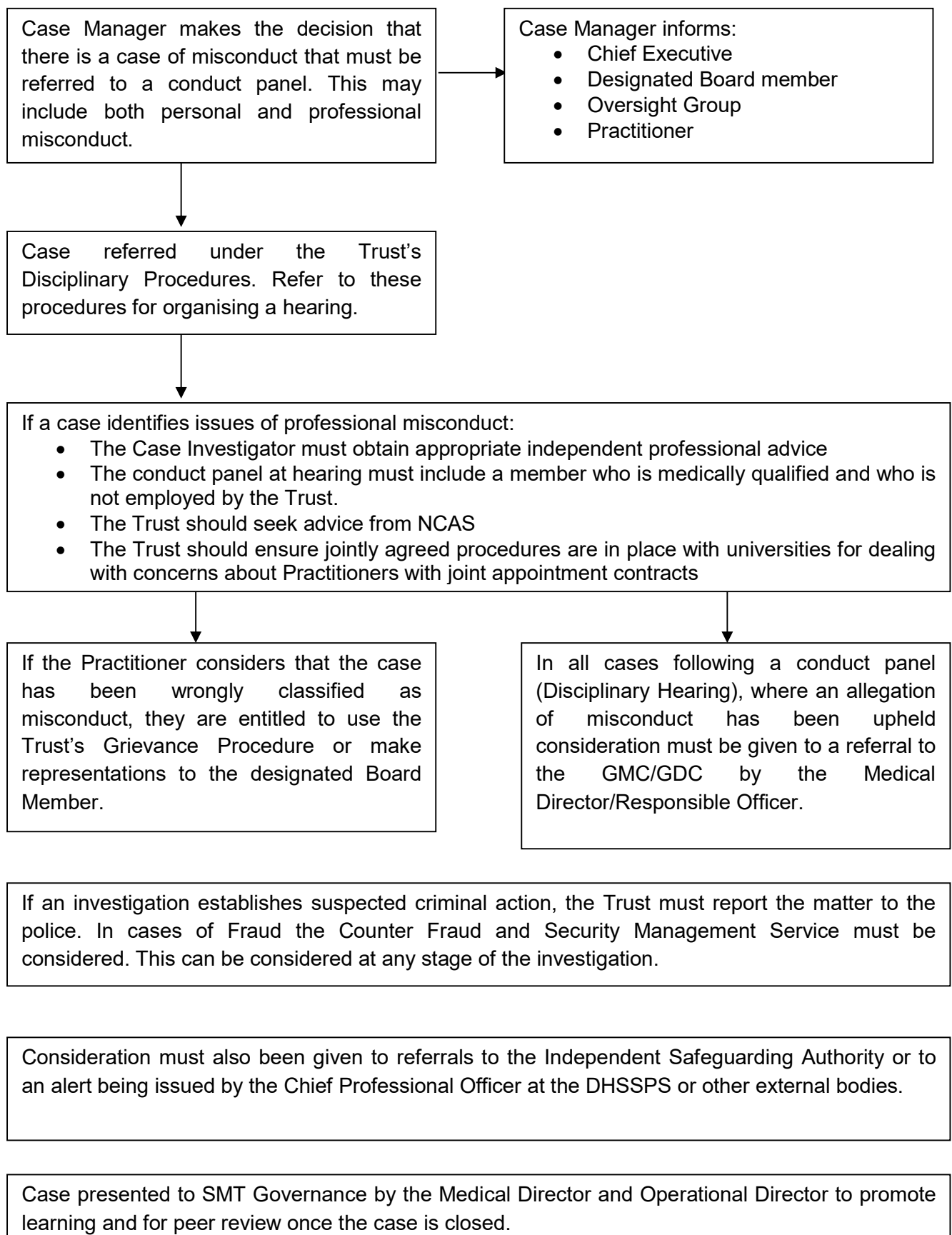
**Step 1 Screening Process**

\*\* 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

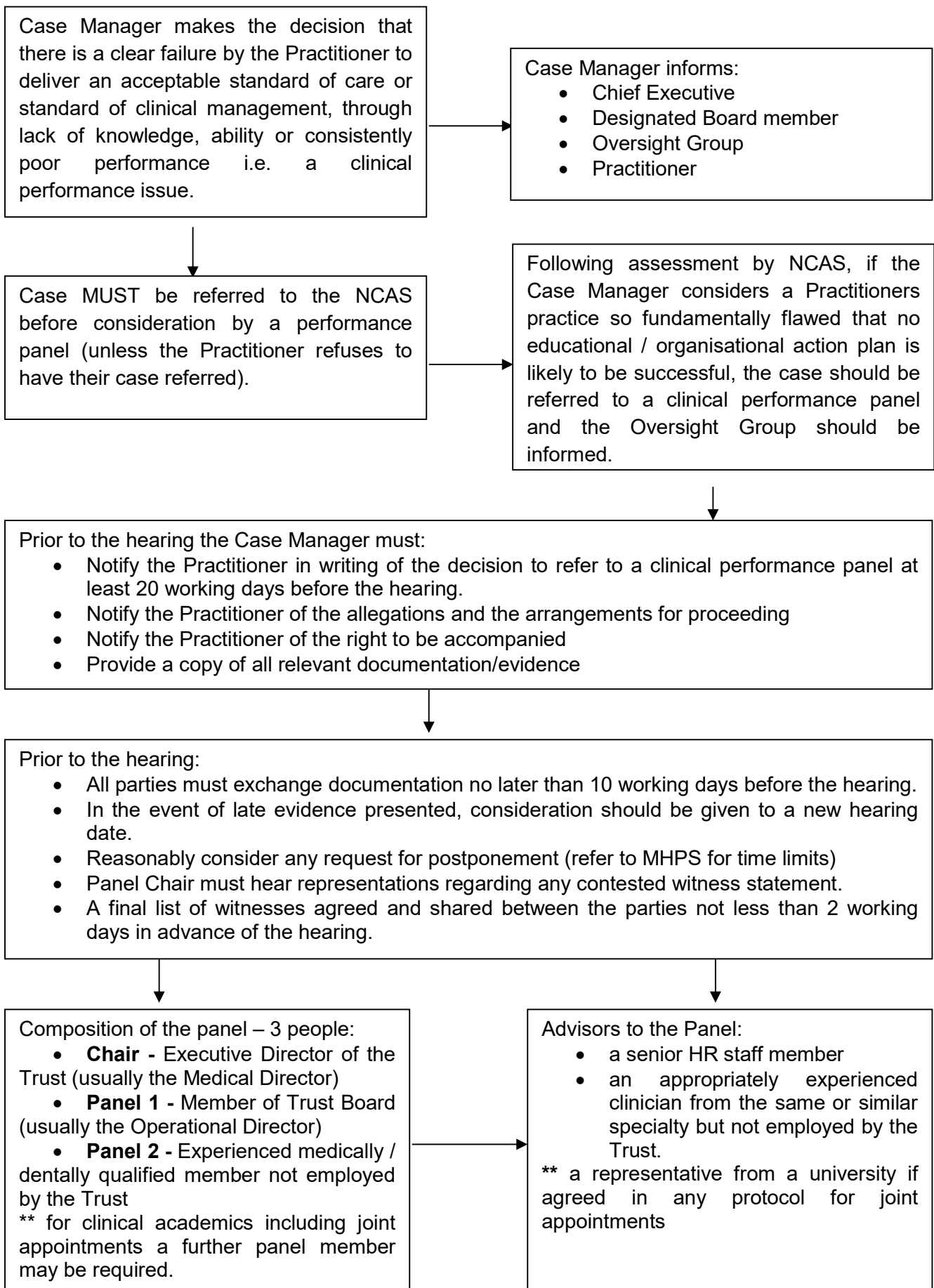
**Step 2 Informal Process**

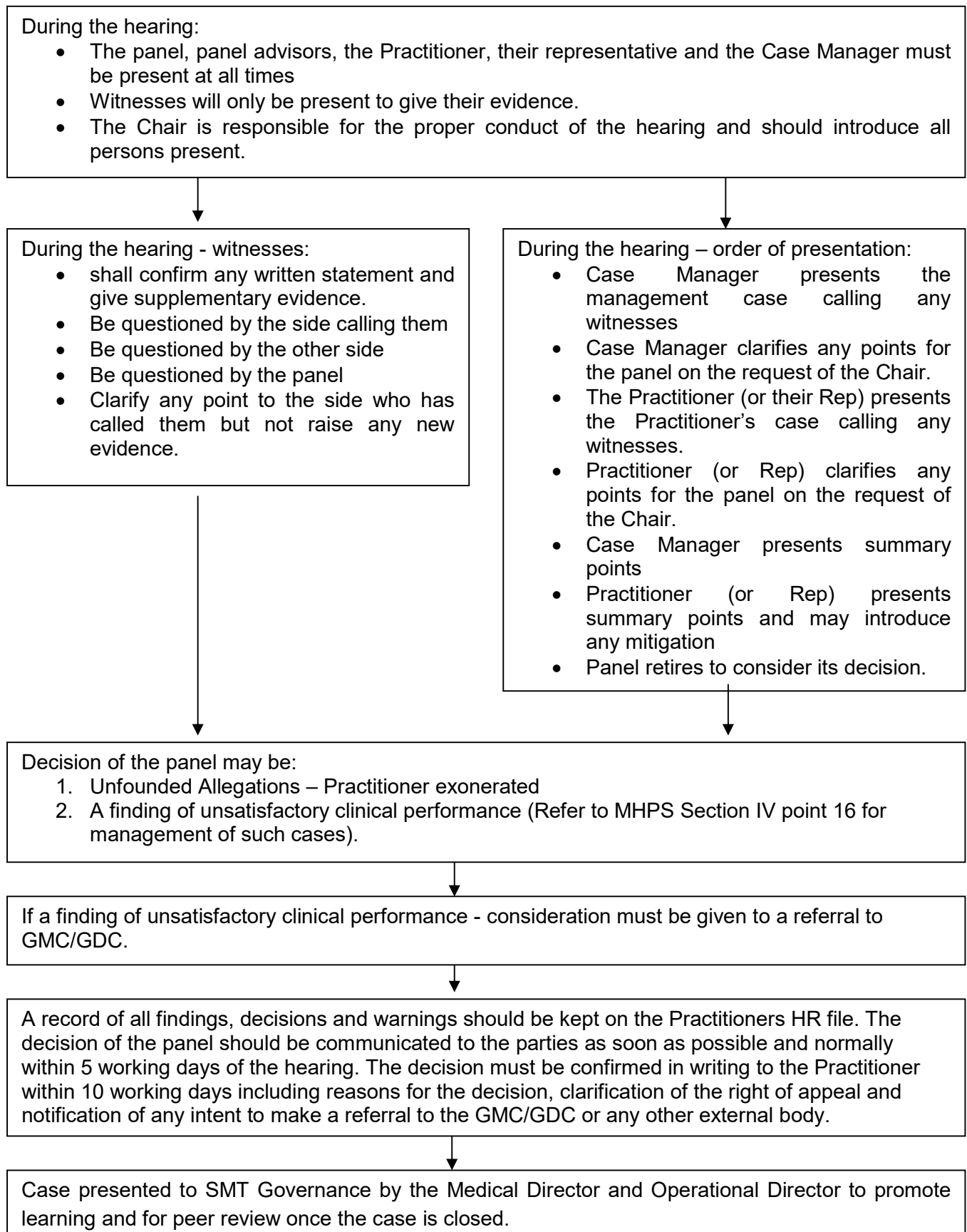
## Appendix 2

**Formal Process**

**Appendix 3****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.

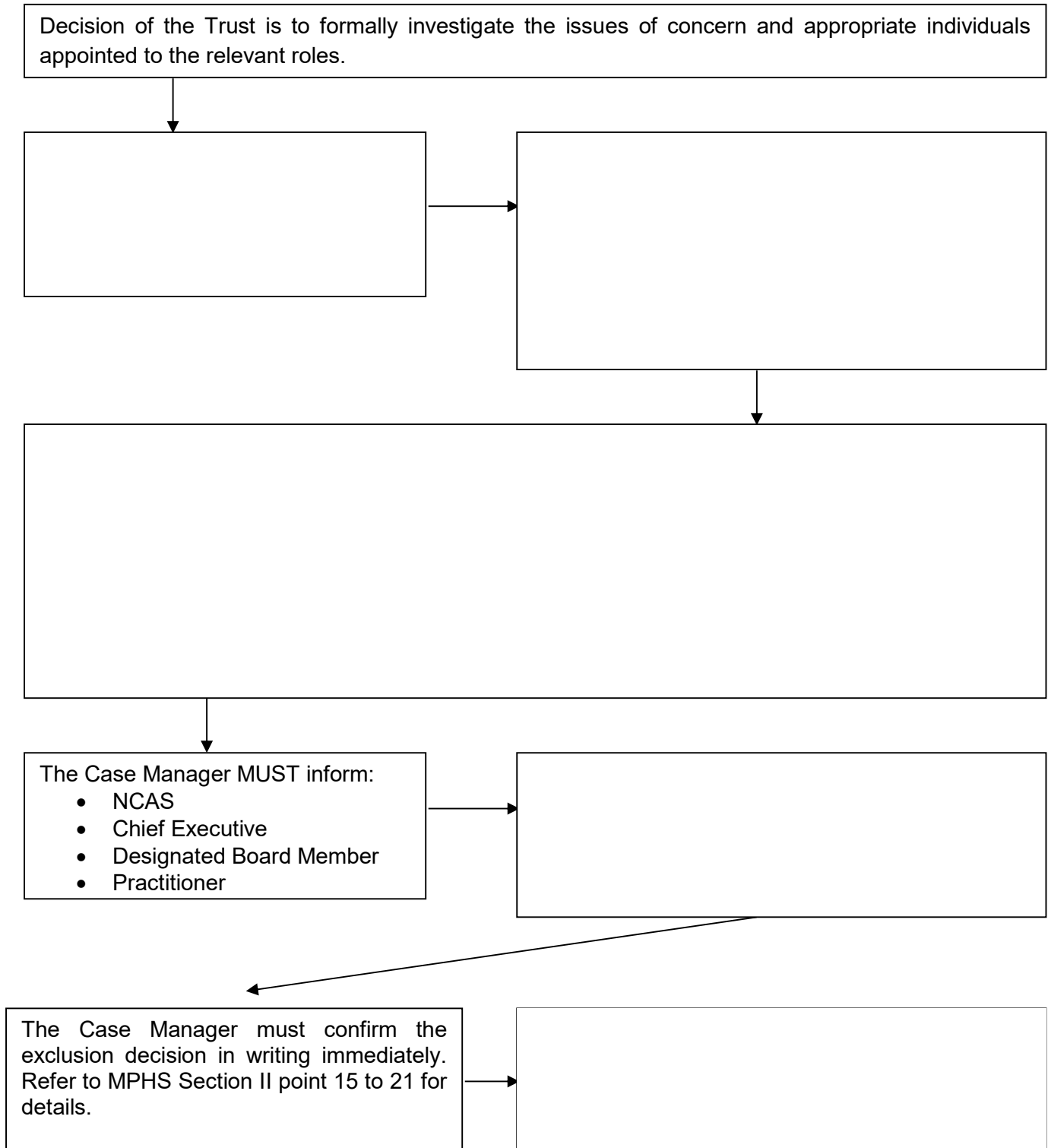
The exclusion should be sanctioned by the Trust's Oversight Group and notified to the Chief Executive. This decision should only be taken in exceptional circumstances and where there is no alternative ways of managing risks to patients and the public.

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.

**Toal, Vivienne**

---

**From:** S Hynds <[REDACTED]>  
**Sent:** 23 September 2010 23:50  
**To:** Toal, Vivienne  
**Cc:** Hynds, Siobhan  
**Subject:** Presentation  
**Attachments:** Trust Guidelines for Handling Concerns about Doctors and Dentists Sept 10.PPT

Vivienne,

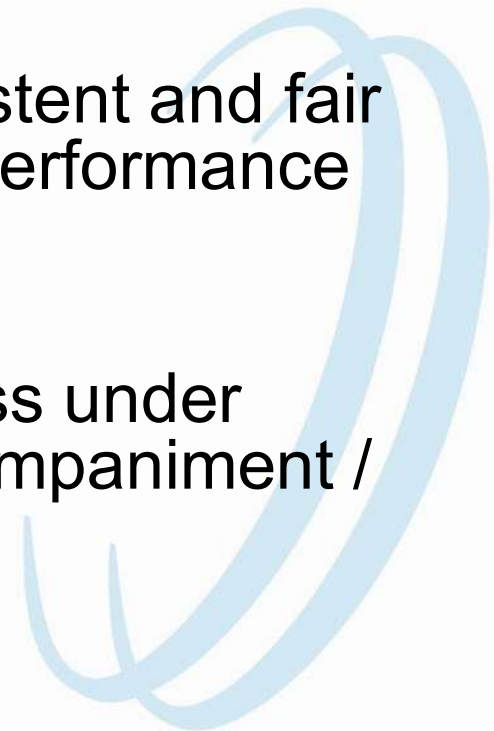
Presentation attached - the slides did not look right with just flowcharts on all of them so I have extracted some of the most important points under each heading and will just talk through the flow charts- are you happy with this?

How are you getting on?

Siobhan

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

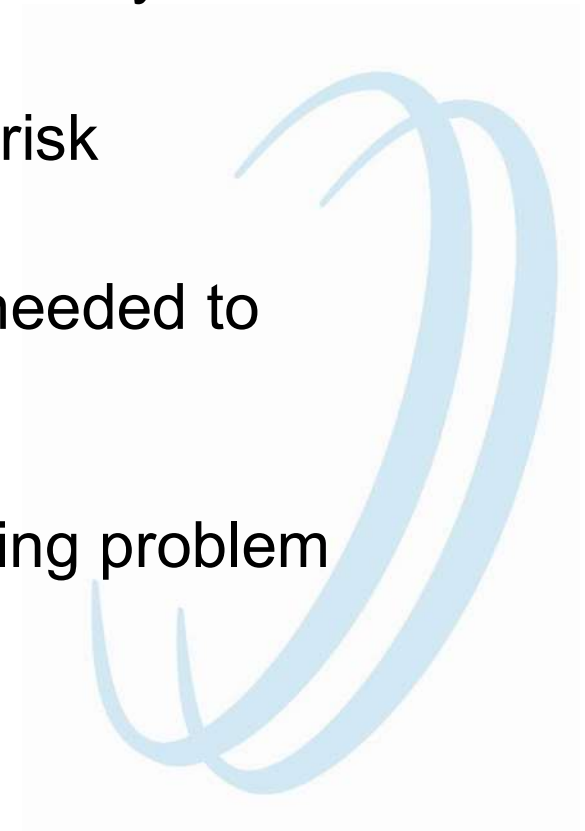
## **Principles:**

- 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.
  - the guidelines aim to ensure that a consistent and fair approach is adopted for the handling of performance concerns within the SHSCT.
  - that during all stages of the formal process under MHPS, the practitioner is entitled to accompaniment / representation.
- 

# Response to concerns

**Whatever the source of the concern, the response must be the same i.e. to:**

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



# Initial Concern Arises

- Concerns should be raised with the Practitioner's Clinical Manager
- The Clinical Manager should inform the relevant Operational Director who will inform the Chief Executive and the Medical Director
- The Clinical Manager must seek advice from a nominated HR Case Manager
- The Clinical Manager and the HR Case Manager will undertake initial verification / fact finding
- The Chief Executive is responsible for appointing a Trust Oversight Group
- Practitioner must be informed of the concerns by the Clinical Manager

# Screening Process

- Clinical Manager and HR Case Manager will investigate the concerns raised and assess what action should be taken in response
- the Oversight Group is informed of the possible action to be taken which may be:
  - No action
  - Informal remedial action with input from NCAS
  - Formal Investigation
  - Exclusion / Restriction



# Informal Process

- Local action plan developed and agreed with the practitioner
- Advice may be sought from NCAS / Occupational Health
- If a remedy cannot be determined, agreement of the practitioner sought to refer the case to NCAS
- Informal plan agreed, implemented and monitored
- Failure on the part of the practitioner to engage with the process will result in management of the case under the formal process

# Formal Process

- Chief Executive appoints a Case Manager, Case Investigator and a designated Board member
- Case Manager informs Practitioner of the specific allegations and the name of the Case Investigator
- Investigation report compiled within designated timeframes
- Practitioner able to comment on the report and should be kept fully informed
- Case Manager responsible for deciding on the appropriate course of action based on the Case Investigator's report

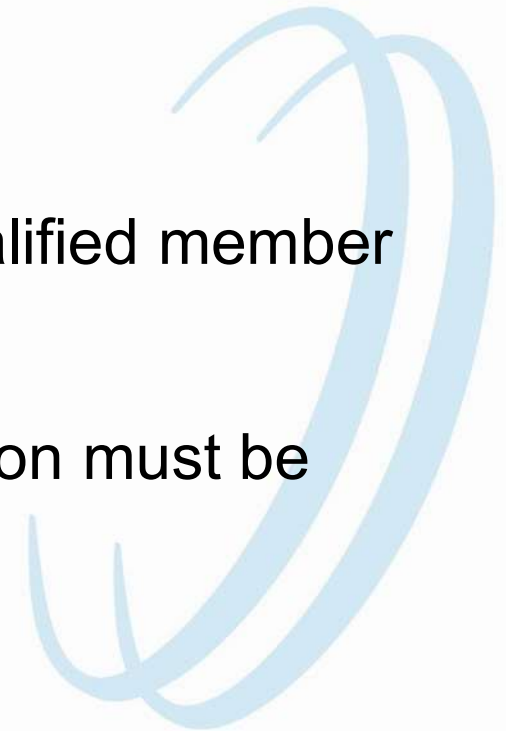
# Formal Process – Decisions

The Case Manager has a range of decisions available:

- No further action required
- Restrictions / Exclusion from work
- Conduct Panel
- Referral to Occupational Health
- Clinical performance concerns which require further consideration by NCAS
- Serious concerns which are referred to GMC/GDC
- Clinical performance is so fundamentally flawed, matter should be put before a clinical performance panel

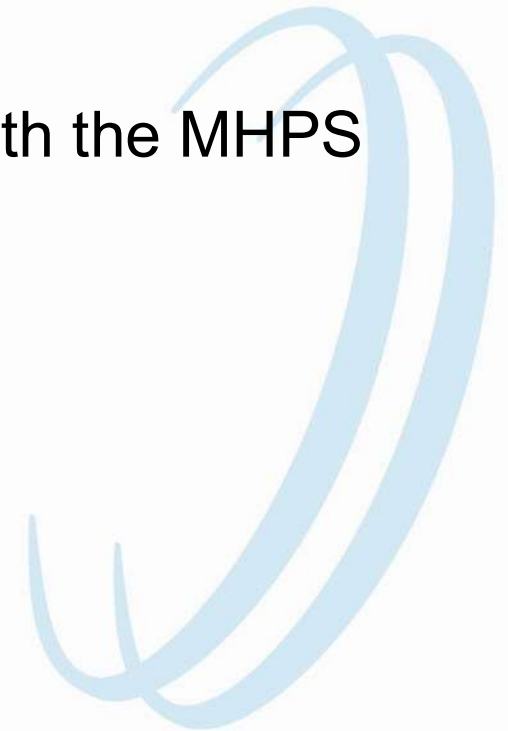
# Conduct Hearings

- Misconduct (including professional misconduct) concerns to be referred under the Trust's Disciplinary Procedures
- Independent professional advice should be sought in cases of professional misconduct
- NCAS advice to be sought
- Conduct panel must include a medically qualified member not employed by the Trust
- If the misconduct case is upheld consideration must be given to a referral to GMC/GDC

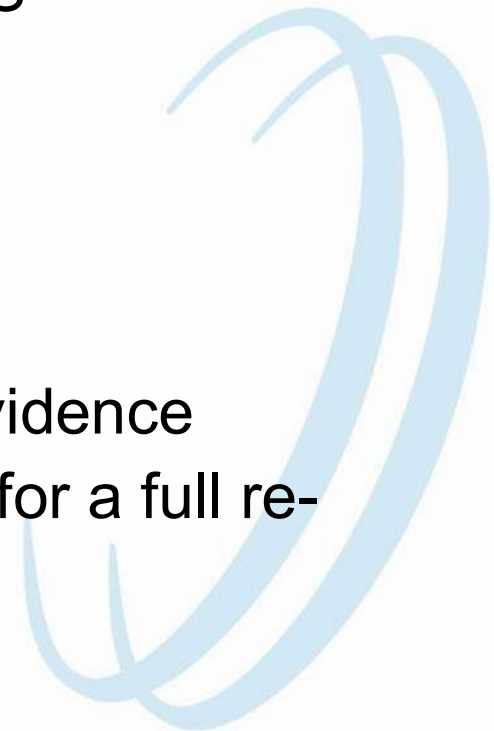


# Clinical Performance Hearings

- Case MUST be referred to NCAS before consideration by a clinical performance panel
- Practitioner must be informed of all relevant information prior to the hearing and within the identified timeframes under MHPS
- Panel must be constituted in accordance with the MHPS framework
- Clinical Performance panel may decide:
  - Unfounded allegations
  - Unsatisfactory clinical performance



# Appeal Procedure

- Appeal panel must be constituted in accordance with the MHPS framework
  - Appeal submissions must be made and hearing convened within the identified timescales under MHPS
  - The Appeal Panel can:
    - Vary or confirm the original decision
    - Seek information from own witnesses
    - Adjourn hearing to seek new statements/evidence
    - Refer to a new Clinical Performance panel for a full re-hearing if appropriate
- 

# Restriction of Practice / Exclusion from Work

- All exclusions must only be an interim measure
- Exclusions may be no more than 4 weeks
- Immediate Exclusion (when concern first arises) – NCAS should be notified
- Formal Exclusion (during formal investigation) – Trust case conference should be convened
- Restrictions should always be considered as an alternative to exclusion

# Roles and Responsibilities

- Clinical Manager – will usually be the Clinical Director and point of contact for concerns to be raised. Will undertake initial screening of the concern
- Case Investigator – will usually be the Clinical Director. Will examine the relevant evidence and present facts to the Case Manager
- Case Manager – will usually be the Associate Medical Director. Will co-ordinate the investigation and ensures timescales are met. Determines the relevant action to be taken following an investigation

**Toal, Vivienne**

---

**From:** Vivienne Toal <[REDACTED]>  
**Sent:** 23 September 2010 23:45  
**To:** Siobhan Hynds  
**Subject:** Presentation - see attached.  
**Attachments:** Medical Leadership Network Presentation 24.9.10.ppt

Siobhan

See attached - hopefully this is ok.

Talk to you in the morning.

Feel sick...

V

# **Medical Leadership Network**

## **Handling concerns about Doctors and Dentists**

**Vivienne Toal – Head of Employee Relations  
Siobhan Hynds – HR Manager**

**Employee Relations Department**



*Quality Care - for you, with you*

# Handling concerns in relation to...

- Working relationships
- Attendance at work
- Personal and professional misconduct
- Clinical Performance

# Working Relationships –

## Working Well Together Policy

- It is not a requirement to like or be friendly with work colleagues, however the WWT Policy states that it is essential that staff behave appropriately and treat each other with respect.
- Managers have a specific duty to be vigilant to the behaviour of staff within their team and are responsible for addressing actions that might cause offence to others.
- Managers must make every effort to ensure that conflict does not arise within their teams, or promptly deal with it if it does.
- Procedure outlines informal and formal processes for handling working relationship difficulties, including mediation.
- Formal process can result in disciplinary action being taken.
- Where the conflict has an equality dimension to it – Harassment at Work Procedure is used.

# Attendance at work -

## Management of Sickness Absence Procedures

- Considerable cost of absenteeism requires us to manage it much more effectively
- Managers must monitor and manage sick leave within their teams in line with Trust Procedures
- Recording of sick leave episodes must be completed on Staff Absence Return Form and forwarded to Payroll & HR
- Proactive management of short term absence – 3 periods of absence in a rolling 12 month period is a potential cause for concern and trigger to consider if action should be taken
- Attendance Management Team in Employee Relations Department available for support and advice to managers

# Personal & Professional Conduct – Disciplinary Procedure

- Issues of personal or professional misconduct are dealt with under the Trust's Disciplinary Procedure
- Examples – theft, fraud, falsification of patient records, physical violence / assault
- Disciplinary investigations and hearings for medical / dental staff are undertaken in same way as for other staff, but reference to particular requirements for panel composition as directed under MHPS Framework.

# Clinical Performance

- New Trust Guidelines for Handling Concerns about Doctors' and Dentists' Performance have now been developed
- This guidance establishes clear processes for how the Trust will handle concerns about its doctors and dentists in line with the Maintaining High Professional Standards Framework.

# HR Support to clinical managers for dealing with concerns

- Employment Law and Case Management Team within Employee Relations deal with all cases
- HR Advisors support and advise managers in relation to all employee relations cases
- Siobhan Hynds manages the team and will allocate an HR Advisor to work with Clinical Managers on employee relations cases

**Toal, Vivienne**

---

**From:** Vivienne Toal <[Personal Information redacted by the USI]>  
**Sent:** 24 September 2010 00:00  
**To:** S Hynds  
**Cc:** Siobhan Hynds  
**Subject:** RE: Presentation  
**Attachments:** Medical Leadership Network Presentation 24.9.10.ppt

Siobhan - these look 100% - very happy with format.

I've attached the 7 introductory slides - I've also sent them to your work email address about 10 mins ago. Can you merge in the morning?

Thanks a million

See you tomorrow.

V

---

**From:** S Hynds [mailto:[Personal Information redacted by the USI]]  
**Sent:** Thu 23/09/2010 23:50  
**To:** Vivienne Toal  
**Cc:** Siobhan Hynds  
**Subject:** Presentation

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*Quality Care - for you, with you*

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**WIT-41394**



*National Patient Safety Agency*

**National Clinical Assessment Service**

# How to conduct a local performance investigation



## Contact NCAS

For general enquiries, please contact our main switchboard on 020 7062 1620. Contact details for case referrals are:

### England

1st Floor, Market Towers, 1 Nine Elms Lane, London SW8 5NQ

**ADVICE LINE:** 020 7062 1655

**General switchboard:** 020 7062 1620

**Fax:** 020 7084 3851

### Northern Ireland

Lisburn Square House, Office Suite 2, 10 Haslem's Lane, Lisburn BT28 1TW

**ADVICE LINE:** 029 2044 7540

**General switchboard:** 028 9266 3241

**Fax:** 028 9267 7273

### Scotland

Hanover Buildings, 66 Rose Street, Edinburgh EH2 2NN

**ADVICE LINE:** 0131 220 8060

**General switchboard:** 0131 220 8060

**Fax:** 0131 220 8950

### Wales

First Floor, 2 Caspian Point, Caspian Way, Cardiff Bay, Cardiff CF10 4DQ

**ADVICE LINE:** 029 2044 7540

**General switchboard:** 029 2044 7540

**Fax:** 029 2044 7549

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# Introduction

## Purpose

The National Clinical Assessment Service (NCAS) is often asked for advice about local investigations into practitioner performance or conduct. While there are no firm rules about when to investigate or how, as each case has to be considered in relation to its own facts and circumstances, there are principles which can be followed in all sectors of healthcare and for any healthcare profession.

Identifying and dealing with performance problems promptly and efficiently can reduce potential risk for patients, practitioners and the teams they work in, as well as for the service as a whole. This guide suggests what this might mean for investigations. It follows the sequence of an investigation from first notification of a concern to the point at which findings are made available to decision-makers. It is written for both primary care organisations (PCOs) and organisations providing hospital and community (H&C) services, in both the NHS and independent sectors of healthcare.

## Assumptions

As part of its governance programme, every organisation should have performance procedures which are objective, fair, up-to-date and easily accessed by anyone interested in them. Formal procedures should comply with core legislation and guidance. Organisations should aim to have managers trained to use the procedures and people identified as potential investigators and case managers so that investigations can proceed promptly, when needed. By assuming that local procedures and processes are in good order, this guidance can focus specifically on the investigating process. Other NCAS publications and guidance can be used to review local processes, if necessary, and managers can also ask NCAS advisers for help.

We have also assumed an understanding that guidance of this sort can cover only general principles and that the handling of a specific case must depend on the unique facts of that case. Where template formats are shown, these are illustrations of the types of issues and actions to consider; organisations should take legal advice, where necessary.

## Relationship with other NCAS guidance

This guidance is written to be used alongside other NCAS publications including *Handling performance concerns in primary care* (2010). We have built on earlier NCAS guidance in *Local GP Performance Procedures* (2007) (now replaced by *Handling performance concerns in primary care*) and also on the joint Department of Health and NCAS publication *Handling Concerns About The Performance of Healthcare Professionals: Principles of Good Practice* (2006).

Further NCAS guidance can be downloaded from: [www.ncas.npsa.nhs/toolkit](http://www.ncas.npsa.nhs/toolkit)

For current NCAS publications go to: [www.ncas.npsa.nhs.uk/resources/publications/key-publications](http://www.ncas.npsa.nhs.uk/resources/publications/key-publications)

## Terms

**'Organisation':** a healthcare organisation employing or contracting with health practitioners.

**'Investigation':** an inquiry carried out by a healthcare organisation into whether or not there is a problem to address in a practitioner's performance.

**'Practitioners':** dentists, doctors and pharmacists, the groups within NCAS' current remit, although organisations may find the guidance useful in other contexts as well.

**'Performance concerns':** any aspects of a practitioner's performance or conduct which:

- pose a threat or potential threat to patient safety;
- expose services to financial or other substantial risk;
- undermine the reputation or efficiency of services in some significant way;
- are outside acceptable practice guidelines and standards.

A glossary of other terms can be found on page 23.

## Legal framework

Statutory Instruments ('regulations') and frameworks differ from country to country and across the professions, so it is important to access the relevant legislation and guidance. The 'Must knows' sections on the NCAS website provide quick links to key NHS legislation in each country and for each practitioner group.

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

### Feedback

Feedback about this document would be greatly valued. Please send it to: [ncas@ncas.npsa.nhs.uk](mailto:ncas@ncas.npsa.nhs.uk)

This is a guidance document but NCAS can be contacted at any stage for advice about the handling of specific cases.

# 1. Deciding whether to investigate

Performance concerns can come to light in many ways, including routine monitoring of management information, reports from patients and colleagues, appraisal, reports on serious untoward incidents and anonymous complaints or concerns. Anonymous reports may be difficult to verify but should not be dismissed. It is unlikely that on their own they would support formal action, but they may lend support to other evidence.

Any performance concern raises the possibility of a need for further investigation. This section outlines how to decide whether to conduct an investigation, by asking:

- What is a performance investigation?
- How might concerns be screened for investigation?
- What should be considered in making a decision to investigate?
- What are the alternatives?
- When is an investigation likely to be appropriate?

## 1.1 What is a performance investigation?

The purpose of a performance investigation is to determine whether or not there is a performance problem requiring action. A performance investigation is not a free-ranging inquiry. It is normally helpful to define the purpose of the investigation using terms of reference.

Terms of reference have to be determined based on what is known at the time an investigation is set up. If, later, a substantial issue comes to light that is outside the initial terms of reference, the terms can be reviewed and, if necessary, changed to ensure that the investigation covers the new issue.

An investigation report then sets out findings and the evidence on which the findings are based. The report informs a decision on whether to take action on the concern and how. It does not make the decision.

A decision to investigate commits the organisation to significant work and expense, so the organisation needs to be sure that a concern is serious enough to warrant an investigation, based on a review of available information.

## 1.2 How might concerns be screened for investigation?

Regardless of how a concern is identified, it should go through a screening process to identify whether an investigation is needed. Anonymous complaints and concerns based on 'soft' information should be put through the same screening process as other concerns.

The form that screening takes will vary from organisation to organisation. The essential requirement is that a consistent process is followed, with decisions made by a person or group with appropriate authority. Decisions made should be appropriately recorded and the practitioner kept informed of progress.

In *Handling performance concerns in primary care*, NCAS suggests the use of a decision-making group (DMG) supported by a professional advisory group (PAG), with membership suggestions made for both groups. In a primary care organisation (PCO) using this structure the DMG would usually make the decision to commission a local investigation or to take some other action such as referral to the police or counter fraud agency. In secondary care, it is the designated responsible manager (often the medical director or deputy) who will determine (in consultation with others, as appropriate) whether or not an investigation is required. In both sectors, the interface with responsible officers for medical practitioners (once appointed) will need to be considered.

The purpose of screening is to identify whether there are *prima facie* grounds for an investigation and, if there are, to set terms of reference which are sufficiently detailed for the investigation to proceed. It is essential that managers set aside dedicated time to progress initial screening so that it can be completed properly and quickly.

## 1.3 What should be considered in making a decision to investigate?

Before deciding whether a performance investigation is necessary, consider what other relevant information is available. This could include:

- clinical or administrative records;
- serious untoward incident reports or complaints;
- earlier statements or interviews with people with first-hand knowledge of the concern;
- clinical audit and clinical governance data;
- the views of appropriate professional advisers;
- earlier occupational health reports.

The objective is to determine whether an investigation would be likely to produce information which is not already available, not to begin the investigation process itself.

There will normally need to be input from the practitioner too. As a general principle, NCAS encourages employers and contracting bodies to be transparent and to communicate and engage early with the practitioner whose performance is causing concern. NCAS suggests that the case manager or other appropriate person should have a preliminary meeting with the practitioner, explain the situation and what might happen next, and explain that they will be available to answer questions if the case progresses. The practitioner's initial comments can be taken into account in evaluating what further action should be taken. The practitioner should be offered the opportunity to be accompanied by a colleague or a union or defence society representative. A note should be taken and copied to the practitioner as a record of discussions and any case handling decisions.

Exceptionally, contact with the practitioner may have to be deferred if a counter fraud agency or the police advise that early meetings or early disclosure could compromise subsequent investigations. But generally, the practitioner's response will be helpful in deciding whether to carry out an investigation.

## 1.4 What are the alternatives?

Investigation should be judged unnecessary where:

- the reported concerns do not have a substantial basis or are comprehensively refuted by other available evidence;
- there are clear and reasonable grounds to believe that the reported concerns are frivolous, malicious or vexatious. While very few complaints fall into this category it is important that those that are not genuine are identified as soon as possible to avoid distress to the practitioner and waste of the organisation's time.

Even where there is evidence of concern, the decision may still be to dispense with investigation under the following circumstances:

- The practitioner may agree that the concerns are well-founded and agree to cooperate with required further action. However, if the issues raised are serious enough to suggest that if upheld they might warrant consideration of termination of employment or removal from a performers list, then the organisation may still need to conduct an investigation. The action to be taken subsequently would then be decided in the normal manner.

- Confirmed or suspected ill-health is another situation where performance investigation could be inappropriate. But health problems may be part of a more complex presentation where an investigation could still be helpful, so ill-health does not, by itself, rule out investigation. Information on a practitioner's health problems should remain confidential unless there are exceptional circumstances that require disclosure in the public interest.
- An investigation may also be judged unnecessary if the concerns are being investigated by another agency. An external investigation does not automatically preclude an NHS investigation but the organisation should have reasons for carrying out its own investigation into different aspects of potentially the same concern. There should then be close liaison with the other agency to avoid one investigation being compromised by the other.

The decision to proceed or not proceed with an investigation should be documented, with reasons, along with decisions on any alternative actions decided on. Box 1 shows what a meeting note might look like for a meeting where the decision is to defer investigation for the time being and take action straight away.

### Box 1 – Recording a decision not to investigate, in primary care

This note sets out who decided what and why, and what has to happen next and when, with the note signed as a correct record by the chair. Similar records should be kept by the responsible manager in secondary care, showing the advice taken and the decisions made.

#### **Note of meeting to consider whether to carry out an investigation into the performance of [practitioner] held on [date]**

PRESENT: [ ]

[Member] said that he knew [practitioner] through common membership of the local representative committee but he did not believe there was a conflict of interest. It was agreed that [member] should continue to take a full part in the proceedings.

The circumstances of the concern were then summarised by [the responsible manager]. The following information had come to the [organisation]'s attention, suggesting that [practitioner] might be performing below an acceptable standard in relation to [specified aspects of care]:

- Information from patients/carers [summarised, anonymised].
- Information from management monitoring sources [summarised].
- Information from colleagues/staff [summarised, anonymised].
- Other information [summarised, anonymised].

[Responsible manager] advised that there were no immediate reasons for thinking that patient safety was at risk. Also, [practitioner] was aware of the organisation's concerns and had indicated a willingness to undergo a remedial training programme on [aspect of care].

Remedial training arrangements have still to be established with [the postgraduate deanery] but similar measures have been used successfully in similar cases of performance concern within the organisation

It was agreed that:

1. The concerns are already clearly enough understood for action to be taken.
2. Provided remedial training can be put in place, further investigation is unnecessary at this time. This will be taken forward by [the responsible manager] working with [ ].
3. The case should be reviewed after [ ] months.
4. No immediate action is needed to protect patient safety.

Signed as a correct record by [Chair]

Date

## 1.5 When is an investigation likely to be appropriate?

Investigation will usually be appropriate where case information gathered to date suggests that the practitioner may:

- pose a threat or potential threat to patient safety;
- expose services to financial or other substantial risk;
- undermine the reputation or efficiency of services in some significant way;
- work outside acceptable practice guidelines and standards.

In these situations, a well-undertaken investigation and report will probably help to clarify any action needed.

In deciding to go ahead with an investigation the screeners and decision-makers should have a clear view on the areas of performance that are a concern – what is to be included and what is to be excluded. The decision-makers might not draft the terms of reference but they should approve them before the investigation starts. The terms of reference should also set report expectations and timescales.

The process of deciding whether to hold an investigation is summarised in Box 2.

### Box 2 – Checklist for deciding whether to investigate

|                                                               | Responsibility                               | Date |
|---------------------------------------------------------------|----------------------------------------------|------|
| Concern identified and referred to responsible manager        | Anyone                                       |      |
| Practitioner normally notified of concern                     | Responsible manager                          |      |
| Written confirmation to practitioner                          | Responsible manager                          |      |
| First meeting with practitioner                               | Responsible manager                          |      |
| Meeting date agreed for decision-making group (if applicable) | Responsible manager                          |      |
| Additional information assembled                              | Responsible manager                          |      |
| Decision made on whether to investigate                       | Responsible manager or decision-making group |      |

## 2. Protecting and supporting

Chapter 1 ended with the decision to investigate. Before the investigation can proceed, even to the planning stage, certain protections must be considered for the people who will be involved in the investigation in any capacity. A formal investigation of practitioner performance is likely to impact on patients, carers, other healthcare workers, the practitioner's staff and colleagues, expert and other witnesses, not to mention the managers carrying out the investigation. Each needs some level of protection or support while the investigation is under way. Organisations should, as appropriate:

- protect patients from harm;
- protect people raising concerns;
- keep patients informed;
- support the practitioner;
- protect the organisation.

### 2.1 Protect patients from harm

Depending on the facts of a particular case it may be necessary to consider formal suspension (in primary care) or exclusion (in secondary care). Where possible, discuss such cases with NCAS before taking action. NCAS provides a 24-hour, seven day a week service to deal with situations of this sort. Specific procedures must be followed to ensure that a suspension or exclusion is lawful.

Suspension or exclusion should only be used where there is no reasonable alternative. These measures are often described as 'neutral' acts intended to protect patients, staff and the practitioner, and not to be disciplinary sanctions. In practice, the practitioner – and possibly colleagues – may see them differently. While exclusion or suspension do protect patients, they can make performance improvement more difficult.

As alternatives, an organisation might:

- ask the practitioner to withdraw voluntarily from carrying out certain duties;
- offer suitable alternative NHS work away from direct patient contact, whilst investigations continue.

Voluntary agreements should be put in writing. They should only be used as an alternative to formal action if detailed, clear and robust enough to give the same certainty of protection as formal action. A voluntary agreement could also state explicitly that the practitioner is entering into a formal undertaking which, if breached later, might lead to referral of the practitioner to the professional regulator. For non-contractor pharmacists, voluntary agreements remain the only available mechanism to restrict their practice.

Discussion with NCAS is advisable before use of a voluntary agreement to restrict practice. The practitioner should be advised to consult a defence society, union or solicitor before signing. Voluntary agreements are not appropriate where there are significant health difficulties or dishonesty is suspected. Apart from anything else, they may compromise an organisation's ability to take a formal position later that the practitioner was not fit to practise. Any information related to a practitioner's health or personal circumstances should normally remain confidential.

For the legal frameworks governing suspension and exclusion in each country go to [www.ncas.npsa.nhs.uk/mustknows](http://www.ncas.npsa.nhs.uk/mustknows). Local guidance, regulations and ministerial directions (for example in England, *Maintaining High Professional Standards in the Modern NHS* (MHPS), Department of Health 2003) specify how practitioners must be notified that suspension or exclusion is being considered and given opportunity to make any representations.

For an outline voluntary undertaking to restrict practice, see Box 3.

**Box 3 – Voluntary restriction of practice**

Dear [Practitioner]

I am writing to confirm your undertaking today that with immediate effect and until further notice you will not provide any form of care to [specified patients], either at [normal workplace address] or at any other workplace.

You accepted that this is a formal undertaking and that if you breach the undertaking it would constitute professional misconduct and it would be appropriate for [organisation] to refer the breach to [professional regulator].

You will now have had opportunity to discuss this undertaking with your [defence society]. If you are still in agreement please confirm this by sending me the enclosed copy of this letter, signed and dated. If we do not receive this by [date] we will take formal action to protect patients.

Your undertaking will remain in force until our current investigation is complete. We will review it as part of the process of deciding the action to be taken (if any) in the light of the investigation's findings.

Yours sincerely

[Manager]

In situations such as this, the organisation may also need to consider whether to inform the relevant professional regulator. Regulators are concerned with issues that raise questions about a practitioner's fitness to practise. In its initial consideration of a case the healthcare organisation has a number of options, including referral to the regulator and other agencies. If it has been decided that a local performance investigation alone is required and, providing patient safety is assured, then there will be no reason to notify the regulator unless or until local proceedings identify serious concerns which bring into question the practitioner's capacity to practise at all. If in doubt, discuss the options with NCAS.

Where a practitioner giving cause for concern has resigned or been dismissed by the employer or is otherwise unavailable, the organisation may still decide to carry out an investigation to learn from the episode and, if possible, prevent it happening again. Where a practitioner moves away before performance concerns have been resolved, and is thought to pose a significant risk if re-employed elsewhere, organisations can also consider the issue of an alert notice. See [www.ncas.npsa.nhs.uk/toolkit/disciplining/consider-who-else-needs-to-know](http://www.ncas.npsa.nhs.uk/toolkit/disciplining/consider-who-else-needs-to-know) for more advice on use of alert notices. Once issued, alert notices must be kept under review and rescinded as soon as they cease to be applicable. Alert notices are not issued in Scotland.

## 2.2 Protect people raising concerns

Whistleblowers and other people raising concerns about professional colleagues may feel vulnerable, particularly if still working with the practitioner concerned. As long as their concern is genuine, they should be protected by the organisation's local policy on whistleblowing and, where applicable, the *Public Interest Disclosure Act 1998* (PIDA). The organisation's human resources team could offer advice on the Act's provisions. Advice for individuals could also come from local representative committees, union or defence society advisers, or from professional regulators. The charity, Public Concern at Work ([www.pcaw.co.uk](http://www.pcaw.co.uk)) also offers confidential advice which can be accessed by people not employed by the organisation and therefore not covered by PIDA.

In practice, it is not usually possible to protect the identity of reporting practitioners, especially within small teams. Practitioners with potential performance concerns are likely to ask questions and try to guess the name of informant(s). They may make counter-allegations which will put working relationships under strain. Explaining the situation and the organisation's investigative procedures to both parties can help formalise the position and

prevent discussion within the team. Remind the practitioner and others involved in the investigation to avoid any action which could be seen as attempting to influence witnesses or influence the investigation in other ways.

Managers should recognise the stress that the practitioner may be under. At the same time, they must try to protect those around from further stress. If it becomes difficult for a team to continue functioning effectively then suspension or exclusion from work may have to be used, either against the practitioner whose performance is a concern or against another practitioner who is not treating the investigated practitioner reasonably.

Where witnesses ask to provide information anonymously, the investigator needs to strike a balance between the rights of the practitioner under investigation and the need to collect evidence. There are some circumstances where it may be possible to proceed even if the practitioner is not informed of the identity of witnesses. The important need is for the practitioner to know the evidence against them and the case they have to answer.

The courts have held anonymity to be reasonable in cases involving sexual misconduct or where there is a real or perceived risk of harm to the informant. In these circumstances the investigator should take a full statement from the witness and then anonymise it by erasing the parts which could identify the witness.

In other cases the investigator should explain why anonymous allegations are undesirable. So long as the concerns are genuine, the informant ought to be protected by any local policy on whistleblowing and, where applicable, by the provisions of PIDA.

When anonymous information is taken into account it is good practice for the investigator to record the issues considered and the reasons for allowing the informant to remain anonymous. The investigator should be available at any subsequent hearing to be cross-examined on the anonymous evidence and the reasons for anonymity.

## 2.3 Keep patients informed

Patients who are already aware of a concern (as complainants, for example) should normally receive the information provided for by the organisation's complaints handling procedure about the actions being taken and relevant timescales. Depending on the circumstances, it may be appropriate to brief patients more actively.

It would not be usual to release information about an ongoing investigation more widely to patients, unless some form of public announcement is necessary – in the event of a look-back exercise, for example. It would then be good practice to discuss a proposed information release with the practitioner first.

Information about a look-back will depend on the facts of the case. Whether a look-back exercise is necessary should be discussed with appropriate experts, for example in the relevant royal college or the Health Protection Agency. Patients whose care has to be reviewed should be contacted with an explanation of the medical need for the review and its implications. A contact point should be identified for further information. Where possible, a review exercise should not identify the practitioner concerned.

Media enquiries will usually go to named individuals within the organisation who have been trained and authorised to respond to them. The information provided to the media should not differ from the information which might have been given to individual patients. Care must be taken to preserve the confidentiality of patients and, where possible, the confidentiality of the practitioner.

The organisation will probably have local policies on media handling and on access to internal communications advice. Depending on the sensitivity of the issues, it could be appropriate to take external advice as well, to ensure that any information about the investigation reaches the media in the most appropriate way. Where possible, any information to be given to the media should be discussed with the practitioner in advance and the practitioner should have an opportunity to discuss the proposed statement with a union or defence society representative.

## 2.4 Support the practitioner

The practitioner was probably already told that an investigation might take place (see section 1.3). Once the decision to investigate has been taken, there should normally be another meeting, organised in the same way, with the practitioner offered the opportunity to be accompanied, and with a note of the meeting kept.

The meeting can, as appropriate, explain and allow questions about:

- Terms of reference, timescale, names of case manager(s) and investigator(s) and the process which the practitioner can use to respond to the concerns raised.
- The regulations and local procedures governing the case's handling. In England, for example, MHPS contains detailed guidance on investigation procedures while the Performers List Regulations do not specify how investigations should be conducted. The organisation therefore needs to be clear to the practitioner about which procedures it is applying.
- The reasons for any restrictions on practice or suspension/exclusion, with explanation of the potential consequences if requirements are not complied with. The relevant regulations set out notification requirements – see [www.ncas.npsa.nhs.uk/mustknows](http://www.ncas.npsa.nhs.uk/mustknows)
- Any proposed statements to patients, colleagues or the media, with the practitioner given enough time to discuss them with advisers/representatives. Ordinarily, colleagues would not have a direct need to know why the practitioner is under investigation or why they have been suspended or excluded from work. But some limited release of information may be appropriate and it is better if this can be agreed with the practitioner.
- The need for the practitioner not to attempt to influence potential witnesses – the same instruction going to everyone else involved in the investigation.
- Personal support mechanisms.

Being the subject of an investigation is likely to be very stressful for the practitioner. Support mechanisms could include access to occupational health services and professional psychological support or counselling. Managers should use occupational health services for advice on fitness to work or related questions about the practitioner's health. When making a referral to an occupational health physician, be explicit about the health issues which are causing concern. Use of GP or other routes does not prevent the occupational health physician giving advice on fitness for work, if necessary, provided there was a manager referral in the first place. If the practitioner self-refers to the occupational health service, the manager will not necessarily receive feedback.

Remember, when conducting an investigation, that it is likely the practitioner will continue working for the organisation afterwards so it is important to try to maintain an effective relationship throughout the process.

## 2.5 Protect the organisation

Keep in mind what could happen next and the need not to put investigators and decision-makers in positions where they might appear later not to be acting impartially, putting the organisation's actions at risk of challenge:

- People who might be involved in subsequent disciplinary proceedings or appeals should not be part of a decision to investigate or an investigation.
- People carrying out investigations should not be involved in later decisions to take formal action against a practitioner based on the investigation's findings.
- The position of the chief executive (CEO) should not be compromised. The responsible manager will need to report a serious concern to the CEO as the accountable officer, as soon as it is known about. But if local procedures mean that the CEO is likely to participate in subsequent formal decision-making processes (such as consideration of list removal or exclusion/suspension), the CEO should only be told the broad nature of the concerns.
- Sometimes a practitioner whose performance is causing concern may complain of bullying or harassment. Such complaints should be investigated in accordance with local policies, but overseen by a manager who is not otherwise involved in handling the concern.

## 3. Managing the investigation

The investigation starts once its terms of reference are finalised and when a case manager and investigator(s) have been appointed. Once the decision is taken to hold an investigation there should normally be discussion with the practitioner to secure as much engagement as possible. The practitioner should be made aware of the terms of reference and who the proposed case manager and investigator(s) are so that any objections can be raised.

The organisation can then:

- finalise terms of reference;
- appoint a case manager;
- appoint case investigator(s).

The investigator(s) will:

- collect evidence;
- interview the practitioner;
- weigh the evidence and identify the facts of the case.

### 3.1 Finalise terms of reference

These will have been agreed in outline at the time a decision was made to carry out the investigation, but some final drafting may be needed. The terms of reference as finally drafted should be agreed by the organisation's relevant decision-maker(s). The case manager and investigator(s) appointed to manage and carry out the investigation (see next sections) would not normally be involved in this process.

Terms of reference should be tight enough to prevent an unfocused general investigation of everything concerning the practitioner. It may be appropriate to specify areas not to be investigated as well as the areas where evidence and commentary are expected. Box 4 suggests a format.

#### Box 4 – Terms of reference for an investigation

An investigation is commissioned into the performance of [practitioner's name], working as a [practitioner's job title] for [organisation's name], at [workplace address].

The matters to be investigated are [ ].

The following matters are excluded from the investigation [ ].

It is expected that the investigation will be completed by [date] and that a report will be submitted to [named manager] by [date].

The report should detail the investigation's findings of fact and include a commentary on how the performance of [practitioner's name] compares with that expected from a practitioner working in similar circumstances.

As a minimum, terms of reference should set out:

- the issues to be investigated;
- the period under investigation;
- the timescale for completion.

It may be that as the investigation progresses the terms of reference are found to be too narrow or that new issues emerge that warrant further investigation. In such cases, the investigator(s) should inform the case manager who should seek the agreement of the responsible manager or DMG to a widening of the terms. Such requests should be decided on promptly so that the investigation is not delayed. The practitioner must be informed of any changes to the terms of reference unless, exceptionally, he is kept unaware of the investigation at all.

## 3.2 Appoint a case manager

A case manager is normally appointed by the DMG (in primary care) or the responsible manager (in the H&C sector). Usual practice is for a case manager to be a senior member of the organisation's staff, with a role to:

- ensure that the investigation is conducted efficiently;
- ensure that confidentiality is maintained where appropriate;
- act as the coordinator between investigators, the practitioner and anyone who the investigators need to interview;
- obtain any documentation required;
- ensure that the process is properly documented;
- receive the investigator's report;
- make recommendations to the responsible manager or the DMG on what action might follow, having regard to the contents of the investigator's report.

To be seen to be objective, case managers need to be able to demonstrate that they:

- understand the general nature of the concerns raised and the clinical and work contexts in which they occurred;
- are sufficiently senior within the organisation to secure the cooperation of other staff members;
- are familiar with the local policy for investigating concerns and related procedures;
- have, preferably, some training and experience in undertaking performance investigations;
- have access to relevant advice and expertise from colleagues within the organisation;
- have access to relevant external experts and authority to instruct them;
- have the necessary protected time to support the investigation.

The case manager should have no real or perceived conflict of interest in relation to any aspect of the investigation. Given the structure of the NHS and the small size of some organisations, minor conflicts of interest are difficult to avoid. Any reservations about the choice of a case manager ought to be reported to the DMG or responsible officer at the outset so that a decision can be made about their significance. The practitioner's views should also be taken into account.

In England, MHPS requires that the medical director should act as case manager for cases involving clinical directors and consultants.

### 3.3 Appoint case investigator(s)

Normal practice is for the investigative work to be carried out by a second senior staff member, or possibly more than one. An investigator's role is to collect and examine relevant evidence and complete the investigation in line with its terms of reference. The investigator will ask the practitioner for a response to the concerns raised, resolve any conflicts of evidence, determine the facts and produce a report which accurately captures all relevant details and findings. All investigators also have a duty to maintain confidentiality and ensure that the investigation is documented.

Usually investigators can be identified within the organisation but occasionally it is necessary to commission an external expert where a suitable person is not available internally. All investigators must be asked to confirm at the outset that there are no real or perceived conflicts of interest disqualifying them from doing the work in question. As for case managers, it may not be possible to identify an investigator totally without knowledge of the practitioner in some administrative capacity. As for case managers, any doubts about impartiality should be raised at the outset.

When asked to undertake an investigation, investigators should be able to demonstrate that they:

- have the necessary expertise to conduct the investigation. In the event that the nominated investigator does not have a relevant clinical background they should ensure that they obtain appropriate advice where issues of clinical judgement are raised. If there are no other senior clinicians with the relevant expertise, a senior clinician from another NHS body should be involved;
- understand the work context of the practitioner;
- have time to complete the investigation and report in a reasonable timescale.

Where more than one investigator is instructed, a lead investigator should be nominated to lead the investigation, ensure compliance with the terms of reference and complete the report.

### 3.4 Collect evidence

Evidence needs to stand up before an impartial tribunal. It includes written materials such as patients' clinical records and other organisation records, appraisals or other information held on the practitioner's personal file which is relevant to the investigation, as well as oral and written evidence provided by witnesses to specific events and any other relevant factual information. The practitioner is also a witness.

An investigation will often begin with a planning meeting between the case manager and investigator(s) to determine, for example:

- what documents need to be seen;
- who will be interviewed;
- how to manage administration of the investigation;
- means of communication with the practitioner;
- other logistical issues.

The investigating team will need to take a view on whether patient records need to be accessed to assist the investigation. Normally this will require prior patient consent but in certain circumstances there can be a public interest justification for disclosure without consent. It may be necessary to take advice from the organisation's Caldicott Guardian in the first instance, and possibly also from the organisation's legal advisers.

Once collected, evidence must be stored safely. Attempts to alter evidence can be prevented if original documents are obtained as soon as possible, and kept securely. Where it is necessary to give the practitioner access to documents, they should be provided as copies or viewed under supervision.

For guidance on conduct of interviews, including use of the PEACE model (Preparation and planning, Engage and explain, Account, Closure and Evaluation) go to: [www.ncas.npsa.nhs.uk/toolkit/investigating/train-investigators/resources](http://www.ncas.npsa.nhs.uk/toolkit/investigating/train-investigators/resources)

The investigator should remain objective and avoid leading the witness through inappropriate feedback or comment. At the end of the interview the witness should be asked if there is anything else that they wish to add to the evidence that they have given. Following the interview, witnesses should be given a comprehensive note and asked to confirm that it is an accurate record of their interview. Alternatively, it is open to the healthcare organisation to commission its legal advisers to obtain a formal witness statement.

In general, there is no need for witnesses to be accompanied. If a witness requests a friend or supporter to be present, the investigators may allow this but the friend should take no part in the interview and should not answer questions or make statements on the witness's behalf.

Accurate records should be kept of all interviews. Interviewees may feel inhibited by the use of recording equipment. If recording is proposed, do not turn the equipment on until the interviewee has agreed to its use. Explain why you would prefer to use it, who will be entitled to listen to it and how long the recording will be retained before being erased. If the witness does not agree, have a note taken by a second person, so that the investigator can concentrate on asking questions.

See Box 5 for an example of how a witness statement might be set out. There are several ways of putting witness statements into writing. It may be appropriate for some witnesses to write their own statements. But it is also acceptable for the investigator to question, take notes and then draft the witness statement, using the witness's own words so far as possible. The witness can then check the draft, ask for alterations to be made, if necessary, and sign the statement as an accurate record.

#### **Box 5 – A witness statement format**

Investigation reference number

Statement made by [witness] to [investigator] after interview on [date].

This statement was drafted on my behalf by [investigator] and I have confirmed its accuracy, having seen it in draft and having been given an opportunity to make corrections or additions.

The investigator told me the terms of reference of the investigation and asked me questions about [ ].

The investigator also showed me [ ] and asked me to comment on [ ] attached [ ] to this statement.

I said [facts of the case as known to the witness, in chronological order].

I said that [ ] also [observed the event in question] and could corroborate this statement.

I believe that the facts in this statement are true.

Signed

Date

### **3.5 Interview the practitioner**

Precisely what information will be given to a practitioner under investigation will depend on the circumstances of the case and on any relevant rules, regulations and procedures governing its handling. The investigator must be free to collect evidence without being pressurised by the practitioner or the practitioner's representative.

Assuming it is appropriate for the practitioner to know that the investigation is taking place (that is, no advice against telling the practitioner has been given by the police or a fraud agency), the practitioner should be invited to provide any information thought relevant to the matters under investigation. This might include documentary evidence as well as identifying witnesses, and providing oral evidence. The investigator(s) should take account of

any evidence provided by the practitioner which is consistent with the investigation's terms of reference. It may be appropriate for the practitioner to be interviewed twice, at the start of the investigation (see also 1.3) and at the end when all other evidence has been collected. The first interview gives the practitioner an opportunity to comment on the investigation process while the second allows the practitioner to be questioned about information likely to be used in the investigation report.

Prior to being interviewed the practitioner might request sight of the evidence on which the investigator(s) propose to rely in their report. This would normally be permitted, once the evidence has been collated into its final form. England's MHPS says that the practitioner must be shown a copy of the investigator's report in capability cases but this is not a requirement in MHPS conduct cases. Local procedures will need to be clear as to what, if any, access the practitioner will be given to the investigator's report to correct any matters of factual error before its submission to the case manager for consideration.

The *Employment Relations Act 1999* gives employed practitioners the right to be accompanied by a union/professional body representative or by a work colleague. While that person might speak on behalf of the practitioner, the practitioner must answer any specific questions put to them about their own actions. Many organisations also allow a friend, partner or spouse to provide support to the individual in a similar manner. In England, where MHPS has been adopted, employed practitioners have an additional right to a legally qualified representative.

For practitioners whose cases are being investigated under Performers List Regulations, there are no statutory provisions on how an investigation should be conducted but it is good practice, where possible, to give such practitioners the same opportunities to be supported as employees.

A practitioner cannot be compelled to attend an investigation interview or answer questions but, in general, the only justification for declining to answer questions is that to do so would be incriminating. Failure to attend an interview or cooperate may in itself warrant further action. Professional regulators expect practitioners to cooperate and contribute to local inquiries to help reduce risk to patients, so regulator referral may be an option for the organisation where non-cooperation arises.

Not answering questions denies the practitioner the opportunity to ensure that their own account of events is properly presented to the investigators. The practitioner's own account of events might still be presented at any later hearing that might arise.

### 3.6 Weigh the evidence and identify the facts of the case

Having collected the evidence, the investigator(s) should set out the facts as they see them, weighing the evidence on the balance of probabilities and taking as true anything which appears more probable than improbable. The more serious the concerns about the practitioner, the greater the need for the investigators to satisfy themselves that the evidence supports their findings of fact.

Investigators will need to take positions on:

- **Written versus oral evidence:** while written evidence may be more clearly defined, oral evidence can be tested by questioning and could be taken as equally reliable, depending on the circumstances. Written witness statements are best compiled in the words of the witness and signed and dated. Both forms of evidence are best collected as soon as possible after the events in question.
- **Age of evidence:** apart from determining what is meant by 'old' in local proceedings, it might be considered that a pattern of unacceptable performance (including conduct) over a period of time is likely to be more significant evidence than an isolated incident even if occurring recently.
- **Seeing the event itself or seeing the aftermath:** factual evidence ought to carry most weight. Opinions of witnesses and unsupported anecdotal evidence are likely to have limited use.
- **Technical competence:** where the investigator identifies a need for specialist advice to interpret a technical issue outside their expertise, the case manager should make arrangements for it to be provided so that evidence is appropriately interpreted.

- **Evidence from previous investigations:** all relevant evidence should be considered, including previous complaints and investigations where relevant, provided there are adequate records of the events and actions that were taken at that time, or matters were of a serious nature such that they continue to have a relevance to the matters now under investigation and can usefully form part of the investigators' report.

In order to be able to demonstrate a fair process, if there is any uncertainty about how to treat a specific piece of evidence, advice should be sought from the healthcare organisation's legal adviser.

Some conflicts of evidence are probably inevitable as individuals present different accounts of the same events. Not all conflicts of evidence need to be resolved, only those that affect the investigators' findings of fact about the performance concerns being investigated.

Normally, independent accounts which corroborate each other are likely to be preferred to disparate accounts of the same incident, or similar accounts provided by people known to be antipathetic to the practitioner under investigation. In drafting their report, investigators should record material conflicts of evidence stating which version of events they preferred and why.

### 3.7 Manage the timetable

MHPS states that the case investigator should aim to complete the investigation within four weeks of appointment and submit a report to the case manager within a further five days. In more complex cases it may not be possible to do this. But it is good practice to try to complete investigations within a reasonable timescale taking into account the circumstances of the individual case. Delays are damaging to the healthcare organisation, the practitioner, and to other staff and patients. The investigation process can lose momentum and become stale. Active management of the process by the case manager is essential if delays are to be avoided.

Where key individuals are difficult to contact and interview, all reasonable steps should be taken to accommodate their other commitments. Case managers should receive the full support of senior management in overcoming any delays.

Practitioners who are unavailable should be given a reasonable opportunity to participate in the process, which may involve close liaison with their representative. The representative will be aware that failure to cooperate means that the practitioner's oral or written account of events may not be received by the investigators in time to influence the report.

Where a practitioner's current health status is preventing their participation in the investigation process, an occupational health assessment might be offered to ascertain whether, whilst they may not be fit to return to work, they are well enough to be interviewed.

All this adds up to a checklist for monitoring the investigation's progress, once started – see Box 6 (page 18).

**Box 6 – Investigation checklist**

|                                                          | <b>Responsibility</b> | <b>Date</b> |
|----------------------------------------------------------|-----------------------|-------------|
| Decision to investigate made                             | Decision-makers       |             |
| Practice restriction/suspension/exclusion considered     | Decision-makers       |             |
| Case manager appointed                                   | Decision-makers       |             |
| Investigator(s) appointed                                | Decision-makers       |             |
| Timetable finalised                                      | Decision-makers       |             |
| Terms of reference finalised                             | Decision-makers       |             |
| Practitioner notified of decision to investigate         | Case manager          |             |
| Practitioner notified of investigator arrangements       | Case manager          |             |
| Meeting with practitioner to discuss arrangements        | Case manager          |             |
| CEO told of arrangements made                            | Case manager          |             |
| Communication channels established (phone numbers etc)   | Case manager          |             |
| Document requirements identified                         | Investigator          |             |
| Document storage system set up                           | Case manager          |             |
| Documents provided to investigator                       | Case manager          |             |
| Interviews identified                                    | Investigator          |             |
| All interviews timetabled (including practitioner's)     | Investigator          |             |
| First interview with practitioner completed (on process) | Investigator          |             |
| Note of first interview agreed                           | Investigator          |             |
| Interviews with other witnesses completed                | Investigator          |             |
| Other witness notes agreed                               | Investigator          |             |
| Second interview with practitioner completed (on case)   | Investigator          |             |
| Note of second interview agreed                          | Investigator          |             |
| Report in first draft for discussion with case manager   | Investigator          |             |
| Report in second draft for accuracy check                | Investigator          |             |
| Submission of report                                     | Investigator          |             |

## 4. Reporting

The final step is for the investigator to write a report – if possible within the five days suggested by MHPS. Like the rest of the investigation this will require dedicated time. The task will be easier if the case manager has organised a tight filing system to support the investigation. Consider the following:

- documentation systems;
- the report;
- circulation;
- next steps.

### 4.1 Documentation systems

At the end of the investigation the organisation ought to have a comprehensive record of the information gathered during the investigation, with transcripts and witness statements where applicable. It is the case manager's responsibility to ensure that the investigation is documented and that all information held is identified and retrievable.

Case records should be kept securely and remain confidential. Electronic and hard copy records are equally acceptable. They should be handled in accordance with local and national data management requirements set out in the *Data Protection Act 1998* and the *NHS Code of Practice on Confidentiality* (Department of Health 2003). There is no nationally-set rule on retention periods for investigation records so organisations will need to determine their own retention periods for case documentation, taking into consideration local policies on, for example, retention of employment records.

During an investigation the practitioner may request access to relevant case papers, such as original clinical records which may form the basis of any questions to be posed by the investigator. It would be normal for such requests to be met.

### 4.2 The report

The key document is the investigator's report. This should be a self-contained document with enough information within it to inform a subsequent decision on whether concerns are unfounded or confirmed, whether or not further action is needed and, if so, the type of action to be taken.

The decisions would be made by a decision-making group of some description (in primary care) or (elsewhere) by the responsible manager in consultation with relevant senior colleagues and on the advice of the case manager. In primary care, available actions would be as provided for in performers list regulations. Elsewhere, action would either be under capability or conduct procedures, and the investigation would need to discuss the relevance of each of these procedures.

Wherever possible the report should exclude reference to identifiable individuals other than the practitioner. A suggested structure for an investigation report is shown in Box 7 (page 20). It will not be appropriate for every investigation but it shows how evidence can be set out in order to be as clear as possible and inform the decision-making process effectively.

## Box 7 – A report template

### Front cover

Strictly confidential

Organisation name

Report of investigation into concerns raised in relation to [practitioner's name and address]

Organisation's case reference number

Date

### Contents page

Chapter headings with page numbers. Headings might include: Introduction, Background, The investigation, Methods, Findings of fact, Summary of conclusions.

The report can refer to annexes as necessary. Each document referred to should have a unique identifier. Where there are many documents it is helpful to categorise them by type – witness statement, clinical record, summary of witness interview, etc. The system will follow from the filing system set up at the start of the investigation.

### Report

The report needs to set out the case story. The sections which will be appropriate will depend on the nature of each case but the following elements will normally need to be included somewhere:

- **Introduction:** brief introduction to the investigation, its relationship with any investigations by other bodies and the procedures and regulations governing the present investigation.
- **Background:** relevant career information about the practitioner and work with the organisation, with reasons for the investigation in more detail.
- **The investigation:** the specific allegations for investigation, the team carrying out the investigation (with names, job titles and qualifications), the terms of reference as set initially plus any subsequent amendments.
- **Methods:** for example, review of patient records, audit of a specific set of cases, prescribing reviews, interviews with specified patients and/or colleagues. If any expert witnesses were used, their expert credentials should be reported. There should be a list of all people interviewed and the capacity in which they were involved in the investigation.
- **Fact-finding:** what has happened, set out in chronological order and with supporting evidence identified. Where the fact-finding include the opinion of case investigators or other experts on a standard of care, the required standards of care should be quoted. The findings should draw attention to any conflicts of evidence and whether it was necessary to resolve the conflicts in order to complete the investigation. Grounds should be given for preferring one version of events to another.
- **Conclusions:** the conclusions reached on each of the points listed in the terms of reference, cross-referenced to the findings of fact.

Signed [Investigator(s)]

Date

## 4.3 Circulation

Circulation of the investigator's report is normally limited to the practitioner, case manager, members of the DMG (in primary care) or the responsible manager (elsewhere). In addition, and once appointed, a copy should also go to the responsible officer in England, Wales and Scotland. The DMG or the responsible manager may, at their discretion, consider whether it would be reasonable for the report subsequently to be seen by others.

The report should remain confidential. Where disclosure to any other person or body is deemed appropriate, disclosure should be kept to the necessary minimum and limited to specified individuals or bodies who are themselves under a duty of confidentiality about the information.

## 4.4 Next steps

At the conclusion of the investigation it is for the DMG or the responsible manager to determine what further action, if any, is required. There are many potential options, ranging from taking no further action or arranging local counselling and mentoring, to referral to the regulator or use of local disciplinary or capability procedures.

Once a decision has been reached the case manager should arrange to meet the practitioner to explain the outcome of the investigation. It remains open to the healthcare organisation to contact NCAS for further advice at any stage.



# Glossary

**Alert notice**

Alert notices are used where a practitioner is believed to pose a serious potential or actual risk to patients or staff and who is believed likely to be working or seeking work elsewhere in a health or social care setting. See [www.ncas.npsa.nhs.uk/toolkit/disciplining/consider-who-else-needs-to-know](http://www.ncas.npsa.nhs.uk/toolkit/disciplining/consider-who-else-needs-to-know) for advice on use of alert notices.

**Area Professional Committees**

In Scotland, Area Professional Committees are the statutory representative bodies for local practitioners. They are the equivalent of local representative committees in England, Wales and Northern Ireland.

**Balance of probabilities**

The balance of probabilities is the standard of proof required in most civil proceedings. It is met if allegations appear more likely to be true than not true.

**Case investigator**

A case investigator examines the relevant evidence in line with an investigation's terms of reference, determining findings of fact and producing a report.

**Case manager**

A case manager coordinates the investigation, organises its administrative support and tries to ensure that the investigation is completed to a timetable.

**Clinical records**

Clinical records include any information relating to the care or treatment of any current or former patient, including notes made by clinical staff, correspondence between clinicians, clinical photographs, video and audio recording, pathology results.

**Confidentiality**

Confidentiality is a legal obligation as well as a requirement of professional codes of conduct. It is also a specific requirement within NHS employment contracts and breaching confidentiality can lead to disciplinary action.

**Counter fraud agencies**

The NHS Counter Fraud and Security Management Service in England and Wales, and equivalent bodies in Northern Ireland and Scotland.

**Decision-making group (DMG)**

While procedures in primary care organisations vary, there will usually be a two-tier structure, with a performance advisory group (PAG) and a decision-making group (DMG). See NCAS guidance, *Handling performance concerns in primary care* (2010).

**Defence societies**

Amongst a range of member services, defence societies advise practitioners whose performance has caused concern.

**Duty of cooperation**

Practitioners have a professional and usually also a contractual responsibility to cooperate with investigations into standards of care and related issues. Only if cooperation could lead to incrimination are practitioners entitled to decline to answer questions.

**Evidence**

Evidence is the totality of the information relevant to the investigation to establish the facts about events. Evidence will come from a variety of sources and may be written or oral and in paper or electronic format.

**Exclusion from the workplace**

Exclusion from the workplace requires employees not to undertake their normal contractual responsibilities, usually on a temporary basis pending investigation and consideration of necessary further action. It is a precautionary measure, not a disciplinary sanction.

**Fair process**

Fair process means that the proceedings are conducted in a way that ensures that both sides have an opportunity to see and challenge all the evidence.

**Lead investigator**

See also 'Case investigator'. Where more than one case investigator is appointed, a lead investigator should be identified with responsibility to ensure that the investigation is completed as required under its terms of reference.

**Local investigation**

An investigation instigated and conducted by the organisation where the practitioner is working, as distinct from an investigation by a professional regulator, for example.

**Local performance investigation procedure**

A procedure published by the organisation and governing the conduct of local performance investigations.

**Local representative committee**

A generic term describing local dental committees, local medical committees, local pharmacy committees and also local optical committees. These are the groups representing the interests of primary care practitioners.

**Look-back exercise**

A retrospective review of the care provided to patients to determine if advice or treatment given was correct and safe, and whether further advice, investigation or treatment is required in response to any shortcomings identified during an investigation.

**NHS Tribunal (Scotland)**

The NHS Tribunal (Scotland) is an independent body established to ensure that NHS primary care services are not brought into disrepute by practitioners committing fraud, prejudicing its efficiency or similar behaviour.

**Occupational health assessment**

Occupational health services advise organisations and practitioners on work-related health issues, including advice on the effects of identified conditions on a practitioner's ability to perform certain roles and on general fitness to work.

**Patient safety**

Processes and procedures put in place to prevent avoidable harm to patients, including the identification of performance concerns about practitioners.

**Performance advisory group (PAG)**

A group giving expert advice on performance handling within a primary care organisation. See also 'Decision-making group'.

**Performance assessment**

Where local investigation has not produced enough information to identify a clear way forward, the organisation may consider a performance assessment. Assessments are undertaken by different bodies for different purposes. For information about NCAS assessments go to [www.ncas.npsa.nhs.uk/about-us/whatwedo](http://www.ncas.npsa.nhs.uk/about-us/whatwedo)

**Performance investigation**

A performance investigation to determine whether or not there is a performance problem to be addressed. An investigation is not an assessment.

**Personal conduct**

Personal conduct includes aspects of behaviour that apply to all healthcare staff and include honesty, punctuality, civility, respect for patients and co-workers etc. See also 'Professional conduct'.

**Professional conduct**

Professional conduct describes the expected standards of behaviour for healthcare professionals. It includes all aspects of providing care for patients, working with colleagues and in teams, respecting the contribution of other health professionals, maintaining confidentiality and high professional standards.

**Public Concern at Work Policy**

A policy published by the organisation setting out the responsibility of employees and other to notify the responsible manager of concerns about patient safety or other matters threatening to undermine the integrity of the service. See also 'Whistleblowing'.

**Public Interest Disclosure Act 1998**

This Act provides some protection from dismissal and victimisation to employees raising genuine concerns about performance or conduct. In certain circumstances it will also provide redress.

See [www.opsi.gov.uk/acts/acts1998/ukpga\\_19980023\\_en\\_1](http://www.opsi.gov.uk/acts/acts1998/ukpga_19980023_en_1)

**Regulators**

Regulators are statutory bodies responsible for the regulation of groups of health professionals and for establishing that practitioners are fit to practise. The General Dental Council, General Medical Council and General Pharmaceutical Council are all regulators.

**Responsible manager(s)**

A responsible manager decides what actions should be taken in response to a performance concern, on behalf of an organisation. This might include a decision to hold an investigation. The responsible manager will also decide the actions to be taken once an investigation is complete. It is common for the medical director or equivalent to fill this role.

**Responsible officer**

All practising doctors in England, Scotland and Wales are to be required to relate to a local 'responsible officer'. This will be a senior doctor with local responsibility for overseeing the revalidation process and handling complaints against doctors.

**Restrictions on practice**

A requirement or formal undertaking to limit professional practice to specific agreed areas or to define specific exclusions.

**Separation of roles**

No person involved in one stage of an investigation should take part in subsequent disciplinary proceedings or appeals based on the same set of facts. Separation of roles is an important element of securing fair process.

**Soft information**

Soft information does not have a firm evidential basis but nevertheless may contribute to the evaluation of concerns, if credible.

**Suspension**

Suspension is used in this guidance to describe an NHS procedure involving temporary removal of a practitioner from a performers list which prevents them performing the relevant list activities. It does not restrict their ability to practise in other settings. Only the regulator has the power to restrict registration pending investigation and further review. In all cases the on-going need to maintain a suspension must be kept under regular review. Note that terminology is not consistent across the UK, however, and 'suspension' sometimes describes 'exclusion' from employment.

**Terms of reference**

Terms of reference define the nature and purpose of an investigation, documenting its scope – what is included and what is excluded.

**Whistleblowing**

Whistleblowing means the raising of concerns outside normal organisation procedures because attempts to use the procedures appear to have failed. All organisations should have whistleblowing policies and procedures in place.

**Witness**

A witness of fact has first-hand knowledge about the event(s) in question and can help clarify issues for the investigators. An expert witness has specialist knowledge and can assist in the interpretation of events, standards of care or other relevant issues.

# Other bodies who may be involved in performance investigation

Although most performance concerns can be investigated locally, some will require swift referral to the other agencies. NCAS can give advice on the appropriateness of referral to another body.

|                                                                                                     |                                                                                                                                                                                                                                                                                                                                                           |
|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| General Dental Council                                                                              | <a href="http://www.gdc-uk.org">www.gdc-uk.org</a><br><a href="mailto:CAIT@gdc-uk.org">CAIT@gdc-uk.org</a><br>0845 222 4141                                                                                                                                                                                                                               |
| General Medical Council                                                                             | <a href="http://www.gmc-uk.org">www.gmc-uk.org</a><br><a href="mailto:practise@gmc-uk.org">practise@gmc-uk.org</a><br>0845 357 0022                                                                                                                                                                                                                       |
| Royal Pharmaceutical Society of Great Britain<br>(until General Pharmaceutical Council operational) | <a href="http://www.rpsgb.org">www.rpsgb.org</a><br><a href="mailto:enquiries@rpsgb.org">enquiries@rpsgb.org</a><br>020 7735 9141                                                                                                                                                                                                                         |
| Pharmaceutical Society of Northern Ireland                                                          | <a href="http://www.psni.org.uk">www.psni.org.uk</a><br>028 9032 6927                                                                                                                                                                                                                                                                                     |
| General Pharmaceutical Council<br>(expected to be operational Spring 2010)                          | <a href="http://www.pharmacyregulation.org">www.pharmacyregulation.org</a><br>020 3365 3400                                                                                                                                                                                                                                                               |
| Family Health Services Appeal Authority                                                             | <a href="http://www.fhsaa.tribunals.gov.uk">www.fhsaa.tribunals.gov.uk</a><br>0113 389 6061                                                                                                                                                                                                                                                               |
| Counter Fraud and Security Management Service                                                       | <a href="http://www.nhsbsa.nhs.uk/fraud">www.nhsbsa.nhs.uk/fraud</a><br>020 7895 4500                                                                                                                                                                                                                                                                     |
| Counter Fraud and Probity Services Northern Ireland                                                 | <a href="http://www.hscbusiness.hsc.net">www.hscbusiness.hsc.net</a><br>028 90 535574                                                                                                                                                                                                                                                                     |
| NHS Scotland Counter Fraud Services                                                                 | <a href="http://www.cfs.scot.nhs.uk">www.cfs.scot.nhs.uk</a><br>08000 15 16 28                                                                                                                                                                                                                                                                            |
| Health Service Ombudsmen for England,<br>Northern Ireland, Scotland and Wales                       | <a href="http://www.ombudsman.org.uk">www.ombudsman.org.uk</a><br>0345 015 4033<br><br><a href="http://www.ni-ombudsman.org.uk">www.ni-ombudsman.org.uk</a><br>0800 343424<br><br><a href="http://www.spso.org.uk">www.spso.org.uk</a><br>0345 015 4033<br><br><a href="http://www.ombudsman-wales.org.uk">www.ombudsman-wales.org.uk</a><br>01656 641150 |



# At a glance

## Deciding to investigate:

- What has happened? Is it isolated or are there linked incidents?
- What is the evidence and how much of it is corroborated?
- Are any other agencies involved? Should they be?
- Are there any health issues?
- Are there any patient safety or wider public interest protection issues that leave patients at risk?
- Which local procedures would govern an investigation?
- What would the terms of reference be? What might be included and excluded?
- Do we have trained investigator(s) available?
- What would the timescale be?
- Would an investigation report help us decide what to do next?

## Questioning:

- Interview out of public gaze
- Frame questions around the concern(s) defined in the terms of reference
- Tell witnesses that it may be necessary to share the information provided
- Ask witnesses to corroborate or refute, based on what they themselves know
- Ask witnesses to sign off their statements

## Reporting:

- Explain how the investigation came about and what has been done so far to manage the concern
- Identify the procedures which the investigation has complied with
- List the investigating team
- List witnesses
- List findings of fact
- Discuss any conflicting evidence and explain how conflicts were resolved

The National Clinical Assessment Service (NCAS) works with health organisations and individual practitioners where there is concern about the performance of a dentist, doctor or pharmacist.

We aim to clarify the concerns, understand what is leading to them and support their resolution. Services are tailored to the specific case and can include:

- expert advice and signposting to other resources;
- specialist interventions such as performance assessment and back-to-work support.

NCAS uses evaluation, data analysis and research to inform its work and also runs a programme of national and local educational workshops. Employers, contracting bodies or practitioners can contact NCAS for help. NCAS works throughout the UK and associated administrations and in both the NHS and independent sectors of healthcare.

## Contact NCAS

In England **call 020 7062 1655**

In Scotland **call 0131 220 8060**

In Northern Ireland or Wales **call 029 2044 7540**

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

### National Clinical Assessment Service

National Patient Safety Agency  
Market Towers  
1 Nine Elms Lane  
London  
SW8 5NQ

**T** 020 7062 1620 (General Switchboard)

**F** 020 7084 3851

Ref: 0901 January 2010

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Received from Vivienne Toal on 26/07/2022. Annotated by the Urology Services Inquiry.

**Toal, Vivienne**

---

**From:** Hynds, Siobhan <[Personal Information redacted by the USI]>  
**Sent:** 21 February 2017 10:16  
**To:** Murphy, Annette  
**Cc:** Toal, Vivienne; Parks, Zoe; Hainey, Lynne  
**Subject:** Review of MHPS

**Importance:** High

Annette

Could you please get a date for a meeting with Vivienne, Zoe, Lynne and myself to meet to review recent MHPS cases and to review our Trust Guidance. Can you try to get a date sometime in March, for approx. 2 hrs in CAH.

Thanks

Siobhan

**Mrs Siobhan Hynds**

Head of Employee Relations

Human Resources & Organisational Development Directorate

Hill Building, St Luke's Hospital Site

Armagh, BT61 7NQ

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



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**Toal, Vivienne**

---

**From:** Murphy, Annette [Personal Information redacted by USI]  
**Sent:** 22 February 2017 12:33  
**To:** Hynds, Siobhan; Toal, Vivienne; Parks, Zoe; Hainey, Lynne; Walker, Helen  
**Cc:** McNeice, Andrea; Mallagh-Cassells, Heather  
**Subject:** RE: Review of MHPS

Hi All,

Please see below confirmation of meeting to: **Review recent MHPS Cases and to review Trust Guidance:**

**Date:** Thursday 2<sup>nd</sup> March 2017  
**Time:** 10.00am to 12.00 Noon  
**Venue:** Seminar Room 1, Medical Education Centre, Craigavon Area Hospital

If you have any queries please get back to me.

Regards

**Annette**

Annette Murphy  
HR Assistant  
Employee Relations  
Hill Building  
St Lukes Hospital Site  
Loughgall Road  
Armagh  
BT61 7NQ

---

**From:** Hynds, Siobhan  
**Sent:** 21 February 2017 11:47  
**To:** Murphy, Annette  
**Cc:** Toal, Vivienne; Parks, Zoe; Hainey, Lynne; Walker, Helen  
**Subject:** RE: Review of MHPS

Annette

Sorry – I missed Helen off the list – can you please include her.

Thanks

Siobhan

---

**From:** Hynds, Siobhan  
**Sent:** 21 February 2017 10:16  
**To:** Murphy, Annette  
**Cc:** Toal, Vivienne [Personal Information redacted by USI]; Parks, Zoe [Personal Information redacted by USI]; Hainey, Lynne [Personal Information redacted by USI]  
**Subject:** Review of MHPS  
**Importance:** High

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Siobhan

**Mrs Siobhan Hynds**

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**Toal, Vivienne**

---

**From:** Parks, Zoe <[Redacted]>  
**Sent:** 05 April 2017 15:43  
**To:** Toal, Vivienne; Walker, Helen; Hynds, Siobhan  
**Subject:** Draft Guidance as discussed re Handling Concerns Medical Staff  
**Attachments:** 5.4.17 DRAFT - SHSCT - Trust Guideline for Handling Concerns about Doctors Dentists Performance (MHPS).doc; 1 SHSCT - Trust Guideline for Handling Concerns about Doctors Dentists Performance (MHPS) FINAL 23 September 2010 (2).pdf

**Importance:** High

Dear all,

As previously discussed, I have prepared a DRAFT new version of the Trusts guidelines for handling concerns about Doctors/Dentists performance for your comments. This revised version provides more guidance around the early part in managing concerns - as it would appear from experience this is where we sometimes come unstuck. I have also removed the Oversight Committee from the process.

I have included our previous guidance just for your reference as I haven't used tracked changes. Happy to discuss

Zoe

## Mrs Zoe Parks

Medical Staffing Manager

✉ Southern Health & Social Care Trust

☎ [Redacted]

📱 Mobile: [Redacted]

📠 Fax: [Redacted]

🔗 [Redacted]

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**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 Concerns<sup>1</sup> 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

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<sup>1</sup> 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

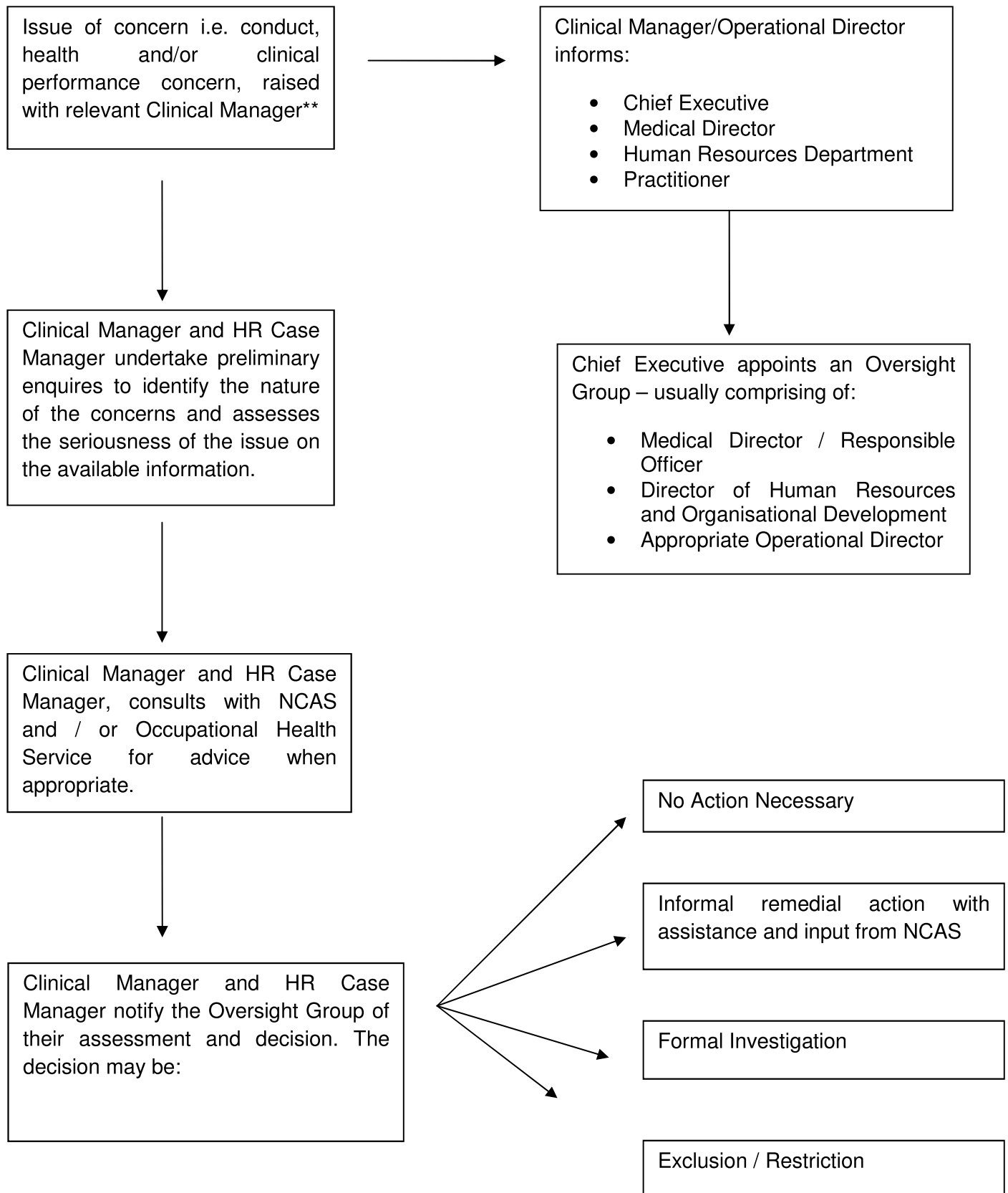
Exclusion can be used at any stage of the process.

## Appendix 6

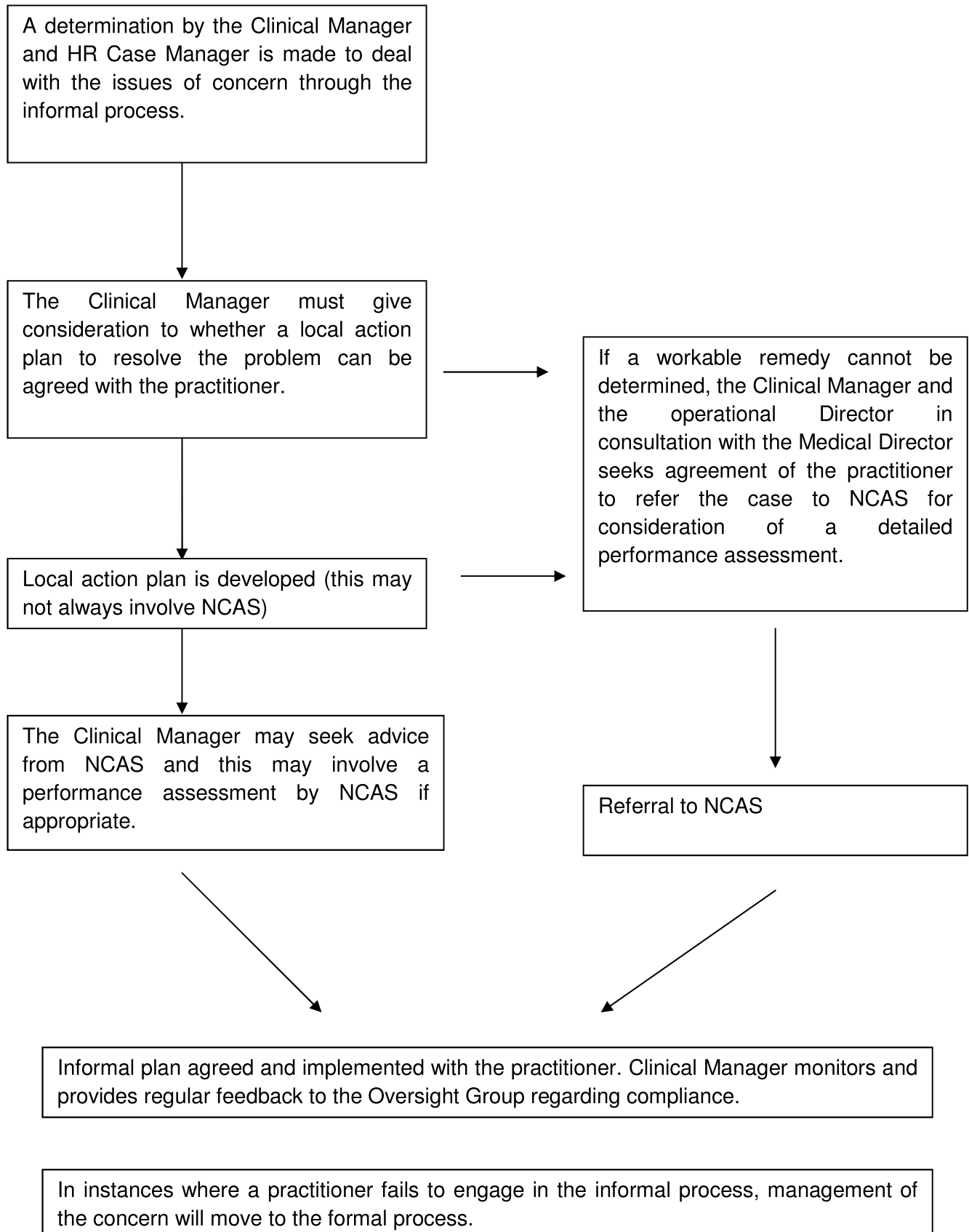
### Role definitions

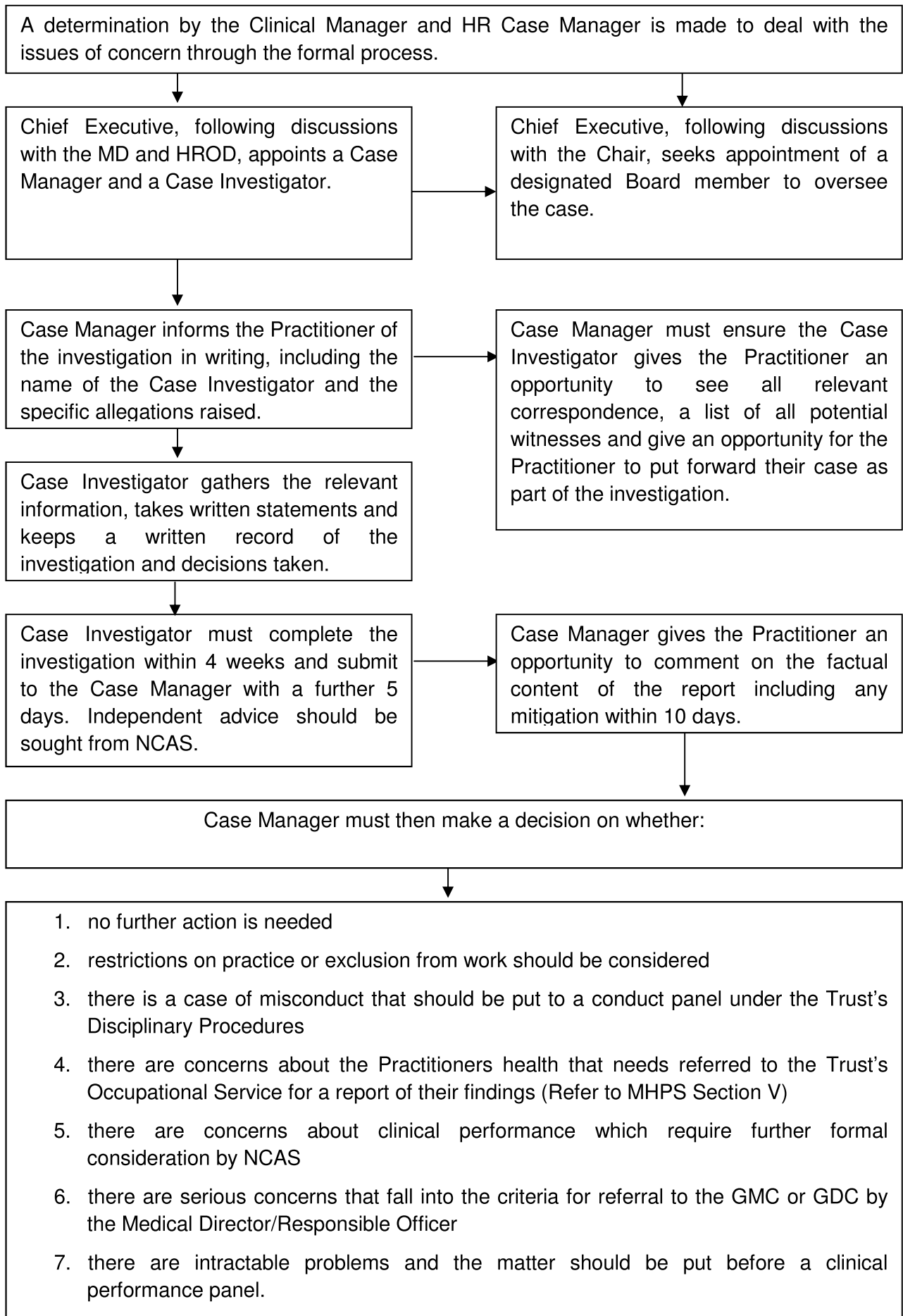
- 3.2 The processes involved in managing performance issues move from informal to formal if required due to the seriousness or repetitive nature of the issue OR if the practitioner fails to comply with remedial action requirements or NCAS referral or recommendations. The decision following the initial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

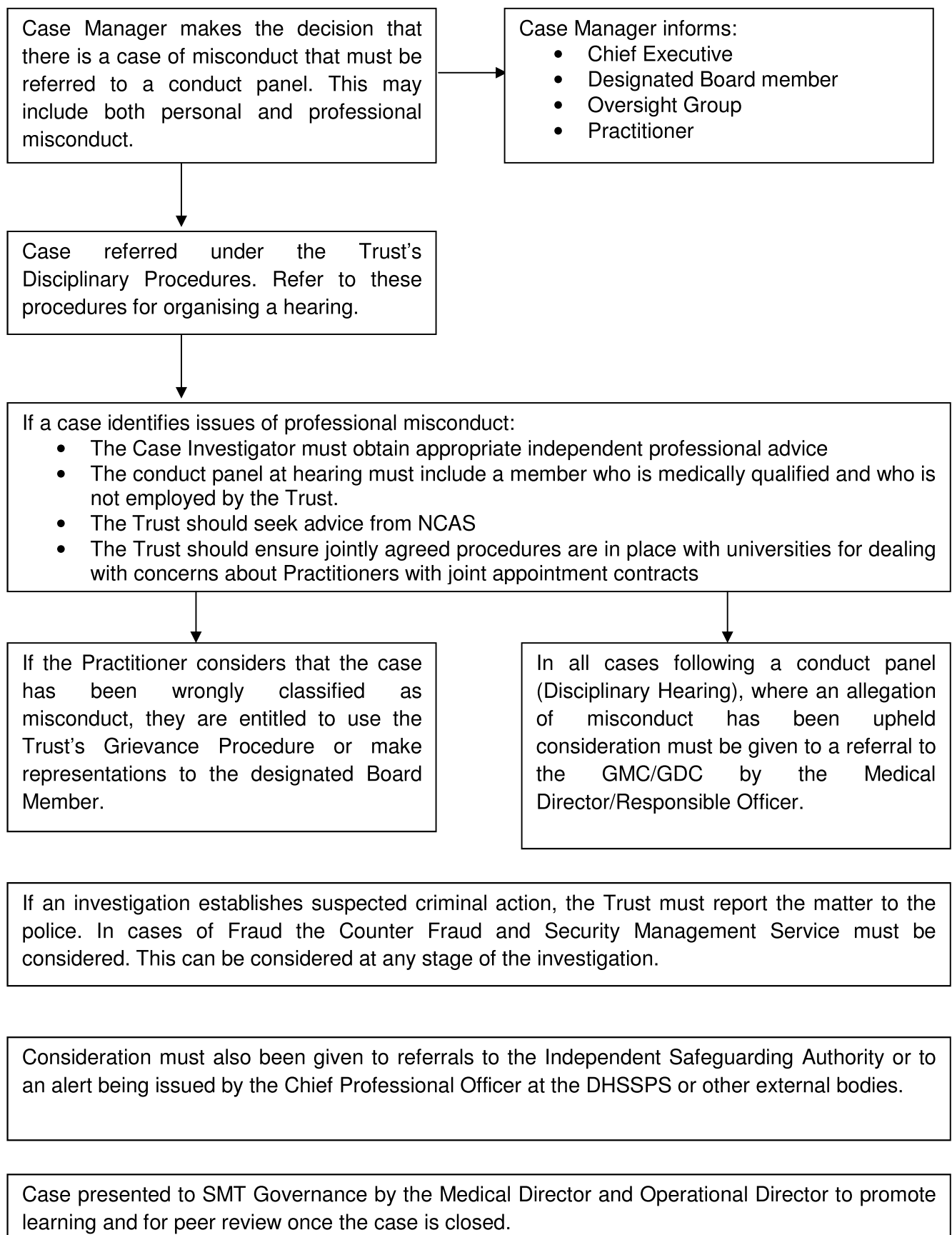
## Appendix 1

**Step 1 Screening Process**

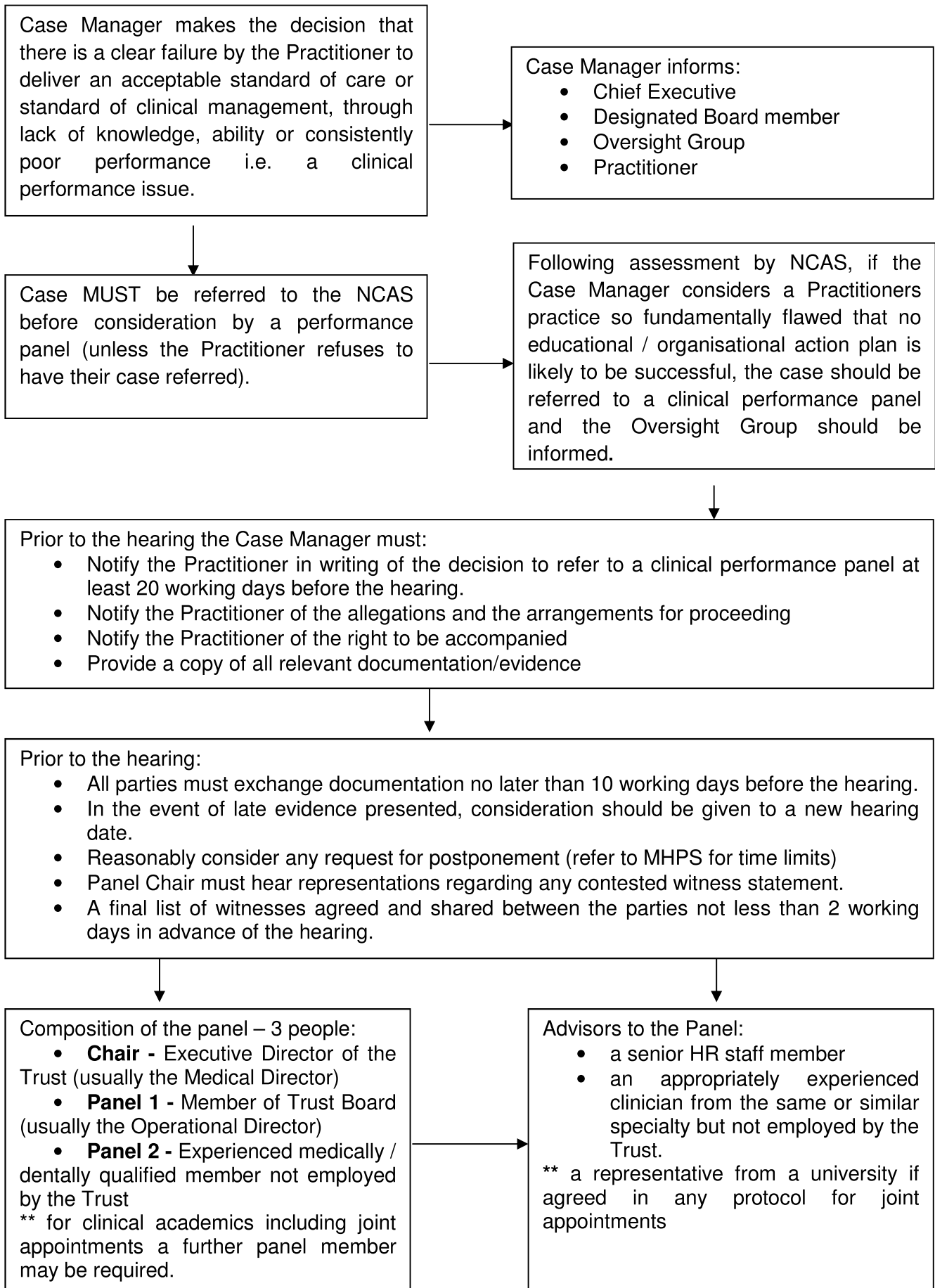
\*\* If concern arises about the Clinical Manager this role is undertaken by the appropriate Associate Medical Director (AMD). If concern arises about the AMD this role is undertaken by the Medical Director

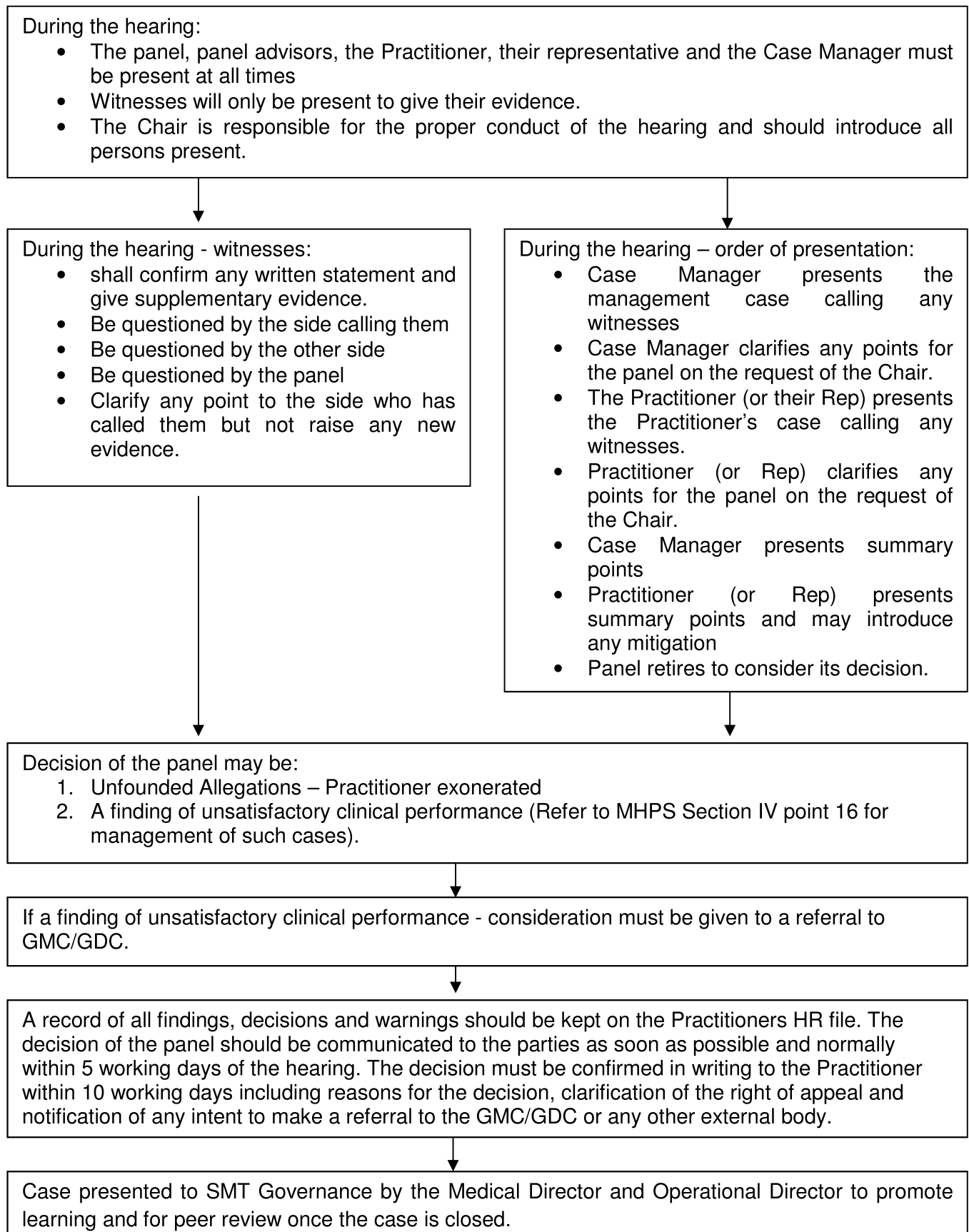
**Step 2 Informal Process**

**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.

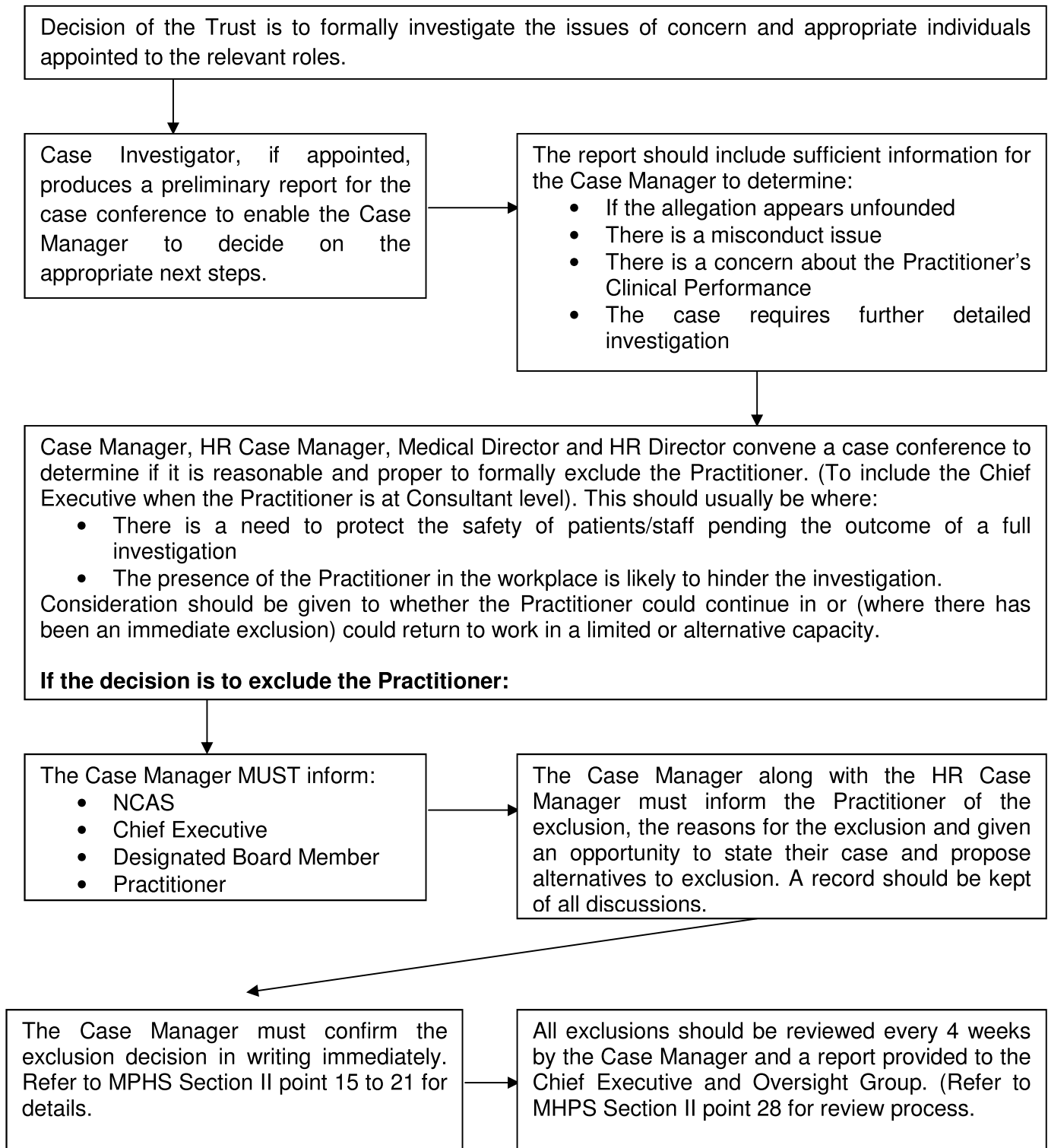
The exclusion should be sanctioned by the Trust's Oversight Group and notified to the Chief Executive. This decision should only be taken in exceptional circumstances and where there is no alternative ways of managing risks to patients and the public.

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.



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

**Updated March 2017**

## **INTRODUCTION**

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- 1.5** This guidance also seeks to take account of the role of Responsible Officer and in particular how this role interfaces with the management of suspected poor medical performance or failures or problems within systems.

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- 1.7** This guidance should be read in conjunction with the following documents:
- Annex A  
“Maintaining High Professional Standards in the Modern NHS” DHSSPS, 2005
  - Annex B  
“How to conduct a local performance investigation” NCAS, 2010
  - Annex C  
SHSCT Disciplinary Procedure
  - Annex D  
SHSCT Bullying and harassment Procedure

## **2.0 WHAT IS A CONCERN?**

- 2.1** The management of performance is a continuous process which is intended to identify problems early to ensure corrective action can be taken. Everyone has a responsibility to raise concerns to ensure patient safety and wellbeing. Numerous ways now exist in which concerns about a practitioner's performance can be identified; through which remedial and supportive action can be quickly taken before problems become serious or patients harmed; and which do not necessarily require formal investigation or the resort to disciplinary procedures.
- 2.2** Concerns about a doctor or dentist's conduct or capability can come to light in a wide variety of ways, for example:
- Concerns expressed by other 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
  - Failure to report concerns

2.3 Concerns can also come to light where a member of staff raises a complaint in relation to poor behaviour they find threatening, humiliating, unwanted, unwelcome or unpleasant. In line with the Trust's Working Well Together and Harassment at Work procedure, harassment can represent a single, serious incident or persistent abuse.

2.4 If it becomes evident that an individual or individuals were aware of a concern(s) but did not escalate or report appropriately – this in itself can also represent a concern, which would necessitate intervention.

## **2.5 WHO TO TELL?**

2.5.1 A concern of any kind should be raised with the practitioner's immediate Clinical Manager. This will normally be the doctors supervising consultant e.g:

| <b>Concerns relates to</b> | <b>Clinical Manager</b>    |
|----------------------------|----------------------------|
| Junior Doctor/SAS Doctor:  | Supervising Consultant     |
| Consultant:                | Clinical Director          |
| Clinical Director          | Associate Medical Director |
| Associate Medical Director | Medical Director           |

2.6 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.

## **3.0 SCREENING PROCESS**

### **3.1 AS CLINICAL MANAGER - WHAT ACTION DO I TAKE?**

3.1.1 If you receive a complaint or concerns are raised with you the first step is to seek advice from the Medical Staffing Manager and have a “Screening of the Concern” to establish the immediate facts surrounding the complaint. This can include any documentary records such as timesheets/ written statements from the member of staff who raised concern and any other witnesses. At this stage, you are only seeking information that is **readily available**.

3.1.2 **Important:** There is **no** need at this stage to be inviting people to formal meetings as this would be part of any subsequent investigation process if needed. You will also need to inform the individual who the received complaint is against, advising that you are making them aware of the complaint as part of this process. Do this sensitively and reconfirm that you are establishing the facts and no formal process has been entered

into at this time. Assure the individual you will keep them informed and the matter will be progressed at pace. The purpose of this stage is to gather enough information to enable the Clinical Manager, supported by a senior HR Manager (e.g. Medical Staffing Manager) to assess the seriousness of the concern/complaint raised and help inform and rationalise whether this needs to be resolved through a more formal route or informally.

**3.1.3** It is important that the process is transparent. Early communication about the performance causing concern can contain in some cases reasonable explanations for concerns and early interventions to better performance can be found. The practitioner's early response can be helpful in deciding whether to carry out an investigation.

**3.1.4** Contact with the practitioner who could potentially be subject to a formal investigation may not be appropriate if a counter fraud agency or the police advice early meetings or early disclosure could compromise subsequent investigations.

**3.1.5** In situations where a person's ill health is a significant contributory factor to their conduct or performance then appropriate advice should be sought from the Occupational Health Department.

### **3.2 DIFFERENCE BETWEEN SCREENING OF CONCERNS AND FORMAL INVESTIGATION**

| <b>Screening / Establishing Facts (Informal)</b>                                                 | <b>Investigation (formal)</b>                                                                                                       |
|--------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| Clinical Manager gathering facts /information that has given rise to concern – readily available | Case investigator – trained in MHPS has been appointed by the case manager this would not ordinarily be the supervising consultant. |
| Information readily available is gathered quickly, surrounding the concern/complaint             | Investigation is directed by a Terms of Reference established and agreed by Medical Director/Case Manager                           |
| The individual concerned has been made aware informally that there is an issue.                  | Individual would have been notified formally by Med Director /case manager to inform of the formal proceedings that will take place |
| Issue is known locally with general advice from NCAS or Occupational Health if appropriate       | Case has been formally logged with NCAS                                                                                             |
| No notice is required i.e. no invite to formal meeting no right to rep                           | Right to notice to prepare following formal invite to a meeting in writing                                                          |
| No right of representation                                                                       | Right of representation applies                                                                                                     |
| Progress is being managed locally with HR                                                        | Progress is being monitored by a nominated                                                                                          |

|                             |                                                                                      |
|-----------------------------|--------------------------------------------------------------------------------------|
| support                     | NED – Case manager/ Medical Director and HR/CEO                                      |
| No formal process to follow | Any action must be in line with MHPS /Trust disciplinary procedure for medical staff |

### **3.3 SUPPORT FOR DOCTORS DURING SCREENING**

Clinical Managers must consider the emotional wellbeing of individuals throughout this process and must not underestimate the impact this may have on a practitioner, so should be encouraged to seek assistance through the Occupational Health department and/or Care Call counselling services. It may also be worthwhile reminding individuals that support is also available to them through their trade union representative.

### **3.4 WHAT HAPPENS AT THE END OF SCREENING PROCESS**

The Clinical Manager and the nominated senior Human Resources Manager will be responsible for screening the concerns raised and assessing what action should be taken in response. In line with MHPS Section 1 para 15, it is likely this decision will be taken in consultation with the Medical Director and Director of HR. Possible action could include:

#### **3.4.1 Action in the event that reported concerns have no substantial basis or are completely refuted by other evidence.**

No further action is required. The reasons for this decision should be documented and held by the responsible clinical manager.

#### **3.4.2 Action in the event that minor shortcomings are isolated**

Minor shortcomings can initially be dealt with informally. The practitioner's Clinical Manager will be responsible for discussing the shortcomings with a view to identifying the causes and offering help to the practitioner to rectify them. A local action plan can be developed to address the issues with advice from NCAS if appropriate. Guidance on NCAS involvement is detailed in MHPS paragraphs 9-14. Such counselling will not in itself represent part of the disciplinary procedures, although the fact and date that counselling was given, should be recorded on a file note and retained on the practitioner's individual file.

In some cases, the Clinical Manager may feel it is appropriate to give an informal warning without a disciplinary investigation or hearing for the purposes of improving future performance and behaviour and in order to assist the practitioner to meet the standards required. The informal warning should be confirmed in writing to the practitioner. Advice must be sought from the Medical Staffing Manager. This is not a formal disciplinary sanction.

### **3.4.3 Action in the event that serious shortcomings are identified or previous informal action has not resulted in the required change.**

When significant issues relating to performance are identified which may affect patient safety, the matter must be immediately escalated to the Associate Medical Director/Medical Director and Operational Director to consider whether it is necessary to place temporary restrictions on a practitioner's practice. The Medical Staffing Manager must also be informed to ensure the Chief Executive is notified and the correct procedures are followed including the necessity for NCAS to be informed prior to any immediate exclusion. (Reference Section 1 Para19 MHPS)

An Investigation will usually be appropriate where the screening process identified information to suggest that the practitioner may; pose a threat to patient safety, expose services to financial or other substantial risk, undermine the reputation or efficiency of services in some significant way or work outside acceptable practice guidelines and standards. In these situations, a well undertaken investigation and report will help to clarify any action needed. The decision following the initial screening, can therefore result in the formal process being activated without having first gone through an informal stage, if the complaint warrants such measures to be taken.

The Medical Director will then appoint a Case Manager, Case Investigator and Designated Board Member (on behalf of the Chief Executive). The Medical Director (which may be delegated to the Case Manager) should then draft the Terms of Reference for the formal investigation and the formal approach as set out in MHPS Section 1 para 28-41 will be followed.

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.

## **4.0 SUMMARY**

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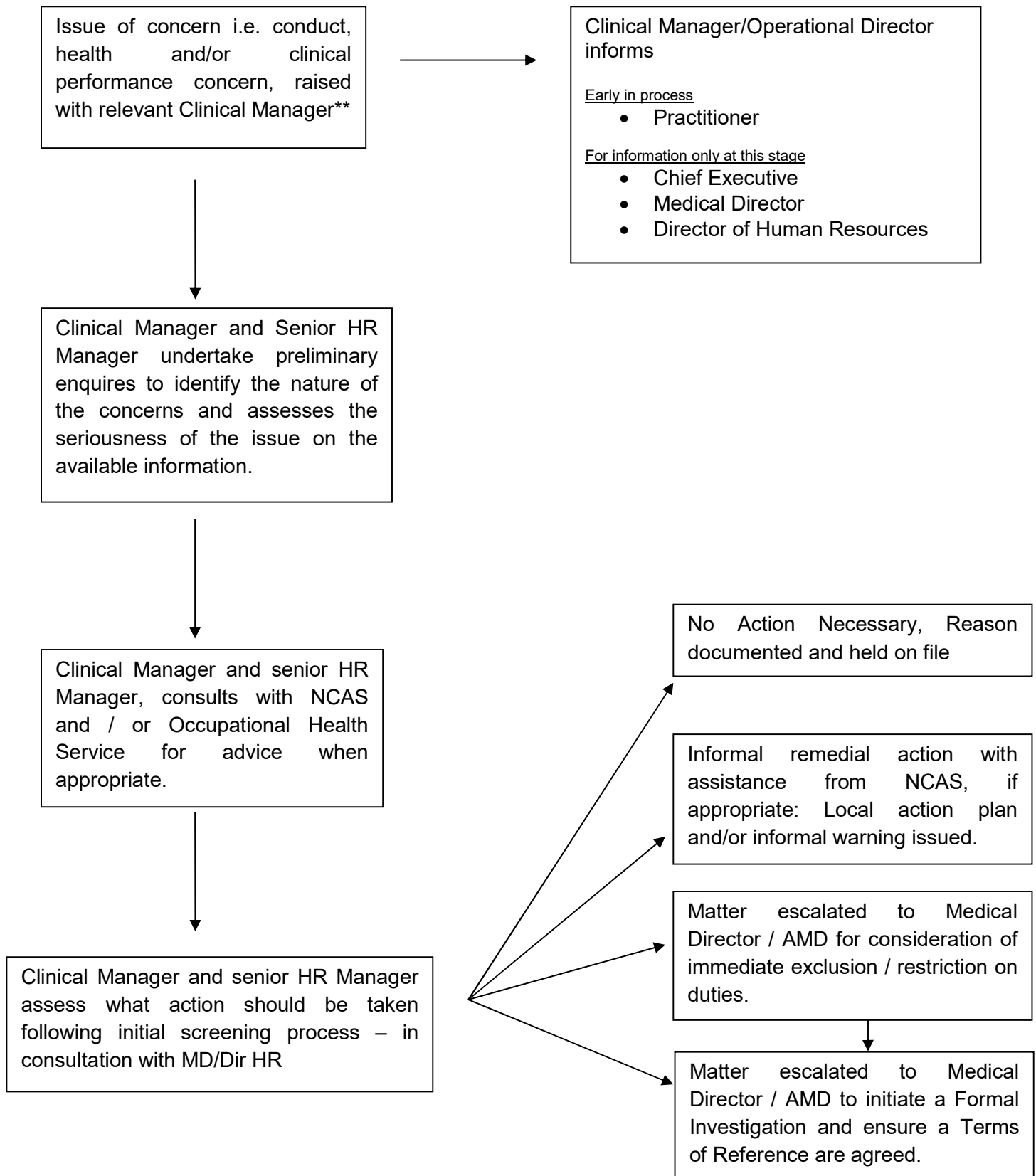
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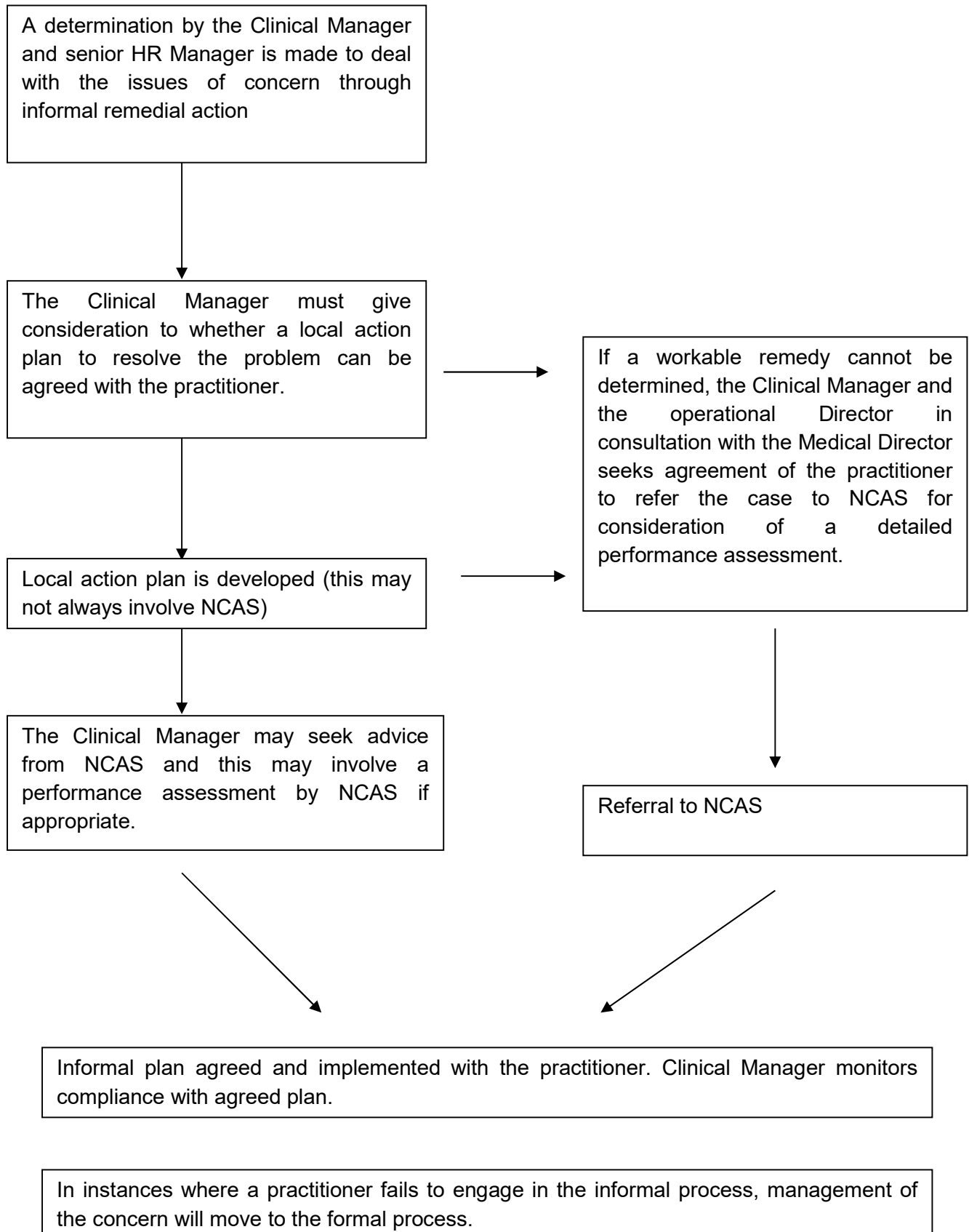
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Role definitions

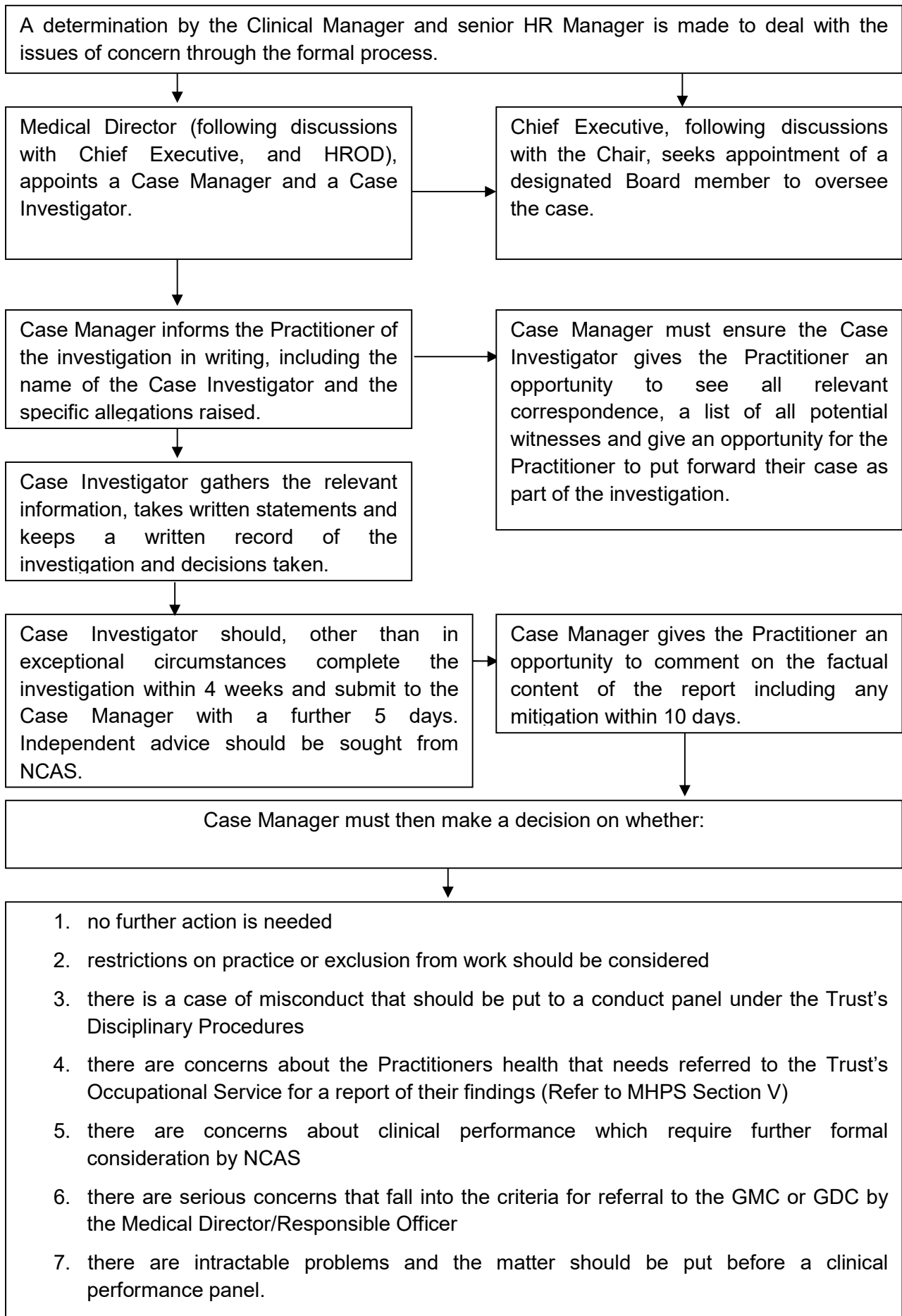
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**Step 1 Screening Process**

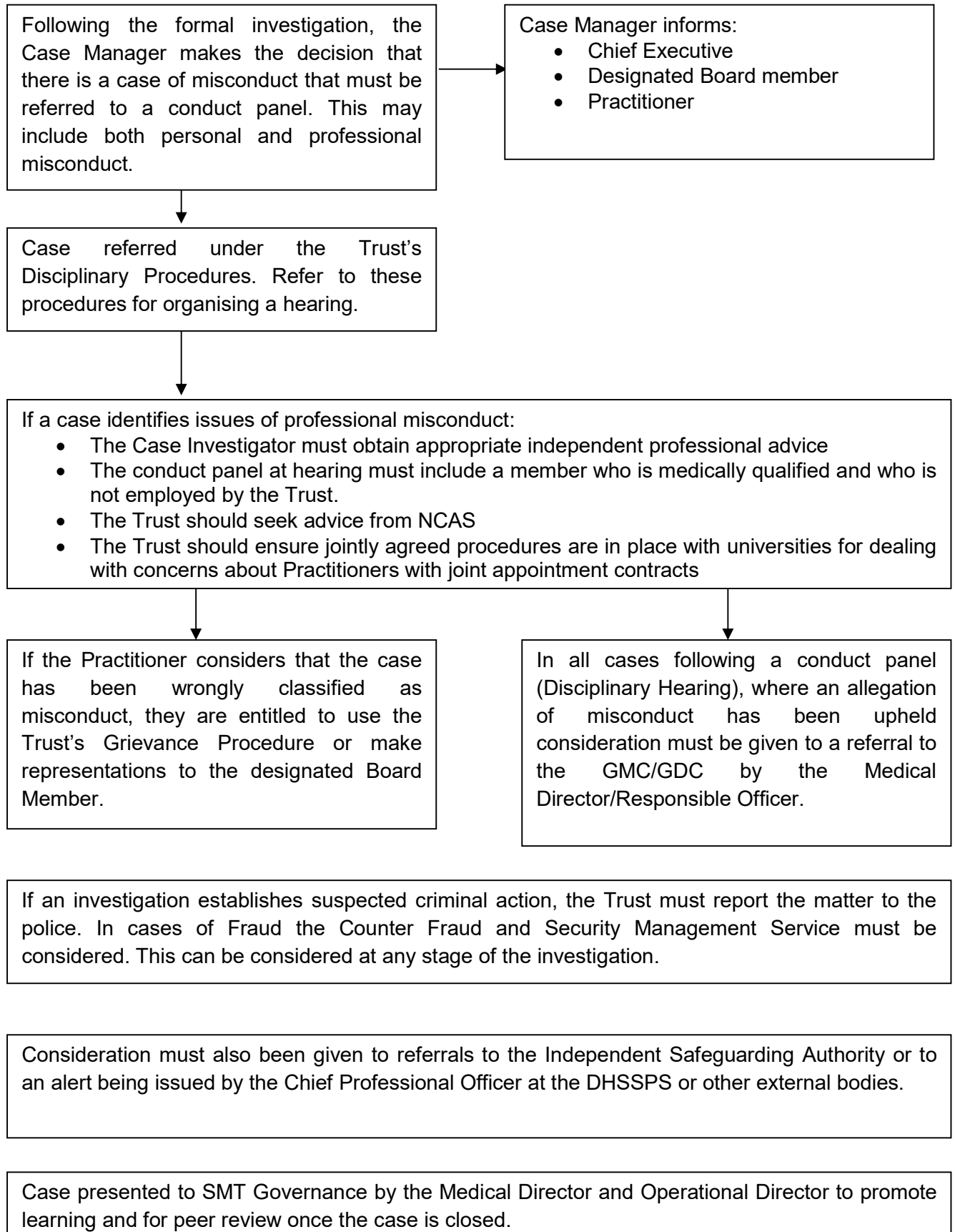
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**Informal Remedial Action**

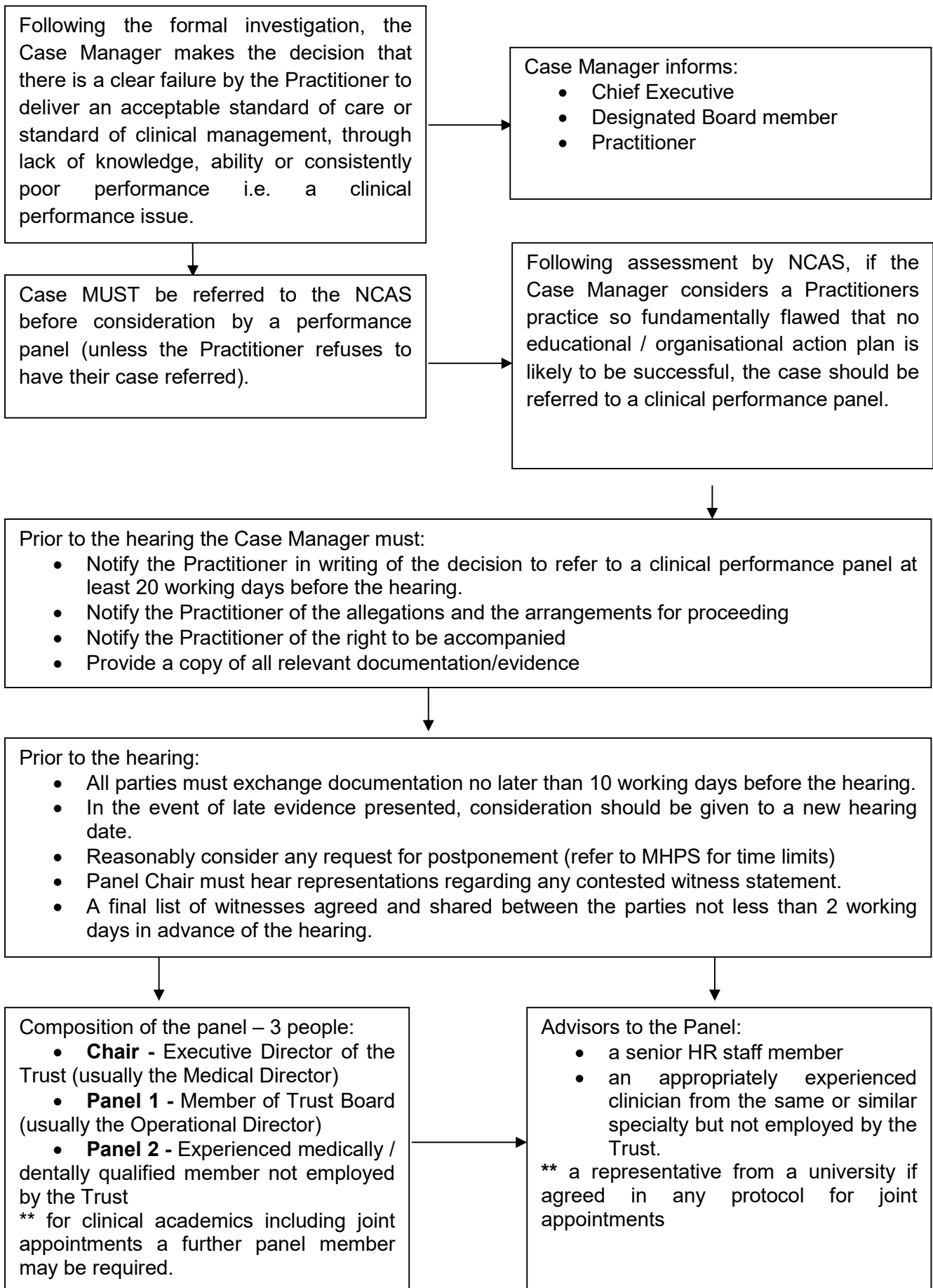
## Appendix 2

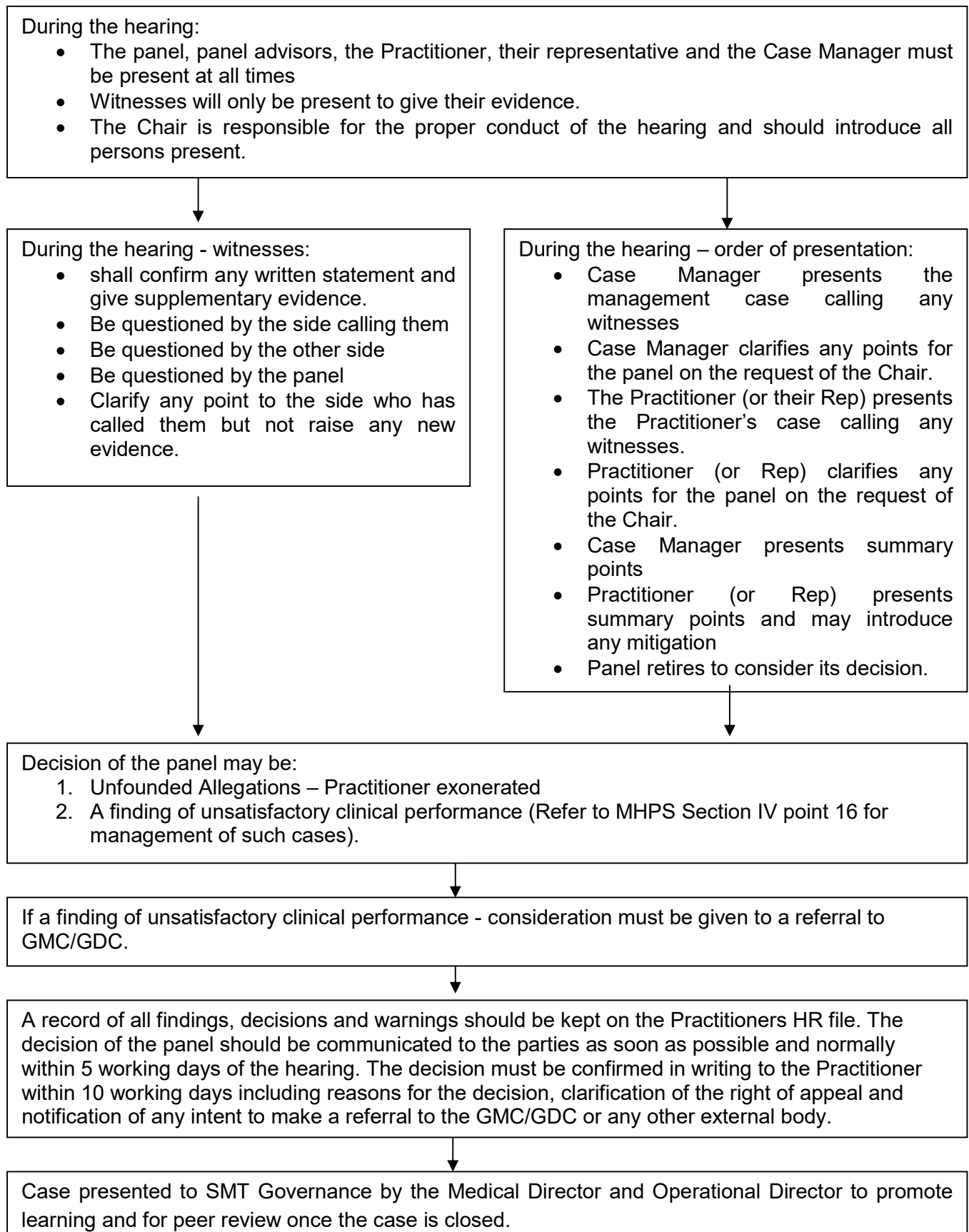
**Formal Process**

## Outcome of Formal Investigation: Conduct Hearings / Disciplinary Procedures



## Outcome of Formal Investigation: 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.
- 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 or Associate Medical 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.

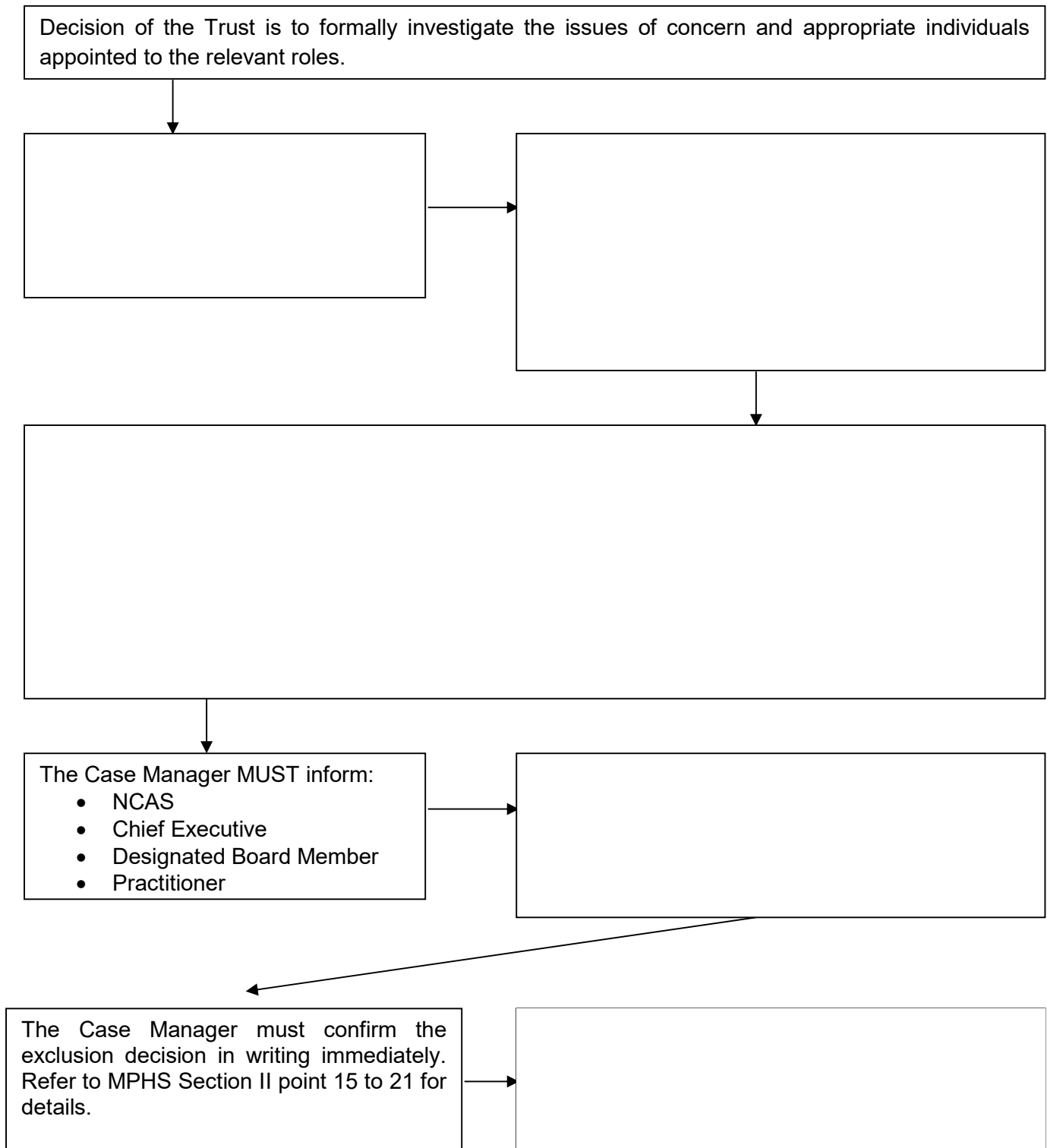
The exclusion should be sanctioned by the Trust's Medical Director and notified to the Chief Executive. This decision should only be taken in exceptional circumstances and where there is no alternative ways of managing risks to patients and the public.

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 supervising Consultant, 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 screening assessment along with a HR Case Manager.

**Formal Process****Chief Executive**

The Chief Executive in conjunction with the Medical Director 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.











































**Toal, Vivienne**

---

**From:** Parks, Zoe  
**Sent:** 06 June 2022 15:26  
**To:** Parks, Zoe  
**Subject:** FW: \*\*DRAFT PAPER - FOR COMMENTS\*\* Trust Guidelines for Handling Concerns about Doctors' & Dentists' Performance  
**Attachments:** DRAFT SHSCT - Trust Guidelines for Handling Concerns about Doctors Dent....doc  
**Importance:** High

---

**From:** Tariq, S <Personal Information redacted by the USI>  
**Sent:** 28 November 2017 17:12  
**To:** Parks, Zoe <Personal Information redacted by the USI>  
**Subject:** FW: \*\*DRAFT PAPER - FOR COMMENTS\*\* Trust Guidelines for Handling Concerns about Doctors' & Dentists' Performance  
**Importance:** High

All looks good to me.

Shahid

---

**From:** McNeice, Andrea  
**Sent:** 24 November 2017 14:28  
**To:** Chada, Neta; Haynes, Mark; Hogan, Martina; Khan, Ahmed; Murphy, Philip; Scullion, Damian; Tariq, S; Wright, Richard  
**Cc:** Parks, Zoe  
**Subject:** RE: \*\*DRAFT PAPER - FOR COMMENTS\*\* Trust Guidelines for Handling Concerns about Doctors' & Dentists' Performance  
**Importance:** High

Dear all,

Just a gentle reminder to forward your comments/approval on the attached paper to Zoe by Monday, 27 November 2017.

Many thanks,

**Andrea**

Andrea McNeice  
Medical Staffing Unit  
The Brackens  
CRAIGAVON AREA HOSPITAL  
68 Lurgan Road  
PORTADOWN BT63 5QQ  
(Working Hours - Mon to Fri: 8am – 4pm)

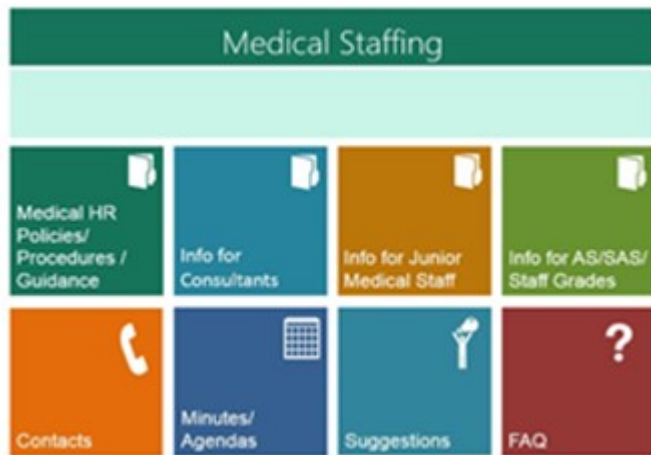


Email: Personal Information redacted by the USI



(028) Personal Information redacted by the USI (Internal: Personal Information – prefix by Personal Information if dialling from legacy telephone)

**You can follow us on:**



[Click here for the Medical Staffing Sharepoint site](#)

**From:** McNeice, Andrea

**Sent:** 10 November 2017 11:53

**To:** Chada, Neta; Haynes, Mark; Hogan, Martina; Khan, Ahmed; Murphy, Philip; Scullion, Damian; Tariq, S; Wright, Richard

**Cc:** Parks, Zoe

**Subject:** **\*\*DRAFT PAPER - FOR COMMENTS\*\*** Trust Guidelines for Handling Concerns about Doctors' & Dentists' Performance

**Importance:** High

Dear all,

Zoe would welcome your comments / approval on the attached paper on or before Monday, 27 November 2017.

Thanking you in advance.

**Andrea**

**Obo Zoe Parks**

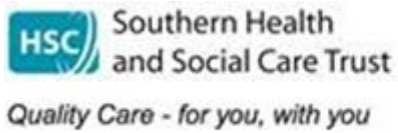
Andrea McNeice  
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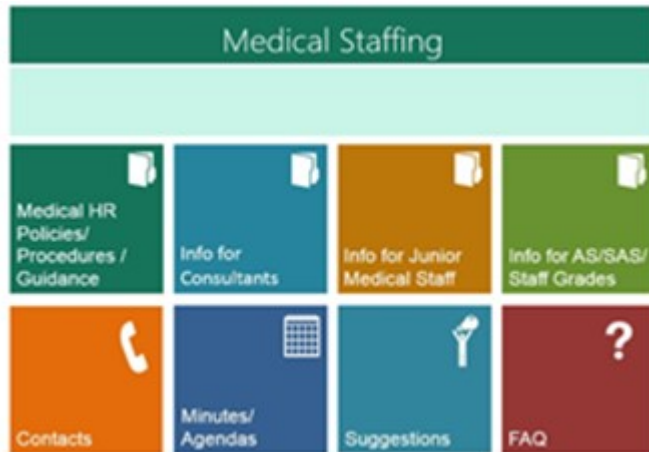


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**Changed My  
Number**

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**Southern Trust will be Smoke Free from 9 March 2016**

[Click here for the Medical Staffing Sharepoint site](#)

## Toal, Vivienne

---

**From:** Parks, Zoe  
**Sent:** 06 June 2022 15:31  
**To:** Toal, Vivienne; Hynds, Siobhan  
**Subject:** FW: SHSCT - Trust Guideline for Handling Concerns about Doctors' Dentists Performance (MHPS) FINAL 24 OCTOBER 2017  
**Attachments:** DRAFT SHSCT - Trust Guideline for Handling Concerns about Doctors' Dentists Performance (MHPS) FINAL 24 OCTOBER 2017.pdf; FW: \*\*DRAFT PAPER - FOR COMMENTS\*\* Trust Guidelines for Handling Concerns about Doctors' & Dentists' Performance; FW: Trust Guideline for Handling Concerns about Doctors' Dentists Performance (MHPS) FINAL 24 OCTOBER 2017  
**Follow Up Flag:** Follow up  
**Flag Status:** Completed  
**Categories:** UPI, NOTED

It seems to have been circulated around all the AMD's and MD in Nov 17 - Chada, Neta; Haynes, Mark; Hogan, Martina; Khan, Ahmed; Murphy, Philip; Scullion, Damian; Tariq, S; Wright, Richard

It then seems to have then been shared with LNC in March 18 (see below)

See attached

---

**From:** Parks, Zoe <[Personal Information redacted by the USI]>  
**Sent:** 02 March 2018 16:18  
**To:** 'CNeely' <[Personal Information redacted by the USI]> <[Personal Information redacted by the USI]>; Maguire, Peter <[Personal Information redacted by the USI]>  
**Subject:** SHSCT - Trust Guideline for Handling Concerns about Doctors' Dentists Performance (MHPS) FINAL 24 OCTOBER 2017

As referenced at the recent LNC informal meeting – please find attached the revised **Trust Guidance for handling concerns about Doctors/Dentists**. This sits alongside the MHPS framework document to clarify some of the Trust responsibilities

## Zoë

Zoe Parks  
Head of Medical Staffing HROD  
Southern Health & Social Care Trust



[Personal Information redacted by the USI]

My working days are Tuesday-Friday

☎ (028) [Personal Information redacted by the USI] (Internal: [Personal Information redacted by the USI] – prefix by [Personal Information redacted by the USI] if dialling from legacy telephone)

**You can follow us on:**



# ***The National Clinical Assessment Service***

***- helping resolve performance concerns***

**Colin Fitzpatrick**  
**Lead NCAS Adviser (Northern Ireland)**  
**National Clinical Assessment Service**



## **1. Title slide**

***Advice for use: Type into existing template to maintain format, style and positions***

### **1.1 Presentation Title**

- Sentence case (first letter of each the sentence capitalised). No full stop at end of title
- Font size: 34
- Font style: Arial
- Format: Bold & Italic
- Font colour: Blue (RGB: Red:0 / Green: 110 / Blue: 203)
- Placeholder size: Height: 5cm width: 24cm
- Placeholder position on slide: Horizontal: 3cm from Top left corner Vertical: 4cm from Top left corner
- Position: Centre aligned and wrapped in text box

### **1.2 Presenter details**

- Font size: 28
- Font style: Arial
- Format: None
- Font colour: Blue (RGB: Red:0 / Green: 110 / Blue: 203)
- Position: Left aligned wrapped in text box
- Line spacing: 1 line Before paragraph: 0cm After paragraph: 0cm
- Placeholder size: Height: 5cm width: 24 cm
- Placeholder position on slide: Horizontal: 1cm from Top left corner Vertical: 10cm from Top left corner

•**Presenter's name** should be written in full (Title First\_name Last\_name)

•NB. Name prefix and professional associations after the name is personal choice but should be consistent with other presentations or materials being used for that session/event

•**Job title:** Title case (First letter of each word capitalised)

•**Organisation:** Should be written in full for external audience. Acronym can be used for internal audience or an audience already knowledgeable of the organisation

•Position: Centre aligned and wrapped in text box

## Overview

- What we do and why we do it
- What we have seen
- What we offer
- What about the future?

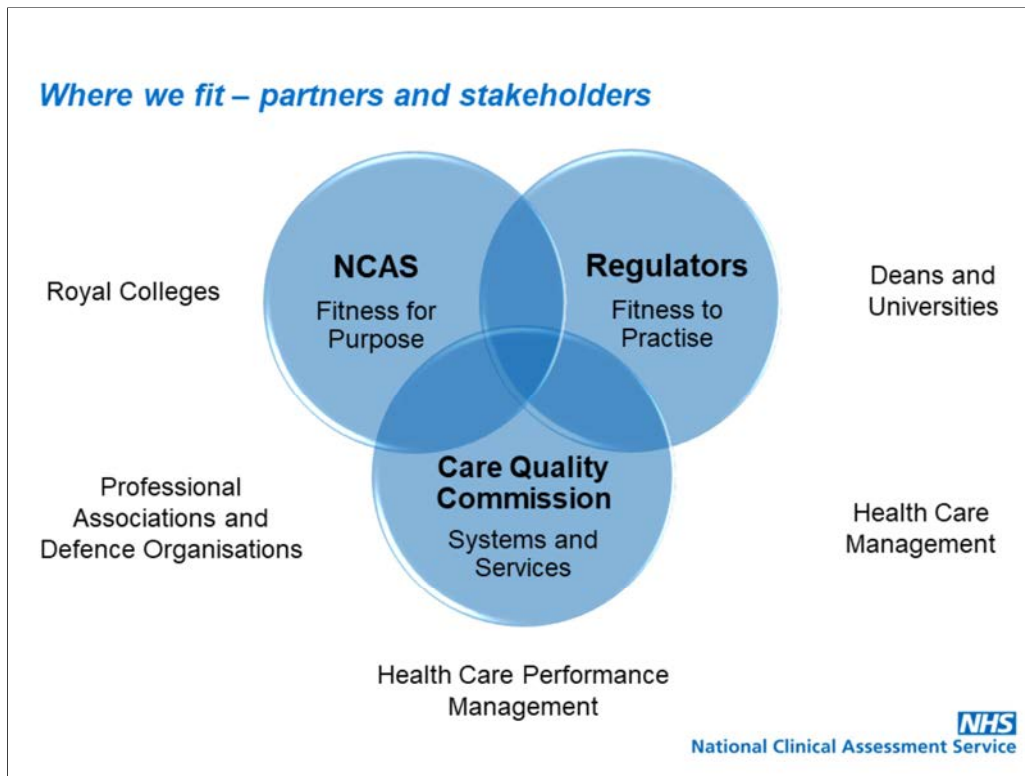
***What we do***

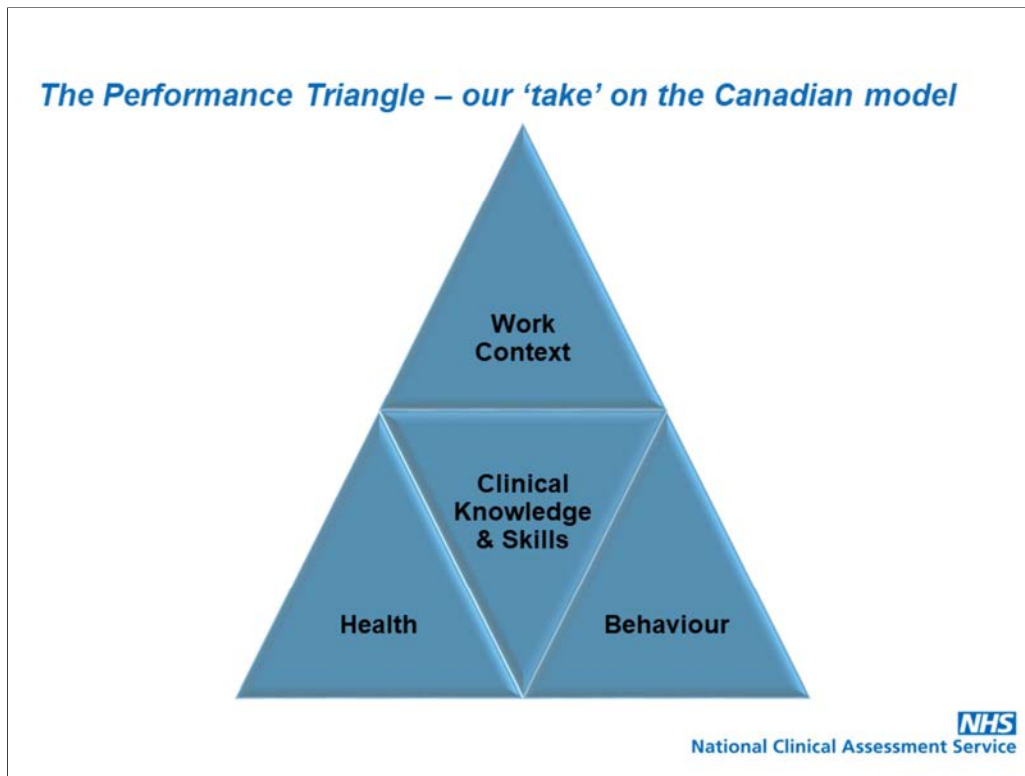
- Support to local resolution of concerns about the practice of doctors, dentists and pharmacists
  - Casework
    - Expert support – to local case management
    - Comprehensive service – from telephone call to action plan
  - Education
    - Building front-line ownership and expertise
    - Making practical tools and resources available
  - Evaluation, research and development
    - Improving our work and methods
    - Sharing our learning and experience
- Coverage
  - Across the UK and associated states
  - Public and independent sectors
  - Self-referral
  - Free at the point of delivery

### *Why we do it*

- Public protection, patient safety and public assurance
  - 900-1000 referrals yearly – small population with disproportionate impact on public confidence
  - Cases coming earlier – 83% less than a year old in 2008/09, compared with 36% in 2002/03
- Impact
  - Suspension/exclusion – down by 80% and average length down by 33% since 2003 – estimated annual saving >£10million (National Audit Office)
  - Cases – two-thirds of most serious cases back in work after remediation
  - Complaints and litigation – earlier, better handling of performance failure
  - Reduction in high profile cases and resulting public inquiries
- Building the profile of professional governance
  - Service extension by invitation – from doctors in the NHS in England, to three professions, three sectors and seven jurisdictions
  - Collaborations across Europe, North America, Australia and New Zealand
  - Assessment methods seen as 'industry standard'

  
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*The picture now – who contacts us and why*

- 1 doctor in 200 and 1 dentist in 250 referred to NCAS each year
  - 900-1000 referrals yearly
  - 3 in 4 NHS organisations refer at least once a year
  - More than half working with us at any time
  - Used equally, regardless of type or 'organisational rating'
  - Small but consistent self-referral rate – about 3%
  - Overlap with professional regulators very small
- Certain groups more likely to be referred
  - Older
  - Consultants – and career grades more generally
  - Men
  - In secondary care, non-white doctors qualifying outside the UK
  - Substantially more likely for single-handed than in practices of 4 or more

### *The picture now – what we find*

- NCAS' experience in assessing practitioners
  - 82% have five or more major areas of deficit across four domains
  - 94% have significant difficulty arising from their approach to working with colleagues
  - 88% have major challenges arising from their working environment
- What we find is often at variance with what is notified at referral

| Domain                         | Notified at referral* | Found at assessment** |
|--------------------------------|-----------------------|-----------------------|
| Clinical skills                | 54%                   | 82%                   |
| Governance and safety          | 35%                   | 48%                   |
| Behaviour – conduct            | 33%                   |                       |
| Behaviour – other than conduct | 29%                   | 94%                   |
| Health                         | 24%                   | 28%                   |
| Organisational                 | 11%                   | 88%                   |

\* Source: NCAS: *NCAS Casework – The first eight years, 2009*

\*\* Source: NCAS: *Analysis of the first 50 assessment cases, 2005*

  
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*Note: Percentages total to more than 100% because a case can be logged as showing more than one type of concern*

### ***Contacting NCAS – what happens?***

- Initial contact
  - Usually CE or relevant Director (HR, MD, DPA or PA) will call – someone carrying decision-making authority of referring body (RB)
  - 020 7062 1620 – advice and support service
  - Brief details of the case given and a time agreed for NCAS Adviser call-back – RB decides the priority and timing of the call-back
- Detailed telephone discussion with Adviser – letter confirms advice
- If not resolved following Adviser call-back
  - Round-table meeting(s) between Adviser and relevant parties
  - Further advice – case continues to be locally handled or referred for NCAS assessment
  - In all cases - continuing support from NCAS as required

  
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Explain why information taken by NCAS at referral stage

***NCAS Cases – how do we define them?***

- Advice and support cases – about 90%
  - Two thirds – telephone advice on a one-to-one basis with its focus more on the use of local or national systems and processes and less on the details of the particular practitioner
  - One third – more detailed support work with referring body and practitioner aimed at resolving a performance dispute between an organisation and one of its practitioners
  - Nature of the performance concern must be clear – or irrelevant to the handling of the case
- Assessment and action planning – up to 10%
  - Where specialist diagnostic work is needed to get behind the concern

### *NCAS Assessment*

- Independent view on the performance of the practitioner within the wider context of their practice
- Challenge
  - Create a developmental model in an adversarial environment
  - Credible, robust to challenge, affordable and practicable
- Models
  - Full performance assessment – developmental, holistic approach across all domains: clinical skills, behaviour, health, work context
  - Clinical performance assessment – under contract to regulator
- Method
  - Peer clinical, behavioural, lay assessors, trained & quality assured
  - Structured gathering of information across the scope of practice
    - Direct observation
    - Record review
    - Questions based on own clinical practice
    - Views of colleagues and patients

  
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*In Summary – NCAS as part of your governance arrangements*

- A central resource to supplement and support individual governance arrangements
- Drawn from the collected – and collective – experience across the whole UK and internationally
- Independent – offering verification and challenge
- An educational and developmental resource for managers and practitioners
- Free at the point of need

*Developments into the future?*

- NCAS' role in revalidation and recertification
  - Supporting the development of Responsible Officers (ROs)
  - Local focused review where concerns are identified
  - Guiding and focusing how remediation can be taken forward

*Supporting the development of Responsible Officers*

- Portfolio of workshops which draw on NCAS' experience including
  - Conducting investigations
  - Overseeing investigations
  - Handling behavioural concerns
  - Handling health concerns
  - Use of local performance procedures
  - Supporting remediation
- Online materials
- Publications

  
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We are aware that we are not the only organisation which may be providing training, but believe that we are in a good position to help, sharing the learning from our 6,500 cases. No other organisation has that kind of experience in supporting local resolution of concerns. From this we believe we could help with topics in these areas

***NCAS Local focused review***

- Need for a limited review of practice to determine whether a full diagnostic assessment is required
  - Sampling and review of (15-20) clinical records in areas where concerns are identified
  - Structured interview with practitioner around clinical knowledge and decision-making in relation to notes reviewed
  - Report for practitioner and referrer

  
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NCAS considering how we can provide a limited review of practice.

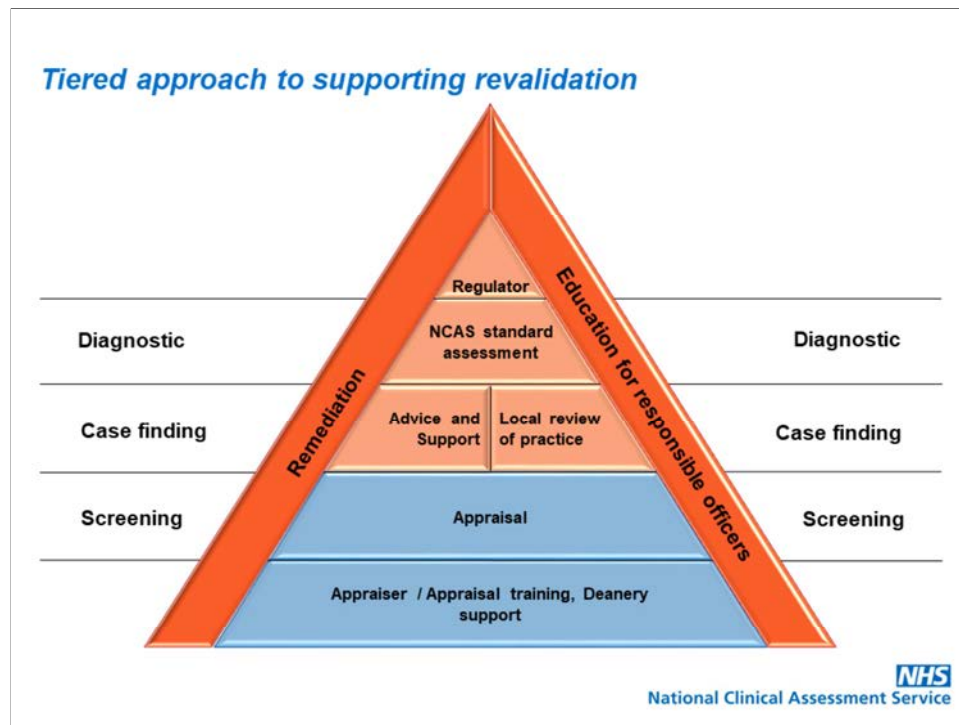
May be appropriate where the RO has insufficient information about the practitioner's performance or where there are low level concerns.

The purpose of this assessment will be to determine whether a full diagnostic assessment is required, so the review needs to be sensitive to pick up any serious concerns which would then need further exploring. However, it will not in itself be enough to base a recommendation for revalidation, or, indeed, as a basis for taking action under the Performers List regulations.

***Guiding remediation***

- Support to devise an action plan using a standard template
- Base on review/assessment to define the concerns
- Advice on access to resources (courses, placements, 1:1)
- Facilitate meetings with relevant parties, e.g. Board, NIMDTA, RCGP

NCAS considering how we can provide a limited review of practice.



**NHS**  
National Patient Safety Agency  
National Clinical Assessment Service

Managing Developing Alerting Supporting Documenting Investigating Rebuilding Disciplining

Home » Toolkit » Toolkit

### IN THIS SECTION

- « Toolkit
- Managing
- Developing
- Alerting
- Supporting
- Documenting
- Investigating
- Rebuilding
- Disciplining
- Toolkit feedback
- Toolkit

### NCAS Toolkit

Although it looks like the rest of the NCAS website, this is a separate section with its own navigation system so the top menu has changed. You can get back to the main NCAS site at any time, via 'Home'.

The Toolkit is written as a resource for NHS managers. Click on a heading and you see a list of ideas, with menus underneath which take you to:

- Practice – putting the idea to work
- Cases – practical examples based on anonymised NCAS casework
- Resources – tools that might help, such as links to relevant legislation, NCAS briefings, model policies

This is a filing system for ideas. It isn't a crisis management tool. If you have an immediate concern about the performance of a doctor, dentist or pharmacist, phone us on **020 7062 1655** (England), **029 2044 7540** (Northern Ireland or Wales) or **0131 220 8060** (Scotland).

If you need a short cut to the key regulations governing doctor and dentist performance, use [Must Knows](#).

Please read this [important note](#) (pdf 36kb) before using the toolkit.

### Toolkit sections

- Managing
- Developing
- Alerting
- Supporting
- Documenting
- Investigating
- Rebuilding
- Disciplining

Terms & Conditions of Use Freedom of Information Privacy Policy  
Information Charter

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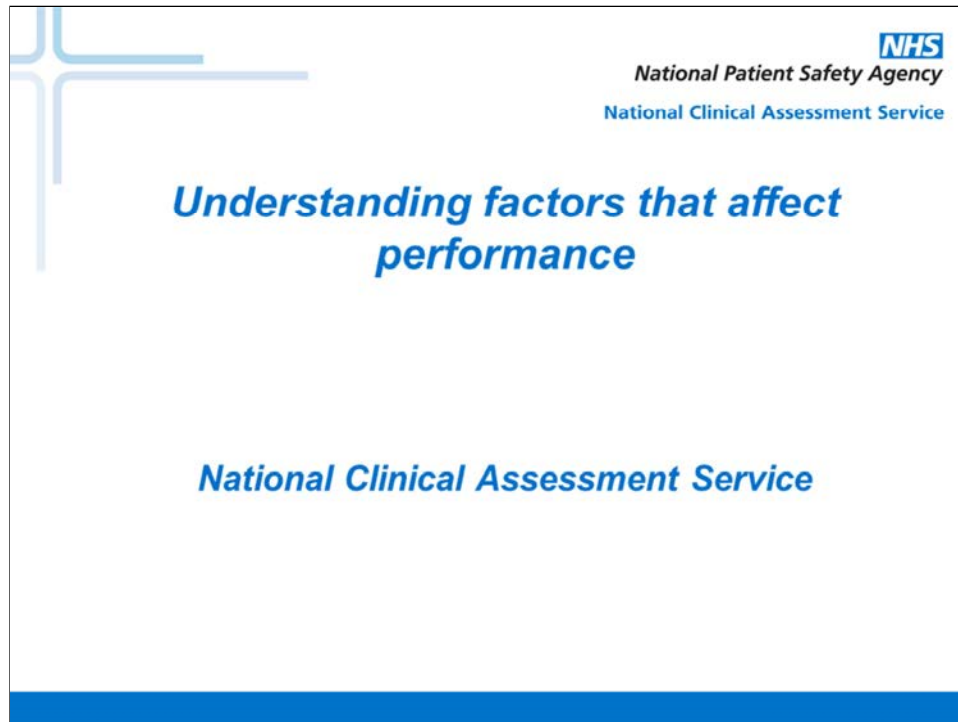
The contents of this website are under review, following the formation of a new HM Government. Current information may be found at [www.oh.gov.uk](http://www.oh.gov.uk)

Practitioner Health Programme NCAS Toolkit NHS Direct

**NHS**  
National Clinical Assessment Service

***NCAS and NCAS-Related Resources***

- [www.ncas.npsa.nhs.uk](http://www.ncas.npsa.nhs.uk), including
  - Must knows [www.ncas.npsa.nhs.uk/resources/mustknows](http://www.ncas.npsa.nhs.uk/resources/mustknows)
  - Publications [www.ncas.npsa.nhs.uk/publications](http://www.ncas.npsa.nhs.uk/publications)
  - Toolkit [www.ncas.npsa.nhs.uk/toolkit](http://www.ncas.npsa.nhs.uk/toolkit)
  - NCAS Resource [www.ncas-resource.npsa.nhs.uk](http://www.ncas-resource.npsa.nhs.uk)
- Practitioner Health Programme [www.php.nhs.uk](http://www.php.nhs.uk)



- So you've heard about the service provided by NCAS
- Since we started work in 2001 we've been keen to understand what may lie behind the concerns that are brought to us. Why do people get into difficulty?
- I'm going to present some of what we've learned about factors which affect performance. This is based on a literature view, continuing work with experts and on analyses of our casework
- Before I present some of our work in this area, I'd like your views about
  - ***What do you think affects performance? (pairs discussion) for 2 minutes – from your own experience. If you think of someone who's got into difficulty, what contributed?***
  - ***Take comments from 3-4 delegates before moving on to presentation***

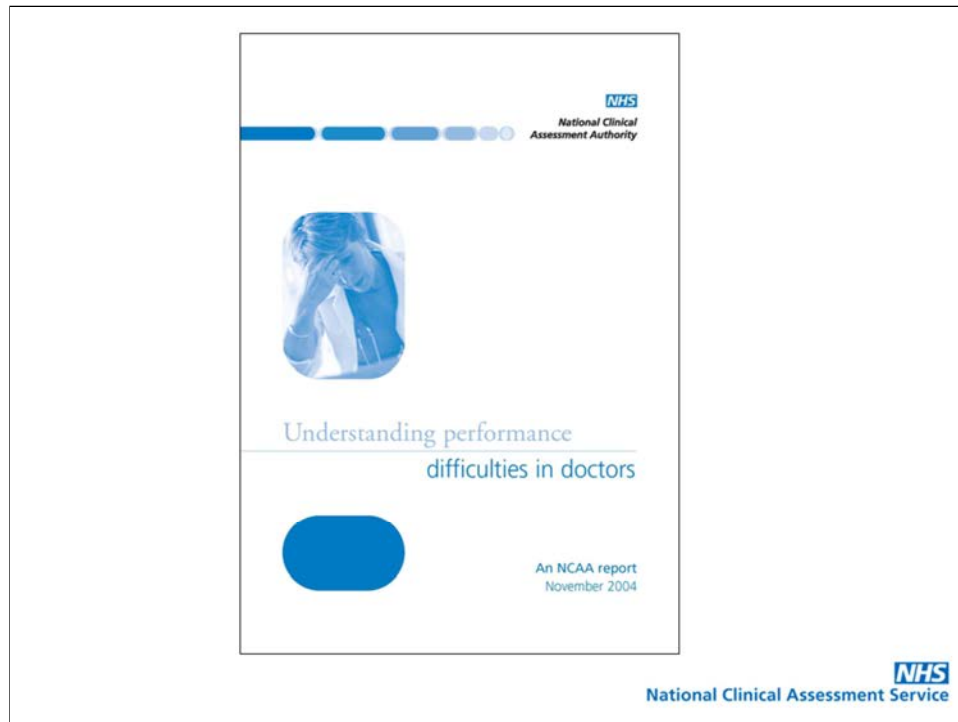
***Factors that impact on performance***

- Individual:
  - Clinical knowledge and skills
  - Health and stress
  - Psychological factors
  - Leadership skills.
- Organisational:
  - Education and training – undergraduate and postgraduate
  - Organisational culture and climate
  - Team functioning
  - Workload and sleep loss.

  
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We considered what were the factors that are likely to affect the clinical care provided by a doctor or dentist. They fell into these categories.

We commissioned literature reviews in each of these areas – except the top one.

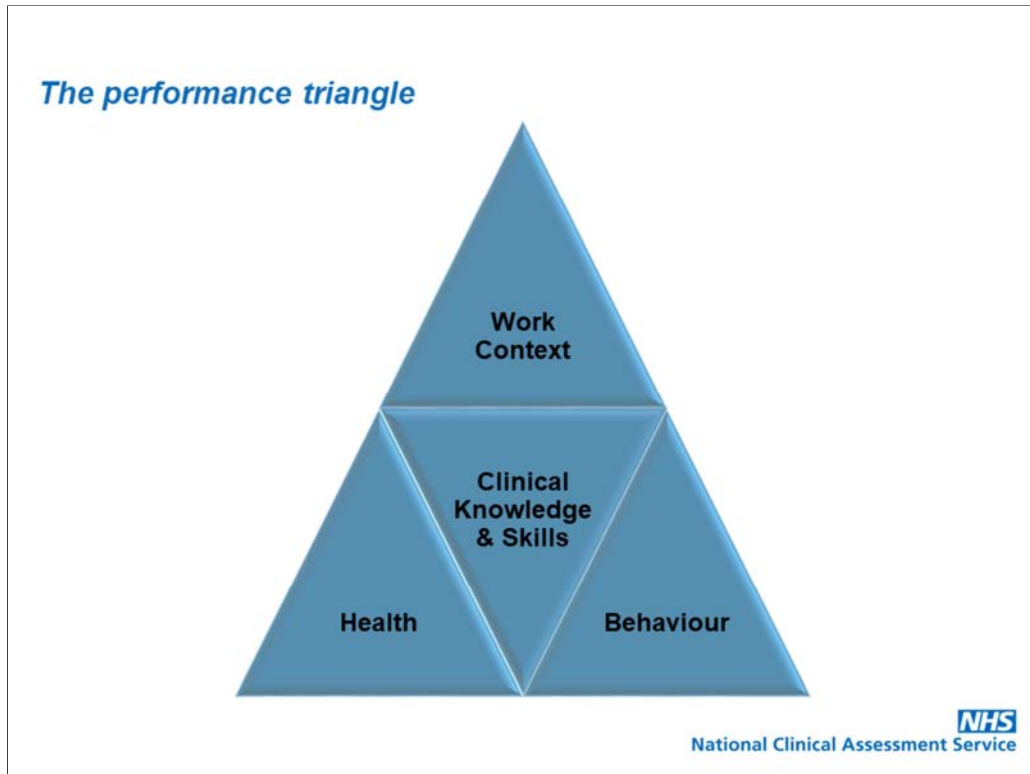


From the literature reviews we produced a book and a short publication, which you can download or order from the NCAS website free of charge. [Copies are available for you to take away today]

The book *Understanding doctors' performance* (Yellow book - co authored by Jim Cox, Jenny King, Allen Hutchinson & Pauline McAvoy) is for sale:

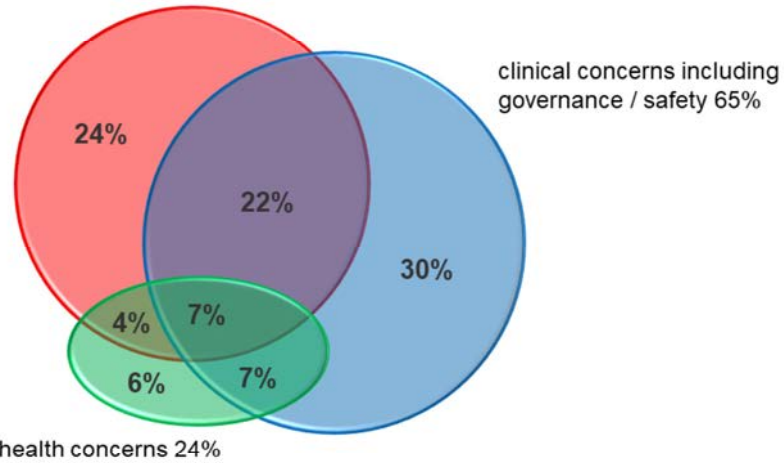
Amazon £27.95

Direct from NCAS £10.00



*What concerns come forward*

behaviour / misconduct – 56%



sample = 1472 cases handled by NCAS Dec 2007 – Mar 2009


  
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### Health concerns

- Anxiety/stress/burnout: 6%
- Depression/hypomania: 6%
- Substance/alcohol misuse: 8%
- Indicators of cognitive impairment: 5%
- Manual dexterity: 2%
- Mobility/lifting and carrying/sight/speech: 2%
- Source NCAS, n=1472 advice cases]

  
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Our advisers don't try to diagnose health concerns or to distinguish mental from physical illness but we record what we are told by a referring organisation. This is what we found amongst the 1472 cases in the previous two charts

- There may be concerns about anxiety or depression
- Or substance misuse
- Or head injury or cognitive impairment
- Or Physical illness

It's often difficult to find a suitable specialist for a practitioner to see locally, with concerns about confidentiality. This led us to help set up the London based prototype Practitioner Health Programme which provides specialist assessment and treatment for doctors and dentists with health problems which may impact on performance.

## *Behaviour*

- Communication with colleagues - 1 in 5
- Team working - 1 in 7
- Communication with management - 1 in 8
- Conflict management style - 1 in 20
- Leadership style - 1 in 20

*[Source NCAS, n = 1472 advice cases]*

Using the same source about behaviour – this slide shows that there are concerns about communication with colleagues in 1 in 5 of cases where advice is sought from NCAS.

***Disruptive behaviour***

- Aggressive behaviour – 1 in 13
- Behaviour under pressure – 1 in 14
- Erratic/unpredictable behaviour – 1 in 25
- Bullying/harassment/discrimination – 1 in 30

*[Source NCAS, n = 1472 advice cases]*

  
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However, specifically disruptive behaviour may be more rare. In North America there is work going on to look at how disruptive behaviour adversely affects the quality of patient care and patient safety.

*Behavioural factors – how strengths can become weaknesses*

| STRENGTH     | DYSFUNCTIONAL BEHAVIOUR |
|--------------|-------------------------|
| Enthusiastic | Volatile                |
| Shrewd       | Mistrustful             |
| Independent  | Detached                |
| Focused      | Passive-Aggressive      |
| Confident    | Arrogant                |
| Charming     | Manipulative            |
| Vivacious    | Dramatic                |
| Imaginative  | Eccentric               |
| Diligent     | Perfectionist           |
| Dutiful      | Dependent               |

Source: Hogan and Hogan (1997); King (2008)

  
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Why should people display these difficult behaviours? Our occupational psychologists have advised us that the very attributes that are strengths may lead to self-defeating behaviours if overplayed, particularly when an individual is under pressure.

Perhaps you recognise yourselves on the left! But these positive points may become overplayed,

E.g. practitioners who are confident can become arrogant when under pressure, those who are diligent become perfectionist and over focused on detail.

***Behavioural factors – summary preliminary findings***

- Patient-focused to the exclusion of wider considerations
- Diligent to the point of perfectionism
- Confrontation-averse
- Poor influencers
- Low self-awareness
- Receptive to ideas
- **BUT** resistant to changing their own ways of working

Source: King (2007) content analysis of 176 NCAS cases

  
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Dr Jenny King (Chartered Psychologist of Edgecumbe Consulting) analysed 176 NCAS behavioural assessments and found that the practitioners assessed by NCAS tend to be...

Currently she is analysing these findings against a normative group to see whether there are significant differences between doctors referred to NCAS and doctors where there are no concerns about performance.

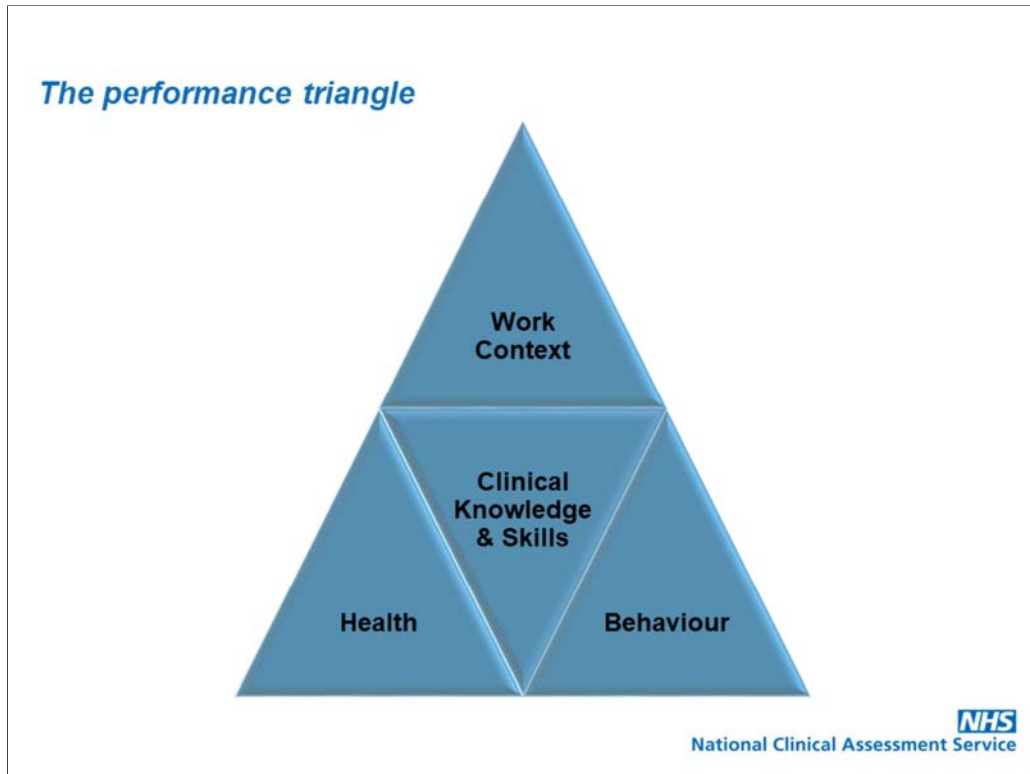
*What predicts the likelihood of change?*

- Do they have the 'key' personality traits to help them change?
  - Are they stable enough?
  - Can they persevere?
- Do they have insight?
  - Are they psychologically minded?
  - Can they reflect on their behaviour and learn from their experience?
- Do they want / intend to change?
  - Have they a history of successful change attempts?
  - What will motivate them to change?
- What kind of environment will they be working in?
  - What support is available?
  - What are the contextual factors that may influence their behaviour?

Source: King (2008)

  
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Dr King has also advised that the following are indicators of the likelihood of change and improvements in performance.



***Clinical knowledge and skills***  
***- Analysis of 50 assessment cases***

- Clinical concerns in 41 out of 50, including:
  - Clinical knowledge
  - Clinical decision-making (including making a diagnosis)
  - Prescribing
  - Record keeping, guidelines, policies and procedures.

With regard to clinical knowledge and skills, when we analysed 50 assessment cases we found clinical concerns in 41 out of 50 and they related largely to the points on this slide

**Factors notified at referral and found at assessment:**

| Domain                         | Notified at referral* | Found at assessment** |
|--------------------------------|-----------------------|-----------------------|
| Clinical performance           | 54%                   | 82%                   |
| Governance and safety          | 35%                   | 48%                   |
| Behaviour – conduct            | 33%                   | n/a                   |
| Behaviour – other than conduct | 29%                   | <b>94%</b>            |
| Health                         | 24%                   | 28%                   |
| Organisational                 | 11%                   | <b>88%</b>            |

\* Source: NCAS Casework – The first eight years, 2009

\*\* Source: NCAS, Analysis of the first 50 assessment cases, 2005

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*Note: Percentages total to more than 100% because a case can be logged as showing more than one type of concern*

However, there may be some differences between the concerns the Trust identify when they refer to NCAS and those that we find at assessment.

Often cases are more complex than notified at referral.

The most marked differences:

Behaviour – other than conduct: 29% compared with 94% found at assessment

Organisational : 11% compared with 88% at assessment.

***Getting behind the concern – the organisation***

- Workload – pressure on individual
- Difficulties in the team
  - Ineffective leadership
  - Inadequate clinical or administrative support
  - Unclear roles, poor morale
- Tolerance of disruptive behaviour

The sort of organisational facts that we see relate to...

## Other factors that may affect performance – learning from referral patterns

  
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Another way of looking at factors that may affect performance is to consider the patterns of our referrals and to think about whether there is some learning from these.

For example, it seems that certain groups of practitioners seem to be more likely to be referred than others, i.e. taking into account the proportion of that group in the workforce.

*Certain groups are more likely to be referred*

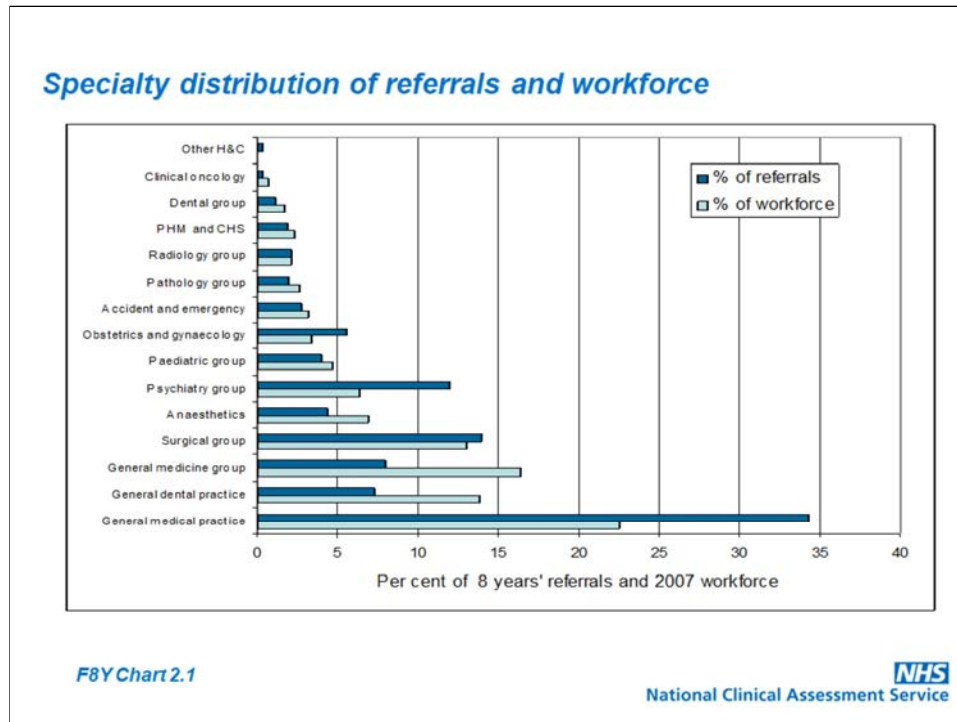
- Older practitioners
- Consultants and other career grades
- Men
- In secondary care, doctors with an overseas qualification
- Single-handed GPs (compared with those in practices >4 doctors)

  
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Certain groups of practitioners are more likely to be referred.

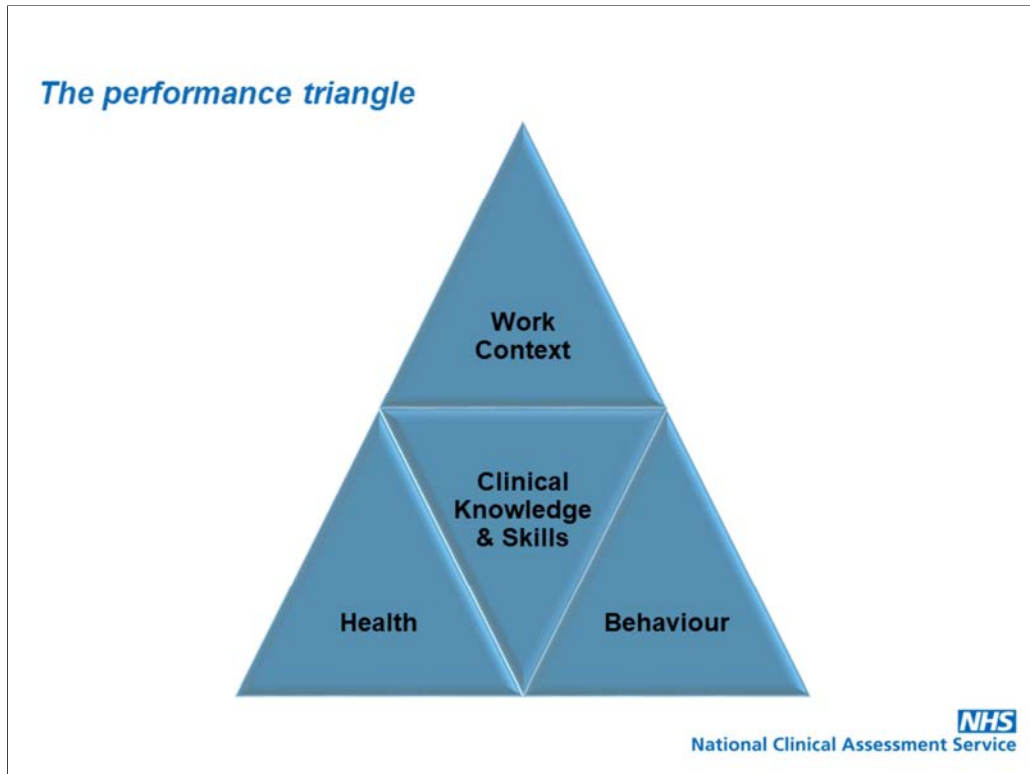
Re **doctors with an overseas qualification**: we have comparative data only for doctors in secondary care. However, we believe that the increased risk of referral applies equally across both the primary and secondary care sectors. (P Old 01/09/10)

The data is in our NCAS 8 year report



This shows each specialty as a proportion of the workforce - the lower bar of each pair, and above, the darker bar shows the proportion of NCAS referrals.

You'll see that there are more referrals than we'd expect for general practice, obstetrics and psychiatry, and fewer for dentists and general medicine



**Further reading**

- NCAS publications [www.ncas.npsa.nhs.uk/publications](http://www.ncas.npsa.nhs.uk/publications)
- Article of the analysis of the first 50 NCAS assessment cases – *Journal of Health Organization and Management*, October 2007
- *Understanding doctors' performance* – booklet and book
- Practitioner Health Programme [www.php.nhs.uk](http://www.php.nhs.uk)

  
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Some of these are available as hard copy and also to download from the NCAS website.

# ***The National Clinical Assessment Service***

***- helping resolve performance concerns***

**Colin Fitzpatrick**  
**Lead NCAS Adviser (Northern Ireland)**  
**National Clinical Assessment Service**



## **1. Title slide**

***Advice for use: Type into existing template to maintain format, style and positions***

### **1.1 Presentation Title**

- Sentence case (first letter of each the sentence capitalised). No full stop at end of title
- Font size: 34
- Font style: Arial
- Format: Bold & Italic
- Font colour: Blue (RGB: Red:0 / Green: 110 / Blue: 203)
- Placeholder size: Height: 5cm      width: 24cm
- Placeholder position on slide: Horizontal: 3cm from Top left corner      Vertical: 4cm from Top left corner
- Position: Centre aligned and wrapped in text box

### **1.2 Presenter details**

- Font size: 28
- Font style: Arial
- Format: None
- Font colour: Blue (RGB: Red:0 / Green: 110 / Blue: 203)
- Position: Left aligned wrapped in text box
- Line spacing: 1 line      Before paragraph: 0cm      After paragraph: 0cm
- Placeholder size: Height: 5cm      width: 24      cm
- Placeholder position on slide: Horizontal: 1cm from Top left corner      Vertical: 10cm from Top left corner

•**Presenter's name** should be written in full (Title First\_name Last\_name)

•NB. Name prefix and professional associations after the name is personal choice but should be consistent with other presentations or materials being used for that session/event

•**Job title:** Title case (First letter of each word capitalised)

•**Organisation:** Should be written in full for external audience. Acronym can be used for internal audience or an audience already knowledgeable of the organisation

•Position: Centre aligned and wrapped in text box



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# Training on MHPS Procedure

For Southern Trust NEDs

29<sup>th</sup> August 2017

Presented by June Turkington  
Assistant Chief Legal Adviser, DLS

[www.hscbusiness.hscni.net](http://www.hscbusiness.hscni.net)

# Maintaining High Professional Standards Framework (MHPS)

- Introduced by DHSSPS Circular
- Effective from 1<sup>st</sup> December 2005
- Formal departmental Directions require all Trusts to comply with MHPS

# Scope/application of MHPS

*“A framework for the handling of concerns about doctors and dentists in the [HSC]”*

Applies to

- Medical and dental employees

Concerns regarding

- Conduct
- Clinical performance
- Health

# Scope/application of MHPS

## Definition of “performance” (Intro para 2)

Where the term “performance” is used in MHPS, it refers to

- All aspects of a doctor’s work, including
- Conduct, health and clinical performance
- The term “clinical performance” means those aspects of a doctor’s work which require exercise of clinical judgment or skill

## Section VI – Formal Procedures – General Principles

- Training – managers and CIs must receive appropriate training on these procedures and on equal opps
- Trust Board must agree on training required by staff and members before they can “take a part in investigations or panels”

# Context of MHPS

MHPS must be seen within wider context – 4 key elements

- Appraisal & revalidation
- Advisory & assessment services of NCAS
- Tackling blame culture
- New arrangements for handling exclusions

Also importance of remedial action including retraining

- See NCAS '*Back on Track Framework*'



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# MHPS Required Response

Safety of patients must be at the heart

Whatever the source of information about concerns, the response must be the same

- See Intro para 10



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## Definition of Roles

The Board, through the C Ex, must ensure these procedures are established and followed

(Section 1 para 7) BUT

- Board members may be required to sit as members of a panel – therefore info given to the Board should only be sufficient to allow 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 cases

# Definition of Roles

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 exclusion; or
- any representations about the investigation

(Section 1 para 8)

# Formal Approach

Where this needs to be followed, the Chief Exec must (after discussion between Medical and HR Dirs)

## Appoint

- a Case Manager – role is to lead the formal
  - a Case Investigator – role is to carry out the formal investigation
  - A designated Board member
- (Section 1 para 28)

# Formal investigation

Case Investigator (CI) – must assist the designated Board member in reviewing the progress of the case

## Timescale and decision

- Investigation – normally completed within 4 weeks
- Further 5 days to report
- Must give doctor opportunity to comment on factual accuracy
- Doctor can provide written comments re mitigation to CM within 10 days



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## Timescale and decision

- Report must give CM sufficient info to make a decision on way forward – see options in para 38
- Conduct cases – transfer to hearing stage of Trust Disciplinary Procedure

## Section II Restriction of Practice & Exclusion

### Exclusion (ie suspension)

- Used only as interim measure whilst action is considered
- For min necessary period up to 4 weeks – normally max limit of 6 months (except for criminal investigations)

## Section II Restriction of Practice & Exclusion

- Extensions of exclusion must be reviewed every 4 weeks and brief report provided to C Ex and Board – see detailed table at para 28
- Detailed report must be provided to designated Board member on request – responsible for monitoring situation until exclusion lifted
- Role of Dept in monitoring exclusions – para 30 & 31



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## Section II Exclusion contd

Reserved for “*only the most exceptional circumstances*”

➤ The purpose of exclusion is

- To protect the interests of patients or other staff and/or
- To assist the investigative process – risk of impeding the gathering of evidence

## Section II Exclusion contd

Key officers and the Board are responsible for ensuring that the process is carried out

- Quickly and fairly
- Kept under review; and
- That the total period of exclusion is not prolonged

## Section II Exclusion contd

Key aspects of exclusion from work - see para 8

- NB right to return to work if review not carried out
- May only take place in the setting of a formal investigation
- Gardening leave should never be used

## Section II Exclusion contd

Key aspects of exclusion include:

- Appointment of a designated Board member to monitor the exclusion and subsequent action
- A right for the doctor to make representation to the designated Board member



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