Avon and Wiltshire Mental Health Partnership NHS Trust

Conduct and Capability Policy

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Contents

1. Introduction

This policy applies to all medical staff and sets out arrangements that have been agreed for handling concerns about doctors' conduct and capability. The policy should be read in conjunction with the Directions on Disciplinary Procedures 2005 and the Trust's Disciplinary Policy and Procedure, which applies to all staff.

This policy is derived from the framework document Maintaining High Professional Standards in the Modern NHS.

This policy operates within the new legislation and regulations covering the statutory role of Responsible Officers, which were introduced on 1st January 2011 (The Medical Professional Responsible Officer Regulations 2010).

2. Purpose or aim

The purpose of this document is to provide a fair and consistent procedure for addressing concerns about the conduct and capability of medical staff.

3. Scope

This policy applies to all medical staff employed by AWP.

4. Definitions

4.1 BMA

British Medical Association

4.2 Exclusion

To be excluded from attending work. It is not disciplinary action but is intended to prevent the possibility of recurrence of the alleged incident/behaviour, or of retaliation, and to ensure that the subsequent investigation is not prejudiced by the presence of the individual.

4.3 NCAS

National Clinical Assessment Service

5. Procedures

5.1 Local resolution

Concerns about a doctor's conduct, capability or performance may arise from various sources e.g.

- Concerns from colleagues, clinical and non-clinical
- Review of performance through job planning, appraisal or revalidation
- Clinical governance, clinical audit and monitoring of performance data
- Complaints by patients or their relatives
- Incident reports and investigations

All concerns regarding a doctor's conduct, performance or practice will initially be addressed within the local Delivery Unit using the Reporting Concerns Action Plan Template and Generic Framework (using Appendices A and B). This must be completed and will be considered,

reviewed and monitored by the Decision Making Group (DMG), in support of Responsible Officer. Where the concerns are about a doctor in training, the postgraduate dean and Director of Medical Education should usually be informed as early as possible and involved if there is a capability issue requiring additional training or assessment; or a conduct issue which may affect training.

5.2 Informal Procedures

The informal procedure should only be followed with the express agreement of the doctor concerned. If this agreement is not requested or not given then progress should be via the formal route.

Allegations or complaints made by any person about a member of the Medical staff of

the Trust which have not been resolved by the immediate clinical line manager as described in Section 6.1 (using Appendices A and B) will be made available to the Medical Director (MD) or Deputy Medical Director (DMD). At this stage the MD or DMD may decide that the matter needs to proceed immediately under the full Maintaining High Professional Standards investigatory process set out below at Section 7. If the MD or DMD agrees that the matter cannot be resolved by the immediate clinical line manager or informally, he/she will, after consultation with the Head of HR or nominated deputy or Decision Making Group (DMG), decide whether or not to commission a preliminary investigation under the informal procedure. This preliminary investigation, using the template (Appendix C) will be conducted by setting up an internal panel of up to three appropriate medical practitioners/ managers whose membership will be nominated by the MD or DMD. The preliminary investigation will usually not last more than 2 weeks.

The purpose of this informal procedure is to provide the MD/DMD with sufficient information to make an informed recommendation as per subparagraph i, ii, or iii below. The investigation will be completed as quickly as possible to achieve this objective and is not intended to be a substitute for the formal investigation that may be necessary as a consequence of a decision to proceed with the full process in accordance with subparagraph iii below.

The practitioner will be provided with a brief outline of the matters of concern in order that these can be explored more fully as part of the informal procedure.

Where the matter requires specialist expertise not available within the Trust, the MD or DMD may appoint an additional external practitioner. If appropriate, this person's contribution may be by telephone, email, video conference or letter. The above approach can be utilised for the full range of issues including those of potential harassment and bullying (where allegations are not clear cut), to establish if a full investigation is required. The subject of the allegation and/or complaint will be informed in writing by the MD or DMD.

Upon completion of the informal procedure a report will be made (using Appendix C) to the MD who, following consultation with National Clinical Assessment Service when appropriate , the Head of HR or nominated deputy, will make a recommendation which may include:

i. There is no case to answer and no further action is required, or

ii. the details of the MD/DMD's proposals for resolving the matter. This may include remedial supportive action, formal remediation under the Trust's Remediation Policy, further training or modification of responsibility, job plan review, and referral to the occupational health department, or issuing formal verbal or written warning by the MD/DMD or CEO. The appropriate formal procedure will be followed if the practitioner does not agree to the MD/DMD's proposals in this regard.

iii. That the matter will be investigated in accordance with the appropriate formal procedure.

In all cases, the person making the complaint/allegation(s) should be informed by the MD or DMD when the matter has been concluded and will receive confirmation that appropriate action has been taken. The individual would not be entitled to further detail relating to any action taken.

6. Formal Procedures - Handling Concerns

All allegations will be investigated as per the processes set out in Sections 5 and 6. All serious concerns must be reported to the Chief Executive who will ensure that a case manager is appointed. The MD or DMD will act as case manager where the concerns relate to a consultant and may delegate this role to a senior manager or medical lead to manage on his/her behalf in cases involving concerns about other medical staff.

A Non-Executive Director will be appointed to oversee the case and ensure that momentum is maintained.

In consultation with the Head of HR (or designated deputy) and the MD or DMD (if not the case manager), the case manager will assess the likelihood that the issue can be resolved without further investigation or formal disciplinary procedures.

Employees who make malicious or frivolous allegations of misconduct may themselves face disciplinary action.

7. Exclusion from Work Pending Investigation, Disciplinary or Capability Hearing

When serious concerns are raised about a doctor, it must be decided whether it is necessary to place temporary restrictions on their practice or to exclude them from the workplace.

Normally a doctor should be excluded from work only if:

- There is a risk to patients or other staff
- There is a risk to health and safety
- Their presence at work could hinder the investigation

Further guidance on exclusion is provided in Guidance for Case Managers on Exclusion.

Exclusion is not a disciplinary sanction. Exclusion not only protects patients and other staff but also protects the doctor from further allegations arising during the course of the investigation.

During periods of exclusion, a doctor will receive normal contractual pay, including banding or on call supplements based on the previous 13 working weeks, excluding additional hours.

The Chief Executive has overall responsibility for managing exclusion procedures and for ensuring that cases are properly managed. The decision to exclude a doctor must be taken only by the MD or DMD..

The doctor may be given an *Immediate Exclusion* for an initial period of no more than two weeks to allow time for a preliminary investigation. The doctor should be given a reason for the exclusion, in broad terms, and a date for a meeting within the two week period. The case manager must advise the doctor of their rights, including rights of representation.

Following preliminary investigation, a case conference and consultation with the National Clinical Assessment Service the MD/DMD will decide whether or not the doctor can return to work, possibly with temporary restrictions on their practice. If not, the doctor will be placed on Formal Exclusion.

In situations where a *Formal Exclusion* is deemed necessary without a prior Immediate Exclusion this should only take place after a preliminary investigation, a case conference and consultation with the National Clinical Assessment Service. If a case investigator has been appointed, they may undertake the preliminary investigation.

When the doctor is informed of the formal exclusion there should be a witness present, if possible, and they should be advised:

- The nature of the allegations or areas of concern

- The reason(s) why formal exclusion has been used

The doctor should be given the opportunity to state their case and propose alternatives to exclusion. The doctor should be advised that they may make representations about the exclusion to the Non-Executive Director assigned to the case or use the Trust's Grievance and Disputes Procedure.

Formal exclusion must be confirmed to the doctor in writing stating:

- The effective date and duration, up to 4 weeks
- The allegations
- The terms of the exclusion, whether this involves exclusion from the premises or contact with colleagues
- The need to remain available for work
- Support available to them, accessed via Occupational Health or counseling services in their locality
- What will happen next

Excluded doctors must inform the case manager about any other organisation with whom they undertake either voluntary or paid work and seek the case manager's consent to continuing to undertake such work or to take annual leave or study leave.

If the case proceeds to disciplinary or capability hearing, formal exclusion can be extended by the case manager for 4 week renewable periods until completion of the process, if a return to work is considered inappropriate. Formal exclusion periods should only last for 4 weeks at a time and must be reviewed by the case manager at the end of each period. The doctor must be sent written notification of each renewal. The exclusion will lapse and the doctor will be entitled to return to work at the end of the 4 week period if the exclusion is not actively reviewed.

The case manager must inform the Chief Executive and the Board about exclusion at the earliest opportunity and provide an outcome report on the review at the end of this and any subsequent 4 week period of exclusion. After three exclusions (12 weeks) the National Clinical Assessment Service must be called in. The reporting requirements for case managers and Chief Executives on exclusions lasting more than 12 weeks are detailed in the Guidance on Exclusion Reporting Requirements.

The exclusion should normally be lifted and the doctor allowed back to work, with or without conditions, as soon as the original reasons for exclusion no longer apply. This situation may arise during the course of the investigation.

8. Investigation

Where further investigation is needed and it is possible that formal disciplinary or capability procedures will result, the MD or DMD will appoint an appropriately experienced or trained person as case investigator. The doctor concerned must be informed in writing by the case manager as soon as it has been decided that an investigation is to be undertaken, the name of the investigator and the allegations or concerns that have been raised. The doctor must be given the opportunity to see correspondence relating to the case, subject to permission to disclose being given, together with the list of people that the case investigator will interview.

The case investigator must:

- Formally involve a senior member of the medical staff where a question of clinical judgment is raised during the investigation process.
- Ensure that sufficient and detailed information is gathered to inform the case manager and a disciplinary panel, if appropriate, whilst taking care to protect patient confidentiality wherever possible.
- Ensure that a written record is kept of the investigation

- Assist the Non-Executive Director in reviewing the progress of the case

The case investigator does not make the decision or recommendation on what action should be taken, nor whether the employee should be excluded from work.

Guidance on investigation reports is provided in Guidance on Investigations found on Ourspace. The case investigator should use the template (Appendix D) for the investigation report.

The case investigator should normally complete the investigation within 4 weeks of appointment and submit their report to the case manager within a further 5 working days.

On receipt of a completed investigation report, with advice from the National Clinical Assessment Service, the case manager will decide whether any of the following actions is appropriate:

- There is a case of misconduct that should be put to a conduct panel
- There are concerns about the doctor's health that should be referred to Occupational Health (refer to Policy for Managing Attendance and Absence and Employee Alcohol and Substance Misuse Policy)
- There are concerns about the doctor's performance that should be referred to the National Clinical Assessment Service
- There are questions about the doctor's capability that should be put to a capability panel
- Restrictions on practice or exclusion from work should be considered
- There are serious concerns that should be referred to the GMC
- No further action is needed.

The investigation of an incident or performance issues may point to a health problem. Concerns about a doctor's health should be addressed with the involvement of the Occupational Health Services using the Policy for Managing Attendance and Absence.

9. Conduct Hearings and Disciplinary Procedures

Cases of alleged misconduct by a doctor that are not directly related to their clinical practice will be heard under the Trust's Disciplinary Policy and Procedure. This policy will also be followed with regard to the imposition of any sanction, the recording of warnings and the provision of appeals against sanctions. As per the informal procedure with the agreement of the Doctor, the MD/DMD or CEO can issue a formal verbal or written warning. The appropriate formal procedure will be followed if the practitioner does not agree to the MD/DMD's proposals in this regard.

Where the investigation identifies issues relating to professional conduct the case manager should obtain appropriate independent professional advice.

Allegations of misconduct involving a doctor in a recognised training grade should be discussed by the case manager with the Medical Director or nominated deputy. Unless allegations of serious misconduct are involved, such cases in the first instance will normally be considered initially as a training issue and dealt with via the educational supervisor and college/clinical tutor. The Director of Medical Education and the deanery would usually also be involved in these cases.

10. Capability Issues

Where possible the Trust will aim to resolve issues of capability through ongoing assessment and targeted support, counselling or remediation.

Where Occupational Health advice is that the capability of a doctor is adversely affected by ill health, the Trust's Managing Attendance and Absence Policy will be used.

Concerns about the capability of a doctor which cannot be resolved by such management must be referred to the National Clinical Assessment Service before the matter can be considered by a capability panel, unless the practitioner refuses to have his or her case referred.

Concerns about capability, established through an investigation, which involve a doctor in a recognised training grade, should be discussed by the case manager with the Medical Director or nominated deputy. Such cases will normally be considered initially as a training issue and dealt with via the educational supervisor and college/clinical tutor. The Director of Medical Education and the deanery would usually also be involved in these cases.

Where a case involves conduct and capability issues, they will normally be heard at a capability hearing. However, there may be occasions where it is necessary to deal with the conduct issue separately via the Trust's Disciplinary Policy and Procedure.

10.1 Capability Pre – Hearing Process

When an Investigation Report has been received, for a capability hearing only, the case manager must give the doctor the opportunity to comment in writing on the factual content of the report. Comments in writing from the doctor, including any mitigation, must normally be submitted to the case manager within 10 working days of the date of receipt of the request for comments.

Having regard to the doctor's written comments, the case manager should reconsider whether the capability issues can be resolved by retraining, counselling or referral to the National Clinical Assessment Service for an assessment to inform a local action plan.

Any action plan to remedy lack of capability will be agreed between the Trust and the doctor and facilitated by the Trust. In the absence of agreement or where the National Clinical Assessment Service advise that no educational and/or organisational action plan is likely to succeed, the case will be put to a capability hearing.

The case manager must notify the doctor in writing of the decision to arrange a capability hearing at least 20 working days before the hearing date. This notification will include:

- Details of the allegations
- Arrangements for proceeding
- The right to be accompanied at the hearing
- Copy of the Investigation Report and any other evidence that will be made available to the panel

All parties must exchange any documentation, including witness statements, no later than 10 days before the hearing.

In the event that the Trust agrees to a request for a postponement of the hearing, the case manager should ensure that time extensions are kept to a minimum. The Trust retains the right, after 30 working days postponement, to proceed to a hearing in the doctor's absence. The Trust will act reasonably in making such a decision. If the postponement is requested on health grounds, the Trust will seek advice from Occupational health to identify possible timescales for the hearing.

10.2 The Capability Hearing

The capability hearing will normally be chaired by an Executive Director of the Trust. The panel should comprise a total of 3 people, normally two members of the Trust Board, or one and a senior manager or clinician selected for the purpose of the hearing. At least one member of the panel must be a medical practitioner who is not employed by the Trust. The following arrangements for selection of the medical practitioner have been agreed with the Local Negotiating Committee:

- The medical practitioner will normally be a consultant from psychiatry or a relevant clinical specialty or discipline, depending on the nature of the concerns
- The medical practitioner selected will be discussed with the LNC chair or nominated deputy

The panel will be advised by a senior member of Human Resources, a senior clinician from the same or similar clinical specialty as the practitioner concerned, but from another NHS Trust. The senior clinician should be able to advise on the appropriate level of competence required of the grade of doctor in question.

As far as is reasonably practical, no member of the panel or advisors should have been previously involved in the investigation.

It is for the employer to decide on the membership of the panel. The doctor may raise an objection to the choice of any panel member within 5 working days of notification. The Trust will consider the objection and take reasonable steps to respond so that the membership of the panel is acceptable to the doctor, which may result in a postponement. Having considered the situation, the Trust must put in writing to the doctor its decision before the hearing can take place.

Witnesses who have made written statements or been interviewed as part of the investigation may be required to attend the capability hearing by the Chair of the panel. The Chair cannot require anyone other than an employee to attend. However, if evidence is contested and the witness is unable or unwilling to attend, the panel may reduce the weight given to the evidence as there will not be the opportunity to challenge it. A final list of witnesses to be called must be given to both parties not less than two working days before the hearing.

Witnesses have a responsibility to ensure that the facts of a case are known and to give an honest account. They will be required to make a written statement and to attend a capability hearing unless it can be agreed otherwise how their evidence will be examined (for example, in cases involving alleged harassment it may be appropriate for some witnesses to attend in camera). Witnesses are required to sign their statements.

The panel and its advisers, the doctor, his/her representative and the case manager will be present throughout the hearing. Witnesses will attend only to give their evidence and answer to questions and will then leave the hearing. Guidance on the order of presentation at the hearing is found on Ourspace.

10.3 Outcome of Capability Hearing

Having considered all the evidence the panel will reach one of the following decisions:

- That no action is required
- Oral Agreement
- Written Warning
- Final Written Warning
- Termination of Employment

10.4 Oral Agreement

a) To make an oral agreement that there must be an improvement in performance within a specified timescale with a written statement of what is required and how it might be achieved.

b) An oral agreement may be given if informal methods, counseling, mediation or training are not considered appropriate on their own or have been tried and failed to achieve acceptable standards

OR

a) Where the standard of performance and/or conduct concerned is unacceptable but not serious enough to warrant a written warning.

10.5 Written Warning

a) To give a written warning that there must be an improvement in clinical performance within a specified timescale with a statement of what is required and how it might be achieved.

b) A written warning may be given if the standard of performance and/or conduct concerned is too serious for an oral agreement or has occurred during the currency of a previous oral agreement.

OR

c) Where the standard of performance and/or conduct concerned is not serious enough to warrant a final written warning.

10.6 Final Written Warning

a) To give a final written warning that there must be an improvement in performance within a specified timescale with a statement of what is required and how it might be achieved.

b) A final written warning may be given if the standard of performance and/or conduct is too serious for a first written warning but not serious enough to warrant dismissal, or has occurred while a previous warning remains in force.

OR

c) The standard of performance and/or conduct has not improved during the currency of a previous warning.

10.7 Termination of Employment

a) Termination of employment is appropriate where the level of competence and/or conduct is unacceptable and too serious for a final written warning.

OR

b) Where a final written warning is still current, the doctor's standard of performance is still unsatisfactory (as determined by a subsequent investigation and hearing).

c) The panel may also make comment and recommendations to senior management on issues other than the competence of the practitioner, where relevant to the case.

10.8 Written Record and Time Limits of Warnings Concerning Capability

A record of oral agreements and written warnings should be kept on the doctor's personal file and will remain current as follows:

- Oral agreement 6 months
- Written warning 12 months
- Final written warning 24 months

If the panel or the relevant professional body puts special measures/requirements in place for a specified timescale which exceeds the duration of the sanction, the currency of the warning will be reviewed and may be extended to coincide with such measures.

The decision of the panel should be communicated to the doctor and to the case manager as soon as possible and normally within 5 working days of the hearing. Written confirmation of the decision will be given to the doctor and will include:

- Reasons for the decision
- The required standard of performance or conduct and timescale for improvement
- The period that the sanction remains on the personal file
- The consequences if concerns of a similar nature arise during the currency of the sanction or there is a failure to achieve the required standard
- Information on right of appeal
- Notification of any intent to refer to the GMC or other external/professional body.

A copy of this letter will be kept on the doctor's personal file for the period of the relevant five year revalidation cycle, and will be available to the Responsible Officer for the purposes of making a positive recommendation for Revalidation if required. All other documentation relating to the case will be held separately in a lockable filing cabinet.

11. Appeals Against Decisions of Capability Hearing

All doctors have the right to appeal against sanctions arising from a capability hearing. The appeal should be to the Head of Resources in writing within 25 working days of the date of the written confirmation of the original decision. The doctor should set out their reason for appealing and whether they wish to call witnesses to attend the appeal.

The Trust/Head of Human Resources should arrange for the appeal panel to meet within 25 working days of the date the appeal was received and notify the doctor as soon as possible. The Trust will endeavour to ensure that the panel members are acceptable to the doctor. Exceptionally, where agreement cannot be reached on membership of the panel, the doctor's objections should be noted carefully.

The timetable for the appeal may be varied by agreement between the Trust and the doctor. The case manager should be informed and, together with the chair of the capability hearing, is responsible for ensuring that extensions are absolutely necessary and kept to a minimum.

11.1 Capability Appeal Panel

The appeal panel will consist of three members and will be constituted as follows:

- An independent member (trained in legal aspects of appeals) from an approved pool (refer to Maintaining High Professional Standards in the Modern NHS)
- The Chair (or other non-executive director) of the Trust
- A medically qualified member who is not employed by the Trust. The arrangements/criteria for selection of this panel member will be the same as in paragraph 9.14

All members of the panel should have been trained to hear an appeal. The panel members must not have had any previous direct involvement in the matters that are the subject of the appeal.

The panel will be advised by a senior member of the People Directorate and a senior clinician from the same or similar clinical speciality as the practitioner concerned, but from another NHS Trust. The senior clinician should be able to advise on the appropriate level of competence required of the grade of doctor in question.

11.2 Capability Appeal Hearing

The purpose of the appeal is:

- To review the decision taken by the capability hearing panel
- To consider whether the Trust's procedures have been adhered to

The appeal panel should not rehear the entire case. However, the panel can hear new evidence submitted by the doctor. If the panel consider that this evidence might have significantly altered the decision of the original hearing, the case will normally be referred back to the original capability panel.

Guidance on the order of presentation at the appeal hearing is found on Ourspace.

The appeal panel has the right to call additional witnesses of its own volition, but must notify both parties at least 10 working days in advance of the hearing and provide them with a written statement, if available, from any such witness at the same time.

Exceptionally, during the course of the hearing the appeal panel may decide that it needs to hear the evidence of a witness not called by either party. The panel may adjourn the hearing to allow for a written statement to be obtained from the witness and made available to both parties before the hearing reassembles.

If during the course of the hearing the appeal panel determines that new evidence needs to be presented, the hearing may be adjourned for the panel to decide whether to consider the new evidence as relevant to the appeal or whether the case should be reheard by a capability hearing panel.

The outcomes available to the appeal panel are:

- To uphold the appeal
- To order that the case is reheard
- To reject the appeal in full
- To reject the appeal in part and impose a lower level of sanction
- To reject the appeal and impose a higher level of warning up to and including termination of contract

The decision of the appeal panel shall be put in writing to the doctor, copied to the case manager, to be received within 5 working days of the conclusion of the hearing. The decision of the appeal panel is final and binding. A copy will be held on the doctor's personal file for the duration of the sanction.

A written record will be kept of the appeal hearing detailing the capability issues, the doctor's defence or mitigation, the decision taken and the reasons for it.

11.3 Termination on Ground of Capability

Where a doctor appeals against dismissal they will not be paid beyond the date of termination of employment during the period of appeal. If the appeal is upheld or it is decided that the case should be reheard, the doctor should be reinstated and paid salary backdated to the date of termination of employment.

11.4 Termination of Employment with Performance Issues Unresolved

Where a doctor leaves Trust employment before disciplinary procedures have been completed, the investigation must be taken to a final conclusion in all cases and capability proceedings must be completed wherever possible, whatever the personal circumstances of the employee concerned.

Similarly, where a doctor's employment is terminated as a result of ill health, the investigation should be taken to a conclusion and capability proceedings completed wherever possible. If, in exceptional circumstances, a hearing proceeds in the absence of the doctor for reasons of ill-health, the doctor should have the opportunity to provide written submissions and/or have a representative attend in his absence.

Every reasonable effort must be made to ensure the doctor remains involved in the process. The Trust must make a judgement on the evidence available whether the allegations about the doctor's capability are upheld and take appropriate action such as requesting the issue of an alert letter, referral to the GMC or to the police.

11.5 Abuse of Children and Vulnerable Adults

Where a case involves allegations of abuse against a child or vulnerable adult, the Trust's Head of Safeguarding must be consulted.

12. Roles and responsibilities

12.1 Non-Executive Board Members

Non Executive Board Members will:

- Oversee cases as appropriate;
- Act as panel members at Capability Hearings and Appeal Hearings.

12.2 Chief Executive

The Chief Executive will:

- Be responsible for managing the exclusion process as set out in this policy and procedure;
- Appoint case manager when appropriate.

12.3 Medical Director

The Medical Director or Deputy Medical Director will:

- Ensure that this policy and procedure is followed;
- Assess conduct and capability cases;
- Authorise exclusions where appropriate;
- Appoint investigators;
- Act as panel member for Capability Hearings as appropriate;
- Make referrals to GMC as appropriate;
- Ensure that the relevant Responsible Officer is informed of all conduct and capability cases and all relevant information and evidence.

12.4 Relevant Responsible Officer

The Relevant Responsible Officer will respond appropriately when concerns exist.

12.5 Head of Human Resources

The Head of Human Resources (or nominated deputy) will:

- Assess cases;

- Receive requests for appeals and arrange for appeal hearings to take place;
- Make a quarterly report to the Board on disciplinary activity within the Trust;
- Take an overview of any problems or difficulties arising within the functioning of this policy and procedure;
- Ensure an annual equality impact assessment is completed.

12.6 Case Managers

Case Managers (as appointed under this policy) will:

- Manage conduct and capability cases in accordance with this policy;
- Manage exclusions as prescribed Guidance for Case Managers on Exclusion;
- Arrange for preliminary investigations to be carried out;
- Consult with National Clinical Assessment Service as appropriate;
- Review exclusions every four weeks and ensure that written notification of renewal is sent to the person on exclusion;
- Keep the Chief Executive and the Board informed of progress of cases.

12.7 Case Investigator

The Case Investigator (as appointed under this policy) will carry out investigations in accordance with this policy (see 4.5).

12.8 Medical Staff

Medical Staff will participate fully in capability and conduct processes as and when required in accordance with policy.

13. Training

Further information and advice is available on Ourspace and from the HR representatives.

14. Monitoring or audit

Managers are required to monitor the application of this policy and to provide exception reports to the assuring committee to the Trust Board if needed.

Representatives from trade unions formally recognised by the Trust and management representatives have drawn up this policy. Management as part of the review will provide meaningful statistics.

15. References

This policy has been drawn up with reference to current UK and European employment legislation and relevant national terms and conditions.

16. Appendices

16.1 Appendix A - Reporting Concerns Action Plan Template (Local Procedure)

Date of incident		**Date of discussion**	
Full name of Doctor		**Employee Number**	
Full name of Manager		**Managers Job title**	
Locality			

Summary of nature of reported concern

Establish nature of Concern (using Appendix C generic framework)	Low level				Moderate level				High Level			
✓ **Tick as appropriate**	Yes		No		Yes		No		Yes		No	
Actions required	Complete informal action plan Inform DMG				Complete informal action plan Inform DMG Or Escalate to DMG for agreement to formal remediation using NCAS templates				Discuss with MD or DMD about informal/formal and/or exclusion or Escalate to DMG for agreed formal remediation using NCAS templates			

Summary of discussion with Doctor

Informal Agreed Action Plan (only to be completed for low or some moderate level concerns)		
Action Point Number	**Action**	**Completion Date**

1		
2		
3		
4		
5		

Clinical/Medical Lead signature or valid nhs.net email address	
Doctors signature or valid nhs.net email address	
This form should now be upload onto PREP, sent electronically to the confidential DMG email address awp.DecisionMakingGroup@nhs.net and Clinical Director where it will be stored on a secure electronic file and shared with the Responsible Officer	

16.2 Appendix B – Generic framework to establish level of concern

Low level indicators	Moderate level indicators	High level indicators
Could the problem have been predicted?		
Unintended or unexpected incident		
What degree of interruption to service occurred?		
Incident may have interrupted the routine delivery of accepted practice (as defined by GMP) to one or more persons working in or receiving care		Significant incident which interrupts the routine delivery of accepted practice (as defined by Good Medical Practice) to one or more persons working in or receiving care
How likely is the problem to recur?		
Possibility of recurrence but any impact will remain minimal or low. Recurrence is not likely or certain	Likelihood of recurrence may range from low to certain	Likelihood of recurrence may range from low to certain
How significant would a recurrence be?		
	Low level likelihood of recurrence will have a moderate impact (where harm has resulted as a direct consequence and will have affected the natural course of planned treatment or natural course of illness and is likely or certain to have resulted in moderate but not permanent harm) Certain level likelihood of recurrence will have a minimal or low impact	Likelihood of recurrence may range from low to certain
How much harm occurred?		
No harm to patients or staff and the doctor is not vulnerable or at any personal risk	Potential for harm to staff or the doctor is at personal risk A member of staff has raised concerns about an individual which requires discussion and an action plan	Patients, staff or the doctor have been harmed
What reputational risks exist?		
Organisational or professional reputation is not at stake but the concern needs to be addressed by discussion with the practitioner.	Organisational or professional reputation may also be at stake	Organisational or professional reputation is at stake
Does the concern impact on more than one area of practice?		
Concern will be confined to a single domain of Good Medical Practice	Concern affects more than one domain of Good Medical Practice	May include a serious untoward incident or

May include one of following: clinical incidents, complaints, poor outcome data which requires discussion and perhaps action	**May include one or more of following: clinical incidents, complaints, poor outcome data which requires discussion and perhaps action**	**complaint requiring a formal investigation This includes criminal acts and referrals to the GMC**
Which factors reduce levels of concern?		
De-escalation from moderate to low: Reduction to low or minimal impact Reduction in the likelihood of recurrence Evidence of completion of effective remediation	**De-escalation from high to moderate Reduction in impact to moderate Reduction in the likelihood of recurrence Evidence of insight and change in practice**	
Which factors increase levels of concern?		
	Escalation from low to moderate Increase in impact to moderate Likelihood of recurrence is certain No evidence of insight or change in practice	**Escalation from moderate to high Increase in impact to severe Increase in likelihood of recurrence No evidence of remorse, insight or change in practice**
How much intervention is likely to be required?		
Insight, remorse and change in practice will be evident Remediation is likely to be achieved with peer support The individual doctor has no other involvement in incidents or has outstanding or unaddressed complaints/concerns The remediation plan should take no longer than four weeks to address	**Insight, remorse and change in practice may be evident Remediation is likely only to be achieved through specialist support The remediation plan should take no longer than three months to address**	**Remediation will only to be achieved through specialist support The remediation plan will take upwards of three months to address and may include a planned period of supervised practice**

16.3 Appendix C - Template for Preliminary Investigations (Informal Procedure)

Date of alleged incident		**Case Manager**	
Full name of Doctor		**Full Name of NED overseeing case**	
Full name of Manager		**Case Investigator**	
Locality			

Date investigation started		**Date investigation completed**	

Allegation	**Supporting Information**	**Evidence enough for further investigation (Y/N)**

Conclusion

Case Investigator Name	**Signature**	**Date**

This report should now be sent electronically to the confidential Case Management system where it will be stored on a secure electronic file and shared with the Case Manager

16.4 Appendix D – Formal Investigation Report Template (Formal Procedure)

Investigation Report

Private & Confidential

Date of alleged incident		**Case Manager**	
Full name of Doctor		**Full Name of NED overseeing case**	
Full name of Manager		**Case Investigator**	
Locality			
Date investigation started		**Date investigation completed**	

Report of the Investigation into allegations of
……..……
……..

1. Allegations/Introduction
1.1 Summarise the nature of the allegation(s) specifying details such as date/place etc.

2. Background
Only information relevant to the case should be included and this will differ from case to case e.g.
2.1 Responsibilities of post holder
2.2 Procedures/policies/codes of practice etc.
2.3 Diagrams/floor plans to show where incident happened
2.4 Rota/timesheet to show who was on duty

Note: Confidential patient notes/documentation must not be included that can identify a patient. If required, this evidence can be made available for reference on the day of the hearing. If it is essential to include notes in the report any identifiable information must be deleted i.e. name/address

Reference should not be made to previous incidents of misconduct which have not been investigated in the past or which have been expunged from the employees record.

3. Investigation Process/Methodology
3.1 State whether informal stages utilised e.g. mediation
3.2 Confirm policy used for investigation
3.3 Schedule of who was interviewed, when and their position
3.4 Documents (letters, emails etc) obtained
3.5 Diagrams/floor plans relevant to the allegation(s) investigated

4. Presentation of Findings
If this section refers to other documents these should be included as appendices such as letters, emails, policies e.g. Breach of confidentiality – refer to section within policy/document and provide copy as appendix
4.1 Chronological order of events

4.2 Take each allegation in turn and present all relevant evidence that supports or contradicts the allegation

5. Evaluation of Evidence

Identify if there is more than one allegation, list and whether each is supported by evidence, contradicted by evidence, no evidence either way is found, conflicting evidence found etc.

6. Conclusions/Observations

This is a brief section outlining the conclusions the investigating officer has drawn from the findings.

7. Appendices

Copies of agreed interview notes/statements for all those interviewed and any other relevant documents

This report should now be sent electronically to the Case Management system where it will be stored on a secure electronic file and shared with the Case Manager

Version History

Version	Date	Revision description	Editor	Status
1.0	01 May 2007	Version approved by the Board on 2007-05-01	LN	Approved
1.1	01 Sept 2009	Amendment to passages concerning representation following adoption of Policy Concerning Staff Accompaniment. No change in review date.	AM	Approved
2.0	07 Sept 2010	Approved at Quality and Health Care Governance Committee Meeting	CS	Approved
2.1	06 Mar 2012	Admin review approved at Quality & Healthcare Governance Committee	KE	Approved
3.0	12 Sept 2013	3 year review of policy with minor amendments agreed at LNG on 26 July 2013, GNG on 30 July 2013 and ESEC on 12 September 2013.	TW	Approved
3.1	1 June 2014	Administrative updates made to reflect Trust structures	SJ	Approved
3.2	July 15	Updated procedures	SM	Draft
4.0	6 August 2015	Approved by Employee Strategy and Engagement Committee	HD	Approved
4.1	6 September 2018	Extended to 30 September and marked as under review	JW	Approved
4.2	22 July 2019	Extended until March 2020	HRD	Approved