• Procedures for initiating a referral to
  I. A Professional Regulatory Body and
  II. The Independent Safeguarding Authority

• Requesting the DHSSPS to issue an ALERT

April 2011

These procedures have been approved by the Southern HSC Trust’s Executive Directors for Nursing / AHP and Social Work, the Medical Director, the Director of Pharmacy and the Director of Human Resources

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1.0 INTRODUCTION

It is the policy of the Southern HSC Trust that all professional health and social care staff who have a statutory requirement to be registered in order to practice must hold a valid registration at all times. The Trust also has a responsibility to inform the regulatory body when concerns arise about an individual’s conduct, capability or fitness to practice.

2.0 TRUST PROCEDURES

The aims of the procedures are to ensure that:

- Clear and consistent communication and decision making processes are in place and applied by Trust staff when considering or making a referral to a regulatory body.

- Roles and responsibilities of Trust line managers, professional supervisors, Executive Directors, Medical Director, delegated officers, and Human Resources staff are defined in relation to initiating a referral to a regulatory body.

- Trust staff are clear as to their responsibilities should a concern arise about the conduct or practice of a health or social care practitioner.

- Recording processes are in place for documenting all communications, decisions and referrals.

- Support mechanisms are in place for Trust staff who may be required to participate in investigations or hearings undertaken by a regulatory body.

3.0 SCOPE OF THE PROCEDURES

The procedures apply to all Trust staff where concerns are raised about health and social care staff who are required to be registered in order to practice.

Annex A sets out arrangements for the referral of a health and social student on placement within the Trust.

Annex B sets out the Trust’s responsibility regarding a health and social care registrant who is an employee of the Trust but is being referred by a person not employed by the Trust.

4.0 WHO ARE THE REGULATORY BODIES?

A number of bodies regulate those professional health and social care staff who have a statutory requirement to be registered in order to practice. These include:

- The Nursing and Midwifery Council (NMC)  www.nmc-uk.org
- The Northern Ireland Social Care Council (NISCC)  www.niscc.info/
- The Health Professions Council (HPC)  www.hpc-uk.org
- The General Medical Council (GMC)  www.gmc-uk.org
- The General Dental Council (GDC)  www.gdc-uk.org
- The Pharmaceutical Society of Northern Ireland  www.psni.org.uk

Each of the bodies above regulates a specific professional group or groups of practitioners and a summary on referral processes in respect of each body is outlined in Appendices 2 to 7. Further information can also be obtained from the relevant website or directly from the regulatory body.

Where a line manager or professional supervisor considers that a practitioner should be referred to a regulatory body, advice should be sought in the first instance from the Trust's relevant Assistant Director for Professional Governance and / or Workforce Development and Training.

5.0 CONSIDERING A REFERRAL TO A REGULATORY BODY

Occasions when a registrant’s conduct, capability or fitness to practice is such that referral to a regulatory body should be considered are:

5.1 Probationary Periods
- Where an individual’s employment is terminated during the course of a probationary period,
- Where an individual resigns from their post during the probationary period and where concerns have been raised about performance and/or conduct

5.2 Capability / Clinical Performance
- Where it becomes evident that an individual’s practice poses a risk of harm to patients, clients and / or others

5.3 Conduct at Work
- Where an individual’s conduct is, or is likely to be, in breach of the regulatory body’s professional code of conduct, often decided at the conclusion of a disciplinary or capability hearing

5.4 Conduct Outside of Work/Criminal Charges
- When criminal charges are brought against a registrant
- When a registrant is convicted of a criminal offence

5.5 Health
- When a registrant’s ill health poses a risk to patients, clients or themselves
- When a registrant’s ill health impacts on their ability to carry out their role

5.6 Resignation
- When a registrant resigns from their position while concerns about their conduct or fitness to practice are being managed or investigated.

Note: where a practitioner is registered with NISCC or HPC, a referral must be made when the practitioner is suspended, even though the outcome of any disciplinary investigation or other process may be still pending.

6.0 RESPONSIBILITIES

The specific responsibilities of a range of Trust employees considering a referral to a regulatory body are set out below.
6.1 Individual Staff Members

All staff have a responsibility to draw to the attention of their line manager and/or professional supervisor any concerns they may have about a colleague’s conduct, capability or fitness to practice, particularly where they believe patients/clients and others may be at risk of harm. **An individual staff member should not refer a colleague directly to a regulatory body but must raise their concerns with their line manager and professional supervisor who will seek advice from the Trust’s relevant Assistant Director for Professional Governance and/or Workforce Development and Training.**

Trust staff who are concerned about the conduct, capability or fitness to practice of someone who is not a Trust staff member, should raise concerns with their line manager and/or professional supervisor in the first instance, see Annex A.

6.2 Line managers and Professional Supervisors

When an line manager and/or a professional supervisor becomes aware of concerns about a practitioner’s conduct, capability or fitness to practice, he/she must discuss the concerns with the Trust’s relevant Assistant Director for Professional Governance and / or Workforce Development and Training and, where appropriate, seek the advice of the Trust’s Employee Engagement and Relations (EER) Department.

6.3 Assistant Directors for Professional Governance and / or Workforce Development and Training (Nominated Deputies to the Executive Director)

The Assistant Directors for Professional Governance and / or Workforce Development and Training are the nominated deputies working to, and on behalf of, the Executive Directors. Their role includes providing resolved advice on professional governance matters including legislation, rules, regulation and guidance pertaining to the professions. As such, the relevant Assistant Director for Professional Governance and / or Workforce Development and Training must be advised as soon as possible when a concern is raised that a practitioner’s conduct or fitness to practice is such that a referral to the regulatory body is being considered. Following the Executive Director’s authorisation to refer, the Assistant Director for Professional Governance will quality assure the referral form before being forwarded by the Head of Employee Engagement and Relations (EER) to the regulatory body.

On behalf of the Executive Director, the Assistant Director for Professional Governance will collate, analyse and monitor information on all referrals of registrants in their respective professions made by the Trust or others and on their progression through the various investigation, hearing and outcome stages and report on any subsequent impact on the profession(s) and the Trust.

6.4 Executive Director (Nursing / AHP and Social Work)

**Only an Executive Director, or in his absence the nominated deputy, may authorise the referral of a Nurse, Midwife, AHP or Social Work registrant employee to the relevant regulatory body on behalf of the Trust.** In the Southern HSC Trust the authorising Executive Director is :-

- Executive Director for Social Work - NISCC (NI Social Care Council)
- Executive Director for Nursing and AHPs - NMC (Nursing & Midwifery Council)
- Executive Director for Nursing and AHPs - HPC (Health Care Professions Council)
The Executive Director will advise the relevant Trust Operational Director of any decision to refer to a registrant to a regulatory body, although the Operational Director will probably already be aware that Trust concerns have been raised about a registrant in his/her directorate and that a referral was being considered.

In order to provide appropriate assurance to the Chief Executive and Trust Board, the Executive Director, and nominated deputy, must be aware of all registrants referred in his area of responsibility, the progress through the various referral stages, the outcome of any hearings and any subsequent impact on the profession(s) and the Trust. The Executive Director will delegate the collation, analysis, monitoring and reporting of such information to his Assistant Director/s for Professional Governance.

6.5 Medical Director

The Medical Director is the responsible officer and has a duty to ensure that all doctors and dentists employed by the Southern HSC Trust are fit to practise. He/she is accountable for ensuring that systems are in place to record and collate all the necessary information, including a record of any practice undertaken by the doctor or dentist outside of the organisation. When a concern is raised about a doctor or dentist's performance, the responsible officer, in consultation with HR and others, will decide whether local processes or remediation are appropriate or whether it is serious enough to warrant a referral to the General Medical Council (GMC) or General Dental Council (GDC) on the grounds of fitness to practise.

6.6 Director of Pharmacy

The Director of Pharmacy is the responsible officer for all pharmacy staff employed in the Southern HSC Trust. When a concern is raised about a registered pharmacist's performance, the Director of Pharmacy will, in consultation with HR and others, decide whether local processes or remediation are appropriate or whether it is serious enough to warrant a referral to the Pharmaceutical Society of Northern Ireland (PSNI) on the grounds of fitness to practise.

6.7 Head of Employee Engagement and Relations (EER) and Employee Relations Case Manager

The Head of Employee Engagement and Relations will be responsible for processing onwards referrals to the relevant regulatory body once authorised by the relevant Executive Director (or nominated officer) and will be the Trust’s point of contact for the regulatory body.

An Employee Relations Case Manager will be allocated to assist the line manager and /or professional supervisor in collating information needed to support a referral. The EER Case Manager will be responsible for convening a meeting of the relevant Executive Director and his Assistant Director for Professional Governance, the line manager and professional supervisor (where different person), and others as appropriate, to share information and evidence relevant to the proposed referral. Further to this meeting, the EER Case Manager must ensure that the decision on whether or not to refer is clearly documented on the employee’s HR file and record all other communications and decisions made at the various stages in the referral process.

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2 Confidence in Care – Guidance on the role of responsible officers for doctors and employers, DHSSPS February 2011
7.0 PROCEDURE FOR INITIATING A REFERRAL TO A PROFESSIONAL REGULATORY BODY

The procedure for initiating a referral of a nurse, midwife, AHP or social worker registrant employed by the Southern HSC Trust to a regulatory body is summarised in the flowchart at Appendix 1.

7.1 Referring registrants to the NMC, HPC and NISCC

The procedure sets out 4 key stages i.e.,

1. Preliminary discussion on the need to refer;
2. Preparation of information for Executive Director (or nominated deputy);
3. Authorisation by Executive Director (or nominated deputy); and

1. Preliminary discussion on the need to refer

Line managers and professional supervisors will, most likely, have discussed the need to refer a registrant as part of one or more the following Trust processes or triggers as outlined in paragraph 5.0 above, e.g.,
- Disciplinary proceedings, including the suspension, relocation or redeployment of a practitioner
- Capability proceeding
- Managing staff wellbeing
- Review of probationary period
- Information received on criminal proceedings
- Information from others outside the Trust
- Information from others inside the Trust

- Note, that where a practitioner is registered with NISCC or HPC, a referral must be made at the point at which the practitioner is suspended, even though the outcome of a disciplinary investigation may be still pending.

- In other instances where there is clear evidence of gross misconduct³, and/or where the practitioner poses a potential risk to others, there may be a need to refer immediately even though the outcome of a disciplinary investigation may be still pending. In such cases, consideration must also be given to the need to refer to the Independent Safeguarding Authority (ISA) and / or to make an application to the DHSSPSNI to issue an ALERT in respect of a health care professional; both of which must be authorised by the relevant Executive Director or the Medical Director.

Where concern is raised about a nurse/midwife, AHP or social work practitioner’s conduct or fitness to practice, the initial discussion must include the relevant Assistant Director for Professional Governance / Workforce Development and Training, see para 6.2. However, should a Disciplinary, Capability or other Panel subsequently consider that a referral is not necessary, the relevant Executive Director and Assistant Director for Professional Governance must be advised of the Panel’s reasons by the Chair as soon as possible after the conclusion of the hearing.

³ Gross misconduct is defined as ‘…a serious breach of discipline which effectively destroys the employment relationship, and/or confidence which the Trust must have in an employee or brings the Trust into disrepute’ SHSCT Disciplinary Procedures, September 2007.
2. Preparation of information for Executive Director (or nominated deputy)

Although Human Resources is involved in Trust procedures such as, disciplinary or capability, the referral to a regulatory body is a separate, even though related, process. As such, the line manager will also need to contact the EER Department who will assign an EER Case Manager to assist in collating information needed to support a referral. The EER Case Manager will convene a meeting of the relevant Executive Director and his Assistant Director for Professional Governance, the line manager and professional supervisor (where different person), and others as appropriate, to share information and evidence relevant to a proposed referral.

3. Authorisation by Executive Director (Nursing / AHP or Social Work)

Only an Executive Director, or in his absence the nominated deputy, may authorise the referral of a Nurse, Midwife, AHP or Social Work registrant employee to the relevant regulatory body on behalf of the Trust. Further to his decision, the Executive Director will inform the relevant operational Director of any decision to refer, although the Director will already have been aware, through discussion with directorate senior managers, that Trust processes were applied and that a referral was being considered.

When the Executive Director authorises a referral, the Employee Engagement and Relations (EER) Case Manager, the line manager and/or the professional supervisor (where different person), will complete the appropriate referral form and send to the Executive Director and the Assistant Director for Professional Governance who will quality assurance the referral form before it is forwarded to the regulatory body by the Head of EER.

4. Documentation and Communication post-referral

Further to the authorisation meeting, the EER Case Manager must:

- Ensure that the decision on whether or not to refer is clearly documented on the employee’s HR file, and
- Advise the employee in writing that a referral has been made.

The Head of EER will be the Trust’s point of contact for all correspondence with the regulatory body in respect of the referral and any issues of concern which arise must be notified to the EER Head of Service and the Executive Director and nominated deputy.

The Head of EER must also ensure that there is a record all communications and decisions made at the various stages in the referral process and will notify the line manager of any further actions to be taken by the regulatory body.

7.2 Referring Doctors to the GMC and Dentists to the GDC

The procedure for initiating a referral of a medical or dental registrant employed by the Southern HSC Trust to a regulatory body is summarised in the flowchart at Appendix 2.

The Medical Director/responsible officer will liaise with the GMC or GDC on matters connected with a doctor or dentist’s fitness to practice. In respect of doctors in Northern Ireland this liaison builds on the current arrangements where contact is made through the local GMC office and is currently described in Maintaining High Professional Standards in the Modern HPSS4. The Medical Director/responsible officer will follow the guidance set out in the Maintaining High Professional Standards document as interpreted by the Southern HSC Trust, see Appendix 9.

The Medical Director/responsible officer will ensure that processes are in place for the supervision and compliance with conditions imposed by the GMC or GDC in relation to the doctor or dentist’s practice.

7.3 Referring Pharmacists to the Pharmaceutical Society of Northern Ireland (PSNI)

The Director of Pharmacy will liaise with the Registrar of the Pharmaceutical Society of Northern Ireland (PSNI) on matters connected with a registered pharmacist’s fitness to practice. The Registrar will decide who needs to be involved in any investigation and will liaise directly with the Trust’s Director of Pharmacy.

The Director of Pharmacy will liaise with the Head of Employee Engagement and Relations and will ensure that processes are in place for the supervision and compliance with conditions imposed by the Pharmaceutical Society of Northern Ireland in relation to the pharmacist’s practice.

The Pharmaceutical Society of Northern Ireland are currently undertaking a review of their referrals process and implementing a new fitness to practice process and further details on this process will be added to this document at a later date. The Society is also considering the registration of Pharmacy Technicians, as happens in the rest of the UK.

8.0 REFERRAL TO THE INDEPENDENT SAFEGUARDING AUTHORITY (ISA)

Referral to the Independent Safeguarding Authority (ISA) is a statutory requirement where there are concerns that a registrant, including those being referred to a regulatory body, presents a risk to children or vulnerable adults. The decision to refer a registrant practitioner to the ISA must be authorised by the relevant Executive Director / Medical Director. Similarly, where an employee is not required to be registered by a regulatory body but provides direct care and is aligned to a professional group, the relevant Executive Director will authorise the referral to the ISA. The Employee Relations Case Manager must take account of the Trust’s Vetting and Barring Scheme policy and procedures when advising on a referral to ISA.

In instances where an employee is not required to be registered by a regulatory body and does not provide direct care, the decision to refer to the ISA will be made by the relevant operational Director with advice from Head of Employee Engagement and Relations.

9.0 APPLYING TO THE DHSSPSNI TO ISSUE AN ALERT

The issuing of an ALERT is also a statutory requirement and is designed to safeguard the public from a practitioner who has been dismissed, or has resigned, as a result of serious concerns. This notification circulated via the DHSSPSNI alerts other employers that this practitioner may pose a risk if employed elsewhere.

The decision to apply to the DHSSPSNI to issue an ALERT must be authorised by the relevant Executive Director or Medical Director. Where an employee is not required to be registered by a regulatory body but provides direct care and is aligned to a professional group, the relevant Executive Director will authorise the application to the DHSSPSNI. The Employee Relations Case Manager must take account of the Trust’s Vetting and Barring Scheme policy and procedures when advising on an application to the DHSSPSNI.

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5 DHSSPS HSC JNF (1) Issue of ALERT letters for Health Care Professional under investigation by HSC Employers, 19 April 2010
In instances where an employee is not required to be registered by a regulatory body and does not provide direct care, the decision apply to the DHSSPSNI to issue and ALERT will be made by the relevant operational Director with advice from Head of Employee Engagement and Relations.

10.0 SUPPORT FOR TRUST STAFF

There may be occasions when Trust employees are required to participate in investigations and / or hearings undertaken by a regulatory body. This can be a stressful process for employees. A member of staff who is required to participate in an investigation or act as a witness for a regulatory body can seek support from their line manager, professional supervisor, trade union representative or Assistant Director of Professional Governance. The employee should be offered the services of the Trust’s Occupational Health Department and Care Call should they require this.

The Head of EER is the point of contact for the regulatory body and any correspondence received by Head of EER the will be copied to the relevant Assistant Director for Professional Governance. It will be the responsibility of the EER Case Manager to notify the Trust employee and their manager that a request for their participation has been made by a regulatory body and copy to Assistant Director of Professional Governance. However, the regulatory body or its representatives may make direct contact with staff in order to progress the investigation or hearing.

11.0 RECORDING DECISIONS REGARDING A REFERRAL

All staff engaged in the referral process are responsible for keeping and recording relevant information in line with Trust and professional record keeping standards and the Data Protection Act. However, the Employee Engagement and Relations Department will be responsible for ensuring a robust system is in place to record all decisions and retain documentation in respect of referrals made to regulatory bodies.

The Executive Director or Assistant Director for Professional Governance will retain all documentation relating to a referral of a registrant who is not employed by the Trust.

12.0 MONITORING OF COMPLIANCE WITH THIS PROCEDURE

All staff engaged in the referral are responsible for complying with these procedures and contributing to the monitoring arrangements. It is the responsibility of the Head of Employee Engagement and Relations to monitor compliance with this procedure every six months.

13.0 FURTHER INFORMATION ON THIS PROCEDURE

If you require any clarification or information on this procedure, please contact the relevant Assistant Director for Professional Governance and/or Workforce Development and Training or the Trust’s Head of Employee Engagement and Relations. Please see Trust intranet for current contact details.
14.0 ASSOCIATED DOCUMENTS

This procedure should be read in conjunction with the following documents:

- Data Protection Act 1998
- DHSSPS Confidence in Care – Guidance on the role of responsible officers for doctors and employers, DHSSPS, February 2011
- DHSSPS HSC JNF (1) 19 April 2010 Issue of ALERT letters for Health Care Professional under investigation by HSC Employers
- DHSSPS 2001, Best Practice, Best Care: a Framework for setting standards, delivering services and improving monitoring and regulation in the HPSS
- GMC 2006, Good Medical Practice Framework for Assessment and Appraisal (GMP)
- HPC 2008, Standards of Conduct, Performance and Ethics, July (same for all health professions regulated by HPC)
- HPC Standards of Proficiency (HPC publish a separate set of standards for each profession they regulate)
- HSS (TC8) 6/98 – Issue of Alert Letters about Hospital and Community Medical and Dental Staff Under Investigation by the HPSS
- Maintaining High Professional Standards in the Modern HPSS – A framework for the handling of concerns about doctors and dentists in the HPSS, November 2005
- NISCC 2010, Procedure for Registration and Regulation of the Social Care Workforce
- SHSCT 2011, Procedure for the Validation and Monitoring of Professional Registration of Nurses, Midwives and Specialist Community Public Health Nurses, January
- SHSCT 2010, Trust Guidelines for Handling Concerns about Doctors’ and Dentists’ Performance, September
- SHSCT 2009, Procedure for the Validation and Monitoring of AHP Professional Registration, SHSCT Vulnerable Adult procedures
- SHSCT 2008, Policy on the Validation and Monitoring of Professional Registration, December
- SHSCT 2008, Capability Procedure, September
- SHSCT 2007, Disciplinary Procedure, September
- SHSCT Procedure for Management of Sickness Absence
- Vetting and Barring Scheme Policy and Procedures, April 2010
ANNEX A

- REFERRAL OF A HEALTH OR SOCIAL CARE STUDENT ON PLACEMENT WITHIN THE TRUST

Nursing and Midwifery Students

Although under discussion with a view to change, currently nursing and midwifery students are not required to be registered with NMC. However, concerns about an individual’s conduct, capability or fitness to practice can arise during the course of their study and/or student placements. When such concerns come to the attention of the Trust, it will be necessary to inform the Assistant Director of Nursing Workforce Development and Training, as the nursing and midwifery education lead for the Trust, who will involve the education provider. It is the responsibility of the relevant education provider, in conjunction with the Trust, to determine if a referral to the regulatory body is required.

Allied Health Professions Students

AHP students are not required to be registered with HPC, however, the Health Professions Council sets out information on standards of conduct, performance and ethics for registrants and those applying to be registered, i.e., students, entitled ‘Guidance on conduct and ethics for students’ (December 2009). Where concerns about a students conduct, capability or fitness to practice arise during the course of their study and/or practice placements within the Trust, it will be necessary for the Trust senior nominated Professional Student Placement Supervisor, for the specific AHP discipline concerned, to involve the education provider and inform the Assistant Director of AHP Governance, Workforce Development and Training as the AHP Education Lead for the Trust. The Education provider will lead on the management of such situations and discuss/determine the relevant outcomes with the reporting Trust.

Social Work / Social Care Students

For concerns about Social Work Students on placement with the Trust it will be necessary for the Practice Teacher and the Education Provider (Tutor) to initiate the N.I. Degree in Social Work Partnership protocol ‘Management & Reporting Process in Relation to Factors effecting Practice Learning Progress’. This protocol should be implemented in consultation with the Trust Practice Learning Coordinator. Any investigation of concerns must take account of University’s procedures relating to Fitness to Practice, NISCC procedures relating to registration and Trust Policy and Procedures relating to the practice learning site. Should concerns be confirmed it is the responsibility of the Education Provider to instigate its internal ‘Fitness to Practice Procedures’ and/or refer the case to NISCC.

If the student is employed by the Trust as a Social Care Worker or as a Trainee Social Worker, responsibility for informing NISCC will be agreed. Students also hold a responsibility to inform NISCC of any changes to their circumstances.

- INITIAL APPLICATION TO WORK IN THE TRUST

Concerns may arise during the initial recruitment and selection process of a job applicant. This may be via previous employment references, disclosures or non-disclosures on application forms, through enhanced disclosure checks or as a consequence of a pre-employment medical check. The Recruitment and Selection Department, or the Trust manager involved in the recruitment and selection process, should contact the Assistant Director for Professional Governance to discuss any concerns they may have about the applicant’s fitness to practice. The Assistant Director for Professional Governance will discuss the issue with the Executive Director and proceed as for registrants employed outside the Trust.
ANNEX B  REFERRAL OF A TRUST EMPLOYEE BY OTHERS OUTSIDE THE TRUST

There may be occasions where referral of a Trust employee is made to a regulatory body by a person outside the Trust. The regulatory body will contact the Trust and ask that the matter is investigated or for details of any investigation already carried out.

The Trust must investigate the circumstances around any referral made to the regulatory body by a person outside the Trust and must advise the Medical Director or relevant Executive Director, Assistant Director for Professional Governance and Head of EER of the referral and the outcome of any investigation. The Trust may need to consider its own actions in relation to the employee. The line manager should ensure that the staff member subject to the referral and those involved in providing information for the investigation receive advice and support as per section 10.
PROCEDURE FOR INITIATING A REFERRAL (see Section 7.0)

1. **Preliminary discussion on the need to refer**
   - is usually part of one or more processes, e.g.,
     - Disciplinary / Capability
     - Managing staff wellbeing
     - Probationary review
     - Criminal proceedings
   - Where suspended employee is registrant on HPC or NISCC

2. **Preparation of information for Executive Director**
   - An assigned EER Case Manager will:
     - Assist manager / professional supervisor in collating relevant information
     - Set up a meeting with the Executive / Medical Director, AD Prof Gov, line manager and Professional Supervisor, others as appropriate

3. **Authorisation by Executive / Medical Director**
   - Executive Director authorises referral
   - Advises Director of referral
   - EER Case Manager, the line manager and/or the professional supervisor will complete referral form and sent to AD Prof Gov
   - AD for Prof Gov quality assures the Referral form

4. **Documentation and Communication post-referral**
   - Head of EER contact point for correspondence
   - Ensures all communications and decisions recorded
   - Undertakes audit of compliance with procedure
   - EER Case Manager must
     - Ensure that the decision is clearly documented
     - Must advise the employee in writing of referral

Audit of procedure implementation & compliance

Referral Route Communication
Appendix 2

DHSSPS Confidence in Care – Guidance on the role of responsible officers for doctors and employers, DHSSPS, February 2011, page 10
THE NURSING AND MIDWIFERY COUNCIL (NMC)

is the UK regulator for the following professions:-
- Nurses
- Midwives
- Specialist Community Public Health Nurses

The NMC’s powers are detailed in the Nursing and Midwifery Order 2001 and its work is governed by this and other associated legislation.

Aim:
The aim if the Council is to safeguard the health and wellbeing public by registering all nurses and midwives and ensuring that they are properly qualified and competent to work in the UK. The NMC also sets the standards of education, training and conduct that nurses and midwives need to achieve in order to deliver high quality health care consistently throughout their careers. It provides guidance and advice to help nurses and midwives to keep their skills and knowledge up to date and to uphold the standards of their professional code.

Professional Code:

When to Refer:
The NMC has developed guidance for employers on how and when to refer a registrant. Essentially a person must be deemed Fit to Practise before s/he is admitted to the NMC’s register which allows a registrant to practice without restrictions. If an employer considers that a registrant’s fitness to practise is impaired, i.e., an individual’s conduct, practice or health is impaired, then the employer must make a referral to the NMC in order that the public remains protected.

A referral will usually be made by an employer following the completion of an internal disciplinary or capability proceeding and prior to the appeal of such proceedings. However, in cases of very serious misconduct or practice issues a referral may be made prior to the conclusion of an internal process.

Reasons for Referrals:
A referral may be made as a result of: -
- Misconduct
- Lack of competence
- A conviction or caution (including a finding of guilt by a court martial)
- A physical or mental health issue which affects fitness to practice
- A finding by any other health or social care regulator or licensing body that a registrant’s fitness to practice is impaired.
- A fraudulent or incorrect entry in the NMC register.

How to Refer:
Employers should refer to the NMC’s Advice and Guidance for Employers of Nurses and Midwives when making a referral. This document is available from the NMC website www.nmc-uk.org and a referral form is also available from this website.

Action Taken by NMC:
Once a referral is made to NMC the matter is referred to an Investigating Committee. A copy of the allegations and supporting documentation will be sent to the registrant who will be invited to submit a written response to the allegations.
If NMC consider that there is a case to answer, a hearing will take place to decide on appropriate action in respect of the registrant’s future practice. Options available to the Panel are:

- A **Striking Off Order** where the registrant’s name is removed from the NMC register for a period of time decided by the Panel. Where the registrant is on more than one part of the register, s/he may be removed from one or all parts depending on the decision of the Panel.

- A **Suspension Order** where the registrant’s name is suspended from the NMC register for a period of time decided by the Panel. Where the registrant is on more than one part of the register, s/he may be suspended from one or all parts depending on the decision of the Panel.

- A **Conditions of Practice Order** where specific conditions are placed on the registrant’s practice, such as prohibited from working with a certain patient group, supervised practice or re-training. The Conditions of Practice will apply for a period of time decided by the Panel. Where the registrant is on more than one part of the register, the conditions of practice may apply to practice in one or all parts depending on the decision of the Panel.

- A **Caution Order** where the registrant is required to advise his/her current or subsequent employer that a caution has been placed on his/her practice for a period of time decided by the Panel.

- In some cases the Panel may decide to take **No Further Action**.

In all cases the registrant will be advised of the reasons for the Panel decision and these will be published on the NMC website.

In advance of a full hearing the NMC may, in some circumstances, place an **Interim Suspension Order or Interim Conditions of Practice Order** on the registrant’s practice which may limit or suspend the registrant from practicing until the full hearing on the allegations has concluded.
The Northern Ireland Social Care Council (NISCC)  
www.niscc.info/

Regulatory Body for the Social Care Workforce
Registration is currently open for:
- Social Workers
- Team Leaders in Residential Child Care
- Residential Child Care staff
- Heads of Residential Homes and Day Centres
- Domiciliary Care Managers
- Adult Residential Care Staff

A final phase of registration running from 2010 will include:
- Social Care staff in Day Care
- Social Work Assistants
- Domiciliary Care Workers

Aim:
To ensure those staff working in Social Care are suitably trained, professional in their practice and accountable for the work they do.

Professional Code:
The Code of Practice for Social Care Workers
The Code of Practice for Employers of Social Care Workers

When to Refer:
The Trust is required to refer matters of misconduct of registered and unregistered social care workers when:
- An individual is dismissed, regardless of any intention to appeal
- A worker resigns during a disciplinary investigation
- A worker is suspended pending the outcome of a disciplinary investigation
- The Trust becomes aware of a criminal charge or conviction against the worker
- Any other circumstance which the employer feels may have a bearing on the workers registration.

A referral must be made by the Trust at the point when a social care worker is suspended.

How to Refer:
There are 2 forms available from the NISCC website for referral of registered or unregistered social care workers. The appropriate form should be used.

Action Taken by NISCC:
Once a referral is made to NISCC there are 5 stages of the ‘Conduct Process’:
- Stage 1 – Preliminary Enquires - to determine if there is a case to answer
- Stage 2 – Preliminary Proceedings Committee – to determine if the matter should go to hearing. An interim suspension order may be made at this stage.
- Stage 3 – Conduct Hearing – usually held in public to determine if it is considered the misconduct occurred.
- Stage 4 – Sanctions – may be:
  - no case to answer
  - Admonishment – a public caution for a period of 5 years
  - Suspension – removal from the register for up to 2 years
  - Removal from the Register – a permanent sanction
- Stage 5 – Appeal
Appendix 5

The Health Professions Council (HPC)  www.hpc-uk.org/

Regulatory Body for:
- Arts Therapists
- Biomedical Scientists
- Chiropodists/Podiatrists
- Clinical Scientists
- Dieticians
- Hearing Aid Dispensers
- Occupational Therapists
- Operating Department Practitioners
- Orthoptists
- Paramedics
- Physiotherapists
- Practitioner Psychologists
- Prosthetists/Orthotists
- Radiographers
- Speech and Language Therapists

Aim:
To protect the health and wellbeing of service users by setting standards that health professionals must meet including education, training and continuing good practice, conduct and behaviour, professional skills, health and character. This is achieved through;

- maintaining and publishing a public register of properly qualified members of the professions;
- approving, upholding and auditing high standards of education and training, and continuing good practice;
- investigating complaints and taking appropriate action;
- working in partnership with the public, and a range of other groups including professional bodies

Professional Code:
HPC Standards of Conduct, Performance and Ethics, July 2008 *(these are the same for all health professions regulated by HPC)*
HPC Standards of Proficiency *(HPC publish a separate set of standards for each profession they regulate)*

When to Refer:
HPC only consider complaints when there are concerns about a registrants fitness to practice and whether this is "impaired" (negatively affected) by

- misconduct
- a lack of competence
- a conviction or caution for criminal offences
- a registrants physical or mental health
- a fraudulent or incorrect entry to the HPC Register
- a determination (a decision) made by another regulator responsible for healthcare
- if convicted/cautioned/suspended or placed under a practice restriction by employer
- dismissed by employer due to serious misconduct
- if registrant is downgraded from registrant status
The HPC will accept a referral from the Trust ‘before, during or after any action which (the employer) takes to help sort out a problem’. HPC will work with employers on a collaborative basis wherever possible, and will discuss matters on a case-by-case basis. HPC may also wait until the conclusion of any internal disciplinary process before taking action.

How to Refer:
The HPC have produced a guidance document which sets out the information required from the Trust when a referral is being made called ‘The Fitness to Practise process’ information for employers and a guidance document for members of the public called ‘How to raise a concern’. These documents are available from the HPC website www.hpc-uk.org

A referral can be forwarded in the following ways:
By sending written information about the concerns to the Fitness to Practice Department, HPC, Park House, 184 Kennington Park Road, London, SE11 4BU. A referral form entitled Reporting a concern to HPC is available on the HPC website and may also be used. For those who are unable to put their concerns in writing HPC will take a statement over the telephone and send to the referrer to check for accuracy and signing.

Action Taken by HPC:
The process followed by HPC when a referral is made is set out in the document ‘The Fitness to Practise process’ (pages 7-11) available on the HPC website.
Once HPC decide to consider a complaint they will write to the registrant about whom the compliant was raised to tell them about the complaint enclosing copies of all documents.
Once a referral is made to HPC, and it is found that a registrant’s fitness to practise is impaired, the panels have the following options available:
- Take no further action
- Impose a caution order
- Place a “conditions of practice order”
- Suspend Registration (this may not be for longer than one year)
- ‘Striking off Order’ i.e., remove the registrant from the register

Related documents on the HPC website at www.hpc-uk.org
- How to raise a concern about a registrant
- The fitness to practice process
- Information for witnesses
- What happens if a compliant is made about me?
- Continuing professional development and your registration, 2008.
- Guidance on conduct and ethics for students (December 2009).
Appendix 6

The General Medical Council (GMC)  
www.gmc-uk.org/

Regulatory Body for:
- Doctors

Professional Code:
GMC Guidance for Doctors - Good Medical Practice

When to Refer:
The GMC will accept a referral from the Trust at any stage when it is believed a doctor’s behaviour poses a risk to patients. However GMC advise that if concerns are less serious, local Trust procedures should be followed or an appropriate person locally should be informed i.e. the medical director, chief executive or an officer of the local medical committee.

Reasons for Referrals:
The Trust is required to refer matters if is believed a doctor has behaved in a way that suggests they are not fit to practice. This may include:
- Misconduct
- Deficient performance
- A criminal conviction or caution in the British Isles (or elsewhere for an offence which would be a criminal offence if committed in England or Wales)
- Physical or mental ill-health
- A determination by a regulatory body either in the British Isles or overseas.

How to Refer:
The GMC have guidance which sets out how the Trust should make a referral, in A Health Professionals Guide – How to Refer a Doctor to the GMC. This document is available from the GMC website www.gmc-uk.org

Action Taken by GMC:
Where a doctor’s fitness to practise is found to impaired, the GMC can:
- Remove the registrant from the register
- Suspend from the Register
- Place conditions on the doctor’s registration
- Issue a warning to the Registrant
Appendix 7

## The General Dental Council (GDC)

**www.gdc-uk.org/**

### Regulatory Body for:
- Dentists
- Dental nurses
- Dental technicians
- Clinical dental technicians
- Dental hygienists
- Dental therapists
- Orthodontic therapists

### Professional Code:

GDC - Standards for Dental Professionals.

### When to Refer:

The GDC will accept a referral from the Trust at any stage when it is believed a dentist/dental care professional's practice falls short of the standards expected.

### Reasons for Referrals:

If there are doubts about a registrant's fitness to practice, the Trust should refer to the GDC, reasons may include:
- Health
- Conduct, including convictions and cautions
- Performance

### How to Refer:

The GDC have produced a guidance document which sets out the referral information required from the Trust in *How to Report a Dental Professional to us*. This document is available from the GDC website [www.gdc-uk.org](http://www.gdc-uk.org).

A referral form is attached to the guidance document which should be used to make a referral.

### Action Taken by GDC:

Where a registrant falls seriously short of the standards expected, the GDC can:
- Remove the registrant from the register
- Suspend from the register
- Restrict what the registrant can do professionally
- Reprimand the registrant
The Pharmaceutical Society of Northern Ireland

Regulatory Body for:
- Pharmacists
- Pharmacy Premises

Professional Code:
Northern Ireland Code of Ethics for Pharmacists.

When to Refer:
The Pharmaceutical Society of Northern Ireland are currently undertaking a review of their referrals process and implementing a new fitness to practice process – further details on this process will be added to this document at a later date.
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 it’s 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:

“Maintaining High Professional Standards in the Modern NHS” DHSSPS, 2005

“How to conduct a local performance investigation” NCAS, 2010

SHSCT Disciplinary Procedure

SHSCT Procedures for Initiating and Responding to Referrals to Professional Regulatory Bodies and the Independent Safeguarding Authority and Requesting DHSSPS to issue an alert.

2.0 SCREENING OF CONCERNS – ACTION TO BE TAKEN WHEN A CONCERN FIRST ARISES

2.1 NCAS Good Practice Guide – “How to conduct a local performance investigation” (2010) indicates that regardless of how a concern is identified, it should go through a screening process to identify whether an investigation is needed. The Guide also indicates that anonymous complaints and concerns based on ‘soft’ information should be put through the same screening process as other concerns.

2.2 Concerns should be raised with the practitioner’s Clinical Manager – this will normally be either the Clinical Director or Associate Medical Director. If the initial report / concern is made directly to the Medical Director, then the Medical Director should accept and record the concern but not seek or receive any significant detail, rather refer the matter to the relevant Clinical Manager. Such concerns will then be subject to the normal process as stated in the remainder of this document.

2.3 Concerns which may require management under the MHPS Framework must be registered with the Chief Executive. The Clinical Manager will be responsible for informing the relevant operational Director. They will then inform the Chief Executive and the Medical Director, that a concern has been raised.

2.4 The Clinical Manager will immediately undertake an initial verification of the issues raised. The Clinical Manager must seek advice from the nominated HR Case Manager within Employee Engagement & Relations Department prior to undertaking any initial verification / fact finding.

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6 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.
2.5 The Chief Executive will be responsible for appointing an Oversight Group (OG) for the case. This will normally comprise of the Medical Director / Responsible Officer, the Director of Human Resources & Organisational Development and the relevant Operational Director. The role of the Oversight Group is for quality assurance purposes and to ensure consistency of approach in respect of the Trust’s handling of concerns.

2.6 The Clinical Manager and the nominated HR Case Manager will be responsible for investigating the concerns raised and assessing what action should be taken in response. Possible action could include:

- No action required
- Informal remedial action with the assistance of NCAS
- Formal investigation
- Exclusion / restriction

The Clinical Manager and HR Case Manager should take advice from other key parties such as NCAS, Occupational Health Department, in determining their assessment of action to be taken in response to the concerns raised. Guidance on NCAS involvement is detailed in MHPS paragraphs 9-14.

2.7 Where possible and appropriate, a local action plan should be agreed with the practitioner and resolution of the situation (with involvement of NCAS as appropriate) via monitoring of the practitioner by the Clinical Manager. MHPS recognises the importance of seeking to address clinical performance issues through remedial action including retraining rather than solely through formal action. However, it is not intended to weaken accountability or avoid formal action where the situation warrants this approach. The informal process should be carried out as expeditiously as possible and the Oversight Group will monitor progress.

2.8 The Clinical Manager and the HR Case Manager will notify their informal assessment and decision to the Oversight Group. The role of the Oversight Group is to quality assure the decision and recommendations regarding invocation of the MHPS following informal assessment by the Clinical Manager and HR Case Manager and if necessary ask for further clarification. The Oversight group will promote fairness, transparency and consistency of approach to the process of handling concerns.

2.9 The Chief Executive will be informed of the action to be taken by the Clinical Manager and HR Case Manager by the Chair of the Oversight Group.

2.10 If a formal investigation is to be undertaken, the Chief Executive in conjunction with the Oversight Group will appoint a Case Manager and Case Investigator. The Chief Executive also has a responsibility to advise the Chairman of the Board so that the Chairman can designate a non-executive member of the Board to oversee the case to ensure momentum is maintained and consider any representations from the practitioner about his or her exclusion (if relevant) or any representations about the investigation.
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 6 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.
**Step 1 Screening Process**

Issue of concern i.e. conduct, health and/or clinical performance concern, raised with relevant Clinical Manager**

Clinical Manager and HR Case Manager undertake preliminary enquires to identify the nature of the concerns and assesses the seriousness of the issue on the available information.

Clinical Manager and HR Case Manager notifies the Oversight Group of their assessment and decision. The decision may be:

- No Action Necessary
- Informal remedial action with assistance and input from NCAS
- Formal Investigation
- Exclusion / Restriction

** 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

Clinical Manager/Operational Director informs:
- Chief Executive
- Medical Director
- Human Resources Department
- Practitioner

Chief Executive appoints an Oversight Group – usually comprising of:
- Medical Director / Responsible Officer
- Director of Human Resources and Organisational Development
- Appropriate Operational Director
Step 2 Informal Process

A determination by the Clinical Manager and HR Case Manager is made to deal with the issues of concern through the informal process.

The Clinical Manager must give consideration to whether a local action plan to resolve the problem can be agreed with the practitioner.

Local action plan is developed (this may not always involve NCAS)

The Clinical Manager may seek advice from NCAS and this may involve a performance assessment by NCAS if appropriate.

Referral to NCAS

If a workable remedy cannot be determined, the Clinical Manager and the operational Director in consultation with the Medical Director seeks agreement of the practitioner to refer the case to NCAS for consideration of a detailed performance assessment.

Informal plan agreed and implemented with the practitioner. Clinical Manager monitors and provides regular feedback to the Oversight Group regarding compliance.

In instances where a practitioner fails to engage in the informal process, management of the concern will move to the formal process.
A determination by the Clinical Manager and HR Case Manager is made to deal with the issues of concern through the formal process.

Chief Executive, following discussions with the MD and HROD, appoints a Case Manager and a Case Investigator.

Chief Executive, following discussions with the Chair, seeks appointment of a designated Board member to oversee the case.

Case Manager informs the Practitioner of the investigation in writing, including the name of the Case Investigator and the specific allegations raised.

Case Manager must ensure the Case Investigator gives the Practitioner an opportunity to see all relevant correspondence, a list of all potential witnesses and give an opportunity for the Practitioner to put forward their case as part of the investigation.

Case Investigator gathers the relevant information, takes written statements and keeps a written record of the investigation and decisions taken.

Case Investigator must complete the investigation within 4 weeks and submit to the Case Manager with a further 5 days. Independent advice should be sought from NCAS.

Case Manager gives the Practitioner an opportunity to comment on the factual content of the report including any mitigation within 10 days.

Case Manager must then make a decision on whether:

1. no further action is needed
2. restrictions on practice or exclusion from work should be considered
3. there is a case of misconduct that should be put to a conduct panel under the Trust’s Disciplinary Procedures
4. there are concerns about the Practitioners health that needs referred to the Trust’s Occupational Service for a report of their findings (Refer to MHPS Section V)
5. there are concerns about clinical performance which require further formal consideration by NCAS
6. there are serious concerns that fall into the criteria for referral to the GMC or GDC by the Medical Director/Responsible Officer
7. there are intractable problems and the matter should be put before a clinical performance panel.
Conduct Hearings / Disciplinary Procedures

Case Manager makes the decision that there is a case of misconduct that must be referred to a conduct panel. This may include both personal and professional misconduct.

Case referred under the Trust’s Disciplinary Procedures. Refer to these procedures for organising a hearing.

If a case identifies issues of professional misconduct:
- The Case Investigator must obtain appropriate independent professional advice
- The conduct panel at hearing must include a member who is medically qualified and who is not employed by the Trust.
- The Trust should seek advice from NCAS
- The Trust should ensure jointly agreed procedures are in place with universities for dealing with concerns about Practitioners with joint appointment contracts

If the Practitioner considers that the case has been wrongly classified as misconduct, they are entitled to use the Trust’s Grievance Procedure or make representations to the designated Board Member.

In all cases following a conduct panel (Disciplinary Hearing), where an allegation of misconduct has been upheld consideration must be given to a referral to the GMC/GDC by the Medical Director/Responsible Officer.

If an investigation establishes suspected criminal action, the Trust must report the matter to the police. In cases of Fraud the Counter Fraud and Security Management Service must be considered. This can be considered at any stage of the investigation.

Consideration must also been given to referrals to the Independent Safeguarding Authority or to an alert being issued by the Chief Professional Officer at the DHSSPS or other external bodies.

Case presented to SMT Governance by the Medical Director and Operational Director to promote learning and for peer review once the case is closed.

Approved by SMT 4th May 2011
**Clinical Performance Hearings**

Case Manager makes the decision that there is a clear failure by the Practitioner to deliver an acceptable standard of care or standard of clinical management, through lack of knowledge, ability or consistently poor performance i.e. a clinical performance issue.

Case MUST be referred to the NCAS before consideration by a performance panel (unless the Practitioner refuses to have their case referred).

Case Manager informs:
- Chief Executive
- Designated Board member
- Oversight Group
- Practitioner

Following assessment by NCAS, if the Case Manager considers a Practitioners practice so fundamentally flawed that no educational / organisational action plan is likely to be successful, the case should be referred to a clinical performance panel and the Oversight Group should be informed.

Prior to the hearing the Case Manager must:
- Notify the Practitioner in writing of the decision to refer to a clinical performance panel at least 20 working days before the hearing.
- Notify the Practitioner of the allegations and the arrangements for proceeding
- Notify the Practitioner of the right to be accompanied
- Provide a copy of all relevant documentation/evidence

Prior to the hearing:
- All parties must exchange documentation no later than 10 working days before the hearing.
- In the event of late evidence presented, consideration should be given to a new hearing date.
- Reasonably consider any request for postponement (refer to MHPS for time limits)
- Panel Chair must hear representations regarding any contested witness statement.
- A final list of witnesses agreed and shared between the parties not less than 2 working days in advance of the hearing.

Composition of the panel – 3 people:
- **Chair** - Executive Director of the Trust (usually the Medical Director)
- **Panel 1** - Member of Trust Board (usually the Operational Director)
- **Panel 2** - Experienced medically / dentally qualified member not employed by the Trust

Advisors to the Panel:
- a senior HR staff member
- an appropriately experienced clinician from the same or similar specialty but not employed by the Trust.

** for clinical academics including joint appointments a further panel member may be required.

** a representative from a university if agreed in any protocol for joint appointments
Clinical Performance Hearings

During the hearing:
- The panel, panel advisors, the Practitioner, their representative and the Case Manager must be present at all times
- Witnesses will only be present to give their evidence.
- The Chair is responsible for the proper conduct of the hearing and should introduce all persons present.

During the hearing - witnesses:
- shall confirm any written statement and give supplementary evidence.
- Be questioned by the side calling them
- Be questioned by the other side
- Be questioned by the panel
- Clarify any point to the side who has called them but not raise any new evidence.

During the hearing – order of presentation:
- Case Manager presents the management case calling any witnesses
- Case Manager clarifies any points for the panel on the request of the Chair.
- The Practitioner (or their Rep) presents the Practitioner’s case calling any witnesses.
- Practitioner (or Rep) clarifies any points for the panel on the request of the Chair.
- Case Manager presents summary points
- Practitioner (or Rep) presents summary points and may introduce any mitigation
- Panel retires to consider its decision.

Decision of the panel may be:
1. Unfounded Allegations – Practitioner exonerated
2. A finding of unsatisfactory clinical performance (Refer to MHPS Section IV point 16 for management of such cases).

If a finding of unsatisfactory clinical performance - consideration must be given to a referral to GMC/GDC.

A record of all findings, decisions and warnings should be kept on the Practitioners HR file. The decision of the panel should be communicated to the parties as soon as possible and normally within 5 working days of the hearing. The decision must be confirmed in writing to the Practitioner within 10 working days including reasons for the decision, clarification of the right of appeal and notification of any intent to make a referral to the GMC/GDC or any other external body.

Case presented to SMT Governance by the Medical Director and Operational Director to promote learning and for peer review once the case is closed.
### 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 re-heard 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

<table>
<thead>
<tr>
<th>Decision of the Trust is to formally investigate the issues of concern and appropriate individuals appointed to the relevant roles.</th>
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</thead>
<tbody>
<tr>
<td>Case Investigator, if appointed, produces a preliminary report for the case conference to enable the Case Manager to decide on the appropriate next steps.</td>
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<tr>
<td>The report should include sufficient information for the Case Manager to determine:</td>
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<tr>
<td>- If the allegation appears unfounded</td>
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<td>- There is a misconduct issue</td>
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<tr>
<td>- There is a concern about the Practitioner’s Clinical Performance</td>
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<td>- The case requires further detailed investigation</td>
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<tr>
<td>Case Manager, HR Case Manager, Medical Director and HR Director convene a case conference to determine if it is reasonable and proper to formally exclude the Practitioner. (To include the Chief Executive when the Practitioner is at Consultant level). This should usually be where:</td>
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<tr>
<td>- There is a need to protect the safety of patients/staff pending the outcome of a full investigation</td>
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<tr>
<td>- The presence of the Practitioner in the workplace is likely to hinder the investigation. Consideration should be given to whether the Practitioner could continue in or (where there has been an immediate exclusion) could return to work in a limited or alternative capacity.</td>
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<tr>
<td>If the decision is to exclude the Practitioner:</td>
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<tr>
<td>The Case Manager MUST inform:</td>
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<tr>
<td>- NCAS</td>
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<tr>
<td>- Chief Executive</td>
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<tr>
<td>- Designated Board Member</td>
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<tr>
<td>- Practitioner</td>
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<tr>
<td>The Case Manager along with the HR Case Manager must inform the Practitioner of the exclusion, the reasons for the exclusion and given an opportunity to state their case and propose alternatives to exclusion. A record should be kept of all discussions.</td>
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<tr>
<td>The Case Manager must confirm the exclusion decision in writing immediately. Refer to MPHS Section II point 15 to 21 for details.</td>
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<tr>
<td>All exclusions should be reviewed every 4 weeks by the Case Manager and a report provided to the Chief Executive and Oversight Group. (Refer to MHPS Section II point 28 for review process.</td>
</tr>
</tbody>
</table>
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.