

DOCUMENT CONTROL	
Title:	Doctors Discipline and Exclusion Procedure
Version:	4
Reference Number:	HR021
Scope:	
This policy applies to Doctors and Dentists except for Agenda for Change employees	
Purpose:	
The purpose of this document is to describe the procedure to be followed if a doctor or dentists conduct is in question.	
Requirement for Policy	
Human Resources and Department of Health requirement	
Keywords:	
Discipline, Exclusion Process, Alternative to Exclusion	
Supersedes:	
Version 3	
Description of Amendment(s):	
No amendments – Review date extended	
Owner:	
Head of Medical Workforce – Sara Higgins	
Individual(s) & group(s) involved in the Development:	
This document has been developed in collaboration with the following interested parties:	
<ul style="list-style-type: none"> • Sharon Smith • Sara Higgins 	
Individual(s) & group(s) involved in the Consultation:	
The document has been circulated for consultation and comments have been taken into consideration and the document amended accordingly:	
<ul style="list-style-type: none"> • Local Negotiation Committee (LNC) • Henry Ticehurst – Medical Director 	

Equality Impact Analysis:	
Date approved:	9th August 2018
Reference:	HR021 – EIA021
Freedom of Information Exemption Assessment:	
Date approved:	30 th July 2018
Reference:	POL2018-16
Information Governance Assessment:	
Date approved:	30 th July 2018
Reference:	POL2018-16
Local Negotiation Committee:	
Date Presented to Committee:	9 th July 2018
Presented by:	Sharon Smith
Date Approved by Committee:	9 th July 2018
Policy Panel:	
Date Presented to Panel:	23 rd of July 2018
Presented by:	Sharon Smith
Date Approved by Panel:	23 rd of July 2018
Policy Management Team tasks:	
Date Executive Directors informed:	21 st of August 2018
Date uploaded to Trust's intranet:	31 st of July 2018
Date uploaded to Trust's internet site:	31 st of July 2018
Review:	
Next review date:	July 2021
Responsibility of:	Head of Medical Workforce
Other Trust documentation to which this policy relates (and when appropriate should be read in conjunction with):	
HR001	Conduct and Disciplinary Procedure
Policy Associated Documents:	
TAD_HR021_01	Involvement of the NCAS following local investigation
TAD_HR021_02	Guidance on Agreeing Terms for Settlement on termination of employment

Other external documentation/resources to which this policy relates:	
MHPS	Maintaining High Professional Standards – Department of Health Documentation
CQC Regulations	
This guideline supports the following CQC regulations:	

Contents Page

1.	Introduction	5
2.	Procedure	5
3.	Codes of Conduct	6
4.	Exclusion/Restriction of Practice	6
5.	Investigation	9
6.	Allegation of Criminal Acts	11
7.	Disciplinary Hearing	11
8.	Role of Board and Designated Members	12
9.	Settlement on Termination of Employment	12
10.	Confidentiality	13
11.	Equality Impact Analysis	13
12.	Freedom of Information Exemption Assessment	13
13.	Information Governance Assessment	13
14.	Safeguarding	14
15.	Monitoring	14
16.	Review	14
17.	References	14

1. INTRODUCTION

The Department of Health has published an established framework for the handling of initial concerns and disciplinary procedures for doctors in the NHS. The framework replaces HSG (94)49, HC (90) 9, HC (82) 13 and HM (61) 112. The framework is HSC 2003/012 `Maintaining High Professional Standards in the Modern NHS.

This procedure summarises the framework and should be followed in conjunction with HSC 2003/012 .**This can be found at www.dh.gov.uk.**

2. PROCEDURE

Concerns about a doctor's conduct or capability can come to light in a wide variety of ways, for example:

- Concerns expressed by other NHS professionals, health care managers, students and non-clinical staff
- Review of performance against job plans, annual appraisal revalidation.
- Monitoring of data on performance and quality of care
- Clinical Governance, clinical audit and other quality improvement activities
- Complaints about care by patients or relatives of patients
- Information from the regulatory bodies
- Litigation following allegations of negligence
- Information from the police or coroner
- Court judgements

All serious concerns must be registered with the Chief Executive and he/she must ensure that a case manager is appointed to each case.

The Chairman of the Board must designate a non-executive member "the designated member" to oversee the case and ensure the momentum is maintained.

The Medical Director will act as the case manager in cases involving clinical directors and consultants.

The Medical Director may delegate the role of case manager to a senior manager to oversee the case on his/her behalf in other cases.

The Medical Director will work with the HR Department to decide the appropriate course of action in each case.

All concerns should be investigated quickly and appropriately. A clear audit route must be established for initiating and tracking progress of the investigation, its costs and resulting action.

At any stage, consideration should be given to the involvement of the National Clinical Assessment Service (NCAS).

3. CODES OF CONDUCT

Misconduct can cover a wide range of behaviour and can be classified in a number of ways, but it will generally fall into one of four distinct categories:

1. Refusal to comply with reasonable requirements of the Trust.
2. An infringement of the Trust disciplinary rules including conduct that contravenes the standard of professional behaviour required by the regulatory body
3. The commission of criminal offences outside the place of work which may, in particular circumstances, amount to misconduct.
4. Wilful, careless, inappropriate or unethical behaviour likely to compromise standards of care or patient safety, or created serious dysfunction to the effecting running of a service.

The Trust conduct and disciplinary procedure sets out details of some of the acts that will result in a serious breach of contractual terms and therefore constitute gross misconduct.

Any allegation of misconduct against a doctor in a recognised training grade should be considered initially as a training issue and dealt with via the educational supervisor and college/clinical tutor with close involvement from the postgraduate dean from the outset.

Failure to fulfil contractual obligations may also constitute misconduct, eg. regular non-attendance at clinics or ward rounds, not taking part in clinical governance activities. Additionally, instances of failing to give proper support to other members of staff including doctors in training may be considered misconduct.

If a practitioner considers that the case has been wrongly classified as misconduct, s/he (or representative) is entitled to use the grievance procedure. Alternatively, or in addition, s/he may make representations to the designated board member.

4. EXCLUSION/RESTRICTION OF PRACTICE

If a serious concern is raised about an individual's conduct or capability it may be necessary to place temporary restrictions on the individual's practice. This might be to amend or restrict clinical duties, obtain undertakings or provide for the exclusion of the practitioner from the workplace. Where the concerns are about a doctor in training, the postgraduate dean should be involved as soon as possible.

Exclusion of clinical staff from the workplace is a temporary expedient and should be considered a precautionary measure and not a disciplinary sanction. Exclusion from work should be reserved for only the most exceptional cases.

The Chief Executive has overall responsibility for managing exclusion procedures and for ensuring that cases are properly managed.

The Chief Executive and Medical Director have the authority to exclude staff at the grade of Consultant and above. Medical Managers have the authority to exclude staff below the grade of Consultant.

The case should be discussed fully with the Chief Executive, Medical Director, HR Department, NCAS and other interested parties (such as police) prior to the decision to exclude a practitioner. In the rare cases where immediate exclusion is required, the above

parties must discuss the case at the earliest opportunity following exclusion, preferably at a case conference.

The Trust can only exclude a practitioner for four weeks at a time. The justification for continued exclusion must be reviewed before a further four-week period of exclusion is imposed.

However, an initial 'immediate' exclusion of no more than 2 weeks can be imposed if necessary to protect the interests of patients or other staff; and/or to assist the investigative process when there is a clear risk that the practitioner's presence would impede the gathering of evidence.

This initial period should be used to carry out a preliminary situation analysis, to contact the NCAS for advice and to convene a case conference.

The case conference will be held to consider whether there is reasonable and proper cause to exclude the practitioner. The case conference should include the Chief Executive, Medical Director, HR Department, the NCAS and other parties (i.e. police) as appropriate.

If a case investigator has been appointed s/he must produce a preliminary report for the case conference to enable the case manager to decide on the next steps as appropriate.

The report should provide sufficient information for a decision to be made as to whether:

- The allegation appears unfounded
- There is a misconduct issue
- There is a concern about the practitioners capability
- The complexity of the case warrants further detailed investigation before advice can be given on the way forward and what needs to be inquired into.

A formal exclusion may only take place after the case manager has consulted the NCAS, considered whether there is a case to answer and held a case conference to consider formal exclusion.

If the decision is taken to formally exclude a practitioner, the practitioner needs to be informed of the exclusion.

When the practitioner is informed of the exclusion, there should, where practical, be a witness present and the nature of the allegations or areas of concern should be conveyed to the practitioner. At this stage the practitioner should be given the opportunity to state their case and propose alternatives to exclusion (e.g. further training, referral to occupational health, referral to the NCAS with voluntary restriction).

The formal exclusion must be confirmed in writing, stating the effective date and time, duration (up to maximum of 4 weeks), the content of the allegations, the terms of the exclusion and the need to remain available for work and that a full investigation or what other action will follow. The practitioner and their companion should be advised that they may make representations about the exclusion to the designated board member at any time after receipt of the letter confirming the exclusion.

In cases when disciplinary procedures are being followed, exclusion may be extended for four-week renewable periods until the completion of disciplinary procedures if a return to work is considered inappropriate.

The case manager is responsible for reviewing the exclusion before the end of the four week period and reporting the outcome to the Chief Executive and Board. This report is advisory.

The Medical Director is responsible for providing a monthly statistical return to Trust Board showing all exclusions with their duration and number of times the exclusion had been reviewed and extended. A copy must be sent to the Strategic Health Authority.

The exclusion will lapse and the practitioner will be entitled to return to work at the end of the four week period if the exclusion is not actively reviewed.

When an exclusion decision has been extended twice, the Chief Executive (or nominated officer) must inform the Strategic Health Authority of what action is proposed to resolve the situation. This should include dates for hearings or give reasons for delay.

After 3 exclusions, the case must be formally referred to the NCAS, explaining why continued exclusion is appropriate and what steps are being taken to conclude the exclusion at the earliest opportunity.

Normally there should be a maximum limit of 6 months exclusion, except those cases involving criminal investigations of the practitioner concerned. The Trust and NCAS should actively review those cases at least every 6 months.

If the exclusion has been extended over 6 months, a further position report must be made by the Chief Executive to the SHA indicating the reason for the continuing exclusion, the anticipated timescale for completing the process and the actual and anticipated costs of the exclusion.

If at any time after the practitioner has been excluded from work, investigation reveals that either the allegations are without foundation or that further investigation can continue with the practitioner working normally or with restrictions, the case manager must lift the exclusion, inform the SHA and make arrangements for the practitioner to return to work with any appropriate support as soon as practicable.

Alternative ways to manage risks, avoiding exclusion include:

- Medical Director or Medical Manager supervision of normal contractual clinical duties
- Restriction the practitioner to certain forms of clinical duties
- Restricting activities to administrative, research/audit, teaching and other educational duties. By mutual agreement the latter might include some formal retraining or re-skilling.
- Sick leave for the investigation of specific health problems.

At any point during the process the case manager reaches a clear judgement that a practitioner is concerned to be a serious or potential danger to patients or staff, the practitioner must be referred to the regulatory body.

The Trust also has an obligation to inform other organisations including the private sector, of any restrictions on practice or exclusion and provide a summary of the reasons for it.

The practitioner should supply details of other employers. Failure to do so may result in disciplinary action.

The Case Manager should also consider whether the issue of an alert letter should be requested. The Medical Director is responsible for taking this forward.

Practitioners should not be automatically barred from the premises upon exclusion from work. Case Managers must always consider whether a bar from the premises is absolutely necessary.

As exclusion under this framework should usually be on full pay, the practitioner must remain available for work with the Trust during normal contracted hours. The practitioner must inform the case manager of any other organisation with whom they undertake either voluntary or paid work and seek consent to continuing to undertake such work or take annual/study leave. The practitioner should be given 24 hours' notice to return to work.

In exceptional circumstances the case manager may decide that payment is not justified because the practitioner is no longer available for work (e.g. abroad without agreement).

The Case Manager should make arrangements to ensure that the practitioner can keep in contact with colleagues on professional developments, and take part in CPD and clinical audit activities with the same level of support as other doctors.

5. INVESTIGATION

The first task of the case manager is to identify the nature of the problem or concern and to assess the seriousness of the issue on the information available and the likelihood that it can be resolved without resort to formal disciplinary procedures.

This decision should be taken in consultation with the Medical Director, HR Department and NCAS.

Contract to the NCAS must be made by the Medical Director in the first instance. Where the concerns relate to a doctor in training, the postgraduate dean should be involved as soon as possible.

Having discussed the case with the NCAS, the case manager must decide whether an informal approach can be taken to address the problem, or whether a formal investigation will be needed. This can include the NCAS undertaking a formal clinical performance assessment when the doctor, Trust and NCAS agree this could be helpful.

Where the informal route is chosen the NCAS can still be involved until the case is resolved.

Where it is decided that a more formal route needs to be followed (perhaps leading to conduct or capability proceedings) the Medical Director must, after discussion between the Chief Executive and HR Department, appoint an appropriately experienced or trained person as case investigator.

The seniority of the case investigator will differ depending on the grade of the practitioner involved in the allegation.

The case investigator is responsible for leading the investigation into any allegations or concerns about a practitioner, establishing the facts and reporting the findings.

The case investigator:

- Must formally involve a senior member of medical staff where a question of clinical judgement is raised during the investigation process.
- Must ensure that safeguards are in place throughout the investigation so that breaches of confidentiality are avoided as far as possible.
- Must ensure that there are sufficient written statements collected to establish a case prior to a decision to convene a disciplinary panel, and on aspects of the case not covered by written statements, ensure that oral evidence is given sufficient weight in the investigation report.
- Must ensure that a written record is kept of the investigation, the conclusions reached and the course of action agreed by the HR Department and with the Medical Director.
- Must assist the designated Board member in reviewing the progress to date.

The case investigator does not make the decision on what action should be taken nor whether the employee should be excluded from work and may not be a member of the disciplinary or appeal panel relating to the case.

The case manager must inform the practitioner in writing as soon as a decision has been made to undertake an investigation. The name of the case investigator and specific allegations or concerns raised must be given. The practitioner must also be given the opportunity to see any correspondence relating to the case and a list of the people the case investigator will interview.

The practitioner must be given the opportunity to put their view or events to the case investigator. The practitioner can be accompanied at this interview or any other interview or hearing by a companion. The companion may be another employee of the Trust; an official or lay representative of the BMA or defence organisation; or a friend, partner or spouse. The companion may be legally qualified but he or she will not be acting in a legal capacity.

If during the course of the investigation it transpires that the case involves more complex clinical issues than first anticipated, the case manager should consider whether an independent practitioner from another NHS body should be invited to assist.

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

The report of the investigation should give the case manager sufficient information to make a decision on whether:

- There is a case of misconduct that should be put to a disciplinary panel.
- There are concerns about the practitioner's health that should be considered by the Occupational Health Service.
- There are concerns about the practitioner's performance that should be further explored by the NCAS
- Restrictions on practice or exclusion from work should be considered.
- There are serious concerns that should be referred to the GMC.

- There are intractable problems and the matter should be put before a capability panel.
- No further action is needed.

6. ALLEGATION OF CRIMINAL ACTS

Where an investigation establishes a suspected criminal action in the UK or abroad, this must be reported to the police. The Trust investigation should only proceed in respect of those aspects of the case which are not directly related to the police investigation.

The Trust must consult with the police to establish whether an investigation into any other matters would impede their investigation. In cases of fraud, the Counter Fraud & Security Management Service must be contacted.

There are some criminal offences that, if proven, could render a doctor unsuitable for employment. In all cases, considering the facts, a decision needs to be taken whether the employee poses a risk to patients or colleagues and whether their conduct warrants instigating an investigation and exclusion. Serious consideration needs to be given to whether the employee can continue in their job once criminal charges have been made.

Bearing in mind presumption of innocence, the Trust must consider whether the offence, if proven renders the doctor unsuitable for their current work and whether, pending trial, the doctor can continue in their present job, allocated to other duties or excluded from work. Advice should be sought from an HR or legal adviser. As a matter of good practice, the Trust should explain the reasons for taking such action to the employee.

When the Trust has refrained from taking action pending the outcome of a court case, if the practitioner is acquitted but the Trust considers there is enough evidence to suggest a potential danger to patients, then the Trust has a public duty to ensure that the individual does not pose a risk to patient safety.

Similarly, where there are insufficient grounds to bring charges or the court case is withdrawn, there may be grounds to consider the police evidence where the allegations, if proven, constitute gross misconduct, bearing in mind the evidence has not been tested in court.

It must be made clear to the police that any evidence they provide that is used in the Trust case will be made available to the doctor concerned. Where the charges are dropped, the presumption is that the employee will be reinstated.

7. DISCIPLINARY HEARING

Disciplinary Hearings will be conducted in line with the Trust Conduct and Disciplinary Procedure. Please refer to Pennine Care Trust Intranet for the Trust Conduct and Disciplinary Policy.

Advice should always be sought from the NCAS in conduct cases, particularly in cases of professional conduct.

Where the alleged misconduct relates to matters of a professional nature, or where an investigation identifies issues of professional conduct, the case investigator must obtain appropriate independent professional advice.

Where a case involving issues of professional conduct proceeds to a hearing under the Trust conduct and disciplinary procedure, the panel must include a member who is medically qualified and who is not currently employed by the Trust.

It is advisable to discuss the selection of the external medical panel member with the appropriate local professional representative body i.e. MSC/LNC.

8. ROLE OF BOARD AND DESIGNATED MEMBERS

The Board has a responsibility for ensuring that these procedures are established and followed. It is also responsible for ensuring the proper corporate governance of the organisation, and for this purpose reports must be made to the Board under these procedures.

Board members may be required to sit as members of a disciplinary or appeal panel. Therefore, information given to the Board should only be sufficient to enable the Board to satisfy itself that the procedures are being followed. Only the designated Board member should be involved in any significant degree in each review.

The Chairman is responsible for designating a non-executive member as the 'designated Board member' under these procedures.

The designated Board member oversees the case manager and investigating manager during the investigation process and maintains momentum of the process.

This member's responsibilities include:

- Receiving reports and reviewing the continued exclusion from work of the practitioner
- Considering any representation from the practitioner about his or her exclusion
- Considering any representations about the investigation

The designated Board member must be informed about an exclusion at the earliest opportunity. The Board has a responsibility to ensure that the organisation's internal procedures are being followed. It should, therefore:

- Require a summary of the progress of each case at the end of each period of exclusion, demonstrating that procedures are being correctly followed and that all reasonable efforts are being made to bring the situation to an end as quickly as possible.
- Receive a monthly statistical summary showing all exclusions with their duration and number of times the exclusion had been reviewed and extended. A copy must be sent to the Strategic Health Authority.

9. SETTLEMENT ON TERMINATION OF EMPLOYMENT

In some circumstances, terms of settlement may be agreed with a doctor if their employment is to be terminated. 'Maintaining High Professional Standards in the Modern

NHS' provides good practice principles set out in the guidance notes attached at TAD_HR021_02.(this should now be TAD_HR021_02 if we can delete all the other appendices)

10. CONFIDENTIALITY

Confidentiality must be maintained at all times. No press notice should be issued nor the name of the practitioner released, in regard to any investigation or hearing into disciplinary matters. Confirmation should only be given that an investigation or disciplinary hearing is underway. The Trust will agree with the practitioner, as far as possible, how this will be handled.

Personal data released to the case investigator for the purposes of the investigation must be fit for the purpose, nor disproportionate to the seriousness of the matter under investigation.

11. EQUALITY IMPACT ANALYSIS

As part of its development, this document was analysed to consider / challenge and address any detrimental impact the policy may have on individuals and or groups protected by the Equality Act 2010. This analysis has been undertaken and recorded using the Trust's analysis tool, and appropriate measures will be taken to remove barriers and advance equality of opportunity in the delivery of this policy / procedure

12. FREEDOM OF INFORMATION EXEMPTION ASSESSMENT

Under the Freedom of Information Act (2000) we are obliged to publish our policies on the Trust's website, unless an exemption from disclosure applies. As part of its development, this policy was assessed to establish if it was suitable for publication under this legislation. The assessment aims to establish if disclosure of the policy could cause prejudice or harm to the Trust, or its staff, patients, or partners. This assessment has been undertaken using the Trust's Freedom of Information Exemption Guide, and will be reviewed upon each policy review.

13. INFORMATION GOVERNANCE ASSESSMENT

This Policy has been analysed to ensure it is compliant with relevant information law and standards as in place at the time of approval, and are consistent with the Trust's interpretation and implementation of information governance components such as data protection, confidentiality, consent, information risk, and records management.

Compliance will be reviewed against any changes to legislation / standards or at the next review of this document.

14. SAFEGUARDING

All staff have a responsibility to promote the welfare of any child, young person or vulnerable adult they come into contact with and in cases where there are safeguarding concerns, to act upon them and protect the individual from harm.

All staff should refer any safeguarding issues to their manager and escalate accordingly in line with the Trust Safeguarding Families Policy and Local Safeguarding Children/Adult Board processes.

15. MONITORING

The effective application of this policy / guideline, including adherence to any standards identified within will be subject to monitoring using an appropriate methodology and design, such as clinical audit.

Monitoring will take place on a biannual basis and will be reportable to the Quality Group via the Clinical Effectiveness and Quality Improvement Team.

16. REVIEW

This policy / guideline will be reviewed three-yearly unless there is a need to do so prior to this; e.g. change in national guidance.

17. REFERENCES