

Guidance for employers on sharing information about a healthcare worker where a risk to public or patient safety has been identified

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1. Introduction

In the NHS and the independent healthcare sector, systems are available to support the maintenance of sound patient safety standards with practices to be followed by healthcare workers. However, there is some concern about how these organisations co-operate with each other when dealing with healthcare workers whose fitness to practise has been called into question. In particular, this is an issue where an internal investigation has concluded that the healthcare worker poses a substantiated risk to public and/or patient safety and they work in more than one organisation at the same time, or may leave an organisation and go on to work in another.

At the time of the Department of Health consultation on the possibility of introducing regulations to address this issue, the Care Quality Commission (CQC) published their findings of a national study *'The right information, in the right place, at the right time: A study of how healthcare organisations manage personal data'*. The report highlighted that the extent to which information was exchanged between organisations was generally poor, that tensions between sectors exist when it comes to sharing information and as a result, healthcare workers who are a cause of concern, can sometimes go undetected by moving between sectors.

Patient safety must always be the first priority of those managing and providing healthcare. The risk posed by healthcare workers whose poor performance or misconduct, identified through an internal investigation and/or referral to a regulatory body in one organisation, but is not known about in another organisation where they also work, is very serious and needs to be addressed. The challenge for organisations in the NHS and the independent healthcare sector is how to ensure that workable measures, short of new legislation, are introduced to address this important matter.

The measures outlined within this guidance document utilises work processes and procedures already in place under current legislation and policy (eg those required to comply with CQC registration and licensing) rather than introducing new responsibilities on organisations. The existing policy and legislative context is described further in section 4 of this guidance.

2. Purpose

The guidance, developed in partnership between the NHS Employers organisation and the Independent Healthcare Advisory Services (IHAS), outlines how these principles can be introduced between healthcare organisations to share information, where a healthcare worker's conduct or performance has been investigated and a substantiated risk to public and/or patient safety has been identified. The investigating healthcare organisation must consider that all alerted conduct, and/or performance, is proportionate, fair and necessary to achieve the legitimate aim of maintaining public and/or patient safety.

Organisations are encouraged to review their current working policies and procedures in line with the guidance and to sign up to and actively promote, the principles which commit them to maintain and follow certain actions as described in Appendix 1.

Healthcare organisations are provided with a number of tools within the guidance to facilitate the sharing of information, these include:

1. a defined set of principles for healthcare organisations in connection with sharing information where there is an identified risk to public and/or patient safety (Appendix 1)
2. recommended wording for a public pledge, committing the organisation to practicing the principles referred to above (Appendix 1)
3. a process map to describe the flow of information within and between organisations (Appendix 2)

4. a template form for healthcare workers to declare any other organisations they are in contract or employment with (Appendix 3)
5. a template form to record details of information shared between organisations (Appendix 4).

In the absence of new legislation for the sharing of any such information, the guidance describes aspects of existing policy and legislation that supports the sharing of information in the interest of public and/or patient safety.

3. Application

Where a healthcare worker's conduct or performance is identified as potentially having a substantiated risk to public and/or patient safety, a thorough and robust internal investigation must take place. This is to ensure that the affected healthcare worker is given a right to appeal, and opportunity to reply to any outcome or internal decision.

No third party healthcare provider organisation in the NHS and the independent healthcare sector, will be alerted to unproven and/or allegations made without a thorough and robust internal investigation.

If, following an investigation, a substantiated risk to public and/or patient safety is identified, the healthcare worker concerned will be given an opportunity to appeal to the outcome through internal policy and procedure, prior to any alert being raised. The healthcare worker also has the right to make written representations if they consider that the alert is inappropriate and/or has concerns about the accuracy of the allegations.

4. Policy and legislation context

In the policy and legislative context in which organisations are operating, there are aspects already in place to support the issue of sharing information in the interest of public and/or patient safety, for example:

Responsible officer regulations

Regulations have been introduced designating certain organisations that employ or contract with doctors, to have to nominate or appoint a Responsible Officer (RO). Organisations are required to provide sufficient resources to ROs to enable them to carry out their statutory duties. These statutory duties relate to evaluating the fitness to practise and monitoring conduct and performance of doctors. An important function is to ensure that appraisals of medical staff take account of all available information relating to a doctor's fitness to practise – in both work carried out for the designated body and for any other body. Both NHS and independent healthcare sector organisations will have an RO, and ROs in a locality will need to be in regular communication with each other. For doctors in training their RO will be their local postgraduate dean. The General Medical Council (GMC) Employment Liaison Service (ELS) also plays a role in supporting ROs as they consider issues around poor performing doctors.

In the independent sector the corporate multi-site providers have one RO for the corporate body. Agencies participating in the Government Procurement Services (formerly the NHS Purchasing and Supply Agency) Framework Agreement for the supply of secondary care locum medical staff will also have a specific RO who will provide appropriate supervision and guidance. Resident Medical Officers (RMO) used in the independent sector are provided by RMO organisations and are not agencies. These organisations are not currently designated however they will be when the RO regulations are amended in 2013.

The independent sector relating to NHS London has established a network of RO's known as the Independent Sector RO Committee (ISROC).

Practising privileges in the independent healthcare sector

The Independent Healthcare Advisory Services (IHAS) has produced a guidance document/template to be used by independent provider organisations about the application and granting of practising privileges for medical and dental staff. Within this document there are provisions covering the restriction, suspension, withdrawal, or varying of practising privileges. Any practitioner affected should be given an opportunity to state his/her case – except where a restriction or a suspension needs to be introduced as a matter of urgency. Practitioners subject to any form of restriction are to be advised that other hospitals where he/she works, the General Medical Council (GMC) and the Care Quality Commission (CQC) will be notified, where it is the view of the independent hospital RO that patient safety remains a risk. References to ‘employed staff’ in this document also apply to medical practitioners and dentists with practising privileges.

The IHAS guidance on the application and granting of practising privileges is available to download at www.independenthealthcare.org.uk/codes-of-practice-and-guidance

Creating a culture of openness

Various national enquiry reports have documented the disastrous consequences of a failure to tackle poor performance or misconduct by healthcare workers who have subsequently done harm to patients. There is a need for greater openness with patients and their families and for information to be provided to them regarding investigations and lessons learned.

In March 2013, the Department of Health published amendments to the NHS Constitution aimed at strengthening the need for transparency within the NHS in order to increase patient confidence. The new arrangements, which came into force from 1 April 2013, require NHS England to include a contractual duty of openness in all commissioning contracts for providers of health services across England. This duty applies to all NHS trusts, NHS foundation trusts, all independent and voluntary sector providers, and social enterprises, where they are providing NHS funded care.

The amendments follow the Coalition Government’s Agreement in 2010 which made clear that it would require hospitals to be open about mistakes and the need to tell patients when something has gone wrong; and the Department of Health’s public consultation in 2012 in relation to introducing new contractual arrangements.

Further information can be obtained from NHS England’s website at: www.england.nhs.uk/nhsconstitution

Raising concerns and encouraging early intervention

Organisations should have robust procedures in place for a concerned healthcare worker to raise an issue about public and/or patient safety without the fear of recrimination.

Published guidance from the Care Quality Commission (CQC) serves as a reminder to provider organisations across England, of their responsibilities to have policies and procedures in place to support staff to raise a concern in the public interest.

The ‘*Speak Up for a Healthy NHS*’ guidance (June 2009) issued by the Social Partnership Forum, of which NHS Employers is a partner, remains effective in reinforcing requirements for NHS organisations to have robust policies and practices in place to support staff. The Department of Health is responsible for reviewing guidance with relevant bodies, to ensure it remains fit for purpose.

NHS Employers launched the ‘*Speaking Up Charter*’, which was one of the outcomes from their whistleblowing summit held in May 2012, which brought together a number of national organisations,

including the Department of Health, regulators, trade unions and professional bodies to discuss the issue of whistleblowing. The key aim of the charter is to drive forward a set of key principles which enable a supportive environment where staff feel able to discuss and raise concerns about any form of wrongdoing early on; and, where this is in the interest of improving quality and maintaining high professional standards, for this to be recognised by both employers and employees as good professional conduct.

Duties are placed on all healthcare workers in the *'NHS Staff Terms and Conditions of Service'* handbook, which includes a right and a duty for all employees to raise concerns in the public interest. This provision is further enhanced within amendments to the NHS Constitution made in March 2012, which emphasise the rights and responsibilities of NHS employers and their staff in respect of whistleblowing/raising concerns at the earliest opportunity.

Guidance for staff has been produced by a number of professional regulatory bodies, such as the General Medical Council (GMC), Nursing and Midwifery Council (NMC), and the Health and Care Professions Council (HCPC).

On 1 January 2012, the Department of Health announced the launch of the National Whistleblowing Helpline. The service provides free, confidential advice to all NHS and social care staff who witness a wrongdoing at work but who are unsure how or whether to raise their concern. The service also provides advice to employers on good policy and governance arrangements.

Relevant advice and guidance listed here can be found at:

www.nhsemployers.org/employmentpolicyandpractice/UKemploymentpractice/raisingconcerns

Alert notice systems

For NHS organisations (and bodies who provide services to the NHS) the current alert notice system still applies when there is a pressing need to inform potential employers of unresolved concerns which could result in a significant risk to patients and/or public safety.

'Staying on course – supporting doctors in difficulty through early and effective action' highlights the importance of early intervention when concerns have first been raised about a doctor. The guidance is relevant to those who have responsibility for managing the performance of medical staff, including responsible officers, medical directors, clinical managers and HR professionals; and applies to doctors in managed settings and other settings for example: primary care.

Professional codes of conduct

There are codes of conduct for professionals such as doctors, registered nurses, midwives and pharmacists, which contain very explicit provision for practitioners around their individual responsibility to advise all organisations they practise in, if they have restrictions placed on their practice, or if their conduct/practise is called into question, or concerns are voiced. Not all healthcare workers have such codes of conduct. It would be advisable, therefore, for employers to make it a 'contractual' requirement for all staff to inform their employer if they have restrictions placed on their practice, or if their conduct/practise is called into question, or concerns are voiced, thus capturing the minority of those healthcare workers not covered by a code of conduct. This would require a minor refinement of the provisions already in existence for the majority.

5. Staff to be covered by this guidance

A large number of staff working in both the NHS and independent healthcare sector are medical staff. The RO provisions are therefore a particularly important means by which poor performance or misconduct involving public and/or patient safety can be tackled and prevented from spreading from one sector to the other.

However, there are other clinical practitioners who move between the NHS and the independent healthcare sector/providers of agency and temporary workers. There are no equivalent RO provisions for registered nurses, midwives, pharmacists, or the allied health professions. The ability of one organisation to share a serious concern about public and/or patient safety, with another involving an employee, who works in both organisations or has left, must be incorporated within individual contracts of employment/service for all non-medical staff and form part of the principles.

Supervision of midwives

Supervision of midwives is a statutory function which provides a mechanism for support and guidance to every midwife working in the UK within the NHS, independent and private sectors. The purpose of supervision of midwives is to protect the public by actively promoting safe standards of midwifery practice. The Nursing and Midwifery Council (NMC) is accountable for ensuring that the statutory rules and standards relating to the supervision of midwives and midwifery practice are met. The local supervising authority (LSA) has an appointed local supervising authority midwifery officer (LSAMO) who carries out the LSA function. The LSAMO appoints supervisors of midwives.

Discussions with supervisors of midwives and supervisees should remain confidential. On occasions, it may become apparent that a particular incident calls for action to share information with managers in the interests and safety of the public. In such cases the supervisor may recommend that the midwife raises the issue with his/her line manager, or informs the midwife that, as a supervisor, he/she intends to take action. It must be made clear to the midwife concerned that information about the incident may be shared as part of their action.

For further information, please refer to the LSAMO National Forum (UK) 2009 Modern Supervision in Action guidance booklet, which can be found on the Royal College of Midwives (RCM) website at: www.nmc-uk.org/Documents/Midwifery-booklets/NMC-LSAMO-Forum-Modern-supervision-in-action.pdf

Appendix 1 – Key principles

Described below are a set of principles for healthcare organisations in connection with sharing appropriate information relating to incidents of unsatisfactory performance and/or conduct by a healthcare worker, where there is an identified risk to public and/or patient safety.

The principles ensure that where a healthcare worker's conduct or performance has been investigated and a substantiated risk to public and/or patient safety has been identified, appropriate action is taken to ensure that any other organisation, in which the healthcare worker also practises or is moving to, is made sufficiently aware so as to prevent further risks to safety.

Principles:

1. By publicly declaring the following pledge, the organisation is committing to be practicing the key principles as outlined in section 2 below:

“(insert organisation name) is committed to operating under the ‘*Guidance for employers*’ in relation to the sharing of appropriate and relevant information between healthcare organisations about the conduct or performance of a healthcare worker where there is an identified risk to public and/or patient safety.”
2. Agreed activities to be in place and being followed by organisations that adhere to this guidance:
 - 2.1 A good quality and comprehensive personnel record will be maintained for each healthcare worker and an internal alert system will be in use to identify instances of disciplinary action, repetitive poor work performance (via appraisal and/or suspension of pay progression), high levels of patient complaints, serious clinical negligence events, and any referrals to a national regulator, and any which, following an internal investigation, may be alerted to another healthcare organisation if considered proportionate and representing a fitness to practise concern.

For the NHS and the independent sector, the current processes under the alert notice system remain applicable.
 - 2.2 Before making an alert, all healthcare organisations must take care to ensure that any disclosed information is proportionate. The Responsible Officer and/or Designated Manager must take into consideration factors such as the relevant healthcare employees appeal to the internal investigation, written representations to the disclosure, and/or the time frame of the relevant conduct and/or performance.
 - 2.3 One or more designated managers eg the Responsible Officer for medical staff should, on a monthly basis, review a schedule of any reported instances via the internal alert system as specified in 2.1 above. Where a potential fitness to practise concern is identified the internal investigation process should be followed to form a view as to whether the poor performance or conduct of a healthcare worker is such that any other organisation that person works in or is moving to, should, on the grounds of public and/or patient safety, be advised of the circumstances. For other professional groups the designated manager should be the appropriate professional head but external communication will be co-ordinated by one manager eg chief nurse, who will also act as the initial recipient of information from other organisations covered by this agreement. Consideration of the conclusion of external processes, such as referrals to regulatory bodies, will need to be considered in light of any alerts raised to prospective employers. This will aim to ensure that the outcome of such processes are reflected within internal records so as to avoid an individual's conduct being alerted without being upheld through investigation.

- 2.4 If the designated manager decides that another organisation, where the healthcare worker practises or is moving to, should be contacted, then the designated manager will advise the healthcare worker of the content of the intended alert, allowing the healthcare worker the right to reply in writing within seven days. Healthcare workers should be given the opportunity to make representations if they consider that the information which has given rise to an alert is inaccurate. Reassurance should be provided to individuals that information can be challenged, reviewed and rescinded.

There is exception where an organisation considers that information should be shared prior to the requirement to take these steps in order to protect the safety of patients and the public. This might be where there is a risk that the healthcare worker might attempt to destroy evidence or put pressure on colleagues to silence them. The decision and the basis for that decision should be recorded and steps to inform the healthcare worker concerned should be taken as soon as possible after that information has been shared.

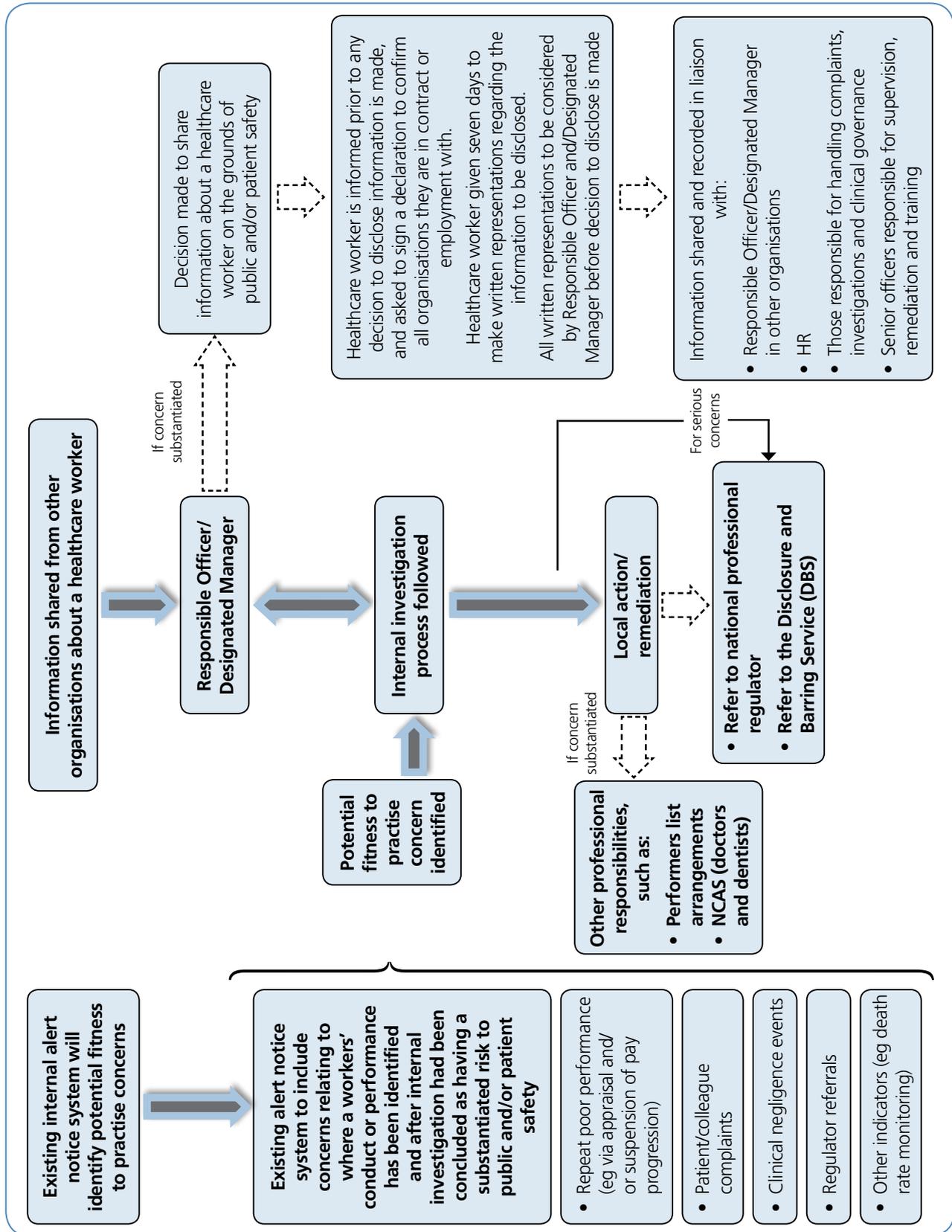
- 2.5 To enable these provisions to be applied to all healthcare workers, it is recommended that organisations covered by this agreement make clear within all new staff contracts of employment¹ that they will be required to inform their employer of any other healthcare organisation, whether NHS or independent sector/provider of temporary staffing etc, in which they also work, or are leaving to join and are asked to complete the 'Declaration of contract or employment' template at Appendix 3.
- 2.6 In addition to requirements outlined in paragraph 2.4, all healthcare workers, as part of any new contract arrangement with the organisations covered by this agreement, should be informed that instances of poor performance/misconduct involving public and/or patient safety, may be communicated to any other organisations in which they work if allegations are substantiated and/or upheld, following an internal investigation. Organisations covered by this agreement should share information using the templates provided at Appendix 4.
- 2.7 Healthcare organisations covered by this agreement must carefully consider their responsibilities when managing the sharing of information in such cases where a healthcare worker's health has had adverse impact on their own performance and conduct.
- 2.8 Where a written request for information about the conduct and/or performance of a healthcare worker is received from another organisation, information will be provided which is considered to be reasonably relevant to the request within a reasonable time, taking into account the factors identified in paragraph 2.2, by completing the template for sharing information at Appendix 4.
- 2.9 The organisation will have a current whistle blowing procedure in existence to enable healthcare workers to raise concerns in the public interest especially where public and/or patient safety is at risk.
- 2.10 Where patient care duties are provided by an agency, contractor or other external body, employers will need to satisfy themselves that these organisations comply with the principles outlined within this guidance. It is therefore recommended that the requirements to share information about healthcare workers is clearly outlined as part of any contractual arrangements with these organisations and introduced as part of any new contracts being established or any scheduled review or re-tendering of contractual agreements. This requirement should also cascade from contract to sub-contract.

¹ Including those with practising privileges

- 2.11 Pre-employment screening procedures will be thorough and comprehensive and no healthcare worker either permanent or temporary will be allowed to practise until all clearances have been obtained and satisfactory references received. In very exceptional circumstances, a risk-based decision may be taken to appoint a healthcare worker before the outcomes of a criminal record check are received, for example in order for them to undertake induction training or perform other duties which would not include them engaging in any form of regulated activity. In any such cases the organisation should ensure safeguards are put in place to manage that worker, such as supervision, restricted duties and restricted access to children and/or adults, until the disclosure has been obtained. Where pre-employment screening is carried out by an agency, contractor or other external organisation, employers must obtain assurances that the appropriate checks have been carried out. Further information about the NHS Employment Check Standards is available on the NHS Employers website at: www.nhsemployers.org/employmentchecks
- 2.12 All references provided for healthcare workers will contain a specific section which gives information considered to be reasonably relevant about instances where fitness to practise has been a cause for concern in the context of public and/or patient safety (as defined in paragraph 2.1). A duty of care is owed both to the prospective employer to whom the reference is being provided and to the former employee. Organisations should use due care when providing references to ensure that it is based on factual and accurate information. The reference must be in substance true, accurate and fair and must not give a misleading impression.

Appendix 2 – Process map

Source: Adapted from *Tackling Concerns Locally*, Information Management Subgroup.



Appendix 3 – Template declaration of contract or employment

Employer to add organisation name

Declaration of contract or employment template

Please declare any other organisations you are in contract or employment with.

Full name: _____

Registration number (as appropriate): _____

Details of outside contract or employment (please write 'none' where not applicable)

Employer name: _____

Nature/type of business: _____

Position held: _____

Type of contract/employment: _____

Other relevant information: _____

Signature: _____ Date: _____

Appendix 4 – Template for sharing information

Employer to add organisation name

Record keeping template - in confidence

When sharing information about the conduct or performance of a healthcare worker to protect public and/or patient safety.

PART A

Name of Healthcare worker: _____

Registration number (as appropriate): _____

Healthcare worker’s contact details: _____

For doctors only: this section should only be completed in connection with sharing information about revalidation.	
Has the above named doctor been revalidated?	Yes/No
If yes, what was the date of their revalidation?	
Please provide dates of any recent appraisals.	

PART B

	Comments:	Date:
a. Decision to share (justification).		
b. Details of the nature of the information shared.		
c. Details of designated bodies with whom information was shared.		
d. Details of any action taken (including joint action where appropriate).		
e. Any other details which the designated body considers relevant to the disclosure.		

Name of Designated Manager/Responsible Officer: _____

Contact details (including email address): _____

Signature: _____ Date: _____

Employer to add organisation name

Record keeping template:

When a request for information about the conduct or performance of a healthcare worker to protect public and/or patient safety has been received.

PART A

Name of Healthcare worker: _____

Registration number (as appropriate): _____

Healthcare worker's contact details: _____

For doctors only: this section should only be completed in connection with sharing information about revalidation.	
Has the above named doctor been revalidated?	Yes/No
If yes, what was the date of their revalidation?	
Please provide dates of any recent appraisals.	

PART B

	Comments:	Date:
a. Any request received from another designated body to provide information?		
b. Details of the nature of the information provided.		
c. Details of designated bodies to which the information provided.		
d. Details of any action taken (including joint action where appropriate).		
e. Any other details which the designated body considers relevant to the provision of information.		

Name of Designated Manager/Responsible Officer: _____

Contact details (including email address): _____

Signature: _____ Date: _____

Independent Healthcare Advisory Services

The Independent Healthcare Advisory Services is a trade body for the independent healthcare sector. Impartial among its members throughout England, Wales, Scotland and Northern Ireland, IHAS provides the mechanism for otherwise competitive members to share innovation, knowledge and expertise for the common good. IHAS maintains the only impartial network serving the operational needs of the independent healthcare sector in all four UK countries.

The primary function of IHAS is in the area of operational policy and regulation as it affects the independent sector. A combination of workstreams formed from members' experts and the small executive team at Centre Point helps develop policy recommendations and cooperative actions. These are communicated under the impartial IHAS name to members and to key organisations that effect the independent healthcare business environment.

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NHS Employers

The NHS Employers organisation is the voice of employers in the NHS, supporting them to put patients first. Our vision is to be the authoritative voice of workforce leaders, experts in HR, negotiating fairly to get the best deal for patients.

We work with employers in the NHS to reflect their views and act on their behalf in four priority areas:

- pay and negotiations
- recruitment and planning the workforce
- healthy and productive workplaces
- employment policy and practice.

The NHS Employers organisation is part of the NHS Confederation.

Contact us

For more information on how to become involved in our work, email getinvolved@nhsemployers.org

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