

Staying on course – supporting doctors in difficulty through early and effective action

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1. Introduction

This document is not intended to be a comprehensive 'how to' manual. Instead, its purpose is to encourage the adoption of a culture of early identification and intervention.

It is aimed at those responsible for managing the performance of medical staff, including responsible officers, medical directors, clinical managers and human resources (HR) professionals.

The focus of the guidance is primarily on employed doctors working in managed settings. The general principles and approaches outlined here are also relevant to other settings in which doctors work, including general practice.

NHS bodies with responsibility for commissioning services may also find this approach helpful in addressing concerns about the work of doctors in general practice in the NHS, independent or voluntary sector.

2. What this guidance seeks to do

This guidance highlights the importance of early intervention when concerns first arise about an individual doctor. Early intervention:

- can minimise any risk to patients and other staff
- ensures that steps are taken to return the doctor to safe and effective practice
- helps avoid more formal disciplinary or regulatory action
- establishes the initial handling of concerns at work as an employment matter in which medical and HR professionals need to work closely together, rather than a regulatory matter.

If it is not possible to resolve the concern at an early stage then further and more formal action will be required through local conduct, health and capability procedures and/or through the fitness to practise processes of the General Medical Council (GMC). The guidance reflects the principles of good practice covering all healthcare professionals set out in the Department of Health and NCAS guidance *Handling concerns about the performance of healthcare professionals*. Responsible officers (ROs) now have a responsibility to establish and implement procedures to deal with questions concerning a doctor's fitness to practise.

In the case of clinical academics, there needs to be clarity on their relationship to the NHS employer and the involvement of the university employer where this is relevant and appropriate. NHS bodies should jointly prepare a formal agreement on procedures for staff with academic and clinical duties for the management of poor performance and disciplinary procedures. These procedures should:

- ensure joint working from the time of implementation
- specify which body is to take the lead in different types of case
- ensure suitable cross-membership of any panels
- work quickly and effectively.

The Follett Report contains a number of key recommendations aimed at promoting joint working to integrate separate responsibilities between university and NHS bodies in respect of employment practices for staff with academic and clinical duties.

3. Before concerns arise

The vast majority of doctors provide good quality, safe and effective care throughout their careers. However, it is inevitable that from time to time problems will arise. Systems failure or organisational issues can impact significantly on performance and give rise to concerns. Organisations should have in place measures to help reduce the risk of problems arising in the first place and, when they do, to identify them at an early stage. Such measures should include:

- strong medical leadership
- strong human resource leadership
- effective recruitment procedures
- effective induction processes that cover the raising of concerns and how they are managed
- robust annual appraisal and personal development planning
- mentorship
- promotion of self-referral schemes
- clear written policies and procedures for dealing with concerns that are internally publicised and reviewed at regular intervals
- training for managers and staff whose responsibility it is to lead on the management of concerns
- robust clinical governance arrangements, including reporting and acting on concerns and complaints.

Principles for handling concerns at work

The principles and values of the GMCs *Good Medical Practice* apply, in which:

- patient safety is paramount
- concerns about a doctor's practice must be addressed early, systematically and pro-actively in all healthcare settings. The appropriate competent authority (as defined in the responsible officer regulations) must take action where a concern is raised.

4. Putting patients first

Patient safety must be the primary consideration, although processes should ensure fairness to doctors, their health and wellbeing and the interests of others affected by performance concerns.

Everyone involved in healthcare is obliged to share concerns about performance of colleagues and themselves, for the purposes of patient safety and for the protection of the public and colleagues. This helps maintain the quality and reputation of services and protects the welfare of doctors and other workers. The GMC has issued guidance to doctors on:

- raising concerns, which gives advice on raising a concern that patients might be at the risk of harm
- acting on concerns, which explains doctors responsibilities when colleagues or others raise concerns with them, and how those concerns should be handled.

Advice about sharing concerns at work is also available through NHS Employers and other organisations such as the National Clinical Assessment Service (NCAS).

In most cases, concerns should be managed locally using processes that are locally determined, but consistent with national directions and regulations, and assured by the responsible officer. Organisations should ensure that their managers and staff are familiar with and adequately trained on these processes and are able to use them appropriately and effectively. Failure to follow agreed procedures can lead to disputes and legal challenges, which have the potential to detract from the overriding aims of safeguarding patient safety and providing high quality services.

Individually tailored solutions provided by external organisations may be required from time to time. For example, competency advice and assistance may come from the medical Royal Colleges, and NCAS offers a range of support to employing and commissioning organisations. For doctors in training, postgraduate deaneries need to ensure that assessment processes allow for concerns arising during training to be addressed.

There should be equity of access to support, process, time and effort. Timescales should be set and adhered to and should be broadly similar for all. Those timescales should also be relatively short – the more time taken to deal with concerns the less likely they will be dealt with effectively. In the event that a timescale cannot be met this should be communicated at an early stage and a revised timescale set.

5. Formal or informal action?

Cases involving minor misconduct or early indications of unsatisfactory performance may be handled informally. For example, additional training, coaching or advice may resolve the concern. If informal action does not bring about sufficient improvement, or if the matter is considered too serious to be classed as minor, then employers should make it clear that formal action will be necessary.

Informal resolution should ideally be a two-way discussion of those aspects of performance or conduct which are causing concern and suggesting ways of sustained improvement. Where improvement is required, the employer needs to make it clear to the employee what needs to be done, over what timescale and how their performance or conduct will be reviewed. The employer should keep notes of any agreed informal action and consider sharing these with the employee. This ensures that informal action is more than just a passing comment or casual aside and is designed to achieve an agreed outcome.

Employers should take care that informal action does not turn, without notice to the doctor, into formal disciplinary action as this may inadvertently deprive the doctor of certain rights under the formal procedure (such as the right to be accompanied). If, during an informal discussion it becomes clear that the matter may be more serious, then the meeting should be adjourned and the employee should be told that the matter will be continued under formal procedures.

Any concern about the capability or conduct of a doctor in training should initially be considered as a training issue and the involvement of the postgraduate dean should be sought. Deaneries must be informed of any concerns and actions taken to allow the dean to carry out his or her role as responsible officer.

6. Handling concerns at work is routine

Employers and contractors are responsible for ensuring that appraisals take place and that a personal development plan is agreed. They should also manage remediation locally, wherever possible. The responsible officer will have a key role in managing remediation processes locally, assuring their quality and advising on the threshold at which a concern needs to be referred to the professional regulator. The GMC also has an employer liaison service to support ROs in their role around fitness to practise and revalidation.

Individual practitioners have a personal responsibility for their own health (including being registered with a GP), conduct and capability. In particular, they should ensure that they:

- work in accordance with *Good Medical Practice* and other relevant GMC guidance
- work within the relevant specialty framework
- meet any employment or contractual-related standards for their current role, including engaging in appraisal and personal development processes
- are honest about when they feel they might have competence and capability problems and seek early help and support
- engage constructively with their employer or contracting body when problems are identified and investigated.

Once a concern is raised, the organisation should carry out an initial investigation to determine the appropriate response.

- Health matters should be referred to occupational health or any relevant medical service.
- Conduct matters should be dealt with by the employer.
- Capability issues should be dealt with locally in the first instance.
- Regulatory matters should be referred to the regulatory body in parallel with local processes. The GMC employer liaison service is able to advise.
- Any criminal matters should be referred to the police in parallel with local and regulatory processes – acting in a linear way can increase the length of time it takes to resolve issues.
- Any cases of fraud should be referred to the Counter Fraud and Security Management Service for advice.

Remediation

There should be a consistent approach to providing remediation, locally delivered as far as possible, with active involvement, where appropriate, from external expert organisations. The following principles should apply.

- There should be a full evaluation of the nature of the concern so that appropriate action is taken according to relevant processes.
- The medical director and/or responsible officer and the human resource director should provide joint leadership.
- The investigation should follow an agreed process and should also assess whether there are any organisational issues that need to be addressed.
- There should be comprehensive documentation and record-keeping throughout the process.
- There should be an assessment of the need to keep patients up to date, recognising confidentiality of the individual concerned.
- Doctors requiring remediation must understand what they need to achieve, the timescale and the methods involved so that they will be able to demonstrate that they have successfully completed the programme. They also need to understand the cause of the concern – insight can contribute to a successful outcome.
- There should be a clear, jointly-agreed strategy on how the remediation process should end.
- Confidentiality should be maintained as far as it is practicable to do so.
- Where concerns arise about a newly appointed doctor or a doctor who has recently completed training, the medical director/responsible officer should liaise with the relevant postgraduate dean to ensure that there are no systemic failures in the deanery selection and assessment process.

Defining and categorising concerns

Concerns at work fall into three main categories:

- health
- conduct
- capability.

However, concerns can vary in scale and complexity. In some cases, what appears to be a capability issue may reflect underlying health problems. A conduct case may involve elements of professional misconduct. Early identification of the problems underlying the concern will help in determining the most effective course of action.

What emerges from each of these processes can also vary widely. In each area, one of the potential outcomes could be to enter a local remediation process aimed at reducing the risk of the doctor having restrictions placed on their registration by the regulator, or of losing their employment.

The aim of tackling concerns early is to ensure the doctor remains in, or returns to, full and unsupported medical practice as quickly as possible. Where this is not possible, more formal processes should be followed. This may trigger support from other agencies such as the relevant medical Royal College, NCAS or the local deanery.

7. Handling concerns due to health

It is important to intervene early and effectively to support colleagues who are suffering from ill health where this is impacting on their work through their absence, or through restrictions on the amount and quality of their work. In such cases, occupational health advice should be taken and local health and wellbeing procedures need to be followed.

Local human resource departments should be able to advise on what should be done and how it should be done. The earlier they are involved the better. Clinical managers, responsible officers and medical directors should work closely with HR colleagues to ensure that the right intervention is made at the right time.

The importance of early intervention is emphasised by the statistic that once a colleague has been absent for over six months, there is a 50 per cent chance they will not return to work. Even after six weeks, the chance of return to work begins to decline steeply. This demonstrates the need for swift diagnosis and likely prognosis, and agreeing support to help employees get back to work using such things as phased returns, support from occupational health departments and adjustments to duties.

The 2011 annual report of the NHS Practitioner Health Programme shows that effective intervention leads to:

- improvements in mental health and social functioning
- increased numbers returning to work and/or training
- a reduction in potential risk to practitioners and the public
- a reduction in regulatory involvement or changes to fitness to practise conditions
- financial benefits to the service.

8. Handling concerns due to conduct

Conduct issues may be causing concerns at work and these should also be dealt with locally under agreed local procedures and codes of conduct. In cases where the concerns are more serious or are likely to impact on patient safety, it may be necessary to involve the regulator. Medical managers should seek the advice and support of their HR department to identify early and effective interventions that resolve the issues of concern.

Conduct is typically dealt with under the provisions of locally-agreed procedures. These are often based on the best practices reflected in the ACAS Code of Practice on disciplinary and grievance procedures. The key principle is that such procedures are not about penalising staff but are about improving behaviour and performance for the benefit of the individual, their colleagues, their patients, and their organisations.

The ACAS statutory code on disciplinary procedures was introduced in 2009, on a principles-based good practice approach rather than on a detailed and prescriptive procedural requirement. The code aims to encourage resolution of concerns at work earlier through informal means without recourse to formal procedures. It aims to encourage early and effective interventions. This is essential to effective work on conduct concerns so that, where possible, they are resolved swiftly long before careers and livelihoods are at risk of being lost.

Every concern about conduct should be considered at the earliest opportunity. In the most extreme cases, such as allegations of assaulting a patient, this may mean exclusion from work according to the principles and timescales set out in *Maintaining High Professional Standards in the Modern NHS*. It is in the interests of the individual doctor, other staff, patients and the public that such processes are handled quickly and effectively.

In some cases, conduct matters may have a professional element that defines them as ‘professional misconduct’. In these cases any formal action should take into account the provisions set out in part 3 of *Maintaining High Professional Standards in the Modern NHS*, covering the requirement for an external medical member of any disciplinary panel. NCAS is able to advise on the most appropriate procedure. The GMC’s Employer Liaison Service can also advise on the need for any regulatory input.

9. Handling concerns due to capability

This type of concern often represents the most difficult area to deal with because judging the doctor’s workload and the quality of a doctor’s work inevitably involves a degree of subjectivity. It can also cover a wide range of things, from poor or inaccurate diagnoses to poor quality interventions and treatments.

Concerns about attitude, behaviour and communication can also arise in the conduct category, so an assessment needs to be made as to which part of the process should apply when a particular concern arises. Where these matters directly affect the four key domains of *Good Medical Practice* (GMC) then they should be managed as capability issues. Those domains are:

- knowledge, skills and performance
- safety and quality
- communication, partnership and teamwork
- maintaining trust.

The earlier that capability concerns are identified, discussed and resolved the better. Interventions such as training, mentoring, shadowing and extra supervision can often be deployed quickly and the doctor can return to normal working. The aim should be to deal with alleged shortcomings at the very earliest opportunity. Where concerns are observed directly it can be relatively easy to intervene to demonstrate better approaches to the work there and then. Alternatively, other opportunities for reflective learning should be used.

The formal procedure for handling concerns about a doctor’s capability, including whether and when to refer a doctor to NCAS for an assessment, is set out in part 4 of *Maintaining High Professional Standards in the Modern NHS*, which highlights the role of NCAS at various stages of the process. In cases where the concerns are more serious or likely to impact upon patient safety, it will normally be necessary to involve the regulator as well. This should not prevent the continuation of local processes.

Checklist: what employers need to do

Employers should:

- have policies in place which link to *Maintaining High Professional Standards in the Modern NHS* and the Performers List Regulations
- understand the policies and train key members of staff on their content
- understand what outcomes are possible
- follow policies carefully and maintain a clear record of the concern and how it has been handled
- determine the type of concern (for example, health, conduct or capability) at an early stage and ask questions – why has the work deteriorated or failed to improve? What is the cause of the behaviour?
- consider any underlying systems or organisational problems
- consider the seriousness of the concern – is it open to informal resolution or is it a serious matter that requires action to be taken under formal processes?
- understand the GMC's thresholds for referral
- be clear about expectations about required standards of attitude and behaviour
- be clear about the need to draw attention to concerns at work at the earliest opportunity. Concerns that present too late are more difficult to resolve to the benefit of patients and staff
- be clear that 'off the record' informality between managers and doctors does not resolve concerns and often makes them more difficult to handle effectively. Off the record does not change behaviour or discharge responsibility.

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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 help employers make sense of current and emerging healthcare issues to ensure that their voice is front and centre of health policy and practice. We keep them up to date with the latest workforce thinking and expert opinion, providing practical advice and information, and generating opportunities to network and share knowledge and best practice.

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.

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