

Clinical Governance

Policy No: NoT MD01
**Policy for Handling Concerns about the
Performance of Independent Healthcare
Professionals**

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Section 1 General Introduction

1.1 Introduction

- 1.1.1 In the past there have been concerns about the way in which NHS organisations handled issues involving practitioners' suitability, efficiency and probity. Evidence from a number of very serious cases (most notably, but not exclusively, that of Harold Shipman) indicated that there were shortcomings in the way that quality issues were addressed in primary care, and in the processes available for dealing with them.
- 1.1.2 Most healthcare professionals practice to a high standard. However, sometimes things go wrong and a healthcare professional may find their practice called into question. If this happens, whilst the over-riding concern must be for patient safety, clinicians need to be treated sensitively and fairly and this policy supports the organisations commitment to professionals not simply when they perform well, but also when professional performance is questioned.
- 1.1.3 The publication in July 2006 of the review of medical regulation, *Good doctors, safer patients* (DoH 2006a) carried out by the Chief Medical Office, emphasised the importance of effective local handling of performance concerns and in December 2006, the National Clinical Assessment Authority (now the National Clinical Assessment Service (NCAS)) in collaboration with Royal College of General Practitioners (RCGP) issued the document *Local GP Performance Procedures (DoH 2006b)* These documents together with *Handling Concerns about the Performance of Healthcare Professionals; Principles of good practice* (DoH & NPSA 2006c) provide the foundation of the multi professional approach to handling concerns about the performance of independent healthcare professionals . In addition taking action about professional performance should be guided by a few key documents outlined in Appendix A.

1.1.4 This policy is designed to support the issue of poor professional performance through training or other appropriate remedial actions rather than solely through disciplinary or regulatory action. It is not intended to weaken professional accountability where there is evidence of genuinely serious professional misconduct.

1.1.5 This policy applies to independent Contractors on North Tyneside PCT, Newcastle PCT and Northumberland Care Trust

- Medical and Dental, Performers Lists.
- Ophthalmic and Supplementary list.
- Community Pharmacists /Pharmaceutical Lists.

1.2 Policy Statement

1.2.1 It is the duty of each NHS body to put and keep in place arrangements for the purpose of monitoring and improving the quality of healthcare provided by and for that body. All three primary care organisation (PCOs) North of the Tyne are committed to this policy and the implementation of professional performance management systems.

1.2.2 The Chief Executive and Boards have overall responsibility for having an effective system in place within each organisation and for meeting all statutory requirements and adhering to guidance issued by the Department of Health in respect of professional performance. This responsibility is delegated to the Medical Director, as named lead North of Tyne for primary care independent contractors and specific members of staff with expertise and responsibility.

1.2.3 For PCO employed medical and dental staff the three PCO's have additional responsibilities and adherence to the requirements of *Maintaining High professional Standards*; a framework for the initial handling of concerns about doctors and dentists (DoH 2005) together with PCO Human Resource (HR) policies are required. This policy does not

include PCO employed medical and dental staff, however access to the North of Tyne Professional Advisory Group for advice and support is available where necessary.

- 1.2.4 To implement this policy, local professional performance procedures will be introduced/reviewed across the 3 PCO bodies and the North of Tyne Clinical Governance Committee is the responsible committee for overseeing all aspects of this policy.

1.3 Purpose

1.3.1 This policy provides information on procedures for General Practitioners (GPs) and Dentists on Northumberland, Newcastle and North Tyneside Performer Lists holding contracts for the provision of primary care services (under either the General Medical Service(GMS)/General Dental Service (GDS) contracts), Primary Medical Services(PMS)/Primary Dental Service(PDS) agreements or Alternate Primary Medical Service (APMS) contracts. The approach and principles apply also to Optometrists holding a General Ophthalmic Service (GOS) contract and Pharmacists holding or working under the terms of the NHS pharmaceutical services contractual framework.

1.3.2 The purpose of this North of Tyne policy is

1. To set out the 3 PCOs commitment to developing, maintenance and monitoring of professional performance systems for independent contractors.
2. To set out the professional performance management arrangements.
3. To outline the professional performance accountability arrangements including the roles of specific members of staff and the organisational structure for handling issues of poor professional performance.

4. To provide definitions of professional performance to help clinicians develop a clear understanding of significant professional performance concerns

1.3.3 This policy is not intended to provide a comprehensive guide on handling concerns about an individual. Detailed guidance on performance, disciplinary, capability and regulatory procedures are available from the North East Family Health Services Agency for each professional group and should be consulted. Additional information is provided in the National Clinical Assessment Service (NCAS) tool kit www.ncas.npsa.nhs.uk and via the leaflet *What to do if you have concerns about a colleague's performance* which provides advice for primary healthcare professionals with genuine and significant concerns about a colleagues performance (Appendix B).

1.3.4 Local performance procedures are to be developed and agreed by Professional Advisory Group in conjunction with the Local Medical Council/Local Dental Council /Local Optometric Committee and will cover;

- what is meant by local investigations of concerns
- information flows, to ensure that concerns reported, recorded, tracked, followed up and reviewed.
- Confidentiality
- Protection of whistle blowers
- Where to find support during the process, this will include support for health issues that may be identified
- Criteria and options for onward referral
- The role of NCAS, and what is involved in an NCAS assessment
- The duty of an individual or local body to refer concerns to the local performance procedures and/ or professional body
- Funding arrangements
- Arrangements for reviewing local procedures, to identify any gaps or delays in information flow and to implement action plans to address these.

1.3.5 Local procedures will be publicised to health professionals and patient groups. An example covering letter from the Chief Executive and appropriate professional committee is provided in Appendix C.

1.4 Related Policies

1.4.1 This Professional Performance Policy is supported by other policies to address specific needs.

These include:

- Complaints Policy
- Policy for the Reporting and Management of Incidents.
- Procedure for the Investigation and Root Cause Analysis of Incidents.
- Being Open Policy
- Whistle Blowing Policy.
- Controlled Drugs Policy.
- Appraisal Policy.
- Disciplinary Procedures
- Grievance Procedures
- Fraud Policy and Response Plan

1.4.2 A copy of the policies for each PCO can be found on each organisations website.

1.5 Principles for handling performance concerns

1.5.1 This section sets out the principles for handling performance concerns

1.5.2 Principle 1 Patient safety must be the primary consideration.

Whilst good performance procedures will ensure fairness to practitioners, patient safety must be the primary consideration. The PCO will reserve the use of list management powers for those cases where patient safety is seriously at risk and such action will be based on evidence.

1.5.3 Principle 2 Policies for Handling performance concerns to be circulated to healthcare professionals and interested parties.

The successful implementation of local procedures depends upon all interested parties understanding and having confidence in the arrangements in place. To be most effective professional performance management needs to become a part of PCO culture and to be integrated into the organisations philosophy, practice and plans rather than be viewed as a separate programme. Performance against objectives are subject to regular review via the Standards for Better Health Assurance Framework.

1.5.4 Principle 3 Avoid unnecessary or inappropriate exclusion of practitioners

Practitioners should continue to work wherever this is compatible with patient safety and the reputation of the service.

1.5.5 Principle 4 Separate investigation from decision-making.

In the interests of fairness the process of information gathering about a concern and the decision making about the action required will be separate functions.

1.5.6 Principle 5 Fairness, transparency, confidentiality and patient consent.

As far as possible, the confidentiality of the practitioner should be protected. However, this need for confidentiality should be balanced against the need to ensure that information is passed to colleagues where appropriate and the need to keep the patient properly informed. Processes used must be open and subject to audit scrutiny, they must be fair, taking into account all the relevant evidence and information. Fairness must ensure appropriate confidentiality and protection of personal data – for patients, colleagues and the practitioner. The Medical Director is the Caldicott Guardian appointed North of Tyne to protect patient information.

1.5.7 Principle 6 Individual healthcare practitioners are responsible for maintaining a good standard of practice.

All healthcare practitioners are responsible for demonstrating their competence, and for maintaining satisfactory standards of practice in line with professional guidance and criteria for registration. Reporting concerns about a colleague is never easy but all professionals have a professional duty to do so in order to protect patient safety.

1.5.8 Principle 7 Impartiality

There is an onus on any group constituted in accordance with this policy to act in an impartial manner. To do so members of the group must be fair and free from bias or favouritism. In order to achieve this member's of groups must act as neither complacent nor unduly sensitive or suspicious observer . Impartiality is a cornerstone of the legal and tribunal system and there is an acknowledgement that to be impartial an individual does not need to be independent of the system administering the group although impartiality and independence are intrinsically linked. Provided a group member who has employment or another association with the organisation is able to act as a fair minded and observed observer in carrying out his/her duties he/ she can act as an impartial member of a panel.

Section 2 Professional Performance Management Aims and Objectives

2.1 Professional Performance Management Aims

2.1.1 The professional performance management aims are:

1. To achieve an improved service for patients both in terms of quality and safety.
2. To identify actual and potential professional performance concerns, assess and prioritise those concerns and where possible avoid and prevent patient harm or reduce patient risk to an acceptable level.

3. To minimise the number of negligence claims, complaints and incidents.
4. To ensure efficient communication links between departments and across primary care.
5. Achieve a high level of compliance with the Healthcare Commission Standards for Better Health and with other appropriate external quality assurance assessments.
6. To promote clinician understanding of significant performance concerns and increase their involvement in assessment, support and management.

2.2 Professional Performance Management Objectives

2.2.1 The professional performance management objectives are:

1. Continue to evolve, update and share good practice and protocols across primary care.
2. Encourage reporting of concerns/incidents and the intelligent use of information.
3. Provide an effective framework for dealing with critical incidents and “near” misses associated with poor professional performance.
4. Communicating and consulting with staff and stakeholders on related issues and keeping them informed of current developments in professional performance management

Section 3 Professional Performance Structures and Accountability

3.1 Duties of the PCT

3.1.1 This section of the policy provides information on the responsibilities of the North of Tyne shared management arrangements and includes individual, departmental and committee duties. In addition a range of other bodies contribute to handling of performance concerns. An outline of the

responsibilities of the key organisations – General Medical Council (GMC), Strategic Health Authority (SHA), the Healthcare Commission (HCC), Family Health Services Appeal Authority (FHSAA), Deaneries, Local Medical Committees (LMC) - is in Appendix D.

- 3.1.2 Section 45 of the Health and Social Care (Community Health Standards) Act 2003 identifies that every local NHS organisation has a statutory duty to assure, monitor and improve the quality of its services. Initially, this obligation was implemented through the clinical governance programme, but since the devolution of powers from health authorities to PCOs in 2002 (NHS 2002), PCOs have acquired an even broader responsibility for the quality and safety of care, including being responsible for appraisal and management of performance problems. Clinical governance has therefore developed to provide a framework through which NHS organisations are accountable for continuously improving quality of their services and safeguarding high standards of care.
- 3.1.3 Since April 2004, PCTs have also become responsible for ensuring the quality of the workforce by managing the primary care Performer Lists. This covers admission of doctors/dentists to the list, removal or contingent removal of doctors/dentists from the list, and doctors'/dentist' disqualification for inclusion in a list.
- 3.1.4 Newcastle Primary Care Trust, North Tyneside Primary Care Trust and Northumberland Care Trust have delegated responsibility for management of the Performer Lists to the North East Family Health Services Agency. However legal responsibility for decisions, for example to remove or suspend, remains with the body holding the Performer List for doctors and dentists.
- 3.1.5 The use of formal powers in managing performance concerns include both the Performer Lists and contractual powers.

3.2 Staff roles and responsibilities

- 3.2.1 **The Chief Executive** ; has overall accountability for all aspects of professional performance and delegates this responsibility to the Medical Director North of Tyne for primary care independent contractors and to the Directors of Nursing for PCT employees.
- 3.2.2 **The Medical Director**; has delegated responsibility for professional performance. This includes the management of professional management systems and controls, ensuring they are in place and working effectively. In addition the Medical Director is the Caldicott Guardian appointed North of Tyne to protect patient information
The Medical Director or agreed senior manager is responsible for assigning a case manager to independent practitioner investigations/assessments. In cases where patient safety is at risk the Medical Director may take immediate action. The Medical Director is a member of the Decision Making Group and is the North of Tyne designated named contact point.
- 3.2.3 **The Deputy Medical Director**; in the absence of the Medical Director has delegated authority for professional performance management. The Deputy Medical Director is a member of the North of Tyne Performance Advisory Group and presents evidence to the Decision Making Group. In the absence of the Medical Director the Deputy Medical Director is a member of the Decision Making Group – non-voting, when involvement has occurred in the investigation of an agenda case.
- 3.2.4 **Strategic Head of Clinical Governance, Performance and Appraisal**; is responsible for leading, managing and developing professional performance of independent contractors across the three PCOs: a principle component of this is to oversee arrangements, including systems of reporting, investigating and learning from incidents, serious untoward events and complaints relating to poor professional performance. The Strategic Head of Clinical Governance, Performance and Appraisal reports

to the Medical Director and is a member of the Decision Making Group and Professional Advisory Group recording all decisions of the groups in writing, including the reason and criteria for decision. This includes reports for Board and relevant committees.

3.2.5 **Specialist Advisors:**

The professional performance function relies upon specialist advisors to provide advice and support to the Professional Performance Advisory Groups and Decision Making Group:

- **GP Professional Performance Lead;** The Deputy Medical Director is the GP Professional Performance Lead and is a member of the North of Tyne GP Performance Advisory Group (PAG) and presents evidence to the Decision Making Group. The professional performance lead is a practising GP with expertise in performance matters.
- **GP Advisor/Case Managers** are members of the Performance Advisory Group (PAG) providing information gathering for the PAG to enable a clear understanding of the nature of the concern. Advisors support the Professional Performance Lead (in liaison with the GP Tutors) in the design of an action plan with objectives for areas of improvement where investigation identifies that performance problems are minor and amenable to being resolved locally.
- **GP Tutors** aim to improve the quality of patient care by ensuring that doctors are well-educated, trained and motivated. Areas of work include providing advice to PCTs on the educational aspects of individual cases, advising on retraining programmes and working with individual GPs on a tailored programme of support and training.
- **Dental Professional Performance Lead** The Professional Performance Lead (dental) is a member of the Performance Appraisal Support Scheme for Dentists and presents evidence to the Decision Making Group. The Dental Poor Professional Performance Lead is a dentist with expertise in performance matters.
- **Dental Advisor/Case Managers** is a member of the PAG (Dental) providing information gathering to enable a clear understanding of the

nature of the concern, Advisors support the Dental Professional Performance Lead (in liaison with the Deanery) in the design of an action plan with objectives for areas of improvement where investigation identifies that performance problems are minor and amenable to being resolved locally.

- **Optometric Adviser/Case Managers** provide information gathering to enable a clear understanding of the nature of the concern. Advisors are co-opted members of the Decision Making Group to present evidence (non decision making). Advisors support the design of an action plan with objectives for areas of improvement where investigation identifies that performance problems are minor and amenable to being resolved locally.
- **Head of Medicines Management** presents evidence to the Decision Making Group. The Head of Medicines Management is a practising pharmacist with expertise in performance matters.
- **Pharmaceutical Advisor/Case managers** provide information gathering to enable a clear understanding of the nature of the concern, Advisors/Case managers support the Head of Medicines management in the design of an action plan with objectives for areas of improvement where investigation identifies that performance problems are minor and amenable to being resolved locally.
- **PEC Clinical Governance and patient safety Leads** provide professional advice on specific areas of clinical expertise to Professional Performance Leads. The Professional Executive Committee (PEC) Chair may be member of the Decision Making Group.
- **Lay Involvement** The involvement of lay people in professional performance management provides a vital perspective and is essential to public confidence in the procedures. A non executive director designated by the joint Boards is Chair of the Decision Making Group.

Section 4 Organisational structures to manage performance concerns

4.1 North of Tyne Decision Making Group (DMG)

4.1.1 Is to be constituted under the PCO's Integrated Management / Partnership Agreement and Standing Orders approved by the Board.

4.2 Purpose

4.2.1 Its primary role is to ensure that the facts are established about performance concerns, appropriate decision made, and that, where necessary, action is taken in accordance with Performer List Regulation. Appendix E outlines the detailed functions with a draft terms of reference.

4.3 Membership:

4.3.1 Comprises a minimum of 3 persons and may include

- a) The PCO Chief Executive
- b) Medical Director or deputy
- c) A PCO Chair or other Non-Executive Board Member (Chair)
- d) PEC Chair
- e) Strategic Head Clinical Governance, Performance and Appraisal or deputy.
- f) Local representative committee member (for GPs this is Local Medical Committee (LMC), for dentists – Local Dental Committee (LDC), for optometrists Local Optometric Committee (LOC), for pharmacists Local Pharmaceutical Committee (LPC), all with observer status).

Section 5 North of Tyne Performance Advisory Group (PAG)

5.1 The North of Tyne Performance Advisory Group is accountable to Decision Making Group. Appendix F outlines a draft Terms of Reference.

5.2 Purpose

- a) undertake the detailed investigation of a case
- b) assist the DMG in the production of a local development and training plan
- c) liaison with Deanery on training of individuals working in local performance procedures
- d) report on trends in performance concerns
- e) provide a PAG member - usually the deputy medical director or appropriate other to attend DMG meetings (non decision making).

5.3 Membership

- a) North of Tyne Professional Performance Lead (Deputy Medical Director)
- b) Lay Chair (PCO Non-Executive)
- c) Deanery representative
- d) LMC representative/additional LDC/LOC as appropriate.
- e) GPs with expertise and training in performance issues.
- f) Strategic Head Clinical Governance, Performance and Appraisal or deputy
- g) Co-opted members for specialist advice e.g. prescribing advisor practice nurse PCT member(s).

Section 6 Performance Procedures

6.1 Understanding Performance Concerns

6.1.1 A PCT may become concerned about a professional's performance through information routinely collected by the PCO, concerns raised by colleagues or patient complaints.

6.1.2 Concerns about performance may relate to :

- clinical performance; errors or delays in diagnosis, use of outmoded tests or treatments;
- ill treatment of patients;
- unacceptable behaviour such as harassment or unlawfully discriminating against staff or patients;
- breaching sexual or other boundaries with patients and staff;
- poor team work that compromises patient care;
- personal health problems, leading to poor practice;
- not complying with professional codes of practice;
- poor management or administration that compromises patient care;
- suspected fraud or clinical offence.

This list is not exhaustive and there may be other areas of concern that need consideration.

6.2 Receiving information about concerns

6.2.1 **Information about a concern may come from a variety of sources these include:**

- A review of patient notes
- A concern expressed by a colleague or 'whistleblower'
- A complaint about care from patients and relatives
- Investigation into a serious untoward incident
- Annual Appraisal

- Clinical Audit or other quality activities as part of clinical governance
- Information from a regulatory body
- Information from the police or coroner
- The practitioner themselves.

6.2.2 A practitioner's performance may be affected by an interplay of personal and situational factors including clinical skills, education, physical and psychological health, personality and attitude as well as the working environment, team work and work load. Research about these factors is presented in NCAS' report, *Understanding performance difficulties for doctors NCAA 2004* and additional supporting documents (see bibliography – Appendix G). When NCAS assess the performance of an individual GP or dentist, they consider how the practice impacts on performance of that individual.

6.2.3 Root cause analysis can support Advisors/Case Managers in identifying what is contributing to an identified problem. The National Patient Safety Agency (NPSA) provide on line tools to support the use of this method.

6.2.4 Suspected fraud must be reported to the Local Counter Fraud Specialist (Northumbria Internal Audit and Counter Fraud service Tel. 0191 203 1406), Director of Finance in line with the Fraud Policy and Response Plan or Counter Fraud and Security Management Service (Fraud and Corruption Reporting Line 0800 0284060) at the earliest opportunity.

Section 7 Process

7.1 Designated Contact Point

7.1.1 The lead officer for concerns regarding North of Tyne primary care independent healthcare professionals is the Medical Director. The Medical Director is responsible for recording a concern and ensuring appropriate action is taken. This may include the use of local performance, health or

disciplinary process to address the concern raised. The Medical Director may take immediate action if patient safety is considered to be at risk.

7.2 Ensuring fairness

7.2.1 Contact will be made with the practitioner to advise of:

- the concern raised.
- the opportunity to take advice, to comment and to have these comments taken into account before any decision is made
- the right to appeal to any decision of the organisation

7.3 Protecting the public

7.3.1 When serious concerns are raised about a practitioner, the organisation must urgently consider whether it is necessary to place temporary restrictions on their practice. This might be to amend or restrict their clinical duties, obtain undertakings or provide for the exclusion of the practitioner from their work place. This advice will be taken for the Performer Lists from the North East Family Health Services Agency.

7.4 Supporting those involved

7.4.1 Professionals under investigation or assessment will be encouraged to identify personal support. This might be a personal friend or work colleague or a member of the local LMC/LDC/LOC not involved in local performance procedures in any capacity. At any stage an individual may consult his or her defence organisation or trade union and they will act as the professional's representative or with a role complementary to that of a 'friend'. In meetings with the organisation, the professional may be accompanied by a friend and or representative.

7.4.2 Training is important for all those involved in local procedures, including members of the Decision Making Group and especially those undertaking assessments and supporting independent contractors in difficulty.

Section 8 Consultation, Approval and Ratification Process

8.1 Consultation

8.1.1 This policy and accompanying procedures have been produced by the Policy Lead (North of Tyne Strategic Head of Clinical Governance Performance and Appraisal). Consultation has included the following stakeholders and users.

- Chief Executive
- Medical Director
- Executive Director of Nursing
- Deputy Medical Director
- Executive and Senior Management.
- Head of Corporate Affairs
- Strategic Head of Human Resources
- Clinical Governance GP Leads
- Professional Executive Committee
- GP Tutors
- GP Appraisal Leads
- Post Graduate Institute for Medicine and Dentistry Newcastle University, Northern Deanery.
- Local Medical Committee for Northumberland, Newcastle and North Tyneside
- Local Dental Committee for Northumberland, Newcastle and North Tyneside
- Local Optometric Committee for Northumberland, Newcastle and North Tyneside.

- Local Pharmaceutical Committee for Northumberland, Newcastle and North Tyneside.
- North of Tyne Clinical Governance Committee
- Legal Review
- National Clinical Assessment Agency Professional Adviser.
- British Medical Association.
- Northern Doctors Urgent care Ltd
- Directors Vocational Training Scheme.

8.2 Policy Approval and ratification Process

8.2.1 Approval and ratification of the policy will be by the North of Tyne Clinical Governance Committee and other agreed committees requested by the Boards of Newcastle and North Tyneside PCTs and Northumberland Care Trust.

8.3 Responsibility for Document Development

8.3.1 The North of Tyne Clinical Governance Committee is the committee responsible for document development. This policy will be reviewed 3 yearly or earlier following publication of local or national guidance.

8.4 Version Control

8.4.1 Version control will be the responsibility of the Policy Lead until such time as a North of Tyne version control process is agreed.

Section 9 Dissemination and Implementation

9.1 Dissemination and implementation

9.1.1 Dissemination and implementation of the document will be the responsibility of the Policy Lead until such times as a North of Tyne dissemination and implementation process is agreed.

Section 10 Document Control including Archiving Arrangements

10.1 Document control and archiving

10.1.1 Arrangements will be the responsibility of the Policy Lead until such times as a North of Tyne documents control and archiving process is agreed.

Section 11 Monitoring Compliance

11.1 Monitoring compliance

11.1.1 Monitoring compliance with the policy will be the responsibility of the Policy Lead until such times as a North of Tyne monitoring process is agreed.

11.1.2 Monitoring Compliance with the effectiveness of procedural Documents.

11.2 Standards/Key Performance Indicator

11.2.1 The Clinical Governance Committee will develop key Performance Indicators (KPI's) capable of showing improvements in the management of professional performance. Performance measures ensure that goals set by

the Joint North of Tyne Board are consistently being monitored/met in an effective and efficient manner.

Section 12 Equality and Diversity

- 12.1 All public bodies have statutory duties under the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 2005 and the Equality Act 2006 to set out arrangements to assess and consult on how their policies and functions impact on race, gender and disability equality, in effect to undertake equality impact assessments on all policies/guidelines and practices. Best practice also suggests that Equality Impact Assessments should be extended to include equality and human rights with regard to age, religion and sexual orientation and as such the three North of Tyne PCOs have adopted this best practice approach within its EIA as from the date of the adoption of the Policy for the Development and Management of Approved Documents.
- 12.2 The three North of Tyne PCOs are committed to providing services that meet the equality and diversity needs of independent healthcare professionals and service users within the framework of current legislation. Current equality and diversity legislation includes disability, gender, age, race, sexual orientation and religion. It is the responsibility of managers and contractor to ensure that they act on this policy in a manner that meets the needs of people from these groups. It is always best to check with individual staff/service users what their needs are, but needs may include providing information in an accessible format, considering mobility and communication issues, being aware of sensitive and cultural issues.
- 12.3 This policy has been Equality Impact (EI) assessed; recommendations from the assessment have been incorporated into the document. A copy of the EI Assessment summary is on the websites.

Section 13 References

2006a Department of Health. Good doctors, safer patients, London 2006
www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4137232&chk=KW63va

2006b Department of Health National Patient safety Agency. Local GP Performance procedures London 2006
www.ncas.npsa.nhs.uk/toolkit

2006c Department of health/National Patient Safety Agency. Handling Concerns about the Performance of Healthcare Professionals: Principles of good practice. London 2006
www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4140207&ch=k%2BJcnS

2005 Department of Health Maintaining High Professional Standards in the Modern NHS
www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPAndGBrowsableDocuments/fs/en?CONTENT_ID=4103418&chk=UVdwG

2002 NHS Reforms & Health Care Professions Act 2002. Schedule 2 of this Act reallocates the functions of health authorities to PCT by amending the 1977 Act

Key Documents

Taking action about practitioner performance should be guided by a few key documents:

[Good Medical Practice](http://www.gmc-uk.org/guidance/good_medical_practice/index.asp) (GMP) General Medical Council 2006 (http://www.gmc-uk.org/guidance/good_medical_practice/index.asp)

the medical profession's rules of behaviour, drawn up and regularly updated by the General Medical Council. The main specialties have published specialty-relevant interpretations of GMP.

[Standards for Dental Professionals](http://www.gdc-uk.org/NR/rdonlyres/6F3D848E-F31A-4A8C-AEFAC4D78D06B618/20453/Standardsfordentalprofessionals.pdf#search=%22Standards%20for%20Dental%20Professionals%22) General Dental Council 2005 (<http://www.gdc-uk.org/NR/rdonlyres/6F3D848E-F31A-4A8C-AEFAC4D78D06B618/20453/Standardsfordentalprofessionals.pdf#search=%22Standards%20for%20Dental%20Professionals%22>)

the dental profession's conduct rules, recently revised by the General Dental Council.

[Maintaining High Professional Standards in the Modern NHS](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4103586) Department of Health 2005 (http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4103586)

guidance on processes to use where there are serious concerns involving health, conduct or capability, for doctors and dentists not covered by performer list regulations.

[The National Health Service \(Personal Medical Services Contracts\) Regulations 2004 SI 2004 No 627](http://www.opsi.gov.uk/si/si2004/uksi_20040627_en.pdf) (pdf) (http://www.opsi.gov.uk/si/si2004/uksi_20040627_en.pdf)

[The National Health Service \(General Medical Services Contracts\) Regulations 2004 SI 2004 No 291](http://www.opsi.gov.uk/si/si2004/uksi_20040291_en.pdf) (pdf) (http://www.opsi.gov.uk/si/si2004/uksi_20040291_en.pdf)

[GMS Statement of Financial Entitlements 2005 onwards](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4107508) Department of Health 2005 (http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4107508)

the contractual terms on which general medical practitioners provide services to the NHS.

[The National Health Service \(Performers Lists\) Regulations 2004 No 585](http://www.opsi.gov.uk/si/si2004/uksi_20040585_en.pdf) (pdf) (http://www.opsi.gov.uk/si/si2004/uksi_20040585_en.pdf) with subsequent amendments – [SI 2004 No 2694](http://www.opsi.gov.uk/si/si2004/uksi_20042694_en.pdf), (http://www.opsi.gov.uk/si/si2004/uksi_20042694_en.pdf) [2005 No 3491](http://www.opsi.gov.uk/si/si2005/20053491.htm), (<http://www.opsi.gov.uk/si/si2005/20053491.htm>) [SI 2005 No 893](http://www.opsi.gov.uk/si/si2005/uksi_20050893_en.pdf) (pdf) (http://www.opsi.gov.uk/si/si2005/uksi_20050893_en.pdf) and [SI 2006 No 1385](http://www.opsi.gov.uk/SI/si2006/20061385.htm) (<http://www.opsi.gov.uk/SI/si2006/20061385.htm>) together with Department of Health guidance on list management in [Primary Medical Performers Lists –](#)

[Delivering Quality in Primary Care](#) Department of Health 2005 (http://www.dh.gov.uk/en/PolicyAndGuidance/OrganisationPolicy/PrimaryCare/ManagementPrimaryCarePractitioners/DH_4081449) the framework under which PCTs can take action on conduct, competence or performance concerns.

[Primary Care Trust Medical Services Directions 2005](#) (pdf) Department of Health 2005 (http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_4124511) rules governing the provision of primary medical services by PCTs, as distinct from PCT commissioning or contracting.

[Alternative Provider Medical Services Directions 2005](#) Department of Health 2005 (http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_4124711) setting out minimum standards and requirements for PCT contracts with non-NHS bodies for provision of primary medical services.

[The National Health Service \(General Dental Service Contracts\) Regulations 2005](#) (<http://www.opsi.gov.uk/si/si2005/20053361.htm>)

[The National Health Service \(Personal Dental Services Agreements\) Regulations 2005](#) (<http://www.opsi.gov.uk/si/si2005/20053373.htm>) the terms on which dentists in primary care in England provide services to the NHS and the procedures for dealing with concerns about their performance, used alongside the 2004 and 2005 Performers List Regulations already listed.

[Primary Care Trust Dental Services Directions 2006](#) Department of Health 2006 (http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_4132909) rules governing the provision of primary dental services by PCTs, as distinct from PCT commissioning or contracting.

APPENDIX B

Further advice

National Clinical Assessment Service	020 7084 3850
General Medical Council	0845 357 3456
Nursing and Midwifery Council	020 7637 7181
Institute of Healthcare Management	020 7620 1030
Royal College of Nursing	0845 772 6100
General Dental Council	020 7887 3800
British Association of Dental Nurses	01253 338360
Health Professions Council	020 7582 0866
Royal Pharmaceutical Society of Great Britain	020 7735 9141
General Optical Council	020 7580 3898
Public Concern at Work	020 7404 6609 Email: helpline@pcaw.co.uk
NHS Employers	0113 306 3000
Independent Healthcare Advisory Services	020 7379 8598

For GP's, Dentists,
Pharmacists and
Optometrists

North of Tyne

Medical Director

Tel. 0191 2022022

National Clinical
Assessment Service

NHS
National Patient
Safety Agency

What to do if you have concerns about a colleague's performance

This leaflet has advice for primary care health professionals with genuine and significant concerns about a colleague's performance

Second edition



Most health care professionals practise to a high standard.

However, occasionally some individuals may work in ways that pose a serious risk to patient safety. In many instances this is unintended and may reflect illness, professional isolation or overwork.

Colleagues are often well placed to recognise problems when they arise. Acting on concerns about a colleague is never easy but all NHS staff have a professional duty to do so in order to protect patient safety and help the practitioner involved.

What is meant by a significant concern

Significant concerns about a practitioner may relate to any of the following areas:

- poor clinical performance;
- ill-treating patients;
- unacceptable behaviour such as harassing or unlawfully discriminating against staff or patients;
- breaching sexual or other boundaries with patients or staff;
- poor teamwork that compromises patient care;
- personal health problems leading to poor practice;
- not complying with professional codes of conduct;
- poor management or administration that compromises patient care;
- suspected fraud or criminal offence.

This list is not exhaustive and there may be other areas of concern that you should consider reporting.

How to report your concern

Your practice or primary care trust should have a policy on how to raise a concern. This should include a named contact point (see the back of this leaflet). In the first instance, contact this person, the practice manager or the practice senior partner.

If you do not feel able to raise your concern within your practice, or there is a serious and/or immediate risk to patient safety, contact the primary care trust lead officer for handling concerns. Further details are on the back of this leaflet.

In addition, any individual can refer a practitioner to their regulatory body. Contact details for some of the regulatory bodies are on the back of this leaflet.

Information on whistleblowing policies and practice for GPs is available at www.nhsemployers.org

Contact the independent charity Public Concern at Work if you would like further confidential advice or want to discuss your concern before reporting it. Their contact details are on the back of this leaflet.

What the primary care trust will do

The lead officer is responsible for recording and investigating your concern and making sure appropriate action is taken. The primary care trust (PCT) has a range of options. They may use the local performance, health or disciplinary process to address the concern raised.

If your concern is about a doctor or dentist, they may seek the help of the National Clinical Assessment Service (NCAS). NCAS can provide advice on local procedures and may assess the practitioner to clarify any issues and then offer recommendations for resolving the concern.

If the PCT thinks there is a serious and/or immediate risk to patient safety, they may take interim measures such as suspending the practitioner whilst an investigation is carried out. In addition, they may refer the practitioner directly to their regulatory body.

Other organisations may also need to be involved such as the police or the area child protection committee.

The PCT will let you know the outcome of the case. If you think the action taken has been insufficient, contact the practitioner's regulatory body.

Confidentiality

The PCT will normally contact the practitioner and tell them that a concern about their performance has been raised. It will not do this if the concern involves a suspected criminal or fraudulent incident, and if telling them could jeopardise an investigation.

Your identity and that of the practitioner in question will generally remain confidential, although they may be disclosed where it is necessary to do so in order to investigate the case fully.

As long as your concern is genuine, you should be protected by a local policy on whistleblowing and, where applicable, the Public Interest Disclosure Act 1998.

Example Letter

To all GPs and practice Managers

Dear Colleague

Establishment of a local Performance Advisory Group (PAG)

Whilst most general practitioners offer a consistently high quality service to patients, at times concerns arise about a small minority.

The purpose of this letter is to explain our arrangements for addressing concerns about the performance of GPs. Arrangements have been brought together under the North of Tyne joint partnership agreement. A single North of Tyne Performance Advisory Group and Decision Making Group will support Newcastle PCT, North Tyneside PCT and Northumberland Care Trust in the local investigation of concerns about a GP

Concerns about the performance of a GP may be identified by anyone who has contact with them, but it is often close clinical colleagues and support staff who are best placed to recognise concerns that may need external involvement, support and training. Reporting a concern about a colleague is never easy but health care professionals have a responsibility to do so if they suspect that a colleague's performance may be putting patients at risk. The enclosed leaflet provides more information.

Details of the local arrangements are outlined in the Policy for Handling Concerns about the Performance of Independent Healthcare Professionals enclosed with this letter. Please share these widely within the practice and keep them safely for future reference.

Yours sincerely

PCT Chief Executive

LMC Chairman

Encs: NCAS leaflet on responding to performance concerns.

Policy for Handling Concerns about the Performance of Independent Healthcare Professionals

Who else has a role in performance concerns?

A range of other bodies have an interest in handling performance concerns. A brief outline of the responsibilities of other key bodies is given below:

General Medical Council

The GMC's key concern is whether a doctor is fit to practice. It is not involved with general complaints of a minor nature, nor of GP performance problems that are capable of being resolved locally. It can take action when:

- A doctor has been convicted of a criminal offence
- There is an allegation of serious professional misconduct
- A doctor's professional performance may be seriously deficient
- A doctor with health problems continues to practice whilst unfit and patient safety is compromised.

If there is evidence that patients may be at risk, the GMC can suspend or restrict a doctor's registration as an interim measure.

Strategic Health Authorities

As part of their role in performance managing PCOs, SHAs may wish to:

- Ensure that local systems for handling concerns about performance are operating well, for example by gathering information about numbers of cases, their progress and outcomes.
- Ensure that there are arrangements in place for further training and support of practitioners about whom there is concern. This will include working with Workforce Development Confederations and Deaneries.
- Help PCOs to handle occasional high profile cases, for example by giving advice on how to handle media interest.

PCO will need to approach SHAs to request they consider issuing an alert notice about clinicians.

Where NCAS is advising on a local performance concern, it will not normally have contact with the relevant SHA. However, there may be instances where NCAS wishes to discuss matters with the SHA, for example regarding the follow up of its recommendations. Before doing this, NCAS would normally inform the PCO of its intentions.

Healthcare Commission

The Healthcare Commission (HCC) was formed on 1 April 2004 and its principal role is the inspection and review of NHS organisation rather than individual practitioners. It undertakes investigations of organisations where concerns have been identified. Since August 2004, it has acquired a role in dealing with complaints brought by patients, which cannot be satisfactorily resolved locally by the practitioner or PCO.

If a review of investigation by the HCC identifies a concern that might raise a question about an individual performance, HCC staff will discuss their concerns with the HCC Medical Director or appropriate equivalent who will decide:

- Whether the matter should be referred back to the PCO for resolution; or
- Whether the matter should be referred to NCAS, either via the PCT or directly to NCAS, if appropriate; and
- Whether it is a matter for the GMC or other professional body.

Similarly, if while assessing the performance of a GP, NCAS believes that there is a strong possibility of serious system or service dysfunction, NCAS staff will discuss their concerns with the NCAS Medical Director, or appropriate deputy, who will decide:

- Whether the matter should be referred back to the PCT for resolution ; or
- Whether the matter should be referred to the HCC either via the PCO or direct to the HCC, if appropriate.

Family Health Service Appeal Authority

The FHSAA is an independent tribunal. It hears appeals from GPs who have been refused inclusion on the Performers List, or who have been removed or contingently removed from the list. It also hears applications from a PCO for national disqualification of a GP from all PCT list.

Deaneries

Deaneries are responsible for postgraduate medical education. They aim to improve the quality of patient care by ensuring that doctors are well-educated, trained and motivated.

The role of Deaneries in performance concerns varies between regions. However, area of work that they might be expected to be involved in includes:

- Responding to local patterns of performance concerns by advising on relevant training courses and other educational opportunities
- Providing advice to PCOs on the education aspects of individual cases
- advising a PCO on whether a programme of retraining is an appropriate response to a problem and, where such a programme goes ahead, providing regular progress reports to the PCT
- Working with individual GPs referred to them by the PCO or the GMC to advise on a tailored programme of support and training.
- Providing training to PCO staff and other GPs involved in performance procedures on their roles and responsibilities.

Local Medical/Dental /Pharmaceutical /Optometric Committees

Local Medical/Dental/pharmaceutical/Optometric Committees are professional statutory organisations that represent members locally. They are not (unlike the BMA) a professional trade union and cannot act as such. They are democratically elected bodies which represent the views of practitioners to PCTs and SHAs, and to many other statutory and voluntary organisations.

Many Committees have been instrumental in setting up local performance procedures and have members with considerable experience of working with clinicians in difficulty. Local Professional committees can provide pastoral support to a professional colleague in distress, as well as an expert view to the PCO on the nature of problems raised (including contractual aspects).

Where an LMC /LDC/LOC becomes aware of a concern about a practitioner that may not be known to the PCO, they should ensure that the matter is referred for handling through the local performance procedure (and/or the professional body if patient safety may be compromised).

Individual practices

All clinicians have an obligation to protect patients from risk of harm posed by another colleagues conduct, performance or health. If they therefore have any reason to suspect that a colleague may be putting patients at risk, they must inform an appropriate local or national body.

Decision Making Group (DMG) : draft terms of reference

DMG Functions

- To assist Newcastle PCT, North Tyneside PCO and Northumberland Care Trust in discharging their responsibility for the quality of services provided by its practitioners
- To take overall delegated responsibility for managing GP performance as part of the North of Tyne clinical governance arrangements.
- To consider concerns about the performance of practitioners.
- To receive for information the outcome of performance investigations of directly employed professionals
- To undertake or arrange for investigation of any concerns.
- To determine, on behalf of the appropriate PCO Board, decisions to be taken on any of the problems received. Actions could include one or more of the following (the list is not exhaustive):no further actions, continued monitoring of the concerns, seeking advice from the Deanery, referral to the PAG for further investigation, referral to NCAS for consideration of assessment, suspension of the practitioner, reporting to the police or counter fraud service, and referral to the GMC.
- To take advice from NCAS at any stage.
- To liaise with other bodies who have a role in handling performance concerns including the SHA, the HCC, and the GMC.
- To provide the PAG with appropriate information when the DMG requests that it undertakes work about a suspected performance concern on behalf of the PCO.
- To assist in spreading good practice in handling performance concerns throughout the PCO.

Underpinning principles

- Safety of patients and the public
- Confidentiality, with information passed only on a 'need to know' basis.

- Processes which have the support of the profession locally.
- Clear communication with other bodies.

Process

- In making decisions on behalf of the PCO Boards, the DMG should record all decisions in writing, including the reasons and criteria used in its decision making.
- The DMG should provide all necessary reports to the PCO Boards.
- The DMG should meet in private when necessary.

Membership

Membership of (a minimum of) three may be drawn from:

- PCO Chief Executive
- Professional Executive Committee (PEC) Chair or deputy
- Medical Director or deputy
- PCO Chair or other Non-Executive Board member (Chair)
- A local LMC representative committee member or LDC/LOC/LPC as appropriate (observer status).

Support

The DMG will be supported by the Strategic Head of Clinical Governance Performance and Appraisal or deputy with responsibility for its procedural and administrative tasks as part of their job description.

Quorum

A panel meeting will be quorate if 3 members are present, to include at least a Non-Executive Director and Medical Director or deputy.

Key relationships

NCAS, GMC, Healthcare Commission, Deanery, LMC, LDC, LPC, LOC SHA

Performance Advisory Group: draft terms of reference

Functions

- To act as an expert advisory body to North of Tyne Decision Making Group (DMG).
- To undertake detailed investigation of cases referred by a DMG
- To advise DMG on interventions to address any problems identified, including further training and, if necessary, referral to other agencies.
- To review the outcome of interventions to improve performance.

Underpinning principles

- Safety of patients and the public.
- Prompt response to requests for advice.
- Confidentiality, with information passed only on a 'need to know' basis.
- Voluntary participation of GPs involved.
- Transparency and fairness of process.
- Clear arrangements for communication with other bodies.
- Process has support of profession.

Process

- The North of Tyne DMG is responsible for decision making and action arising from the PAG's recommendations. The PAG is acting on the instruction of the DMG and any appeal relating to a decisions made on the basis of advice from the PAG will be against the North of Tyne DMG , not that of any individual in the PAG.
- The PAG does not deal with complaints and is not a disciplinary body. However, any professional performance concerns identified following completion of a complaint investigation may be reviewed.

- The PAG will be accountable to the North of Tyne DMG which has agreed to take the lead on performance concerns.
- The PAG will send minutes of its meetings to the DMG. These minutes, and any other PAG reports, will allow the DMG to form an opinion of whether the PAG is fulfilling its responsibilities. PAG minutes and reports will recognise the confidential nature of individual cases and respect the controls governing the release of sensitive information.
- The DMG will report their activities to the Boards of North Tyneside PCT, Newcastle PCT and Northumberland care Trust.
- The PAG will prepare an annual report on its activities for the DMG.

Membership

Members will include people with relevant skills and experience including the understanding of ethical and legal issues in investigating and managing performance concerns.

- Lay Chair (PCO Non-Executive Director drawn from one of the 3 PCOs)
- North of Tyne Professional Performance Lead (Deputy Medical Director) or deputy
- Strategic Head of Clinical Governance, Performance and Appraisal or deputy
- GP /Dental Tutor (appropriate to agenda)
- LMC, LDC, LOC, LPC representative (appropriate to agenda) with expertise in the field
- Practising GP (s) with expertise and training in performance matters (case manager)
- Medical/Dental Deanery representative.

If required, co-opted members for specialist advice may include, pharmacists, prescribing advisor, dentists, optometrists, practice nurse. Director of Community Services, when investigations of directly employed

staff impact on issues of professional performance of independent healthcare professionals.

Quorum

A panel meeting will be quorate if five panel members are present, to include at least Non-Executive Director or deputy and Deputy Medical Director or deputy.

Key relationships

Local Medical Council (LMC), Local Dental Committee (LDC), Local Pharmaceutical Committee (LPC), Local Optometric Committee (LOC), National Clinical Assessment Service (NCAS), General Medical Council (GMC), General Dental Council (GDC), General Optical Council (GOC), Royal Pharmaceutical Society (RPS), Deanery, GP educationalists

Bibliography 1996 to present

Performance problems and general practice

- 1996 **Maintaining Medical Excellence.** An inquiry by the Chief Medical Officer, Sir Kenneth Calman, with the terms of reference: “To review guidance and procedures relating to GPs whose performance appears to fall below acceptable standards and to make recommendations to the Secretary of State for any necessary changes and further work needed.”
- 1997 **Measures to assist GPs whose performance gives cause for concern.** School of Health and Related Research (SchARR), University of Sheffield. This report, commissioned by the Department of Health, addressed issues of principle, definition, identification, diagnosis intervention, resourcing and evaluation. It also suggested a practice management framework for linking these different aspects of dealing with performance problems.
- 1997 **The New NHS: modern, dependable.** Department of Health (CM3807). This heralded a shift towards ensuring quality in the NHS and requiring practitioners to accept responsibility for developing and maintaining standards in the local NHS organisations, specifically embracing the concept of clinical governance.
- 1998 **A First Class Service: quality in the New NHS.** Department of Health. This announced that the responsibilities of PCTs would be reinforced by a statutory duty in respect of the quality of care provided. A systematic approach to monitoring and developing clinical standards in primary care was seen as essential. Action on quality was to be through a new system of clinical governance.
- 1998 **Good Medical Practice.** General Medical Council. This booklet describes the principles of good medical practice and standards of competence, care and conduct expected of doctors.

- 1999 **Supporting Doctors, Protecting Patients.** Department of Health. Based on the premise that procedures for detecting and dealing with poor clinical performance were fragmented and inflexible, this document set out for consultation a new framework for dealing with these problems. The aim was not only to provide better protection for patients, but also to facilitate the earlier recognition of doctors with problems and provide effective support for them.
- 2001 **Assurance the Quality of Medical Practice.** Department of Health. Arising directly out of *Supporting Doctors, Protecting Patients*, this report marked the formation of the National Clinical Assessment Authority (NCAA – now the National Clinical Assessment Service) and a new approach to handling concerns about the performance of doctors.
- 2001 **GP toolkit.** Royal College of General Practitioners. A practical guide to managing GPs whose performance gives cause for concern.
- 2002 **Good Medical Practice for General Practitioners.** British Medical Association and RCGP joint publication. This document set out the GMC's requirement for good medical practice in the specific context of general practice, summarising under each GMC heading points that would describe an excellent and unacceptable GP.
- 2002 **Primary Care Trusts and GPs whose performance gives cause for concern.** SchARR, University of Sheffield. Commissioned by the NHS Executive, this report gave PCTs a framework within which to develop their own local processes.
- 2002 **NCAA Handbook for prototypes phase.** NCAA. This was the NCAA's first handbook for general practice, giving an overview of the NCAA GP assessment framework and providing information on effective local performance procedures.

- 2004 **NCAA./NCAA Handbook.** NCA. Replaces the 2002 prototype handbook (and further updated in 2005) this covers NCAS' process for responding to requests for help about performance concerns. It explains when and how to contact NCA and the range of services offered by NCAS.
- 2004 **Understanding Performance Difficulties in Doctors.** NCAA. Presents research on the reasons why a doctor may come to under perform. Includes the impact on performance of physical and psychological health, cognitive impairment, personality, attitudes, organisational culture and teamwork.
- 2005 **Understanding doctor's performance.** Cox et al, Radcliffe Publishing. This book provides more detailed information about factors that may contribute to doctors' performance difficulties.
- 2006 **Good doctors, safer patients.** Reports of a review of medical regulation undertaken by the Chief Medical Officer for England.

Local Performance Procedures Flow Chart

