



## Responding to Concerns about Medical & Dental Staff Policy

This document sets out the policy for the handling of concerns and subsequent remediation activities for medical and dental staff in the Trust and is in accordance with the Department of Health Revalidation Support Team guidance on Supporting Doctors to Provide Safer Healthcare.

|                      |                               |
|----------------------|-------------------------------|
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| ACCOUNTABLE DIRECTOR | Medical Director              |
| POLICY AUTHOR        | HR Business Partners/Advisors |

### Important Note:

**The Intranet version of this document is the only version that is maintained.**

Any printed copies should therefore be viewed as “uncontrolled” and, as such, may not necessarily contain the latest updates and amendments.





## Contents

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|   |    |
|---|----|
| 1. Scope .....                                  | 2  |
| 2. Introduction.....                            | 3  |
| 3. Statement of Intent.....                     | 3  |
| 4. Definitions .....                            | 4  |
| 5. Duties .....                                 | 4  |
| 6. Arrangements/Detail .....                    | 6  |
| 7. Training .....                               | 9  |
| 8. Monitoring compliance with this policy ..... | 9  |
| 9. References/ Bibliography .....               | 10 |
| 10. Related Trust Policy/Procedures .....       | 10 |
| Appendices.....                                 | 11 |





## 1. Scope

This policy and its supporting procedures:

- Covers all Medical or Dental staff (Practitioners) whether
  - Medical staff employed by Cumbria Partnership NHS Foundation Trust (the Trust), including those on honorary contracts, and including Locums
  - Dental staff employed by Cumbria Partnership NHS Foundation Trust
  - all Medical trainees on rotation working in the Trust i.e. specialty trainees, GP trainees, foundation doctors, medical students. NB Trainee concerns are considered initially as training issues, following the Deaneries' procedures, including their remediation.

For the purposes of this policy, this broad staff group will be hereafter referred to as Practitioners.

- Covers concerns that are judged as 'Medium or High level' on the Levels of Concern Matrix in Appendix 1.
- Are integrated with clinical governance systems to enable a single point of monitoring and triangulation, including subsequent remedial action for Practitioners:
  - whose performance has been identified as a concern for whom the appraisal process has identified very early signs of difficulties
  - who have had a significant career/organisational break or other absence from practice. For example, suspension/exclusion, a change in career path, ill-health/maternity/carers leave or other types of statutory leave, or a period working outside the NHS or outside the UK.

The Trust ensures its commitment to fair and equitable treatment of all members of staff in the utilisation of this policy.



## 2. Introduction

This policy is required to enable the Responsible Officer (RO) to carry out their statutory duties in relation to responding to concerns (Medical Profession (Responsible Officers) Regulations 2010) about a Practitioner's performance.

The Trust is responsible for setting measurable, realistic and achievable standards of performance and behaviour for Practitioners. It has a responsibility to ensure that employees understand what is required of them as part of their role. This includes identifying areas of poor performance/behaviour and other concerns that impact the performance of Practitioners, in a supportive and consistent way.

This policy has been developed in order to support the management of concerns about the performance/behaviour of Practitioners across the Trust. With early intervention and prevention, possible restriction, exclusion or suspension can be avoided.

## 3. Statement of Intent

Our aim throughout this policy is

- to address concerns (knowledge, skills and behaviour) about the performance of Practitioners in a collaborative and supportive manner
- to have a fair and consistent approach to handling concerns and remediation action planning
- to have a process for timely and effective monitoring of concerns and the progress of plans
- to have managed arrangements tailored to the needs of the individual Practitioner to facilitate improved performance or return to work
- to have a standardised system for recording and monitoring concerns.

Patient safety should be the paramount consideration in any remediation plan. The following key elements must act as a touchstone for the policies, procedures and practical arrangements.

Remediation must ensure the safety of patients and the public while aiming to secure:

- The needs and care of patients
- The governance and integrity of the clinical service
- The needs and wellbeing of medical and dental staff.

The policy provides a clear, formal framework to apply in order to address issues of remediation which arise in relation to an inability to perform to, and sustain the required standard for a post because of a shortfall in competency, skill, knowledge or understanding. This shortfall can be for a wide variety of reasons.





With appropriate, planned and managed remedial programmes, Practitioners with performance concerns can be supported to stay on their career path, and contributing to the delivery of safe, high quality care to patients.

#### 4. Definitions

|               |                                      |
|---------------|--------------------------------------|
| The Trust     | Cumbria Partnership Foundation Trust |
| Practitioners | Medical and Dental staff             |
| RST           | NHS Revalidation Support Team        |
| PET           | Trust Patient Experience Team        |

**Remediation** is the process of addressing performance concerns (knowledge, skills and behaviours) that have been recognised through assessment, investigation, review or appraisal, so that the Practitioner has the opportunity to practice safely.

Remediation is an umbrella term for all activities which provide help; from the simplest advice, through to formal mentoring, further training, reskilling and rehabilitation:

**Reskilling** is the process of addressing gaps in knowledge, skills and/or behaviours where a Practitioner is performing below the required standard, or as a result of an extended period of absence (usually over 6 months) so that the Practitioner has the opportunity to return to safe practice.

**Rehabilitation** is the process of supporting the practitioner, who is disadvantaged by chronic ill health or disability, and enabling them to access, maintain or return to practice safely.

**Insight** NCAS define insight as ‘A readiness to explore intellectually and emotionally how and why I, and those I interact with, behave, think, and feel as we do, and for me to adapt my behaviour accordingly’.

#### 5. Duties

##### 5.1 The Responsible Officer/Medical Director (RO)

- has overall responsibility for responding to concerns and ensuring appropriate systems and procedures are in place

##### 5.2 The Good Medical Practice Group (GMPG)

- Monitors all concerns, decides initial actions depending on their level of concern
- Signs off Remediation Action Plans and monitors progress





### **5.3 The individual Practitioner with performance concern**

- Is responsible for engaging with this policy, carrying out activities on the remediation action plan timely.

### **5.4 Associate Medical Directors (AMD) and Clinical Directors (CD)**

Are responsible for:

- Raising any concerns they may have or that have been reported to them
  - Using the appropriate policy, or
  - If other policies are not relevant, directly to the RO
- Informing the Practitioner that a concern about them has been raised to the RO and will be placed on the central Performance and Development Log; and subsequently when the concern has been closed
- Reviewing concerns (triangulating with other knowledge) for Practitioners they are responsible for, and manage through regular management supervision meetings.
- Developing Remediation Action Plans with the Practitioner; obtaining sign-off from and reporting progress to the GMPG.

### **5.5 Director of Medical Education**

- Has the same responsibilities for educational supervisors (trainers) and trainees, as AMDs and CDs have for other Practitioners, in terms of raising concerns, communication and their review.

In addition they have responsibility to

- Liaise with the trainer/trainee's CD/AMD and keep them informed
- Inform the relevant Deanery of medium/high concerns about trainees.

### **5.6 HR Business Partner**

- Is responsible for managing the records and documentation that is the Performance & Development Log and remediation records.

### **5.7 Organisational Infrastructure**

The RO is supported by other teams and individuals in reporting concerns: -

- by the PET for the administration of the Policy on Dealing with Complaints and Comments
- by medical appraisers for Appraisals
- by the Risk Team & investigators for the administration of the Incident & Serious Untoward Incident & Near Miss Policy
- by the Whistleblowing Lead for the Whistleblowing Policy

### **5.8 Trust Governance**

The RO shall report to the Quality and Safety Committee as part of the annual Revalidation Report r.





## 6. Arrangements/Detail

### 6.1 Raise a Concern

Concerns may be raised by anyone, using the appropriate policies e.g. complaints, appraisals, whistleblowing.

If this is not appropriate, concerns shall be raised depending on the level of the concern. In order to support a consistent approach with other NHS organisations, the Trust will adopt the guidance contained in the NHS England paper “Establishing the level of concern”, (Refer to Appendix 1).

#### **Medium/High Level Concerns**

These concerns should be raised with the CD /AMD of the individual to whom the concern relates, and to the RO.

#### **Low Level Concerns**

These concerns should be raised with the CD /AMD of the individual to whom the concern relates, who shall then manage and support through supervision.

If the CD/AMD, on triangulation with other factors, subsequently decides the concern is medium/high, they shall notify the RO. The CD/AMD shall also inform the Practitioner that they have notified the RO.

If the Practitioner disputes the content of the concern, they should raise this with their CD/AMD in the first instance, before the RO.

All trainer-specific concerns shall be raised with the DME in the first instance to manage and who shall refer to the RO, if medium/high level.

Trainee-specific concerns shall be raised to the trainee’s trainer, and, if medium/high level to the DME. The DME shall review and if considered to be medium/high level shall inform the RO and, in addition, the trainee’s Deanery who will decide action to be taken with the trainee’s Lead Employer.

### 6.2 Review of Concern & the Recording on Performance & Development Log

Concerns raised to the RO (medium/high level concerns) will be reviewed by the GMPG.



If, on review, the concern is considered to be medium or high level, then it is managed formally through Remediation Action Planning and it is recorded on a central and confidential Performance and Development Log.

There may be certain instances where Remediation Action Planning is not immediately progressed, for example, where the Disciplinary and Capability Policy for Medical and Dental staff is followed. Where the concern is about a locum or trainee, it may not be appropriate/reasonable for remediation to be undertaken by the Trust.

Note, the Practitioner's CD/AMD will be notified about the decision to treat the concern under the under Disciplinary and Capability Policy for Medical and Dental staff.

OR, if, on review, the concern is considered to be of low level, the GMPG will advise the Practitioner's CD/AMD to manage this through supervision. This concern will NOT be placed on the Performance and Development Log.

Note, if there is a medium or high level concern for the Trust about a Practitioner (i.e. there is an open concern on the Performance & Development Log) at the point their revalidation recommendation is due, then the likely outcome is that the RO will send a request to the GMC to defer revalidation.

### **6.3 Plan and implement Remediation Action Plans –**

The following 4 steps are based on the NCAS Back on Track framework with full details on how to undertake each step at appendix 2.





1. Consider the full range of concerns
2. Develop & Agree Remediation Action Plan
3. Implement & Monitor
4. Review & Follow Up

#### Funding

In considering whether to attempt a further training programme/remediation the Trust will give consideration to the cost, time and emotional impacts involved.

Cost-sharing solutions may also be found. NCAS' position remains that the Practitioner may be asked to make a reasonable contribution to the cost of a further training programme. An employer also has a responsibility to consider providing funding to support reskilling, and more so when a Practitioner has been on maternity or long term sick leave or other types of long term leave.

The contribution that the Trust makes will be proportionate to the likelihood of success of the training programme/remediation taking into account relevant factors including but not limited to willingness of practitioner to engage, level of insight, success or otherwise of previous attempts to bring improvement in performance.

Where practitioners work for other organisations in addition to Cumbria Partnership Foundation Trust contribution to the costs of training/remediation may also be discussed with such organisations.

It is unlikely that it will be reasonable/appropriate for the Trust to fund training programmes/remediation for locums or trainees.

### **6.4 Supporting the Practitioner – Appeal process**

If a Practitioner is dissatisfied with the way this policy is applied, they should contact the Director for Workforce and Organisational Development in the first instance. The Trust's Grievance Policy may be used if this cannot be resolved.

### **6.5 Maintaining Confidentiality**

The process for responding to concerns and managing remediation is confidential, with details shared on a need to know basis.

All records will be kept in accordance with the guiding principles of the Data Protection Act and the RST Information Management Guidance.

A simple record will be kept within the Trust, recording all concerns in the scope of this policy (Performance & Development Log). Access to the information will be restricted to the GMPG. As a minimum, this will include:





- Date concern raised
- Type & level of concern
- Brief summary of action & current progress
- Date of next review

Remediation Action Plans and other records will be kept in the individual Practitioner’s personnel file.

## 7. Training

Training required to fulfil this policy will be provided in accordance with the Trust’s Training Needs Analysis. Management of training will be in accordance with the Trust’s Learning and Development Policy.

## 8. Monitoring compliance with this policy

The table below outlines the Trusts’ monitoring arrangements for this policy/document. The Trust reserves the right to commission additional work or change the monitoring arrangements to meet organisational needs.

| Aspect of compliance or effectiveness being monitored                            | Monitoring method   | Individual responsible for the monitoring | Frequency of the monitoring activity | Group / committee which will receive the findings / monitoring report | Group / committee / individual responsible for ensuring that the actions are completed |
|--|---|---|--------------------------------------|---|--|
| Effectiveness of Remediation process for Practitioners performance concerns      | Written report  | RO  | Annual                               | Quality & Safety Committee  | RO   |
| Any negative effects of this policy on employees with a protected characteristic | Monitoring and analysis of the equality profile of employees at each stage of the procedure | HR Lead                                   | Annual                               | Equality & Diversity Group  | HR Lead  |





## 9. References/ Bibliography

|  |   |
|--|---|
|  |   |
| GMC 'Good Medical Practice'  | <a href="http://www.gmc-uk.org/guidance/good_medical_practice.asp">http://www.gmc-uk.org/guidance/good_medical_practice.asp</a>   |
| RST Supporting Doctors to Provide Safer Healthcare<br>Responding to concerns about a doctor's practice.                                      | <a href="https://www.england.nhs.uk/revalidation/wp-content/uploads/sites/10/2014/03/rst_supporting_doctors_providing_safer_healthcare_20131.pdf">https://www.england.nhs.uk/revalidation/wp-content/uploads/sites/10/2014/03/rst_supporting_doctors_providing_safer_healthcare_20131.pdf</a> |
| RST Information Management Guidance  | <a href="http://www.gmc-uk.org/static/documents/content/RST2.pdf">http://www.gmc-uk.org/static/documents/content/RST2.pdf</a>   |
| National Clinical Assessment Service. The Back on Track framework for further training: Restoring Practitioners to safe and valued practice. | <a href="http://www.ncas.nhs.uk/archive-of-revision-project-jan-mar-2016/back-on-track/">http://www.ncas.nhs.uk/archive-of-revision-project-jan-mar-2016/back-on-track/</a>   |

## 10. Related Trust Policy/Procedures

This policy and its supporting procedures use the outcomes and reports from a variety of sources, including the following Trust policies: -

- Medical Appraisal Policy
- Policy on Dealing with Complaints and Comments
- Incident & Serious Untoward Incident & Near Miss Policy
- Disciplinary and Capability Policy for Medical and Dental Staff
- Whistleblowing Policy

Other related policies and procedures include

- Clinical Supervision Policy
- Trust Confidentiality Policy
- Grievance Policy





## Appendix 1 – Levels of Concern Matrix

| • Low level indicators   | Moderate level indicators   | High level indicators   |
|--|---|---|
| Could the problem have been predicted?   |   |   |
| Unintended or unexpected incident  |   |   |
| What degree of interruption to service occurred?   |   |   |
| Incident may have interrupted the routine delivery of accepted practice (as defined by GMP) to one or more persons working in or receiving care  |   | Significant incident which interrupts the routine delivery of accepted practice (as defined by Good Medical & Dental Practice) to one or more persons working in or receiving care  |
| How likely is the problem to recur?  |   |   |
| Possibility of recurrence but any impact will remain minimal or low. Recurrence is not likely or certain   | Likelihood of recurrence may range from low to certain  | Likelihood of recurrence may range from low to certain  |
| How significant would a recurrence be?   |   |   |
|  | <p>Low level likelihood of recurrence will have a moderate impact (where harm has resulted as a direct consequence &amp; will have affected the natural course of planned treatment or natural course of illness and is likely or certain to have resulted in moderate but not permanent harm).</p> <p>Certain level likelihood of recurrence will have a minimal or low impact</p> | Low level likelihood of recurrence will have a high impact (where severe/permanent harm may result as a direct consequence and will affect the natural course of planned treatment or natural course of illness such a permanent lessening of function, including non-repairable surgery or brain damage) |
| How much harm occurred?  |   |   |
| <p>No harm to patients or staff and the doctor is not vulnerable or at any personal risk</p> <p>No requirement for treatment beyond that already planned</p>                                     | <p>Potential for harm to staff or the doctor is at personal risk</p> <p>A member of staff has raised concerns about an individual which requires discussion and an action plan</p>  | Patients, staff or the doctor have been harmed  |
| What reputational risks exist?   |   |   |
| Organisational or professional reputation is not at stake but the concern needs to be addressed by discussion with the Practitioner.   | Organisational or professional reputation may also be at stake  | Organisational or professional reputation is at stake   |
| Does the concern impact on more than one area of practice?   |   |   |
| <p>Concern will be confined to a single domain of Good Medical Practice</p> <p>May include one of following: clinical incidents, complaints, poor outcome data which requires discussion and</p> | <p>Concern affects more than one domain of Good Medical Practice</p> <p>May include one or more of following: clinical incidents, complaints, poor outcome data which requires</p>  | <p>May include a serious untoward incident or complaint requiring a formal investigation</p> <p>This includes criminal acts and referrals to the GMC</p>  |





|   |   |  |
|---|---|--|
| perhaps action  | discussion and perhaps action   |  |
| Which factors reduce levels of concern?   |   |  |
|   | De-escalation from moderate to low:<br><br>Reduction to low or minimal Impact<br><br>Reduction in the likelihood of Recurrence<br><br>Evidence of completion of effective remediation                                 | De-escalation from high to moderate:<br><br>Reduction in impact to Moderate<br><br>Reduction in the likelihood of Recurrence<br><br>Evidence of insight and change in practice                       |
| Which factors increase levels of concern?   |   |  |
| Escalation from low to moderate:<br><br>Increase in impact to Moderate<br><br>Likelihood of recurrence is Certain<br><br>No evidence of insight or change in practice   | Escalation from moderate to high:<br><br>Increase in impact to severe<br><br>Increase in likelihood of Recurrence<br><br>No evidence of remorse, insight or change in practice  |  |
| How much intervention is likely to be required?   |   |  |
| Insight, remorse and change in practice will be evident<br><br>Remediation is likely to be achieved with peer support<br><br>The individual doctor has no other involvement in incidents or has outstanding or unaddressed complaints/concerns<br><br>The remediation plan should take no longer than four weeks to address | Insight, remorse and change in practice may be evident<br><br>Remediation is likely only to be achieved through specialist support<br><br><br>The remediation plan should take no longer than three months to address | Remediation will only to be achieved through specialist support<br><br><br>The remediation plan will take upwards of three months to address and may include a planned period of supervised practice |

*(Source: RST Supporting Doctors to Provide Safer Healthcare: Responding to Concerns about a doctor's practice v1 March 2012)*

If the concern is relatively low but the Practitioner is working in a more professionally isolated or less-managed environment, then the concern is considered to be at a higher level to the Trust.





## Appendix 2 –Remediation Action Plans

The following 4 steps provide guidance on planning and implementing a remediation action plan and are based on the NCAS BoT framework

### 1. Consider the full range of concerns

If there is not already a clear understanding of the nature and range of the concern, then further investigation or assessment may be necessary. This should involve early discussions with the Practitioner and consider the context of the doctor's practice e.g. operational team.

### 2. Develop & Agree Remediation Action Plan

#### Different Interventions

When drafting an individual's Remediation Action Plan, there are a number of different options for intervention, covering supervision, development and scope of work. Common Types of Intervention are detailed below

#### Supervision:

- supervised practice
- formative work-based assessments  
case-based reviews, mini-clinical evaluation exercises (Mini-CEX), objective structured clinical examinations (OSCE), on-site assessment and training (OSAT), video recording, simulation, patient and colleague feedback

#### Development:

- educational activities  
re-training and re-skilling activities including tutorials, workshops, courses, e-learning, focused reading, language/communication skills-based activities
- specialist interventions  
behavioural coaching, occupational, psychological and specialist health (mental health and addiction) interventions, counselling (career or therapeutic), boundary awareness, cultural competence
- Practitioner support  
mentoring, vocational rehabilitation, protected learning and development time, career guidance, financial advice
- organisational support  
human resource, legal advice, team or workplace mediation

#### Scope of work:



- 
- amendment/restriction of aspects of scope of work

### **The Hallmarks of an appropriate, effective intervention**

- Tailored to the problem
- Suits the individual's learning style
- Results in genuine, long lasting change
- Requires an acceptable investment of time, money, energy or other resources
- Makes a quantifiable difference
- Clarity and client engagement are essential
- Personality, motivation and organisational factors all impact on individual performance
- Explicit arrangements for giving feedback to the GMPG concerning progress towards addressing the concern(s) and the level of the doctors insight into the concerns

### **Models of Support**

The RO will consider support that can be offered through existing capacity and resource; and where strategic delivery of remediation and support may result in more effective outcomes and better value for money.

- Utilising the skills and experience of senior clinicians in developing skills of more junior staff
- Working across professional groups to collaborate on learning sets and support for handling of complex issues
- Reciprocal or networked arrangements with other organisations, for example, for placements, supervision and clinical expertise
- Shared arrangements with other organisations for commissioning and delivery of support and interventions
- Use of routine and mandatory training and development opportunities to ensure that these are used to the full benefit of the medical and dental workforce
- Co-ordinating support and running regular updates or sessions for common concerns rather than commissioning these on an individual basis
- Group support for Practitioners who have fallen into difficulties when supporting one another through a common approach
- Recognising that Practitioners who are going through a process of remediation and those who have completed a process may be willing to act as a mentor or in another supportive capacity.



### **Sufficient Expertise**

There must be a sufficient level of expertise available to the Trust for effective remediation. A collaborative approach will be used on a case by case basis:

- NCAS may be consulted for advice and support e.g., drafting and reviewing of remediation action plans, their implementation and on methods of monitoring progress.
- Other organisations in the NHS North of England cluster may be consulted for advice/pooling of expertise.

The plan is developed by the relevant CD/AMD, in collaboration with the Practitioner. This should detail: -

- Areas of concern
- Interventions
- Resources & support needed
- Timeframes
- Shared funding arrangements
- Sources of evidence/information needed to demonstrate progress
- Implications to Practitioner if concerns are not addressed

The plan should engage the Practitioner, be reasonable, proportionate, practical and resourced. There will be clear signoff by the GMPG.

### **3. Implement & Monitor**

Progress of the plan is monitored closely by the relevant CD/AMD, with regular progress reports to the GMPG. This will allow any lack of engagement with the process or lack of progress to be identified and dealt with quickly and effectively. This could include rearranging activities, extending deadlines or potentially engaging disciplinary policies.

### **4. Review & Follow up**

The closing of a plan and the need for subsequent management actions will be considered by the GMPG depending on whether concerns about the Practitioner's performance have been resolved or only partially resolved. Further actions may include considering the instigation of the Trust's Disciplinary and Capability Policy for medical and dental staff.

Plans may be reviewed by the Trust regarding how well they worked, in order to strengthen future planning.



