

# **Guidance for Employees Involved in Maintaining High Professional Standards in the NHS**

If you require a copy of this policy in an alternative format (for example large print, easy read) or would like any assistance in relation to the content of this policy, please contact the Diversity & Inclusion Officer on 01803 656705.

*This is a controlled document. It should not be altered in any way without the express permission of the author or their representative. On receipt of a new version, please destroy all previous versions.*

<b>Date of Issue:</b>	October 2023	<b>Next Review Date:</b>	October 2025
<b>Version:</b>	1	<b>Last Review Date:</b>	Sept 23
<b>Author:</b>	Medical Workforce		
<b>Directorate:</b>	Workforce and Organisational Development		
<b>Links or overlaps with other guidance/policies:</b>			
MD29 MHPS			

**Amendment History**

Issue	Date	Reason for Change
1		

**Rapid (E)quality Impact Assessment (EqIA)** (for use when writing policies)

<b>Guidance Title</b> (and number)	Guidance for Employees Involved in Maintaining High Standards in The NHS investigation	<b>Version and Date</b>	V1 oct 2023
<b>Author</b>	Medical Workforce		
An (e)quality impact assessment is a process designed to ensure that policies do not discriminate or disadvantage people whilst advancing equality. Consider the nature and extent of the impact, not the number of people affected.			
<b>Who may be affected by this document?</b>			
Patients/ Service Users	<input type="checkbox"/>	Staff	<input checked="" type="checkbox"/>
Other, please state...			<input type="checkbox"/>
<b>Could the policy treat people from protected groups less favorably than the general population?</b>			
<i>PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below</i>			
Age	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Gender Reassignment	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Race	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Disability	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Gender	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Pregnancy/Maternity	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Sexual Orientation		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Religion/Belief (non)		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Marriage/ Civil Partnership		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
<b>Is it likely that the policy could affect particular 'Inclusion Health' groups less favorably than the general population?</b> (substance misuse; teenage mums; carers <sup>1</sup> ; travellers <sup>2</sup> ; homeless <sup>3</sup> ; convictions; social isolation <sup>4</sup> ; refugees)			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Please provide details for each protected group where you have indicated 'Yes'.</b>			
<b>VISION AND VALUES:</b> Policies must aim to remove unintentional barriers and promote inclusion			
Is inclusive language <sup>5</sup> used throughout?			Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
Are the services outlined in the policy fully accessible <sup>6</sup> ?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input checked="" type="checkbox"/>
Does the policy encourage individualised and person-centered care?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input checked="" type="checkbox"/>
Could there be an adverse impact on an individual's independence or autonomy <sup>7</sup> ?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input checked="" type="checkbox"/>
<b>EXTERNAL FACTORS</b>			
<b>Is the policy a result of national legislation which cannot be modified in any way?</b>			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>What is the reason for writing this policy?</b> (Is it a result in a change of legislation/ national research?)			
<b>Who was consulted when drafting this policy?</b>			
Patients/ Service Users	<input type="checkbox"/>	Trade Unions	<input checked="" type="checkbox"/>
Protected Groups (including Trust Equality Groups)			<input type="checkbox"/>
Staff	<input type="checkbox"/>	General Public	<input type="checkbox"/>
Other, please state...			<input type="checkbox"/>
<b>What were the recommendations/suggestions?</b>			
<b>Does this document require a service redesign or substantial amendments to an existing process?</b> <i>PLEASE NOTE: 'Yes' may trigger a full EIA, please refer to the equality leads below</i>			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>ACTION PLAN:</b> Please list all actions identified to address any impacts			
<b>Action</b>	<b>Person responsible</b>	<b>Completion date</b>	

**Please contact the Equalities team for guidance:** For Torbay and South Devon NHS Trusts, please call 01803 656676 or email [pdf.sdhct@nhs.net](mailto:pdf.sdhct@nhs.net). **This form should be published with the policy and a signed copy sent to your relevant organisation.**

<sup>1</sup> Consider any additional needs of carers/ parents/ advocates etc, in addition to the service user

<sup>2</sup> Travelers may not be registered with a GP - consider how they may access/ be aware of services available to them

<sup>3</sup> Consider any provisions for those with no fixed abode, particularly relating to impact on discharge

<sup>4</sup> Consider how someone will be aware of (or access) a service if socially or geographically isolated

<sup>5</sup> Language must be relevant and appropriate, for example referring to partners, not husbands or wives

<sup>6</sup> Consider both physical access to services and how information/ communication is available in an accessible format

<sup>7</sup> Example: a telephone-based service may discriminate against people who are d/Deaf. Whilst someone may be able to act on their behalf, this does not promote independence or autonomy

## Contents

<b>1</b>	<b>Introduction</b> .....	<b>5</b>
<b>2</b>	<b>Understanding Concerns</b> .....	<b>5</b>
<b>3</b>	<b>Responsibility of the Clinical Service Lead on Receipt of a Concern</b> .....	<b>6</b>
<b>4</b>	<b>Difference between ‘establishing facts’ and ‘Formal investigation’</b> .....	<b>6</b>
<b>5</b>	<b>MHPS Investigation</b> .....	<b>7</b>
	Doctor Under Investigation .....	7
	Member of Staff Witness to Concern/Complaint .....	8
	Case Investigation Report.....	9
<b>6</b>	<b>Confidentiality</b> .....	<b>9</b>
<b>7</b>	<b>Conduct Hearings &amp; Disciplinary Matters</b> .....	<b>10</b>

## 1 Introduction

- 1.1 This Guidance is to be read in conjunction with MD 29 Maintaining High Professional Standards (MHPS) in the NHS Policy. The document provides guidance to all employees responsible for or part of a MHPS investigation.
- 1.2 Involvement in a MHPS process, in whatever capacity, can be worrying this guidance is designed to provide you with information regarding the process and your role within it.

## 2 Understanding Concerns

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

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

A member of staff may witness the following and wish to raise their concerns in relation to:

- Inflammatory comments
- Poor communication with colleagues or patients
- Inappropriate verbal language
- Inappropriate body language
- Poor behaviour
- Clinical practice
- Fraud for example private practice concerns / timesheets

### 3 Responsibility of the Clinical Service Lead on Receipt of a Concern

- 3.1 If you receive a complaint or concerns are raised with you the first step is to 'establish the immediate facts' surrounding the complaint. This can include any documentary records such as timesheets/ written statements from the member of staff who raised concern and any other witnesses. At this stage, you are only seeking information that is readily available.
- 3.2 It is recommended that you seek advice from the Medical Workforce Service [sdhct.MedicalHR@nhs.net](mailto:sdhct.MedicalHR@nhs.net)
- 3.3 **Important:** There is **no** requirement at this stage to invite individuals to formal meetings, this would be part of any subsequent investigation process if needed.
- 3.4 You should advise the individual doctor that a concern/complaint has been received regarding them. Do this sensitively and reconfirm that you are establishing the facts and no formal process has been entered into at this time. Assure the individual you will keep them informed and the matter will be progressed at pace.
- 3.5 The purpose of this stage is to gather enough information to enable the Chief Medical Officer to assess the seriousness of the concern/complaint raised and help inform and rationalise whether this needs to be resolved informally or through a more formal route.

### 4 Difference between 'establishing facts' and 'Formal investigation'

Establishing facts (Informal)	Investigation (Formal)
Clinical Service Lead (CSL) gathering facts /information that has given rise to concern – readily available	Case investigator – trained in MHPS has been appointed by the case manager this would not ordinarily be the respective CSL
Information is gathered surrounding the concern/complaint	Investigation is directed by a Terms of Reference established and agreed by case manager
The individual concerned has been made aware informally that there is an issue.	Individual would have been notified formally by Chief Medical Officer /case manager to inform of the formal proceedings that will take place
Issue is only known to small group of individuals as appropriate	Case has been discussed with PPA, NHS Resolution
No notice is required i.e. no invite to formal meeting no right to rep	Right to notice to prepare following formal invite to a meeting in writing
No right of representation	Right of representation applies

Progress is being managed locally with Medical Workforce Service Support.	Progress is being monitored by a nominated NED – Case manager/ Chief Medical Officer and Medical Workforce Service
No formal process to follow	Any action must be in line with MHPS /Trust disciplinary procedure for medical staff

## 5 MHPS Investigation

- 5.1 A MHPS investigation will commence where a concern or incident has not been able to be resolved informally in the first instance. This decision will have been made by the Chief Medical Officer.
- 5.2 A MHPS investigation will also allow for a determination as to whether the matter relates to misconduct or capability.
- 5.3 A Case Manager will be appointed this is usually a Medical Clinician who has received the appropriate training. The Case Manager will identify the nature of the problem or concern and assess the seriousness of the issue of the information available.
- 5.4 The Case Manager will be responsible for deciding whether the matter needs to be investigated under the formal MHPS process. They will also be responsible for determining the Terms of Reference for the investigation.
- 5.5 Where a more formal route needs to be followed an appropriately experienced and trained case investigator will be appointed.
- 5.6 The case investigator's role is in leading the investigation into any allegations or concerns about a practitioner within the Terms of Reference, establishing the facts and reporting the findings. They are not involved in the decision on what action should be taken or whether the employee should be excluded from work or on restrictions being placed.
- 5.7 The Responsibilities of the Case Manager and Case Investigator are outlined in the Trust's MD29 Maintaining High Professional Standards Policy.

### Doctor Under Investigation

- 5.8 You will be informed in writing by the case manager, as soon as it has been decided, that an investigation is to be undertaken, the name of the case investigator and made aware of the specific allegations or concerns that have been raised.
- 5.9 You will be given the opportunity to see any correspondence relating to the case together with a list of the people that the case investigator will interview. You will be afforded the opportunity to put your view of events to the case investigator.

- 5.10 Written notes of the investigation interview will be typed up for you to sign. You will have the opportunity to amend your statement to clarify points and correct any inaccuracies. If it is agreed by the Case Investigator and supporting Medical HR representative that the notes are a true representation of the actual conversation that took place in the meeting, the notes cannot be changed. A separate note can be added to the information which indicates the areas the employee wished to change and the reason.
- 5.11 If you are subject to the formal MHPS process you have the right to be accompanied and/or represented from the outset, by an official or lay representative of a professional organisation (e.g. BMA), a defence organisation, or a work colleague

### **Member of Staff Witness to Concern/Complaint**

- 5.12 If you are a witness to the concern/complaint that has been received the Case Investigator will ask to meet with you. You will be informed on the Terms of Reference for the Investigation including the details of the concern/complaint.
- 5.13 Written notes of the investigation interview will be typed up for you to sign. You will have the opportunity to amend your statement to clarify points and correct any inaccuracies. If it is agreed by the Case Investigator and supporting Medical HR representative that the notes are a true representation of the actual conversation that took place in the meeting, the notes cannot be changed. A separate note can be added to the information which indicates the areas the employee wished to change and the reason.
- 5.14 Witnesses to a concern/complaint do not have the right to be accompanied and/or represented by a Trade Union or Workplace Colleague. However, if you wish to have support at the investigation meeting we will do our best to accommodate your request.
- 5.15 It is not possible to guarantee anonymity under the laws of 'natural justice' the employee has the right to know who has made (or is a witness to) an allegation made against them.
- 5.16 If you are a witness, you will be informed that the details of your statement will be discussed with the individual during their investigatory interview. If the case proceeds to a disciplinary meeting, a copy of your statement will be given to the employee, to which the allegation(s) relate at least five working days before their disciplinary meeting. In addition, you may well be required to attend a disciplinary meeting as a witness.



## Case Investigation Report

5.17 The Case Investigator will be required to produce a written report which will be submitted to the Case Manager. The report of the investigation should give the case manager sufficient information to decide whether:

- There is a case of misconduct that should be put to a conduct panel;
- There are concerns about the practitioner's health that should be considered by the Trusts occupational health service;
- There are concerns about the practitioner's performance that should be further explored by the Practitioner Performance Advice (NHS Resolution)
- Restrictions on practice or exclusion from work should be considered;
- There are serious concerns that should be referred to the GMC or GDC;
- There are intractable problems and the matter should be put before a capability panel;
- No further action is needed.

5.18 The doctor under investigation will be given the opportunity to comment in writing on the factual content of the report. Comments in writing including any mitigation, must normally be submitted to the case manager within 10 working days of the date of receipt of the request for comments.

5.19 The Case Investigation report will NOT be shared with witnesses.

## 6 Confidentiality

6.1 Formal procedures can in some cases take considerable time; especially when there are a lot of employees to be interviewed. This can sometimes arouse suspicion. The investigation is confidential and if you are a witness you may not be aware of the full extent of the allegations, however, it is essential when providing information for the investigation that you concentrate only on what you know.

6.2 It is imperative for all involved in the investigation to avoid talking to each other about the incident/accusation being investigated or anything relating to the matter. 'All involved' would be expected to include those directly concerned with the matter, possible witnesses, direct workplace colleagues and individuals outside the speciality. Investigatory interviews are confidential, if these interviews are discussed it can jeopardise the process and often lead to inaccurate information being circulated. This may also lead to disciplinary action being taken for breach of confidentiality.

6.3 Not being able to talk to colleagues and the limited information available will present a challenging situation, however, we are not asking you to remain in

silence, we all need to talk to someone when under considerable stress; there are two factors to consider:

- Avoiding the expression of identifiable facts or details to those who may be able to identify individuals involved.
- It is important that you have the opportunity to discuss the situation with someone, you can and should trust your closest friend or relative, who are not involved, with the investigation, or you may wish to talk to your Union Representative and/or access our Well Being Resources.

## 7 Conduct Hearings & Disciplinary Matters

- 7.1 Where the Case Manager has determined that there is a case of misconduct to answer the matter will be dealt with under the Trust's Disciplinary Policy.
- 7.2 **Oral reprimand** - In the case of minor infractions, the Chief Medical Officer may decide to give an oral reprimand without a formal disciplinary meeting for the purpose of improving future performance and behaviour, and in order to assist the doctor to meet the standards required.
- 7.3 **Situations in which ill health was a contributing factor** - In situations where a person's ill health is a significant contributory factor to their conduct or performance then separate procedures for dealing with ill health and capability would be used.

## Appendix 1:

### Concerns Raised Process

