

### **PROCEDURE WHEN A CONCERN ARISES – MANAGEMENT INSTRUCTIONS AND GUIDANCE**

#### **1.0 Involving the NCAS**

##### **Understanding the Issue, and Investigation**

1.1 At any stage of the handling of a case consideration must be given to the involvement of the NCAS. The NCAS has developed a staged approach to the services it provides NHS trusts and practitioners. This involves:

- Immediate telephone advice, available 24 hours.
- Advice then detailed supported local case management.
- Advice then supported local clinical performance assessment.
- Advice, then detailed NCAS clinical performance assessment.
- Support with implementation of recommendations arising from assessment.
- Understanding the issue and investigation.

1.2 The first stage of the NCAS's involvement in a case is exploratory, i.e. an opportunity for local managers to discuss the problem with an impartial outsider; to look afresh at a problem; see new ways of tackling it themselves; possibly recognise the problem as being to do with work systems rather than solely practitioner performance, or recognise a wider problem needing the involvement of an outside body other than the NCAS.

1.3 Having discussed the case with the NCAS if felt appropriate, the Case Manager must decide whether an informal approach can be taken to address the problem, or whether a formal investigation will be needed. Where an informal route is chosen the NCAS may still be involved until the problem is resolved. This may include the NCAS undertaking a formal clinical performance assessment when the doctor, the Trust and the NCAS agree that this could be helpful in identifying the underlying cause of the problem and possible remedial steps.

1.4 Where the NCAS is asked to undertake an assessment of the practitioner's practice, the outcome of a local investigation may be made available to inform the NCAS's work.

##### **Involvement of the NCAS following Local Investigation**

1.5 Medical under-performance can be due to health problems, difficulties in the work environment, behaviour, or a lack of clinical capability. These may occur in isolation or in a combination. The NCAS's processes are aimed at addressing all of these; particularly where local action has not been able to take matters forward successfully. The NCAS's methods of working therefore assume commitment by all parties to take part constructively in a referral to the NCAS. For example, its assessors will work to formal terms of reference, decided upon after input from the Case Manager and the practitioner.

1.6 The focus of the NCAS's work is therefore likely to involve performance difficulties that are serious and/or repetitive. This means:

- Performance falling well short of what doctors and dentists could be expected to do in similar circumstances and which, if repeated, would put patients seriously at risk.
- Alternatively or additionally, problems that are ongoing or (depending on severity) have been encountered on at least two occasions.

1.7 In cases where it becomes clear that the matters at issue focus on fraud, specific patient complaints or organisational governance, their further management may warrant a different local process. The NCAS may advise on this.

1.8 Where consideration is being given to excluding a practitioner (see **Section 2** of the Policy), whether or not their performance is under discussion with the NCAS, it is important for the NCAS to know of this at an early stage, so that alternatives to exclusion can be considered. It is particularly desirable to find an alternative when the NCAS is likely to be involved, because it is much more difficult to assess a practitioner who is excluded from practice than it is to assess one who is working.

1.9 Concerns about the capability of a doctor or dentist may arise from a single incident or a series of events, reports or poor clinical outcomes. Advice from the NCAS will help the Trust to come to a decision on whether the matter raises questions about the practitioner's capability as an individual (health problems, behavioural difficulties or lack of clinical competence) or whether there are other matters that need to be addressed. If the concerns about capability cannot be resolved routinely by management, the matter must be referred to the NCAS before a Capability Panel can consider the matter, unless the practitioner refuses to have his case referred. It is also advisable to involve the NCAS in all other cases, particularly those involving clinical matters.

Further guidance on NCAA processes, and how to make referrals, may be found at the NCAA website: <http://www.ncas.npsa.nhs.uk/>

## **2.0 Role of the Case Investigator**

2.1 Following the decision that an issue cannot be resolved informally, and that a more formal route needs to be followed, the Medical Director or his nominated representative, in consultation with the HR Director, or his nominated representative will appoint an appropriately experienced person to act as Case Investigator. The Case Investigator is responsible for leading an investigation into the concerns/issue, establishing the facts and reporting the findings.

2.2 The Case Investigator will:

- where a question of clinical judgement is raised during the investigation process, formally involve a senior member of the medical or dental staff (unless the Case Investigator satisfies these requirements). Where the NHS body employs no other suitable senior doctor or dentist a senior doctor or dentist from another NHS body should be involved.
- ensure that safeguards are in place throughout the investigation so that breaches of confidentiality are avoided as far as possible. Patient confidentiality needs to be maintained: It is the responsibility of the Case Investigator to judge what

information needs to be gathered and how, within the boundaries of the law, that information should be gathered.

- ensure there are sufficient written statements collected to establish a sufficiently comprehensive case prior to a decision to convene a disciplinary panel, and on aspects of the case not covered by a written statement, ensure that oral evidence is given sufficient weight in the investigation report.
- ensure that a written record is kept of the investigation, its conclusions, and the outcome.
- assist the Designated Board Member in reviewing the progress of the case.

2.3 The Case Investigator does not make the decision on what action should be taken, nor whether the employee should be excluded from work, and may not be a member of any disciplinary or appeal panel relating to the case.

2.4 The Case Investigator has wide discretion on how the investigation is carried out but in all cases the purpose of the investigation is to ascertain the facts in an unbiased manner. Investigations are not intended to secure evidence against the practitioner as information gathered in the course of an investigation may clearly exonerate the practitioner or provide a sound basis for effective resolution of the matter.

2.5 The Case Investigator will endeavour to complete the investigation within 4 weeks, and submit their report to the Case Manager within 5 days of completion (see paragraph 5.2.14).