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# Framework for managing performer concerns

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# 1 Executive Summary

NHS England's central role is to ensure that the NHS delivers better outcomes for patients within its available resources. The performers lists system supports NHS England in the delivery of this central role to ensure:

- consistency of primary care service delivery;
- services are safe and effective; and
- continuous improvement of quality is sought.

The legislative framework in England is set out in the National Health Service (Performers Lists) (England) Regulations 2013, as amended. These Regulations provide a framework for managing medical, dental and ophthalmic performers undertaking NHS primary care services.

The National Health Service (Performers Lists) (England) Regulations 2013, as amended, entrusts the responsibility for managing the performers lists (medical, dental and ophthalmic) to NHS England as the commissioner of primary care services. The national performers lists replace the previous system of individual PCT performers lists. Although a number of Clinical Commissioning Groups (CCGs) now have delegated responsibility for commissioning some primary care services, the responsibility for the Performers Lists remains with NHS England. It is imperative that the regions ensure appropriate two-way communication with CCGs regarding the performance of individual practitioners, particularly where this may impact on the delivery of services.

Each of the performers groups is also separately governed by their respective professional regulator who derive their powers from the relevant Acts, e.g. the Medical Act 1983, as amended; the Dentists Act 1984, as amended; the Opticians Act 1989, as amended; and the Health Act 1999, as amended. The Regulators are responsible for:

- Maintaining a register of individual professionals who are able to work in the United Kingdom;
- Setting professional standards;
- Quality assuring education;
- Ensuring professionals stay up to date through the successful completion of Continuing Professional Development (CPD); and
- Investigating concerns about the fitness to practise of individual professionals and, where an issue is sufficiently serious, either preventing or restricting an individual professional from practising in the United Kingdom.

Action taken by the regulator may have implications for the status of the performer on the performers list/s.

Similarly services provided by medical and dental performers are subject to regulation by the Care Quality Commission (CQC). The CQC's powers are derived from the Health and Social Care Act 2008 and it is responsible for monitoring, inspecting and regulating care services to ensure they meet fundamental standards of quality and safety. For General Practice and Dentistry, it is responsible for maintaining a register of providers (and registered managers) undertaking regulated activities in England. These are individuals who have overall responsibility for the provision of services in nominated premises. NHS England has an important role in acting on the information shared by these bodies.

The National Health Service (Pharmaceutical Services) Regulations 2005, as amended, provide a framework for managing Pharmacists included on NHS England's Pharmaceutical List.

The Medical Profession (Responsible Officer) Regulations 2010, as amended, provide an additional framework for managing those doctors for whom NHS England is the designated body.

## 2 Policy Statement

The scope of this framework reflects NHS England's powers as set out in the National Health Service (Performers Lists) (England) Regulations 2013, as amended. It also reflects NHS England's transfer of responsibility for the management of a concern between Medical Directors and Responsible Officers (ROs) related to the movement of a performer.

The term 'primary care performer' is used throughout this document to mean the medical, dental or ophthalmic performers included on the performers lists for the provision of NHS primary care services.

The powers enable NHS England to ensure that performers are fit for purpose and suitable to undertake NHS primary care services. If issues arise that indicate that the performer may be impaired, NHS England can use its powers to prevent a performer from working in order to protect patients from harm.

This framework encompasses:

- the process by which teams identify, manage and support primary care performers where concerns arise; and
- the application of NHS England's powers to manage suspension, imposition of conditions and removal from the performers lists.

This framework does not cover applications to join the Performers List, nor NHS England's responsibilities in relation to assessing and paying suspension payments as these responsibilities and processes are set out in separate documents.

## 3 Scope

This framework relates to the management of those performers registered on NHS England's Performers Lists.

For those medical staff who are directly employed by NHS England and who are not on the performers lists, the policy for responding to concerns in doctors with a prescribed connection to NHS England through employment is the applicable policy, not this framework.

Pharmacy applications should be considered in accordance with NHS England's Pharmacy Manual. A medical contractor with an NHS contract cannot be a decision maker in pharmacy applications. However, if a concern arises about an existing pharmacist this will be handled within the decision making and support structure of the Performance Advisory Groups (PAG) and if they are included in NHS England's Pharmaceutical List, the Performers List Decision Panels (PLDP) as set out in this Framework.

## 4 Distribution and implementation

This document will be made available via the NHS England website. Notification of this document will be included in all the appropriate staff email bulletins and via external communications to primary care audiences.

Guidance will be provided on the medical and operational directorates' intranet sites.

## 5 Governing principles

All those within NHS England who are involved with the handling of concerns about performance of performers included on NHS England's performers lists will ensure that their working arrangements comply with the following governing principles:

- protecting patients and public;
- enhancing public confidence in the NHS;
- identifying the possible causes of underperformance;
- ensuring equality and fairness of treatment and avoiding discrimination;
- being supportive of all those involved;
- confidentiality;
- ensuring that action is appropriate and proportionate;
- being fair, open and transparent; and
- decisions may be subject to appeal.

In particular, it is important that every case is dealt with according to individual circumstances. All decisions made by NHS England relating to the fitness for purpose and/or thresholds for referral for fitness to practise of a performer including any removal or suspension will be made in accordance with the relevant statutory regulations. Every effort is made to ensure that any decision taken by NHS England is procedurally robust and that all decisions are well founded and based on evidence that is credible, cogent, sufficient and reliable.

It is the duty of NHS England as an NHS body to put in place and maintain arrangements for the purpose of monitoring and improving the quality of healthcare provided by and on behalf of itself. It is the responsibility of the performer to notify NHS England of any change in their personal circumstance that may affect their status on the performers list. (For example if the performer accepts a police caution, is charged with a criminal offence, becomes subject to any investigation by any regulatory or other body.)

It is important that all parties have confidence in the process and accordingly NHS England will seek to raise awareness and understanding amongst all employed staff and others about this framework. All individuals involved in the delivery of this framework will have training, support and performance review relevant to their respective roles.

# 6 Ensuring equality and fairness

## 6.1 Equality duties

The Equality Act 2010 prohibits unlawful discrimination in the provision of services (including healthcare services) on the basis of "protected characteristics". The protected characteristics are:

1. age
2. disability
3. gender reassignment
4. marriage and civil partnership
5. pregnancy and maternity
6. race
7. religion or belief (which can include an absence of belief)
8. sex
9. sexual orientation.

Unlawful discrimination can also occur if a person is put at a disadvantage because of a combination of these factors.

## 6.2 Unlawful Discrimination

There are broadly four types of discrimination in the provision of services that are unlawful under the Equality Act:

1. Direct discrimination occurs when services are not available to someone because they are e.g. not married, over 35, a woman. Apart from a few limited exceptions, direct discrimination will always be unlawful, unless it is on the grounds of age and the discrimination is a proportionate means of achieving a legitimate aim.
2. Indirect discrimination occurs when NHS England apply a policy, criterion or practice equally to everybody but which has a disproportionate negative impact on one of the groups of people sharing a protected characteristic, and where the complainant cannot themselves comply. Requirements that require people to behave in a certain way will amount to indirect discrimination if compliance is not

consistent with reasonable expectations of behaviour. Indirect discrimination is not unlawful if it is a proportionate means of achieving a legitimate aim.

3. Disability discrimination occurs if a person is treated unfavourably because of something "arising in consequence of their disability". This captures discrimination that occurs not because of a person's disability per se (e.g. a person has multiple sclerosis) but because of the behaviour caused by the disability (e.g. use of a wheelchair). Disability discrimination is not unlawful if it is a proportionate means of achieving a legitimate end.
4. A failure to make "reasonable adjustments" for people with disabilities who are put at a substantial disadvantage by a practice or physical feature. The duty also requires bodies to put an "auxiliary aid" in place where this would remove a substantial disadvantage e.g. a hearing aid induction loop

### 6.3 Public sector equality duty

As well as these prohibitions against unlawful discrimination the Equality Act 2010 requires NHS England to have "due regard" to the need to:

- eliminate discrimination that is unlawful under the Act;
- advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This can require NHS England to take positive steps to reduce inequalities. In this regard the Act permits treating some people more favourably than others but not if this amounts to unlawful discrimination. The duty is known as the public sector equality duty or PSED (see section 149 of the Act). The PSED has been used successfully on many occasions to challenge changes to services.

## 7 Equality impact assessment

This document forms part of NHS England's commitment to create a positive culture of respect for all staff and service users. The intention is to identify, remove or minimise discriminatory practice in relation to the protected characteristics (race, disability, gender, sexual orientation, age, religious or other belief, marriage and civil partnership, gender reassignment and pregnancy and maternity) as well as to promote positive practice and value the diversity of individuals and communities.



An equality impact assessment has been carried out on the final draft of this framework, and the implementation of the framework will be monitored to ensure NHS England remains compliant with its Equality duties.

## 8 Monitoring

Compliance with this policy will be monitored by the Professional Standards Oversight Group (PSOG). Compliance will be subject to independent reviews through internal and external audit on a periodic basis.

The Professional Standards Delivery Group (PSDG) will have responsibility for updating the policy as determined or agreed by PSDG. The document should be reviewed in 24 months unless guidance or legislation requires an earlier review.

## 9 Roles and responsibilities

### 9.1 The role of the Medical Director – System Improvement and Professional Standards (MD SIP) and Responsible Officer

NHS England MD SIPs may also be the Responsible Officer (RO) for the local geography, however the RO role and MD SIP role is distinct. The Responsible Officer Regulations give ROs responsibilities to ensure that all doctors work within a managed environment, in which their performance, conduct and behaviour are monitored against a doctor's *fitness to practise* across their whole scope of work. The Regulations empower Responsible Officers to instigate investigation of the doctor's performance and to ensure that the appropriate action is taken. The RO function relates solely to doctors.

The MD SIP role is distinct from the Responsible Officer role as the latter concerns itself only with the fitness to practise of doctors and medical revalidation. The MDSIP role is more diverse in that NHS England has bestowed the responsibility for the management of the Performers List in accordance with the Performers List Regulations and NHS England policy to the MDSIP. This responsibility covers GPs, Dentists and Optometrists included on the Performers List and for the management of performance concerns in relation to pharmacists. The MDSIP role includes managing performance concerns regarding individual performers, supporting remediation and ensuring clinicians on the Performers List remain '*fit for purpose*'. Under the terms of this Framework, the

consideration and powers that derive from the Performers Lists Regulations is conferred to the Performers List Decision Panel (PLDP) as described.

In the context of the national performers list, fitness for purpose requires a clinician to be able to work independently to deliver the full contractual requirements of core primary care services.

## 9.2 Roles and responsibilities of the decision making and support structures

NHS England has established Performance Advisory Groups (PAGs) and Performers Lists Decision Panels (PLDPs) within each region in order to support its responsibility in managing the performance of primary care performers. The PAG's role is to consider concerns about a named individual, who is either included on the Performers List, has a prescribed connection to NHS England, or is a Pharmacist, and determine the most appropriate course of action. It can instruct an investigation where it considers it appropriate and it can agree voluntary undertakings with a performer when low level concerns have been identified and the performer accepts this to be the case. The primary role of the PLDP is to make decisions under the Performers Lists Regulations. This does not prevent the PLDP from taking any action that the PAG can take.

Where the MD SIP has been made aware of a complaint or a concern relating to a GP, dentist, ophthalmic practitioner or pharmacist that may raise a question as to their fitness for purpose, this must be recorded in the practitioner's file and must be referred to the PAG for notification and/or discussion.

If action is considered to be necessary under the performers lists regulations, only the PLDP has delegated authority to take this action. Members of the PLDP must take account of any potential conflict of interest or perception of bias and NHS England officers must take this into account when convening Panels to consider each case.

The PAG terms of reference are set out in Annex 2. The PLDP terms of reference are set out in Annex 3.

The MD SIP is responsible for ensuring that clinical governance arrangements are established to identify issues relating to fitness for purpose and/or practise and that these concerns should be considered by a PAG and/or PLDP, as appropriate.

If the concern raises serious and immediate patient safety issues, immediate action should be taken to safeguard patients and the performer. Such actions are provided later in this document at Annex 3.

Any issues related to the delivery of the contract are considered under the terms of the contract under separate governance processes.

### 9.3 Roles and responsibilities of management and staff

The MD SIP will have overarching responsibility for the operation of this framework taking any steps necessary to protect patients and those that raise concerns in accordance with the current legislation in relation to Freedom to Speak up and Whistleblowing policies. This will ensure that robust procedures are established to support all parties through the investigation and assessment of concern. The Medical Director will have responsibility for ensuring that appropriate action is taken to address variation in individual performance and to ensure any necessary further monitoring of the performer is in place, liaising with regulators and external bodies as appropriate.

NHS England teams must have access to case investigators and case managers who have been appropriately trained. NHS England will ensure that there is sufficient support of this nature and other identified managerial and administrative support to allow for an effective process for responding to concerns. Case Managers should ensure that all concerns and associated documentation are recorded on the Performers List Case Management System and have responsibility for the ongoing management and oversight of the case.

All members of staff involved in the process of responding to concerns must have been appropriately trained and have time to perform their responsibilities efficiently and effectively to a high quality standard.

The process will require the capacity and skills for collecting and collating data relating to the concerns, production of periodic audits and reports and effective information governance.

Teams will establish the PAG and PLDP membership in accordance with the terms of reference (Annexes 2 and 3). Members of the PAG and PLDP must be able to demonstrate that they have the necessary skills, knowledge and experience to sit on the Panel, as described in the PAG and PLDP terms of reference and the job descriptions of panel members. Members must have completed NHS England's PAG and PLDP training prior to commencing in the role.

The role of the Panel is to:

- hear the evidence;

- make decisions about the case based on the information and evidence before them; and
- give reasons for decisions.

The role of the Panel is not to be involved in the ongoing management or oversight of the case. This is conferred to the MD SIP or delegated officer.

## 10. Movement of performers between regions

A mechanism is in place to ensure a safe and effective process for the transfer of a performer from one NHS England team to another. This process takes account of this framework for managing concerns and seeks to act in a manner that is transparent, fair and reasonable at all times.

Where a performer is under investigation, the arrangements between teams should be on a case by case basis with the process normally being completed to the point where a decision can be made before the transfer comes into effect.

The transfer of responsibility for performers and their information is particularly important when a performer has a current remedial action plan including any conditions or voluntary undertakings. Use of the PL Case Management System will ensure the timely and efficient transfer of all case related documentation for a performer.

Where a concern arises after the performer has transferred to a new team, the MD SIP of the receiving team and the MD SIP of the leaving should discuss and agree which region will investigate. The outcome of the investigation must be made available to both teams to allow a decision to be made.

## 11 Identifying and addressing concerns

### 11.1 Risk assessment

NHS England has an obligation to take account of all information provided to it. Where this information gives rise to concerns relating to an individual performer's conduct, performance or health the NHS England team will take appropriate action to safeguard patients and the performer involved.

In this event the team will assess against the agreed NHS England risk matrix and, taking into account other available clinical governance information, identify the nature of the concern and take a decision on immediate next steps.

The MD SIP is responsible for ensuring that the following key actions are taken:

1. Clarify what has happened and the nature of the problem or concern.
2. Seek appropriate advice from the regulator and external advisers, for example in the case of medical and dental performers and pharmacists, Practitioner Performance Advice can assist.
3. Consider if any immediate steps to protect patient safety such as restriction of practice or suspension are required, including considering if a request should be made to NHS Resolutions to issue a HPAN notice.
4. If appropriate, ensure the performer is informed about the complaint or concern.
5. Consider if the case is of suitably low risk and can be progressed by mutual agreement with the performer and notify the PAG of this decision.
6. Convening
  - a) A PAG to consider the information regarding the concerns, when regulatory action is not anticipated to be required. *or*
  - b) A PLDP when regulatory action is being considered.
  - c) Maintaining oversight of the decisions taken by PAG and PLDP and ensure the actions decided by the PAG and PLDP are undertaken in a professional and timely manner.
7. If a PAG or PLDP determine that a formal approach is required, appoint a case investigator and oversee the drafting of terms of reference.
8. Ensure accurate actions and decisions are recorded contemporaneously in the performer's file on the PL Case Management System.

Where the professional regulator notifies either the RO or NHS England of any actions or conditions the PLDP will consider the implications in relation to the performer's fitness for purpose and consider if further action is required. The RO should be notified of all PAG and PLDP decisions regarding doctors. If a PAG or PLDP recommends referral of a doctor to the GMC, the RO should consider the recommendation and confirm the decision or set out their rationale for not, and ensure that, where necessary, the GMC referral form is completed appropriately.

## 11.2 Immediate suspension

In line with the Performers Lists Regulations 12(6), where NHS England considers it necessary to do so for the protection of patients or members of the public or is otherwise in the public interest, it may determine that a suspension is to have immediate effect.

NHS England has nominated MD SIPs across the regions with the power to order an immediate suspension following discussion with one other director. This decision must be reviewed by two members of the PLDP who have not been previously involved in the decision to suspend, within two working days beginning on the day the decision was made. The case must then be considered by the PLDP in accordance with the regulations.

All cases will be managed in line with the terms of reference of the PAG and PLDP (Annexes 2 and 3).

## 12 Performers List Management System and Reporting

All concerns and information should be recorded against the appropriate practitioner on the PL Case Management System. The system should be used to detail the specifics of each case and store the relevant documents pertinent to the case.

The PL Case Management System will be used to derive management information for reporting to the Board.

The MD SIP of each region is responsible for producing an annual Responding to Concerns report for consideration by the Executive Team summarising the nature of concerns received, and the type of action taken, for each practitioner group. Each region is also required to complete the Annual Responding to Concerns Declaration.

## 13 Peer Review

NHS England strives to ensure that there are regular opportunities to provide assurance that the principles set out in this Framework are adhered to and to provide opportunities to derive continuous learning. The requirements to participate in regular peer review and observation are principles endorsed by NHS England and their outcomes generate opportunities to share learning within NHS England and where appropriate with other stakeholders.

## 14 Associated documents

Prescribed connections to NHS England guidance:

<https://www.england.nhs.uk/2014/02/connections/>

Responding to concerns in doctors employed by and with prescribed connections to NHS England policy:

<http://www.england.nhs.uk/revalidation/ro/resp-con/>

NHS whistleblowing policy:

<https://www.england.nhs.uk/ourwork/whistleblowing/freedom-to-speak-up-whistleblowing-policy-for-the-nhs/>

Health Professionals Alert Notice:

<https://resolution.nhs.uk/services/practitioner-performance-advice/hpans/>

Speaking Up Charter:

<https://www.gov.uk/government/news/speaking-up-charter-encourages-staff-to-raise-concerns>

NHS England complaints policy:

[www.england.nhs.uk/contact-us/complaint](http://www.england.nhs.uk/contact-us/complaint)

NHS England information governance policy:

<https://www.england.nhs.uk/publication/information-governance-policy/>

NHS England remediation policy:

<https://www.england.nhs.uk/medical-revalidation/ro/resp-con/>

## 15 References

The National Health Service Act 2006 as amended by the Health and Social Care Act 2012:

<http://bit.ly/1f6iZmf>

The National Health Service (Performers Lists) Regulations 2004:

<http://bit.ly/1cQX908>

The National Health Service (Performers Lists) Amendment Regulations 2005:

<http://bit.ly/1faASPm>

The National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008:

<http://bit.ly/M6C374>

The National Health Service (Performers Lists) (England) Regulations 2013:

<http://bit.ly/1j4MvYF>

The National Health Service (Performers Lists) (England) (Amendment) Regulations 2015:

[http://www.legislation.gov.uk/uksi/2015/362/pdfs/uksi\\_20150362\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/362/pdfs/uksi_20150362_en.pdf)

The National Health Service (General Medical Services Contracts) Regulations 2004:

<http://bit.ly/1hpPo91>

The National Health Service (Personal Medical Services Agreements Regulations 2004:

<http://bit.ly/1gvS Mwl>

The National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2004:

<http://bit.ly/1gVMaFG>

The National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2005:

<http://bit.ly/1m1glyu>

The National Health Service (Primary Medical Services) (Miscellaneous Amendments) (No 2) Regulations 2005:

<http://bit.ly/1eIJkAA>

The National Health Service (Primary Medical Services and Pharmaceutical Services) (Miscellaneous Amendments) Regulations 2006:

<https://www.legislation.gov.uk/uksi/2006/1501/contents/made>

The National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2007:

<http://bit.ly/1f6jo8b>

The National Health Service (General Dental Services Contracts) Regulations 2005:

[https://www.legislation.gov.uk/uksi/2005/3361/pdfs/uksi\\_20053361\\_en.pdf](https://www.legislation.gov.uk/uksi/2005/3361/pdfs/uksi_20053361_en.pdf)

The National Health Service (Personal Dental Services Agreements) Regulations 2005:

[http://www.legislation.gov.uk/uksi/2005/3373/pdfs/uksi\\_20053373\\_en.pdf](http://www.legislation.gov.uk/uksi/2005/3373/pdfs/uksi_20053373_en.pdf)



The General Ophthalmic Services Contracts Regulations 2008:

[http://www.legislation.gov.uk/uksi/2008/1185/pdfs/uksi\\_20081185\\_en.pdf](http://www.legislation.gov.uk/uksi/2008/1185/pdfs/uksi_20081185_en.pdf)

The Medical Profession (Responsible Officer) Regulations 2010:

[http://www.legislation.gov.uk/uksi/2010/2841/pdfs/uksi\\_20102841\\_en.pdf](http://www.legislation.gov.uk/uksi/2010/2841/pdfs/uksi_20102841_en.pdf)

The Medical Profession (Responsible Officer) Regulations 2010 as amended:

[http://www.legislation.gov.uk/uksi/2013/391/pdfs/uksi\\_20130391\\_en.pdf](http://www.legislation.gov.uk/uksi/2013/391/pdfs/uksi_20130391_en.pdf)

NHS Resolutions:

<https://resolution.nhs.uk/>

Disclosure and barring service:

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

The General Medical Services Statement of Financial Entitlements (Amendment)

Directions 2017:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/607877/SFE\\_Amendment\\_Directions\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607877/SFE_Amendment_Directions_2017.pdf)

The General Medical Services Statement of Financial Entitlements (Amendment No.2)

Directions 2017:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/657147/General\\_Medical\\_Services\\_Statement\\_of\\_Financial\\_Entitlement\\_Amendment\\_No.2\\_Directions\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/657147/General_Medical_Services_Statement_of_Financial_Entitlement_Amendment_No.2_Directions_2017.pdf)

Secretary of State's Determination: Payments to Medical Practitioners Suspended from the Medical Performers List 2015:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/432913/Medical\\_Det.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/432913/Medical_Det.pdf)

The Performers List (Suspended Dentists' NHS Earnings) Determination 2015:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/432914/Dental\\_Det.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/432914/Dental_Det.pdf)

Determination on Payments to Persons Suspended from the Ophthalmic Performers List 2013:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/432916/Ophthalmic\\_Det.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/432916/Ophthalmic_Det.pdf)

## Appendix A: Abbreviations and acronyms

CQC	Care Quality Commission
FTT	First-tier Tribunal
GDP	General Dental Practitioner
GDC	General Dental Council
GDS	General Dental Services
GMC	General Medical Council
GMS	General Medical Services
GOC	General Optical Council
GOS	General Ophthalmic Services
GP	General Practitioner
GPhC	General Pharmaceutical Council
HPAN	Healthcare Professional Alert Notice
LDC	Local Dental Committee
LETB	Local Education and Training Board
LMC	Local Medical Committee
LOC	Local Optical Committee
LPC	Local Pharmaceutical Committee
LPS	Local Pharmaceutical services
LRC	Local Representative Committee
MDO	Medical Defence Organisation
PPA	Practitioner Performance Advice
NHS LA	NHS Litigation Authority
OMP	Ophthalmic Medical Practitioner
PAG	Performance Advisory Group
PCC	Primary Care Commissioning

PDS	Personal Dental Services
PLDP	Performers' Lists Decision Panel
PMC	Primary Medical Contract
PMS	Personal Medical Services
PSNC	Pharmaceutical Services Negotiating Committee
PSRC	Pharmaceutical Services Regulations Committee
RO	Responsible Officer
SI	Statutory Instrument
SOP	Standard Operating Procedure
SUI	Serious Untoward Incident
The 2005 Regulations	The NHS (Pharmaceutical Services) Regulations 2005, as amended
The 2012 Regulations	The NHS (Pharmaceutical Services) Regulations 2012, as amended
The 2013 Directions	The Pharmaceutical Services (Advanced and Enhanced Services) (England) Directions 2013
The 2013 Regulations	The NHS (Pharmaceutical Services and Local Pharmaceutical Services) Regulations 2013

# Appendix B: Performance Advisory Group (PAG) Terms of Reference

## Constitution and authority

NHS England has established a sub-group within each NHS England team to be known as the Performance Advisory Group (PAG). It has authority to undertake any activity within these terms of reference.

## Membership and quoracy

The PAG will be a repository of expertise provided by individuals with in-depth knowledge of performance procedures and professional standards and able to provide advice on handling individual cases. Membership should comprise four voting individuals. These are:

1. A senior NHS manager with a performance role who will chair the PAG\*
2. A discipline-specific practitioner nominated by the medical director\*
3. A senior manager with experience in primary care contracting and/or patient safety and experience\*
4. A lay member.

\* The first three members must be present in order for the PAG to be quorate. All members have a vote and the Chair has the casting vote, if necessary.

Additional non-voting individuals may be invited by the chair. This includes NHS England staff with contracting or patient safety and patient experience and local representative committee members, if not attending in their own right.

Each member of PAG will be appointed to their role in line with a competency framework.

## Conflicts of Interest

Each and every PAG member is responsible for declaring any potential conflicts of interest or perceived bias at the earliest opportunity. The PAG Chair is responsible for assuring themselves at the beginning of each meeting that there are no conflicts of interest and/or perceived bias before each case is heard. This discussion should be documented including the agreement on the handling of any conflicts of interest or perceived bias.

## Frequency

The PAG will meet as frequently as is required, as dictated by caseload.

## Purpose

- a. To consider the information provided to it; to discuss and decide an appropriate course of action.
- b. To ensure that where the medical director has been made aware of a complaint or a concern relating to a GP, dentist, ophthalmic practitioner or pharmacist that may raise a question as to their fitness for purpose, this has been recorded in the practitioner's file and is referred to the PAG for discussion and are managed in accordance with the Framework for Managing Performance Concerns.
- c. To ensure that performers in difficulty who do not present a threat to patient safety or public interest are signposted to the relevant agencies that can both support them and help them to prevent their performance from falling below the standard expected of the profession.

## Objectives

- a. To ensure that all concerns and all complaints related to a named primary care practitioner included on the performers list or on the pharmaceutical services list are considered, investigated where appropriate, and managed in the interest of patient safety and high standards of patient care.
- b. To ensure that primary care practitioners whose performance, conduct or health has given cause for concern are supported to return to a satisfactory standard where possible.
- c. To ensure a fair, open, consistent and non-discriminatory approach to the management of concerns.
- d. To facilitate the resolution of concerns through appropriate agreed local action and support for improvement.

## Duties

To consider individual cases related to a named primary care performer or pharmacy contractor and decide whether further action or further information is required, or that there is no case to answer.

- a. To decide upon and agree the interventions and support required to enable resolution of the concerns identified.
- b. To ensure that details of the primary care performer or pharmacy contractor where a concern has been discussed, details of the actions and outcome, and details of the whistle-blower, if applicable, are managed in accordance with the NHS England policies.

- c. To receive reports and provide advice as required from time to time as a case progresses. This may include advice on the compliance and progress of interventions and action plans that have been agreed outside of the NHS (England) (Performers Lists) Regulations 2013, and ultimately to recommend closure where actions have been satisfactorily completed.
- e. Where appropriate, to request a formal investigation.
- f. Where appropriate, to refer to occupational health.
- g. Where appropriate, to refer to external agencies for advice, for example NHS Resolution, Practitioner Performance Advice Service, national professional and representative bodies, local representative committees, or other advisory bodies.
- h. To request action by the PLDP or Pharmaceutical Services Reference Committee (PSRC) if necessary.

## **Recording of Decisions**

The decision taken for any case considered by PAG, including the rationale for that decision must be recorded and may need to be made available to the practitioner concerned. The decision also needs to be recorded within the National Case Management System.

## **Reporting**

The Chair of the PAG will:

- Carry out referrals to the PLDP for consideration of any action under the Performers List Regulations. The PLDP is the only Panel with delegated authority to invoke the Performers List Regulations. This includes any proposed action under the Regulations.
- Report serious concerns related to a performer or contractor to the medical director.

## **Payment and terms and conditions of PAG members**

Reimbursement and terms and conditions for voting PAG members who are not employed by NHS England are set out in the Members Agreement. Co-opted members are not covered by the Members Agreement and no payment for attendance will be payable unless by prior agreement with the Medical Director.

# Appendix C: Performers Lists Decision Panel (PLDP) Terms of Reference

## Constitution and authority

NHS England has established a sub-group within each of its teams to be known as the Performers Lists Decision Panel (PLDP). The group is authorised by NHS England to undertake any activity within this terms of reference.

## Membership and quoracy

The PLDP will take overall responsibility for the management of performance; decide on actions required on individual performance cases in line with the Performers Lists Regulations and any other statutory regulations and make referrals to other bodies where appropriate. Membership of the PLDP comprises of the following individuals:

1. A lay member who will chair the PLDP.
2. A discipline-specific practitioner.
3. A senior NHS England manager/director with responsibility for patient safety/ experience.
4. The Medical Director for an NHS England team or their nominated deputy.

All four members need to be present for the PLDP to be quorate. All members have a vote and the chair has the casting vote, if necessary.

Additional non-voting members and advisors may also be invited by the chair from time to time. In addition the performer may be accompanied by a legal representative or an advocate or may be an LRC member.

Each member of the PLDP will be appointed to their role in line with a competency framework and relevant training will be provided.

In cases when immediate suspension is required under Regulation 12 (6) a decision may be taken outside of the PLDP meetings by the medical director with one other director. This decision must be reviewed by two members of the PLDP who have not been previously involved in the decision to suspend, within two working days beginning on the day the decision was made. The case must then be considered by the PLDP to consider any representation received.

## **Conflicts of Interest**

Each and every PLDP member is responsible for declaring any potential conflicts of interest or perceived bias at the earliest opportunity. The PLDP Chair is responsible for confirming there are no conflicts of interest and/or perceived bias before each case is heard. This discussion should be documented including the agreement on the handling of any conflicts of interest or perceived bias.

The Responsible Officer should have oversight of all cases considered by the PLDP and should manage their conflicts of interest in the same way as any other PLDP member.

## **Frequency**

The PLDP will meet as frequently as is required, as dictated by caseload.

## **Purpose**

- a. To take overall responsibility for i) the management of an application to the performers lists where an issue of note has been lodged ii) the management of a performance concerns of a performer already included on the performers lists, where evidence has been presented to the PLDP; and
- b. To consider each case and the evidence provided and decide on what action should be taken.
- c. To consider whether action may be required under the NHS (Performers Lists) (England) Regulations 2013 as amended and to invoke action under the Regulations where this is agreed as the course of action.

## **Objectives**

- a. To agree relevant and appropriate action in the interest of patient safety or the safety of colleagues.
- b. To consider information provided by the PAG and where necessary any other source in relation to primary care performers included on the relevant performers list.
- c. To consider any response by a performer in relation to concerns or complaint raised about them.
- d. To ensure that action is taken in line with NHS England policy and procedure, and in line with the performers lists regulations.
- e. Following consideration of applications to join the NHS England performers lists decide whether to invoke Regulations and whether to include the applicant with conditions, refuse or defer the application.



## **Duties**

To consider individual cases presented to it, including any recommendation made by PAG and make one or more of the following decisions:

- a. Take no further action and close the case.
- b. Refer for further investigation or monitoring and, if appropriate, delegate the actions to PAG.
- c. Consider referral to the primary care contracts team for consideration under the relevant contract regulations.
- d. Refer to the relevant regulatory body.
- e. Refer to the police.
- f. Refer to NHS Protect.
- g. Refer to any other organisation for remediation or intervention agreed.
- h. Agree an action plan for remediation of the primary care performer or pharmacy contractor when appropriate, including a reporting process for monitoring of the implementation of the action plan.
- i. Request the issue of an alert through the agreed NHS England mechanism according to the Healthcare Professionals Alert Notice Direction (2006).
- j. Take action by invoking the NHS (Performers Lists) (England) Regulations 2013 ensuring that appropriate advice from the Practitioner Performance Advice Service ( NHS Resolutions ) has been taken.
- k. Refer to the Responsible Officer for action under the Responsible Officer Regulations.

## **Recording of Decisions**

The decision taken for each case considered, including the rationale for that decision, must be recorded and may need to be made available to the practitioner concerned. The decision also needs to be recorded within the National Case Management System.

## **Payment and terms and conditions of PLDP members**

Reimbursement and terms and conditions for PLDP members who are not employed by NHS England are set out in the Members Agreement.

# Appendix D: Elements of the framework specifically applicable to medical performers only

## Revalidation/appraisal

Revalidation is the process by which doctors demonstrate to the GMC that they are up to date and fit to practise. The cornerstone of the revalidation process is that doctors will participate in annual medical appraisal. On the basis of this and other information available to the responsible officer from local clinical governance systems, the responsible officer will make a recommendation to the GMC, normally every five years, about a doctor's fitness to practise. The GMC will consider the responsible officer's recommendation and decide whether to renew the doctor's licence to practise.

## Responsible Officer Regulations

This framework forms part of the responsible officer functions as set out in the Medical Profession (Responsible Officers) Regulations 2010 and the Medical Profession (Responsible Officer) (Amendment) Regulations 2013. The principles above are also principles of the responsible officer role which will seek to:

- ensure that doctors who provide and oversee care continue to be safe;
- ensure that doctors are properly supported and managed in sustaining and, where necessary, raising their professional standards;
- for the very small minority of doctors who fall short of the high professional standards expected, ensure that there are fair and effective local systems to identify them and ensure appropriate remedial, performance or regulatory action to safeguard patients; and
- increase public and professional confidence in the regulation of doctors.

The Medical Profession (Responsible Officers) Regulations 2010 and the Medical Profession (Responsible Officers) (Amendment) 2013 require each body designated under the regulations to appoint a responsible officer who must monitor and evaluate the fitness to practise of doctors. In particular this gives a responsible officer specific statutory duties relating to the identification, investigation and handling of concerns, monitoring of performance and conduct and in particular ensuring conditions or undertakings are in place, and addressing the concerns through the offering of appropriate support. The PAG and PLDP governance arrangements should be used to ensure that any issues of concern are appropriately addressed. The decision relating to the fitness to practise remains with

the regulator, the GMC but is informed by the recommendation and information provided by the responsible officer.

## **NHS England as designated body**

NHS England is the largest designated body under the Responsible Officer Regulations. It has a prescribed connection to approximately 45,000 primary care medical performers as well as a number of responsible officers, employed doctors and a small number of secondary care locum doctors. The means by which a doctor may have a prescribed connection to NHS England are described in detail in the NHS England published document [‘Prescribed Connections to NHS England’](#).

Responsible officers have a specific responsibility relating to the duty to initiate measures to address concerns which may include requiring the performer to undertake re-skilling, re-training and/or rehabilitation services. There is no requirement on the designated body to fund this remediation however NHS England recognises that in exceptional circumstances it may be appropriate to do so.

## **Remediation**

Remediation is based upon the following non-negotiable principles arising from the professional, regulatory, contractual and legal obligations;

- I. the responsibility of the individual doctor, flowing from professional and regulatory requirements, to keep themselves up to date and fit to practise;
- II. the responsibility of the NHS provider to meet the quality and continuity aspects of their contract; and
- III. the responsibility of the responsible officer (in England) to fulfil their legal requirements around investigation, training and work experience where there are concerns about a doctor.

Should the remediation process require a doctor to be placed away from their place of work, the impact on smaller organisations could be significant. Any contribution to costs should be agreed locally on a case by case basis.

Funding for individual practitioners should be exceptional and based on agreed clinical and service need. The following issues could be considered by NHS England teams in considering suitability for funding. These are suggestions only and should not be considered as formal guidance:

- the practitioner should produce a business case detailing the financial impact on them and on service delivery to explain why the costs of the remedial package

cannot be contained within their business or individually without impacting on patient care;

- the remedial package should be supported by an educational action plan with measurable outcomes, including timescales and addressing all areas of concern;
- the performance of the practitioner is likely to improve to an acceptable standard i.e. as part of the formal assessment process, and a clear decision has been made that there is capacity to benefit from a planned remediation package;
- a signed learning agreement must be in place; and
- occupational health assessments would be supported but health care should be provided through NHS commissioned routes.

As a guiding principle and based on historical practice and the consensus of current practice in teams, where financial support is provided, split funding arrangements between the team and the individual are the norm.

It is therefore suggested based on this historical practice that NHS England teams may pay up to 50% of costs up to maximum of £10,000, but that the individual practitioner should pay the first 50% and the total should include all on costs. Salaries, income or drawings will not be paid. Funding would apply to costs arising from conditions or outcome of formal assessment. In this context, formal assessment is defined as: A formal, structured and methodologically sound process conducted to assess performance across a practitioner's scope of practice, taking into account the concerns raised in order to identify development needs.

Contact us: [enquiries@england.nhs.uk](mailto:enquiries@england.nhs.uk)

NHS England and NHS Improvement  
Skipton House  
80 London Road  
London  
SE1 6LH

This publication can be made available in a number of other formats on request.

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