



## Responding to Concerns Procedure

### Purpose

The purpose of this document is to describe how the Faculty of Public Health will respond to concerns about the practice of a doctor attached in its role as a Designated Body. It is the role of the Responsible Officer to ensure that concerns are addressed with a suitable response. The principles underpinning the discharge of these responsibilities can be summarised as:

- Patients and the public must be protected.
- All action must be based on reliable evidence.
- The process must be clearly defined and open to scrutiny.
- The process should demonstrate equality and fairness.
- All information must be safeguarded.
- Support must be provided to all those involved.

In the context of responding to concerns about a doctor's practice, the responsible officer must:

- Identify concerns through clinical governance processes that are available to the RO.
- Initiate investigations and ensure these are carried out with appropriately qualified investigators separate from the decision-making process.
- Initiate further monitoring.
- Initiate measures to address concerns which may include re-skilling, re-training, rehabilitation services, mentoring and coaching.
- If necessary, take steps to exclude or suspend a doctor or place restrictions on their practice, pending further investigation.
- If necessary, refer to the GMC, comply with the conditions applied by the regulator and provide appropriate information as required.
- Address any systemic issues within the doctor's workplace which may have contributed to the concerns identified.

The responsible officer must take into account information from all areas of the doctor's scope of work when responding to a concern and must consider any fitness to practise assessments.

### What constitutes a concern?

The majority of doctors provide a high standard of patient care. The principles and values which underpin medical professionalism, and the behaviour required of a doctor are described in *Good Medical Practice* (GMC, 2013). As medicine and technologies evolve, doctors need to enhance their skills and keep up to date, in order to remain fit to practise. Doctors are supported in the process of continuing professional development, which is facilitated through annual appraisal. Continuing professional development is enhanced by local self-directed learning, team-based discussions and clinical governance processes led by the organisation in which they are working.

In the course of their professional career every doctor will experience variation in the level of their practice and clinical competence. Every doctor will make mistakes and, on occasion, patients will come to harm as a result. All doctors must therefore be vigilant in recognising and taking

responsibility for mistakes and for reductions in the quality of their practise. Learning from these will improve patient safety in the future.

Where a doctor's standard of care falls below that defined within *Good Medical Practice*, continuing professional development measures alone may be insufficient to address the problem.

A concern about a doctor's practice can be said to have arisen where the behaviour of the doctor causes, or has the potential to cause, harm to a patient or other member of the public, staff or the organisation; or where the doctor develops a pattern of repeating mistakes, or appears to behave persistently in a manner inconsistent with the standards described in *Good Medical Practice*. While minor concerns may be addressed through normal continuing professional development processes, this document is primarily concerned with responding to those instances where normal continuing professional development processes are not sufficient to address the concern.

Once a concern is recognised the responsible officer is responsible for making an initial assessment and for deciding whether an investigation should take place. Concerns about a doctor's practice can be separated into three categories: conduct, capability and health. There is often considerable overlap between these categories and concerns may arise from any combination or all three of these. Any response should be proportionate to the risks posed. An investigation will clarify the nature of the concern, confirm the facts, establish its severity and give an indication of the appropriate response.

Low-level concerns identified through appraisal should be remedied through the PDP wherever possible. This will prevent many concerns from escalating.

Appraisal should not be the process by which serious concerns regarding health, capability, behaviour or attitude are addressed. Such concerns should be managed in an appropriate and timely manner outside appraisal wherever possible.

If there is insufficient evidence to carry out the appraisal meeting, the appraiser reserves the right to discontinue the appraisal and report concerns to the Responsible Officer.

If the situation is then remedied the appraisal process can continue. Nothing in the operation of the appraisal process can over-ride the basic professional obligation to protect the public's health.

Both the appraiser and the doctor need to recognise that they must protect patients when they believe that a colleague's health, conduct or performance is a threat to the public or patients. If, as a result of the appraisal process, the appraiser believes that the activities of the doctor are such as to put individuals or communities at risk, the appraisal process should be stopped and the appraiser should contact the FPH's RO or to contact the appropriate regulator **immediately**.

A doctor may be removed from the revalidation process due to:

- Illness.
- Break of practice.
- Failure to engage.
- Missed appraisals.
- Concerns raised.
- Remediation.

In all circumstances, the doctor in question should be kept informed of all actions and developments. For further information, please refer to the FPH Clinical Governance policy contained within the FPH Revalidation Policy.

It should be noted that FPH does not offer or fund practice investigation or remediation services.

## Managing Performance Concerns

Failures in the performance of healthcare professionals have been highlighted by cases such as the Bristol, Shipman and Patterson inquiries. These inquiries have acted as a catalyst for action by UK healthcare regulatory bodies, such as the GMC, to review fitness-to-practise procedures in an endeavour to ensure that their members do not pose a risk to patients, and to maintain public confidence and trust.

Performance concerns can cover a wide variety of issues:

- Behaviour and professional attitudes.
- Communication.
- Professional offerings and advice-giving.
- Conduct.
- Legal issues.

A doctor may be reported to and included in the FPH managing concerns procedure if:

- concerns are substantiated - on the evidence available there is confidence that expressed concerns are accurate statements.
- concerns are significant - the actions about which concerns are expressed fall well short of the standards for what a Public Health professional would be expected to do in similar circumstances.
- concerns are repetitious – on-going problems, and/or problems on at least two separate occasions.
- the problems seem to be primarily a problem of professional practice rather than a disciplinary or health matter.
- local procedures have failed to resolve the problem or are not appropriate.
- patient/public safety is not judged to be seriously at risk - if patient/public safety is at risk, suspension and/or referral to the GMC are required immediately.

In the absence of performance indicators within public health, it is likely that performance concerns are primarily identified through reactive approaches, such as complaints, peer reporting, and information received from patients, customers, or other organisations such other employers.

It is also possible that performance issues may come to light as the result of the appraisal process: as revalidation is a developmental process and FPH encourages doctors to strive towards best practice through reflection and to identify for themselves where they could make improvements in their practice.

## Establishing the Level of Concern

There are three different categories of performance concerns identified by application of the matrix below:

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 GMP) 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?		
	Low level likelihood of recurrence will have a moderate impact Certain level likelihood of recurrence will have a minimal or low impact	Low level likelihood of recurrence will have a high impact
How much harm occurred?		
No harm to patients or staff and the doctor is not vulnerable or at any personal risk No requirement for treatment beyond that already planned	Potential for harm to staff or the doctor is at personal risk Someone has raised concerns about an individual which requires discussion and an action plan	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?		
Concern will be confined to a single domain of GMP May include one of following: clinical incidents, complaints, poor outcome data which requires discussion and perhaps action	Concern affects more than one domain of GMP May include one or more of following: clinical incidents, complaints, poor outcome data which requires discussion and perhaps action	May include a serious untoward incident or complaint requiring a formal investigation Includes criminal acts
Which factors reduce levels of concern?		
	De-escalation from moderate to low: Reduction to low or minimal impact or in the likelihood of recurrence Evidence of completion of effective remediation	De-escalation from high to moderate: Reduction in impact to moderate or in the likelihood of recurrence Evidence of insight and change in practice

The method of resolution for each of these levels is outlined below:

Low	<p>Isolated or resolved episode of minor concern. Can be dealt with by signposting to appropriate group for learning, development and outcomes.</p> <p>Actions:</p> <ul style="list-style-type: none"> <li>• careful, accurate and proportionate enquiry in response to concern raised</li> <li>• identification of the facts - what happened and how</li> <li>• scrutiny of a particular event or set of circumstances</li> <li>• inclusion in PDP to review the following year</li> </ul>
Moderate	<p>Performance giving cause for concern but can be remedied through FPH</p> <p>Actions:</p> <ul style="list-style-type: none"> <li>• information about why there is a difficulty</li> <li>• provision of a specific Performance Improvement Plan within the PDP</li> <li>• signposting to remedial training</li> <li>• feedback of remedial training via assessment of progress and demonstration of competence in specified areas for review with appraiser the following year</li> </ul>
High	<p>Performance which is significantly and repeatedly below that which is expected – concerns requiring local investigation and that may be addressed with the benefit of advice or assessment from an external organisation such as NHS Resolution in the first instance.</p> <p>Actions:</p> <ul style="list-style-type: none"> <li>• assessment of performance across a broad range of indicators by a suitably qualified investigator</li> <li>• information about why there is a difficulty</li> <li>• suggestions about what might stop it happening again</li> <li>• Significant further training linked to Professional Development Plan</li> <li>• Issuing of an alert letter to the Responsible Officer</li> </ul>
Fitness to Practise (FtP) issue	<p>Performance considered so serious as to potentially call into question the professional's fitness-to-practise.</p> <p>Action:</p> <ul style="list-style-type: none"> <li>• refer to regulator</li> </ul>

## Investigating concerns

It should be noted that all concerns and actions taken to address these should be recorded to demonstrate the reflection and development of the doctor and the robustness of the system in supporting good medical practice. This includes informal concerns. This information will be recorded in the doctor's portfolio to demonstrate that concerns have been addressed. This information will then be available to third parties, such as a new RO.

The lower levels of concern (Green and Amber) can be dealt with by the appraiser and appraisee. It is expected that, where a concern or performance issue is identified, it is reflected upon, discussed and an agreement reached as to how to remedy the issue/concern within the next year. It is expected that concerns of a lower level should be addressed as soon as possible to avoid them escalating into higher level concerns.

Concerns of a higher level (Red) require notification to the RO. The RO will then review the information available to assess if an investigation should take place. If s/he believes one should, then s/he will instruct an appropriately trained investigator (most likely from the trained pool within London) to review. The RO will specify the scope of the investigation and reporting arrangements. The doctor will be kept fully informed at each step in the process.

Where possible, the appraisal process will continue. It may be that NCAS or the GMC will also be notified of the investigation – please note, this is not the same as a formal referral of the case to these organisations.

All relevant circumstances and the entire scope of practice will be taken into account. The appraisee will be kept informed of all developments and their views/comments will be taken into consideration. The investigation will clarify the nature of the concern, confirm the facts, establish its severity and give an indication of the appropriate response. Following the conclusion of the investigation, the results will be discussed by the appraisee, appraiser and RO with next steps, such as a remedial action plan, agreed. It is important to ensure the action taken in response to a concern is proportionate to the level of the concern.

It may be appropriate for increased monitoring of the doctor to be introduced to allow progress to be assessed and/or the remedial action plan to be amended and allow the appraisal the following year to proceed.

Any concerns that affect patient safety or call into question a doctor's fitness-to-practice will be referred to the regulator immediately and the appraisal process suspended until the regulator's procedures have been concluded.

## Referral to regulator

If the performance concern is perceived to be of a serious nature, it shall be referred to the GMC fitness to practice procedures. The fitness to practise procedures are similar to the performance assessments currently undertaken by the GMC, and include: a test of knowledge; observation of the registrant in practice; examination of records (such as continuing professional development); doctor/specialist interview, and third party interviews.

A case may be deemed worthy of referral if:

- Patient/public safety appears to be seriously at risk.
- The doctor/specialist has been convicted of a criminal offence.
- Local (FPH) action would not be practical.
- FPH has tried local action and it has failed.

## Accessing remediation

It should be noted that FPH does not offer or fund remediation services, nor does it organise training on public health topics for re-skilling or development. However, it is possible for a doctor to access further training or development with an external body such as the London Professional Support Unit or NHS Resolution. FPH does allow for the provision of advertisement of external training events through the monthly e-bulletin. Training events can be found with training providers and can be counted as development for a PDP/ appraisal.

The help and support available once performance concerns are identified can vary:

- **Advice** – from experts with backgrounds in public health practice, human resources management, signposting to other resources to help manage the concern.
- **Mentoring and Coaching** – this type of support will form part of most interventions.
- **Specialist interventions** – including facilitation, mediation, performance assessment, action planning and back to work support.
- **Shared learning** – from case experience, evaluation and research.
- **Specific Learning** – to address specific skills of knowledge areas.

## Identification of case investigators and case managers

Case management and case investigation are significant professional roles. Case managers and case investigators should be identified proactively, based on a suitable role description and person specification. Any doctor subject to an investigation will be required to pay for it.

*How to Conduct a Local Performance Investigation* (NCAS, 2010)<sup>1</sup> provides guidance on the roles and competencies that individuals in these roles should be able to demonstrate.

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<sup>1</sup> <https://resolution.nhs.uk/resources/how-to-conduct-a-local-performance-investigation/>