

# THE RESOLUTION OF DISCIPLINARY MATTERS FOR MEDICAL AND DENTAL STAFF

<b>Author:</b>	<b>Head of Medical Staffing</b>
<b>Responsible Lead Executive Director:</b>	<b>Director of Human Resources</b>
<b>Endorsing Body:</b>	<b>Human Resources Forum</b>
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<b>Responsible Person</b>	<b>Head of Human Resources</b> (Medical, Dental and Employment Services)

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<b>CONSULTATION AND DISTRIBUTION RECORD</b>	
<b>Contributing Author / Authors</b>	<ul style="list-style-type: none"> <li>• Head of Medical Staffing</li> </ul>
<b>Consultation Process / Stakeholders:</b>	<ul style="list-style-type: none"> <li>• Scott Anderson - BMA</li> <li>• Liz Airns - GMB</li> <li>• Elaine Anderson – HR Manager</li> <li>• Tom Bryce – General Manager</li> <li>• Margo Cranmer – Unison</li> <li>• Sharon Hannah – RCM</li> <li>• Ruth Hibbert – Head of Policy &amp; Governance</li> <li>• Christine Jack – Operational Manager</li> <li>• Cathy McGinty - Unison</li> <li>• Gwen Macintyre – Senior Nurse</li> <li>• Annette Shorts – Senior OH Nurse Advisor</li> <li>• Sylvia Stewart - Unite</li> <li>• Tom Wilson - RCN</li> </ul>
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July 2014	HR Manager Medical staffing	Amend to new policy format	1.1
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## 1. INTRODUCTION

1. It is essential that NHS Lanarkshire (NHSL) has in place robust procedures to ensure the prompt and effective handling of disciplinary matters.
2. This paper sets out NHSL's arrangements for the resolution of disciplinary matters for medical and dental staff and brings together a number of relevant policies and procedures which are currently contained in a number of separate documents including NHS Circulars. In structure the paper details:
  - the **scope** of these arrangements
  - the **steps** which require to be followed
  - the **procedures** which will apply including levels of authority
  - **the** appeals mechanism
3. Although these arrangements apply to all medical and dental staff employed by NHSL, the position of Doctors and Dentists in Training is slightly different by virtue of the training element inherent in their contract and the relationship with the Postgraduate Dean. Specific references are made to the position of junior staff within these papers.

## 2.0 AIM, PURPOSE AND OUTCOMES

4. These procedures have been introduced following consultation with the Medical and Dental Staff Negotiating Committee and have been approved by Board of NHSL. They will be specified in the written particulars of terms of employment of medical and dental staff.

## 3.0 SCOPE

### SCOPE

4. General disciplinary requirements and procedures apply to all members of staff. However, it is recognised that the unique position of medical and dental staff demands a broader procedural approach. These arrangements cover four main areas of discipline:
5. "NHS Lanarkshire take care to ensure your personal information is only accessible to authorised people. Our staff have a legal and contractual duty to keep personal health information secure, and confidential. In order to find out more about current data protection legislation and how we process your information, please visit the Data Protection Notice on our website at [www.nhslanarkshire.scot.nhs.uk](http://www.nhslanarkshire.scot.nhs.uk) or ask a member of staff for a copy of our Data Protection Notice."

### ***Personal Misconduct***

6. The first area is defined as **Personal Misconduct** where the question of disciplinary action arises because the individual has:
  - fallen short of normal standards of personal conduct in the work area
  - breached the normal disciplinary rules of the department
  - behaved in a way which impacts adversely on the employment contract whether within or away from the workplace
7. Illustrative examples of matters deemed to be Personal Misconduct including conduct which would merit dismissal are contained in NHSScotland's Workforce Conduct Policy's Guide to Expected Standards of Behaviour – links included in appendix 1 to this paper.
8. In these circumstances the matter will be dealt with in accordance with NHSScotland's Workforce Conduct Policy.

### ***Contractual Commitments***

9. The second area concerns practitioners who are alleged to have failed repeatedly to honour their contractual commitments.
10. In these circumstances the matter will be dealt with through NHSL's Professional Review Machinery as set out in paragraphs 23 and 34 – 38.

### ***Professional Misconduct***

11. The third area concerns allegations of unacceptable performance or behaviour on the part of a practitioner arising from the exercise of medical or dental skills.
12. In these circumstances the matter will be dealt with in accordance with NHSL's Procedures for dealing with cases of professional misconduct as set out in paragraphs 24 and 25, and 39 – 49.

### ***Professional Competence***

13. The final area concerns allegations of inadequacy of performance by a practitioner related to the exercise of their medical or dental skills and professional judgement.
14. In these circumstances the matter will be dealt with in accordance with NHSL's Procedures for dealing with cases of professional incompetence as set out in paragraphs 24 and 25, and 39 – 49.

15. Illustrative examples of matters deemed to be Professional Misconduct and Professional Incompetence are set out in appendix 2 to this paper.

### 3.1 Who are the Stakeholders

All directly employed staff of NHS Lanarkshire.

## 4. PRINCIPAL CONTENT

### **Steps**

16. Allegations against a member of medical or dental staff of NHSL can take many forms and can come from many sources. In all cases allegations must be passed in confidence to the Medical Director or, where the individual is a Consultant in Public Health Medicine, the Director of Public Health. Where further action is necessary, Human Resources should notify either the appropriate Associate Medical Director or General Manager that enquiries are underway, limitations have been placed on an individual's practice and/or a suspension has been applied. The Associate Medical Director or General Manager must ensure that any implications for service provision or potential issues for the specialty are covered.

17. Extracts from GMC Guidance on how and when a colleague should be referred are attached as appendix 3 to this paper.

### **Preliminary Enquiries**

18. Preliminary enquiries will be made by an individual nominated by the Medical Director (*normally Deputy or Associate Medical Director*) under the direction of the Medical Director/Director of Public Health.

19. Following these preliminary enquiries, the Medical Director/Director of Public Health will have sole discretion to determine, following consultation with the Director of Human Resources, whether:

- there is no substance in the allegations and that no further action is necessary
- the case is a minor one which can be dealt with by the Medical Director/Director of Public Health or Associate Medical Director on an informal basis
- the procedure for sick doctors as set out in NHS Circular 1982(PCS)8 should be followed. This procedure is attached as appendix 4.
- a *prima facie* case exists to justify further action

20. During these preliminary enquiries the nominated individual will normally wish to discuss the issues with the practitioner involved, who may choose to be represented.
21. Where the Medical Director/Director of Public Health determines that a *prima facie* case exists the matter will be pursued through one of the following procedures depending on the nature of the allegation.

### ***Disciplinary Procedures***

22. Where the case involves personal conduct as defined in paragraphs 6 - 8 the matter will be dealt with directly under NHSScotland's Workforce Conduct Policy as set out in appendix 1

### ***Professional Review Machinery***

23. Where the case concerns allegations that a practitioner has failed repeatedly to honour his/her contractual commitments the matter will be dealt with through NHSL's informal 'pre-disciplinary' machinery as set out in paragraphs 34 – 38.

### ***Intermediate Procedure***

24. Where the case is one of professional misconduct or professional incompetence which warrants disciplinary action short of dismissal the matter will be dealt with as set out in the intermediate procedures as set out in paragraphs 39 – 43.

### ***Serious Disciplinary Cases***

25. Where the case is one of professional misconduct or professional incompetence of a serious nature which would warrant dismissal the matter will be dealt with as set out in paragraphs 44 to 49.

### ***Review***

26. Before instigating formal action, the Medical Director/Director of Public Health will advise the Practitioner and/or his/her professional representative of his/her intentions. The representative will normally have 3 weeks to complete with the Medical Director/Director of Public Health a review of the procedure to be followed. Only in exceptional cases will the review extend beyond 6 weeks.

27. If agreement cannot be reached and the question is whether the matter is one of personal misconduct or professional conduct or competence, the case will be referred to an independent arbiter from the appropriate Royal College selected by agreement between the Medical Director/Director of Public Health and the practitioner's representative.

### **Suspension**

28. Suspension with pay is **not** a disciplinary measure. It enables a full investigation of the circumstances of an alleged offence to be carried out. Sometimes it is required simply to ensure that the practitioner leaves the premises for example if it is in the interests of the practitioner's safety or the safety of others.

29. Suspension should only be used in exceptional circumstances and where this is in the interests of the practitioner or NHSL. However, suspension will always be used in grounds of very serious personal misconduct or in cases of serious professional misconduct or incompetence pending a formal hearing.

30. NHSL's procedures for the suspension of staff are contained in sections 1.5.5-1.5.5.3 of NHS Scotland's Workforce Conduct Policy. A link to the Guide to Suspension is also contained in this section. Please note that there are specific reporting arrangements for Medical and Dental Staff.

### **GENERAL**

31. The decision to dismiss in personal conduct cases involving personal misconduct is as set out in NHS Scotland's Scheme of Delegation Principles. The decision to dismiss in all other cases, ie professional misconduct and professional competence is one for the Board of NHSL who will delegate this to the Remuneration Committee to consider the case.

32. Should the Medical Director or Director of Public Health be absent, it will be for the Chief Executive, in consultation with whichever Director is available, to determine whether the matter can wait for his/her return or whether the practitioner should be suspended in accordance with paragraph 28. The decision will be subject to ratification by the Remuneration Committee.

### **PROCEDURES**

#### ***Disciplinary Procedures***

33. In cases where the issues are ones of personal misconduct the disciplinary procedures which apply are referred to in this paper and contain:

- NHS Scotland's Workforce Conduct Policy
- the Guide to expected standards of behaviour



- the disciplinary matrix which sets out the levels of authority
- the detailed procedures

### ***Professional Review Machinery***

34. In cases where it is alleged that a career grade practitioner has repeatedly failed to honour his/her contractual commitments, and as a means of encouraging early informal action to prevent the development of more serious disciplinary action, a Professional Review Panel may be established.
35. The membership of the Panel will be determined by the Medical Director/Director of Public Health who will not otherwise be involved. The Panel will normally comprise a Senior Medical Manager identified by the Medical Director/Director of Public Health and 3 senior clinicians from the hospital who are not immediate colleagues of the practitioner. The Panel may only consider allegations referred in writing by the Medical Director/Director of Public Health.
36. The Chairman of the Panel will inform the practitioner of the allegations and the practitioner will be invited to meet the Panel to respond to the allegations.
37. If the Panel determines that there is substance in the allegations, the practitioner will be advised formally of the position and given the opportunity to improve.
38. The Panel will consider the position again 6 months after discussion with the practitioner. If there has been no improvement or if the practitioner declines to meet the Panel, the matter will be referred to the Medical Director/Director of Public Health who will instigate disciplinary action in accordance with NHSScotland's Workforce Conduct Policy.

### ***Intermediate Procedure***

39. The Intermediate Procedure involves the use of independent professional assessors to investigate and advise the Medical Director/Director of Public Health on less serious matters involving professional conduct or competence.
40. If the Medical Director/Director of Public Health decides that this procedure is appropriate he/she will write to the Scottish Joint Consultants Committee and invite them to nominate 2 independent assessors from another NHS Board who will be provided with a detailed statement of case (which will be copied to the practitioner concerned). The assessors will consider whether the matter is appropriate for this procedure. In certain circumstances this action will be taken by the appropriate Associate Medical Director.
41. The assessors will determine whom they wish to interview and, through the Medical Director/Director of Public Health, will provide the practitioner involved with a list of the names of those to be interviewed and ask the

practitioner whether he/she would wish anyone else to be interviewed by them. The assessors will undertake any investigations necessary and will submit a report to the Medical Director/Director of Public Health.

42. The Medical Director / Director of Public Health will determine what further action is necessary and will inform the practitioner accordingly. If the decision is that disciplinary action is necessary, the matter will be dealt with in accordance with NHSScotland's Workforce Conduct Policy.
43. Full details of the procedures to be followed by the assessors is attached as appendix 5.

### **Serious Cases of Professional Conduct or Competence**

44. If the Medical Director/Director of Public Health determines that the case involves professional conduct or professional competence where the outcome of the disciplinary action could be the dismissal of the practitioner concerned, a report will be made to the Chairman of NHSL and where necessary NHSL's legal advisers will be called in.
45. The Chairman will determine whether or not there is a *prima facie* case. If not the practitioner will be informed in writing and any suspension will be lifted immediately. Otherwise the practitioner will be informed of the allegation or complaint that the question of an inquiry is under consideration that any comments will be placed before the Chairman and any investigating panel, and will be sent copies of all relevant correspondence.
46. The practitioner will be given 4 weeks to respond and seek advice before a decision is taken on whether an inquiry is necessary.
47. If the Chairman decides in the light of all the evidence before him that a case exists and if there is no substantial dispute as to the facts of the matter the case will be dealt with in accordance with NHSScotland's Workforce Conduct Policy ie a disciplinary panel comprising the Remuneration Committee will be convened to deal with the case.
48. If the Chairman decides that a *prima facie* case exists and that there is a dispute as to the facts NHSL will proceed to hold an inquiry. The procedure for the conduct of such an inquiry are detailed as appendix 6.
49. The report from the investigating panel will be considered by Board of NHSL who will decide what action to take.

## APPEALS

50. Where the disciplinary process relates to issues which are matters of personal misconduct NHSScotland's Workforce Conduct Policy applies. In these cases, decision making and appeals are conducted according to the matrix in appendix one.
51. Where the disciplinary matrix relates to issues which are matters other than personal misconduct i.e. professional misconduct or professional competence the decision to dismiss is taken in all cases by the full Board of NHSL. In such cases therefore there is no **internal** appeal and the only right of appeal is, as outlined in para 52, either to the Secretary of State (if this is a contractual right) or to an independent panel. In cases of dismissal for matters other than professional conduct or competence i.e. personal matters, the procedure as outlined in the disciplinary matrix (section 4) will be followed, and the Practitioner will have recourse to an Employment Tribunal.
52. Consultant employed prior to 1<sup>st</sup> April 2004, and whose contract included a Right of Appeal to Scottish Ministers under the provisions of Paragraph 190 of the Terms and Conditions of Service then applying, will continue to benefit from this Right of Appeal. Other Consultants will have the right to appeal to an Independent Panel.
53. A practitioner subject to these procedures who considers that his/her appointment has been unfairly terminated as a result of disciplinary action may appeal against termination by submitting a notice of appeal to Chairman of NHSL within twenty eight days of the formal notification of dismissal.
54. On receipt of a notice of appeal the Chairman of NHSL will establish an Independent Appeal Panel consisting of three members: in the chair a Queen's Counsel determined by the Chairman of NHSL from a panel appointed by the Lord Advocate; a representative appointed by NHSL; a professional representative appointed by the SJCC. None of the three members of the panel will have been involved earlier in the case.
55. The Independent Appeal Panel shall consider the appeal in the manner determined by the Queen's Counsel. The panel will conduct the appeal as promptly as possible and will advise its findings normally within four weeks of completion.
56. The decision of the Panel will not be binding on NHSL but Board of NHSL will consider the recommendation of the Panel and issue a formal response to the Panel and the Practitioner, setting out its reasons if the decision is not accepted.

## **JUNIOR MEDICAL AND DENTAL STAFF**

57. Disciplinary Procedures for junior medical and dental staff for matters concerning personal and professional conduct will be conducted in accordance with the Service Agreement between the Dean's office and NHSL with the involvement of the Postgraduate Dean's office at all stages – see appendix 7.

58. The implications in these procedures in relation to junior medical and dental staff are:-

- As stated in paragraph 16 allegations must be passed to the Medical Director/Director of Public Health in the first instance
- The panel which would take disciplinary action short of dismissal will normally comprise the appropriate Associate Medical Director, the appropriate Associate Dean and Head of Medical Staffing.
- An appeal against disciplinary action will be heard by the Medical Director/Director of Public Health, the Postgraduate Dean and the Director of Human Resources
- In cases of serious misconduct which may lead to dismissal the case will be heard by the Medical Director/Director of Public Health, the Postgraduate Dean and the Director of Human Resources.
- An appeal against dismissal will be heard by The Remuneration Committee. A medically qualified representative appointed by NES will participate in the hearing of appeals against dismissal.

59. The processes detailed in NHSScotland's Workforce Conduct Policy will be followed in all cases involving junior doctors and dentists but the disciplinary matrix itself will not apply.

## **5. ROLES AND RESPONSIBILITIES**

Employees must

- Ensure they are familiar with the policy and procedures
- Comply with the policy
- Attend training as necessary

Managers must

- Ensure they communicate with staff about the policy
- Consistently implement the policy at their local level
- Keep accurate records

Staff Side Representatives must

- Support the principles and procedures in the policy
- Act in accordance with NHS Lanarkshire's Partnership Agreement
- Undertake training as appropriate

Human Resources Staff must

- Provide awareness training as appropriate
- Provide expert advice and support on the application of the policy
- Monitor and review the policy

**6. RESOURCE IMPLICATIONS**

None identified

**7. COMMUNICATION PLAN**

This policy will be launched using the weekly staff briefing and it will be available on Firstport.

This policy will also be discussed at the appropriate management team meetings and local partnership fora.

**8. QUALITY IMPROVEMENT – Monitoring and Review**

This policy will be reviewed every 3 years via the Joint Policy Forum

**9. EQUALITY AND DIVERSITY IMPACT ASSESSMENT**

This policy meets NHS Lanarkshire's EDIA



(tick box)

**10. APPENDICES**

**NHSScotland Workforce Conduct Policy**

Download from <https://workforce.nhs.scot/policies/>

**Guide to Expected Standards of Behaviour**

Download from  
<https://workforce.nhs.scot/media/iqidmrit/conduct-policy-guide-to-expected-standards-of-behaviour.pdf>

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## ILLUSTRATIVE LIST OF EXAMPLES OF DYSFUNCTIONAL PRACTICE

1. A Junior House Officer was under some stress during his second six-month preregistration post. During a particularly busy week's work, he put one patient's blood into five other patients' test bottles. This only came to light after he had been suspended for inventing blood pressure results and writing the early morning blood pressure readings into the case notes the night before.
2. An Anaesthetist was reported to his Medical Director by nursing staff. He was seen to be inhaling anaesthetic gases. He had had no disasters and there was no record of any untoward incidents. He admitted what he had been doing.
3. Examination of patients may lead to charges of professional misconduct. Rough or painful handling of patients may form such a charge if there was evidence of repeated complaints from patients or other staff. An isolated example would not normally be so regarded. Sexual or intimate examinations are obviously fraught with difficulties for patients. An SHO was reported by a patient for performing what she thought was a sexually motivated assault when he had been attempting a rectal examination with the patient lying on her back.
4. Consent is another area where professional misconduct may occur. In dental and surgical anaesthetics, it was an accepted practice to insert an analgesic suppository after the procedure and immediately before the patient was awake. In a number of such cases the patients were not told this would happen and therefore did not consent.
5. Responsibility for the conduct and performance of one's colleagues is important, particularly if consultants adopt positions of authority. Two consultants have been disciplined for not actively pursuing under or incompetently performing colleagues or locums.
6. Fraud in connection with National Health Service expenses or other income will be regarded as professional misconduct. This may also include inappropriate use or misappropriation of research funds.
7. Deliberately falsifying or using misleading qualifications.
8. A consultant was disciplined for refusing to attend the hospital when requested by a junior colleague. The patient subsequently died.

This list is not exhaustive; more examples of professional misconduct are listed in the GMC booklet "Professional Conduct and Discipline: Fitness to Practice".

## GUIDANCE ON THE REFERRAL OF DOCTORS

1. All doctors have a duty to maintain a good standard of professional work. This is stressed in the GMC publication “Good Medical Practice” which sets out the principles of good practice. Similarly, the public have a right to expect that the doctors they consult will provide them with considerate and competent medical attention.

### ***Performance***

2. Problems of performance may include, for example,
  - Failure to keep professional knowledge and skills up to date
  - Failure to recognise the limits of professional competence
  - Failure to maintain any or adequate clinical records
  - Inability or unwillingness to take an adequate history or to perform a competent physical examination.
  - Attempting to practise techniques in which the doctor has not been appropriately trained
  - Inability or refusal to communicate effectively with patients or their relatives
  - Failure to work effectively with colleagues

### ***Conduct***

3. Problems in relation to conduct include, for example:
  - Serious neglect or disregard of professional responsibilities to patients
  - Certifying as true, information which the doctor knows to be untrue or has not taken appropriate steps to verify
  - Improper charging of private fees to NHS patients or false claims on the NHS
  - Any other form of dishonesty
  - Any abuse by the doctor of their position of trust, including a breach of professional confidence



- Any form of indecency or inappropriate sexual conduct towards a patient or colleague or any other person

### **Health**

4. Ill health which impairs a doctor's fitness to practise includes, for example:

- A serious mental condition
- Abuse of alcohol
- Abuse of drugs

5. Examples of dysfunction given in Appendix 2 do not purport to form a comprehensive list, but are merely illustrative.

### **Problems of Dysfunction**

6. Problems of dysfunction may take the form of persistent poor performance or misconduct, or a poor standard of practise because of ill health or a combination of these factors.

7. Prompt action is essential and if a problem is noticed by colleagues the following advice issued by the GMC should be followed.

*'You must protect patients when you believe that a colleague's conduct, performance or health is a threat to them. Before taking action you should do your best to find out the facts. Then, if necessary, you must tell someone from your employing authority or from a regulatory body ..... The safety of the patients must come first.'*

This professional responsibility rests on all doctors whether they are colleagues of the dysfunctional doctor or have a managerial relationship.

Appendix 4

**PREVENTION OF HARM TO PATIENTS RESULTING FROM PHYSICAL  
OR MENTAL DISABILITY OF MEDICAL OR DENTAL STAFF**

1. Paragraph 19 of NHSL's Procedures for the Resolution of Disciplinary Matters for Medical and Dental Staff refer to the 'procedure for sick doctors'. As indicated these procedures are contained in NHS Circular 1982(PCS)8 a full copy of which can be seen on request.
2. For the purpose of these Procedures this appendix summarises the steps which should be taken to prevent harm coming to patients resulting from the physical or mental disability of medical or dental staff.
3. It is recognised that when members of medical or dental staff have reason to suspect such circumstances, it is their clear duty to do what they can to ensure that the safety and care of patients is not threatened. Action to protect the patients should be taken at the earliest possible stage.
4. As soon as a practitioner's colleagues believe that there are reasonable grounds for apprehending a risk of this kind, they, or one of them, should endeavour to give him/her such confidential advice as might prevent the risk arising. This advice will be given as from a friend and colleague, and if taken, no further action may be necessary.
5. If it seems that a practitioner is already a risk, or if the preliminary personal approach as above is unavailing, colleagues should immediately inform the appropriate medical manager (Deputy or Associate Medical Director), and Chairman of the Medical Staff Association. (Staff other than medical and dental should normally first approach the most senior member of their discipline in the unit or department). It is for these officers to make such confidential enquiries as are necessary to verify the information and assess the situation. If they are satisfied that the information has substance, the practitioner should be told of the results of the enquiry, but not necessarily of its source, and be given the opportunity to be interviewed by the medical manager (*Medical Director/Director of Public Health*) and Chairman of the Medical Staff Association. If interviewed, the practitioner, if he/she wishes, may ask for a professional colleague of his/her choice to be present, and the medical manager (*Medical Director/Director of Public Health*) must make it clear to the practitioner that he/she is being interviewed under the terms of this Circular.

6. If the medical manager (*Medical Director/Director of Public Health*) and Chairman of the Medical Staff Association agree that there is a risk it should be for the Medical Director/Director of Public Health, after such further consultations as he/she considers necessary, to decide what, if any, action should be taken. The Medical Director/Director of Public Health has available to him/her the power to suspend a practitioner from duty where disability is suspected but disciplinary action may not necessarily be envisaged, including the power to take action without consultation where an immediate risk presents itself.
7. Once any immediate risk has been averted, the Medical Director/Director of Public Health should consider whether, in relation to a practitioner's employment, the circumstances might justify a report to the Registrar of the General Medical Council or General Dental Council for consideration in accordance with the procedures of the Council's Health Committee. In considering this it will be relevant to bear in mind that the Council's procedures are specifically designed to encourage a sick practitioner to accept treatment.
8. Any communication concerning the suspected or established disability of an individual or any subsequent medical report should in each case be made and handled in strict confidence and should not be disclosed except to persons (who may, where appropriate, include the Registrar of the General Medical Council or the Registrar of the General Dental Council) whose duties require them to know of it. Such material should not be made available to any other person or body unless so ordered by a Court or other Authority which has the legal power to make such an order.
9. Nothing in this Procedure affects the advice on the Control of Dangerous Drugs and Poisons in Hospitals ie that it is in the interests of the employee and of the public that Boards should consult the police wherever they have grounds for suspecting that one of their staff is misusing or misappropriating controlled drugs and that the police and not the Board of NHSL should make the enquiries necessary to establish whether drugs are being misused or misappropriated and if so, by whom. Similar action should be taken should suspicion arise in the community health services.

## **INTERMEDIATE PROCEDURE FOR LESS SERIOUS MATTERS INVOLVING PROFESSIONAL CONDUCT OR COMPETENCE**

1. Paragraphs 39 – 43 of the main document on The Resolution of Disciplinary Matters for Medical and Dental Staff deals with the ***Intermediate Procedure***.
2. The Intermediate Procedure involves the use of independent professional assessors to investigate and advise the Medical Director/Director of Public Health on less serious matters involving professional conduct or competence. This paper sets out the procedures to be followed by the assessors.
3. The assessors will determine whom they wish to interview and, through the Medical Director/Director of Public Health, will provide the practitioner involved with a list of the names of those to be interviewed and ask the practitioner whether he/she would wish anyone else to be interviewed by them. The assessors will undertake any investigations necessary and will submit a report to the Medical Director/Director of Public Health.
4. The assessors will visit NHSL to undertake the necessary investigations. They will have no power to compel any person – including the practitioner involved – to meet them but refusal to do so will not be allowed to frustrate the enquiry.
5. Any person who is interviewed should be informed that they will be expected to provide a written statement or to sign an agreed record of the interview and that copies of this record or statement will be passed to the practitioner involved.
6. The practitioner involved will be invited to meet the assessors and may do so either alone or accompanied by a representative of his professional organisation or by a friend. NHSL will provide the assessors with secretarial and administrative assistance as required.
7. If at any time the assessors decide that the case is not appropriate to be dealt with under this procedure they will bring this to the notice of the Medical Director/Director of Public Health who will determine what action to take.
8. As far as possible the investigation will be completed within 13 weeks of the assessors receiving the statement of case from the Medical Director/Director of Public Health. The assessors will prepare a report in two parts. The first part will set out the assessor's findings on all the

relevant facts of the case but will contain no recommendation as to action.

9. The second part will contain a view as to whether and to what degree the practitioner involved is at fault and it may also contain recommendations on for example organisational matters or advice to be given to the practitioner. Under no circumstances will the assessors be given disciplinary powers.
  
10. The assessors will send the practitioner involved and the Medical Director/Director of Public Health a copy of the first part of the report and should allow a period of two weeks for the submission of his/her comments on its factual accuracy. Where agreement cannot be reached between the practitioner and the Board of NHSL on the factual accuracy of the report the stated position should be recorded. The assessors will then submit the full report to the Medical Director/Director of Public Health.
  
11. The Medical Director/Director of Public Health will determine what further action is necessary and will inform the practitioner accordingly. If the decision is that disciplinary action is necessary, the matter will be dealt with in accordance with NHSScotland's Workforce Conduct Policy.

## PROCEDURE FOR SERIOUS DISCIPLINARY CASES

1. An investigating panel, the composition of which should differ with the type of inquiry, should be set up by the Board of NHSL. No member of the panel should be associated with the hospital(s) in which the practitioner concerned works, or, in the case of a community doctor or dentist, with the Board of NHSL in which he works. The panel should normally consist of up to five persons, including a legally qualified chairman, not being either an officer of the Scottish Executive or a member or officer of the Board of NHSL concerned. In cases involving professional conduct, membership of the panel other than the chairman should be divided equally between professional and lay persons, unless the allegations relate only to relationships between a practitioner and his professional colleagues when it would be appropriate to have a panel consisting wholly or mainly of professional members apart from the chairman. In cases concerned solely with professional competence, all panel members (other than the chairman) should be medically or dentally qualified and it will normally be appropriate for at least one of their number to be in the same or an allied specialty to that of the practitioner whose professional competence has been called in question. It may also be appropriate for one of the members to be a practitioner from another hospital in the same grade as the practitioner whose competence is the subject of enquiry. The professional members should be nominated by the appropriate professional body. In the case of a doctor this would be the Scottish Joint Consultants Committee (SJCC). In the case of a dentist the SJCC or the appropriate group of the British Dental Association would provide the nominations.
2. The terms of reference of the panel should include the nature of the incident or complaint. The practitioner should be informed of the setting up of the panel and its terms of reference and he should be given not less than 21 days to prepare his case. He should be provided as soon as possible with copies of any correspondence or written statements made. A list of witnesses should be drawn up with the main points on which they are to give evidence. This task might be undertaken by the legal adviser to Board of NHSL assisted by the Medical Director/Director of Public Health as appropriate. As early as possible before the hearing the panel should undertake to exchange between the practitioner and the disciplinary authority lists of witnesses. The main points on which they can give evidence unless exceptionally the chairman of the panel gives authority for the names of witnesses not to be provided in advance of the hearing.

3. The investigating panel should meet in private and seek to establish all the relevant facts of the case. At the hearing the practitioner should appear personally before the panel and hear all the evidence presented to it. Both the practitioner and the Board of NHSL may be represented, legally or otherwise. The Board of NHSL's case should normally be presented by their legal adviser. Where the Board of NHSL and/or the practitioner are represented before the panel by a lawyer, both sides should make efforts to reduce the formality and length of the proceedings. Both the practitioner and the Board of NHSL may call witnesses, including officers of the Board of NHSL if desired, who may be cross-examined before the panel. Only one representative of each party, or the practitioner himself if he is not represented, shall be entitled to cross-examine witnesses. Members of the panel may question witnesses of either party or may ask for other witnesses to be called. The panel should ensure as far as possible that all witnesses are asked to present factual evidence and not personal impressions or opinions.
4. The procedure at the hearing and rules regarding the admission of evidence before the investigating panel should be determined by the chairman who may hold a preliminary meeting with the parties or their representatives for this purpose. The question of adjournment of the hearing in the event of illness or unavoidable absence of the practitioner or any witness is also a matter for the chairman to decide in accordance with natural justice.
5. The report of the investigating panel should be presented in two parts. The first part should set out the panel's findings and all the relevant facts of the case but contain no recommendations as to action. The second part should contain a view as to whether the practitioner is at fault and should explain the basis on which this finding is reached. At the request of the Board of NHSL the second part of the report may contain recommendations as to disciplinary action. In no circumstances should the investigating panel itself be given disciplinary powers.
6. The panel should send the practitioner and the Board of NHSL a copy of the first part of their report, and should allow a period of 4 weeks for the submission to them of any proposals for the correction of facts. It would be for the panel to decide whether to accept any proposed amendments and whether any further meeting was necessary to enable them to reach this decision. Following completion of this procedure, the facts as set out in the panel's report should be accepted as established in any subsequent consideration of the case.
7. The Board of NHSL should then receive the full report of the investigating panel and decide what action to take. In the event of the panel finding that the practitioner is at fault, their views on the case and recommendations in the second part of their report should be made

available to the practitioner in good time before the Board of NHSL meets to consider their decision and the practitioner should be given the opportunity to put to the Board of NHSL any plea in mitigation which he may wish to make before they reach any decision as to action.

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## **EXTRACT FROM THE SERVICE AGREEMENT**

### **DISCIPLINE AND GRIEVANCE**

1. The Operating Division/Board will demonstrate to NES that it has written procedures to deal with grievances and disciplinary matters arising from doctors and dentists in training. These will be in accordance with the PIN Guidelines on Conduct and Capability, the Terms and Conditions of Service for Hospital Medical and Dental Staff (or of doctors in Public Health Medicine and the Community Health Service as appropriate), the General Whitley Council Conditions of Service and ACAS guidelines.
2. Grievances and disputes relating to personal conduct and not involving training matters should be resolved locally under existing arrangements, as per PCS (DD) 2001/9 with the Postgraduate Dean being kept fully informed. See also paragraph 10.5 below.
3. Where a grievance or dispute relates to training matters this should be raised with the Postgraduate Dean or nominated representative at an early stage and NES kept informed throughout. In particular, NES must be informed immediately of any case where a doctor or dentist in training is suspended. Any minimum necessary information received by NES will be treated in accordance with the provisions of the Data Protection Legislation 1998.
4. In cases of serious personal or professional misconduct, where there is a prima facie case for disciplinary action, it may be appropriate to suspend the staff member concerned on full pay prior to convening a disciplinary hearing. Suspension can only be sanctioned by a senior member of the Operating Division's/Board's Clinical Management who has line management responsibility for the staff member concerned and with the approval of a senior member of the Operating Division's/Board's Human Resources Management.
5. Disciplinary issues relating to professional misconduct or competence will be dealt with in accordance with the provisions of NHS Circular: 1990 (PCS)8, PCS (DD) 1994/11, PCS (DD) 1999/7, PCS (DD) 2001/9, and MEL 1993 (149) Annex B paragraph 9. Disciplinary matters relating to personal misconduct will be dealt with in terms of Section 40 of the General Whitley Council Conditions of Service or subsequent terms and conditions.
6. Both parties will nominate duly authorised officers to liaise regarding any action arising under this section.