

Title:	Policy and Procedure for Managing Primary Care Professionals in Difficulty
Reference No:	NYY/PC/001
Owner:	David Geddes – Medical Director/Primary Care Director
Author:	Sharon Sissons – Primary Care Performance Manager John Keith – Head of Governance in Primary Care
First Issued On:	3.3.08 (0.001)
Latest Issue Date:	1 October 2011 (version 1.000)
Operational Date:	1 October 2011 (version 1.000)
Review Date:	1 October 2012
Consultation Process:	Key stakeholders: LRC's, Primary Care Independent Contractors, Primary Care Clinical Governance Group
Policy Sponsor:	Medical Director/Primary Care Director
Ratified and Approved by:	Governance and Quality Committee
Distribution:	All North Yorkshire and York Primary Care Trust Primary Care Independent Contractors, LRCs
Compliance:	Mandatory for all North Yorkshire and York Primary Care Trust Primary Care Independent Contractors
Equality & Diversity Statement:	This policy has been subject to a full Equality Impact Assessment

CHANGE RECORD			
DATE	AUTHOR	NATURE OF CHANGE	VERSION No
3 Mar 08	Primary Care Manager Head of Governance in Primary Care	First draft	0.00 1
2 April 08	Primary Care Manager Head of Governance in Primary Care	Second draft	0.00 2
21 Apr 08	Primary Care Manager Head of Governance in Primary Care	Third draft	0.00 3
25 June 08	Legal Services Manager	Procedure for conduct of hearings added	0.00 4
1 Oct 08	Primary Care Manager	Formatting	0.00 5
6 Nov 08	Primary Care Manager	Inclusion amendments from Governance Sub Committee, LOC	0.00 6
8 Dec 08	Primary Care Manager	Inclusion Equality & Diversity wording	0.00 7
20 Jul 10	Primary Care Manager	Inclusion reference to ICGRG, adhoc amendments & formatting	0.00 8
10 Jan 11	Primary Care Performance Manager Head of Governance in Primary Care	Up dating of Policy to reflect new ways of working & format to standard policy format	0.009
8 Feb 11	Primary Care Performance Manager	Inclusion of comments from Senior Commissioning Manager	0.010
17 Feb 11	Primary Care Performance Manager	Inclusion of comments from Senior Commissioning Manager	0.011
4 April 11	Senior Quality Assurance and Performance Manager	Inclusion of comments from Senior Quality Assurance and Performance Manager	0.012
15 June 11	Primary Care Performance Manager	Inclusion of comments from YorLMC and update to Appendix 3	0.013

13 July 11	Primary Care Performance Manager	Inclusion of amendments to paragraph 1.9, 1.10, 1.11, 5.1.1 and appendix 6 and insertion of paragraph 1.12	0.014
17 August 11	Primary Care Performance Manager	Inclusion of amendments from Medical Director	0.015
22 August 11	Primary Care Performance Manager	Update to paragraph 3.4	0.016
13 September 2011	Approved by Governance and Quality Committee		Version 1

Please note that the intranet version is the only version that is maintained. Any printed copies should, therefore be viewed as 'uncontrolled' and as such may not necessarily contain the latest updates and amendments.

CONTENTS

Preface	5
1 Introduction	5
2 Scope	8
3 Responsibilities	8
4 Guidance on referral under the Policy and Procedure for Managing Primary Care Professionals in Difficulty.....	9
5 Grounds for Action	10
6 Identifying Performance that Raises Concern.....	11
7 Performance Indicators.....	11
8 Key Performance Indicators	12
9 Complaints, Concerns	12
10 Referral from GP Appraisal/Revalidation	13
11 Self Referral	14
12 Regulatory Body Imposed Conditions And Undertakings	14
13 Confidentiality	14
14 Defining Performance that Raises Concern.....	15
15 Detailed Process Flow and Action for the Management of Concerns Raised in Relation to Primary Care Independent Contractors	16
16 Supporting Practitioners	20
17 Resourcing support arrangements for individual practitioners	20
18 Equality & Diversity Statement	21
19 Data Protection Act 1998 Statement.....	21
20 Freedom of Information Act 2000 Statement	21
21 Appeals Process and Follow up	22
22 Consultation, Approval and Ratification Process.....	22
23 Dissemination and Implementation.....	22
24 Document Control including Archiving Arrangements.....	23
25 Training and Awareness	23
26 Monitoring	24
27 Review	24
28 References	24
Appendix 1 - Process flow chart for local management of alleged performance issues	25
Appendix 2 – Performance Assessment Framework Criteria/Indicators	26
Appendix 3 – Membership and remit of the PCT Performance Advisory Group..	27
Appendix 4 – Dental PASS Scheme	29
Appendix 5 – Membership and remit of the PCT Performers Regulatory Panel..	30
Appendix 6 – Written Procedures for Panel Hearings	31
Appendix 7 – Performers/Practice Risk Assessment	38
Appendix 8 – Reflective Template	45
Appendix 9 - Raising Concerns at Work/Whistleblowing Policy	46
Appendix 10 – Internal Reporting Mechanism Flowchart	63

Preface

This policy is made in co-operation with both the NHS North Yorkshire and York (NHS NYY, “the PCT”) and all North Yorkshire and York Independent Primary Care Contractors (GP’s, GDP’s, Optometrists and Pharmacists), using the mechanism of the Local Representative Committee’s (LRC’s). It will remain in force until superseded by a replacement Policy, or until terminated by NHS North Yorkshire and York, giving no less than six months notice to the Local Representative Committee’s. The purpose of the notice to terminate the Policy is to provide the opportunity for all parties to renegotiate a replacement Policy

1. Introduction

- 1.1 Primary Care Independent Contractors (General Medical Practitioners [GPs], General Dental Practitioners [GDPs], Optometrists and Pharmacists) in North Yorkshire and York, like their colleagues elsewhere in the UK, are highly competent and give an excellent standard of care. However, there exists a minority of practitioners who need support to improve unacceptable standards. Following a series of high profile cases, it is apparent that the government, professions and public are becoming increasingly concerned about performance issues. Performance management of Primary Care Independent Contractor Services is the responsibility of Primary Care Trusts. It is therefore incumbent on all PCT administrations to draw up performance management policies.
- 1.2 All NHS organisations have a statutory duty to deliver a quality service. NHS organisations, including those in primary care, need to develop a fair process for tackling performance issues. The publication of *Assuring quality of medical practice* announced the establishment of the National Clinical Assessment Service (NCAS). The PCT will liaise with NCAS for advice on handling concerns about Primary Care Independent Contractors’ performance. PCT’s are also able to request that NCAS undertakes an assessment of a Primary Care Independent Contractor’s practice in order to make recommendations for local action. At present these services are only available for GPs GDPs, and Pharmacists. Where the Primary Care Independent Contractor is a GP, the PCT will also liaise with the GMC Affiliate for advice on handling concerns about performance.
- 1.3 NHS North Yorkshire and York is committed to ensuring quality in its Primary Care Independent Contractor Services, to maximise clinical effectiveness and minimise risk and harm to patients and staff. An outline of North Yorkshire and York PCT’s policy is represented as a flow chart illustrating the process, and can be seen at **Appendix 1**.
- 1.4 This model for performance assessment and support, based on the original Glasgow Unit structure, is one that maintains a supportive and formative

framework whilst at all times preserving patient safety and operating within current legislation.

- 1.5 A central tenant of the policy is that practitioners in difficulty should be supported wherever possible to help them improve their performance. The PCT will work with the local representative committees and other key stakeholders such as the Yorkshire Deanery to support the assessment and management of practitioners in difficulty via a Performance Advisory Group (PAG), whose membership will include a PCT executive director, lay member (non-executive director) and local representative as appropriate, e.g. Local Medical Committee (LMC), Local Dental Committee (LDC), Local Optical Committee (LOC) or Local Pharmaceutical Committee (LPC). Appropriate GPs, GDPs, Optometrists and Pharmacists would be co-opted to this group, dependent on the profession of the practitioner giving cause for concern.
- 1.6 The Performance Advisory Groups' processes are derived from the Handling Performance Concerns in Primary Care – NCAS good practice guide. The Performance Advisory Groups support the implementation of this policy and arrange on-going training, necessary to support members of the groups instrumental to this policy. Its Terms of Reference and membership are detailed at **Appendix 3**.
- 1.7 Referral to the Performance Advisory Group can come from various internal and external PCT systems including complaints, whistle blowing from staff and from routine performance monitoring. This list is not exhaustive.
- 1.8 The Performance Advisory Group will not be required to review all cases of concern regarding a practitioner.
- 1.9 Following the raising of a concern, an initial inquiry will be made which may lead to a preliminary investigation being undertaken. The PCT will seek to complete the preliminary investigation within 5 weeks from the appointment of the case investigator. In more complex cases it may not be possible to do this and the PCT will take into account the circumstances of the individual case, seeking to complete the investigation in a reasonable timescale. In the interest of fairness and good practice, the process of gathering information about a concern will be separated from the decision making about the action required.
- 1.10 The concern will be discussed with the practitioner whose performance gave rise to the concern, unless to do so would jeopardise the enquiry. For example in the case of suspected fraud / child protection issues, further discussion would take place with the source of the concern and any supportive information gathered. A detailed report of the concern, and the practitioner's response would be compiled by the Investigating Officer.
- 1.11 After the preliminary investigation of the concern, there are four options available to the PCT, based on the seriousness of the issues:-

- 1.11.1 Where a concern has been raised which is of a less serious nature, the matter could be dealt with by the Medical Director/Primary Care Director in discussion with colleagues which would include the practitioner. Such issues may relate to an isolated complaint; a lack of systems and process; or a concern raised via appraisal or dental PASS which could be addressed simply by support or education.
- 1.11.2 A potentially more serious or complex concern would be presented to the Performance Advisory Group. The review by the Performance Advisory Group may result in further directed investigation by delegated members of the Performance Advisory Group and /or other officers from the PCT, in order to determine if the concerns are substantiated. The Performance Advisory Group would oversee the engagement with the practitioner / practice and monitor the outcome of any action plan to address the areas of weakness identified. The principle underpinning the investigation is that performers should be encouraged to address concerns and improve their performance, within a fair and supportive framework, whilst maintaining at all times patient safety.
- 1.11.3 If the matter involves fraud then the practice/individual practitioner will be referred to the counter fraud officer at the NHS Counter Fraud and Security Management Service (NHSCFSMS).
- 1.11.4 If the matter is of a serious professional nature, then the PCT will be required to exercise its powers in accordance with the NHS (Performers Lists) Regulations 2004, the NHS (Pharmaceutical Services) Regulations 2005 and all subsequent amendments. The NHS North Yorkshire and York Performers Regulatory Panel make decisions on behalf of the NHS NYY Board with regards to implementing the PCT's powers. Its Terms of Reference and written procedures for panel hearings are detailed in **Appendices 5 and 6**.

If it appears to the Medical Director/Primary Care Director, on receipt of the information, that the matter is so serious as to warrant action under the various Performers List Regulations, it may be referred directly to the Performers Regulatory Panel, without first going through the Performance Advisory Group.

Where concerns involve direct harm or potential harm to patients or professional misconduct, they will be referred to the General Medical Council (GMC), General Dental Council (GDC), General Optical Council (GOC) or General Pharmaceutical Council (GPhC).

- 1.12 In the case of paragraphs 1.11.2, 1.11.3 and 1.11.4 the concerns will be escalated to a formal investigation. Appropriate timescales will be agreed

as part of the Terms of Reference for the formal investigation, based on the urgency of the case.

2. Scope

- 2.1 This policy applies to all Primary Care Independent Contractors who are included on one of the NHS North Yorkshire and York performers lists or pharmaceutical list.

3. Responsibilities

- 3.1 The responsibility for the quality of care provided lies with the individual Primary Care Independent Contractor in the provision of that care. If any untoward event occurs as a consequence of any omission, dereliction of duty, negligent or criminal act then the individual concerned answers for this personally. A vicarious liability also exists for GPs, GDPs, Optometrists and Pharmacists in respect of their employees – including salaried practitioners.
- 3.2 The PCT's Medical Director/Primary Care Director and the Primary Care Directorate will support Primary Care Independent Contractors and their staff to demonstrate the quality of care they provide. They will support Primary Care Independent Contractors to rectify weaknesses and deficiencies in their practice. The Medical Director/Primary Care Director is responsible for ensuring that the resource available within the PCT for Clinical Governance is targeted appropriately. The PCT can offer help and support, although it is a matter for the Primary Care Independent Contractor as to whether they take the advice and support offered.
- 3.3 It is for the Primary Care Independent Contractor to demonstrate their clinical governance, through the established reporting mechanism to the PCT. The Primary Care Governance Group monitors governance in independent contractors and reports to the PCT board, via the NHS NYY Integrated Governance Committee.
- 3.4 The PCT collects, stores and responds to “soft” information it receives about a Primary Care Independent Contractor and reviews the information on a monthly basis via the Independent Contractors Governance Review Group (ICGRG). The information discussed at the ICGRG will be risk rated using a modified NPSA risk assessment tool. The PCT will seek to ensure that all actions and responses are relevant and proportionate and information is stored in accordance with data protection legislation and Caldicott principles. If concerns are identified as being of a significant importance to warrant the practitioner to be referred to the PAG/PRP, the risk assessment will form part of the preliminary investigative paperwork.
- 3.5 The PCT is responsible for establishing and maintaining appropriate systems within the PCT to demonstrate Clinical Governance. This will include reporting

systems from individual GPs, GDPs, Optometrists and Pharmacists, or practices as appropriate, along with critical incident reporting systems with feedback to practitioners.

- 3.6 The PCT has established bimonthly meetings of the Performance Advisory Groups, to decide on the appropriate action required in consideration to any concerns raised about the performance of a Primary Care Independent Contractor (ad hoc meetings may be necessary if a serious concern is identified).
- 3.7 The PCT will be responsible for dealing with the management of performance concerns. The PCT will arrange for investigation and referral on to other agencies, including the GMC, GDC, GOC and GphC, as necessary and work to support such investigation. The PCT will oversee any necessary remedial support.
- 3.8 The PCT will develop a series of indicators supporting the development of a self-monitoring system for each practice relating to the Clinical Governance plan.

4. Guidance on referral under the Policy and Procedure for Managing Primary Care Professionals in Difficulty

- 4.1 More than 3 complaints recorded at the PCT regarding the same issue in any twelve-month period or 5 for all issues.
- 4.2 Danger to patients and staff as identified by serious/critical incidents.
- 4.3 Absence(s) from practice (excluding annual leave and study leave) to be assessed using the Bradford Factor Calculation.
- 4.4 Suspected substance and alcohol misuse.
- 4.5 Suspected health issues which could adversely impact on patient care.
- 4.6 Financial irregularities.
- 4.7 Criminal activity.
- 4.8 Unjustifiable persistent failure to abide by prevailing guidance as identified by national and statutory organisations e.g. NICE.
- 4.9 Failure to abide by regulations for good practice e.g. General Medical Council: Good Medical Practice or GDC/GOC/GPHC equivalent.
- 4.10 Discrimination arising from age, gender, racial, ethnic, religious, sexual orientation or cultural intolerance.

- 4.11 Breaches of employment law.
- 4.12 Any situation that would give the 'Performance Advisory Group' / ICGRG reasons for concern with the quality of care provided to the public.
- 4.13 Poor prescribing practice as identified by the Medicines Management team and / or the Business Services Authority – Prescription Pricing Division
- 4.14 Concerns raised via Clinical Governance reviews / visits – QoF, Dentistry, Pharmacy and Optometry
- 4.15 Concerns raised via GP appraisal / Revalidation process or Dental PASS scheme

5. Grounds for Actions

- 5.1 PCTs may take decisions on three different grounds; these are set out in statute:

5.1.1 Efficiency

- Conduct or performance which is likely to be prejudicial to the services those on the list provide. They may relate to everyday work, inadequate capability, poor clinical performance, bad practice, repeated wasteful use of resources that local mechanisms have been unable to address, or actions or activities that have added significantly to the burdens of others in the NHS (including other doctors).

5.1.2 Fraud

- When someone has obtained or attempted to obtain resources to which they are not entitled. Fraud may involve the misappropriation (or attempted misappropriation) of NHS resources for personal gain or the gain of others.

5.1.3 Suitability

- As a consequence of a decision taken by others (for example, by a court, by a professional body, or the contents of a reference)
- The lack of tangible evidence of a Practitioner's ability to undertake the performer role (eg satisfactory qualifications and experience, essential qualities).

6. Identifying Performance that raises concerns

6.1 There are two main ways performance problems might be identified; by the raising of concerns or by routine monitoring of performance.

6.1.1 Concerns may be raised by:

- Patients or their representatives
- Patient representative groups
- Other healthcare professionals (e.g. district nurse, pharmacist etc)
- Other Practitioners (including partners)
- The Practitioner concerned (self-identification)
- An organisation with an interest in health
- An employee of the PCT or Strategic Health Authority.

6.1.2 It is proposed that performance is routinely monitored in a number of ways: Monitoring a common dataset of performance indicators (e.g. activity, prescribing, referrals, cost effectiveness and death rates)

- Clinical governance processes
- Practice visits
- Practice development planning
- Complaints / PALs
- Checks on joining the Performers List (including police checks as part of the implementation of The Children's Act.)
- The Appraisal / revalidation process
- Requiring practitioners to report sentinel events to the PCT via the Medical Director / Primary Care Director. A sentinel event is one which is so unusual in practice that the fact they occur at all should be sufficient to raise concern, e.g. a death in a practice.

7. Performance Indicators

7.1 The PCT recognises that the use of indicators as a screening tool is controversial for a number of reasons:-

- Valid and well-researched indicators for this purpose are rare.
- They tend to concentrate on very specific areas and as a result can cause distortions in practice.
- Indicators tend to lead to arguments about data and avoid discussion about how to improve performance.
- Indicators only augment what is already informally known about a practitioner or practice.

7.2 PCTs (through Clinical Governance lead/local contract managers) routinely visit all practices and use this as a means of assessing performance and developmental needs. As a result of these visits, areas of concerns about the practice, or Primary Care Independent Contractors may emerge.

7.3 The resources section contains a clinical governance matrix (**Appendix 2**) for use by visiting clinical governance leads in assessing performance.

8. Key Performance Indicators

8.1 The NHS NYY recognises that Key Performance Indicators are necessary to give a full and rounded picture of the incidence of concerns raised. Some key performance indicators need to be considered in any investigation.

8.1.1 These key performance indicators can vary between their disciplines concerned with its policy, these can range from:-

- Complaints / Concerns at PCT and / or practice level
- Referral rates against benchmark.
- Information from appraisal / revalidation
- Prescribing data
- Performance against national and local targets e.g. data from Quality and Outcome framework

9. Complaints, Concerns

9.1 There are two types of feedback from patients in which performance difficulties might be highlighted:

- By a single significant complaint or a series of complaints (usually from a patient)
- By expressions of concern (from patients, professionals or the public)

9.2 NHS guidelines on procedures for the handling of complaints are in existence.

9.3 The NHS NYY policy for managing Primary Care Professionals in Difficulty recognises the need to support both performer, as well as the person who has raised a concern. The Performance Advisory Group will consider:

- The PCT will support the informant in line with the principles underpinning support to those who express concern. There is a history of informants being poorly treated in the NHS¹ - a guide to supporting '*whistleblowers*' is available, in addition to the NHS NYY Whistleblowers policy attached at **Appendix 9**.
- The PCT will encourage people expressing anonymous or verbal concerns or complaints, to allow them to be identified or to make a written record of their concern or complaint
- The PCT will determine if one expression of concern or complaint merits investigation, or whether trends in complaints are more informative.

9.4 The Performance Advisory Group will consider all information presented, carefully considering cases where this information is received from a single source. The group is aware that a balance is required between substantiating

¹ Yamey G. Protecting whistleblowers. BMJ 2000; 320: 70-71

single source information whilst identifying and investigating performance difficulties. Support will be offered to informants reporting a concern, especially where the informant's solitary testimonial will be the basis of an investigation. The danger of ignoring single cases is that it will reduce the sensitivity of identifying performance difficulties, yet reliance on a single concern may prove more difficult to substantiate, and the root cause of the difficulties harder to identify. The Performance Advisory Group will have to make a judgement and be prepared to explain their decision whether or not to act on one incident).

- 9.5 By investigating complaints within a consistent open and transparent framework, the Performance Advisory Group will aim to distinguish between genuine concern and rumours.
- 9.6 It is recognised that the system for handling concerns and complaints needs to be responsive and rapid, balancing the need for thoroughness with the need to resolve concerns and avoid undue distress for either complainant or practitioner
- 9.7 Concerns / Incidents expressed regarding a practitioner will be triangulated with other information within the PCT.
- 9.8 The Primary Care Directorate will act as a central collection point at PCT level for information coming in from all sources. This triangulation of data is the key to identifying concerns about performance through pattern recognition. Patterns will vary, and in general they may be considered with respect to:
 - Gravity: those of which might be determined in terms of patient harm.
 - Frequency: both absolute and in comparison to Primary Care Independent Contractors of the same discipline.

10. Referral from GP Appraisal/Revalidation

- 10.1 Within the proposed process of Revalidation / Strengthened Medical Appraisal, it is envisaged that all concerns / issues, will feed into the process highlighted within this policy. As part of the revalidation / Strengthened Medical Appraisal process the individual will be expected to undertake a reflective review of the concerns / issues that have been raised, and discuss this as part of their forthcoming appraisal
- 10.2 Appraisals should be viewed positively as a means for planning for future personal and professional development, and if conducted appropriately, will benefit the individual as well as satisfying a requirement of clinical governance and being part of the revalidation process. The Responsible Officer shall undertake to review completed appraisals and it is envisaged that as part of this process some Primary Care Independent Contractors will be identified through this process as potentially under performing.

- 10.3 The appraiser, if concerned, may encourage the Primary Care Independent Contractor to access the local performance process through self-referral, as this is a route through which they might access necessary resources and support for improvement (e.g. a mentor or clinical support).
- 10.4 The annual appraisal is a contractual requirement for medical practitioners on the performers list, but is expected to become an integral part of professional life for all Primary Care Independent Contractors.

11. Self Referral

- 11.1 Whilst all referrals will receive prompt, sensitive and full attention. Self-referral or self referral into the dental PASS scheme (see **Appendix 4**) will be given specific support, with the offer of a professional mentor if required.

12. Regulatory Body imposed conditions or undertakings

- 12.1 Where the Regulatory Body imposes conditions or agrees specific undertakings in relation to a Primary Care Independent Contractor, this will trigger a local investigation and/or review by the PCT of the restrictions imposed.
- 12.2 The Responsible Officer will monitor a Primary Care Independent Contractor's compliance with those conditions or undertakings via the procedures and structures outlined in this policy.

13. Confidentiality

- 13.1 Caldicott principles apply to all data handled and to all data communicated to the PCT by individuals and organisations.
- 13.2 The Data Protection Acts 1984 and 1998 apply to all data held by the PCT and by other organisations.
- 13.3 In accordance with the Human Rights Act 1998, the source of a concern or complaint regarding the performance of a health care professional may be identified to that professional in some circumstances.
- 13.4 Consent may be required from individual patients before medical records can be inspected for the purpose of assessing performance. However in accordance with Schedule two and three of the Data Protection Act the processing is necessary "for the exercise of any functions conferred on any person by or under any enactment" (e.g. NHS performers List Regulations 2004)
- 13.5 All members of a practice in which an assessment is undertaken are required to maintain confidentiality about the assessment and any subsequent actions.

- 13.6 Any patient, including those who are medical professionals, should be reassured about the high level of confidentiality they can expect. Caldicott principles and the Data Protection Act will apply. In normal circumstances a Practitioner could expect to be informed of the identity of the individual or organisation raising the concern. In certain circumstances the individual or organisation may reasonably request to remain anonymous (e.g. practice staff raising a concern about the GP employing them). It should be understood, in these circumstances that if the matter proceeds there may be a need to reveal the identity of the complainant at a later stage.
- 13.7 Practitioners whose performance is being assessed will be assured that confidentiality will be maintained throughout the investigation process.
- 13.8 The PCT will investigate and act against any individual or organisation suspected as being a source of malicious or inappropriate referral to the PCT regarding alleged poor performance.
- 13.9 Any PCT employee(s) identified as the source of a malicious referral to the PCT will be subject to the organisation disciplinary procedures. Practice employees acting in a similar manner should be subject to practice disciplinary procedures.
- 13.10 Meticulous record keeping is required at all stages. The record should include:
- The name of the person expressing the concern.
 - The name, address and telephone number of the person if the concern is expressed verbally.
 - The details of the practitioner to whom the expression of concern refers.
 - The date of the event which gave rise to the concern.
 - The date the expression of concern was received.
 - The nature of the concern.
 - The date of the acknowledgement letter sent to the person raising concern.

14. Defining Performance that raises concerns

- 14.1 The Performance Advisory Group will use the criteria and definitions described in table 1 below, developed and used by the Manchester Performance Panel.

Table 1 – Criterion of Performance that raises concerns	
Criterion	Definition
Service provision	Alleged poor performance in one or more of the following: <ul style="list-style-type: none"> • inappropriate treatment or medication; • poor clinical performance; • poor behaviour or attitudes; • Poor administration or management.
Severity	It is acknowledged that if the expressed concerns are substantiated, at the very least they represent sufficiently sub-standard performance to the point that they cannot be ignored and demand some form of action.

Repetitious	The alleged poor performance been on going over a period of time or occurred on at least two separate occasions?
Information	On the information available (preferably written) do the expressed concerns appear to warrant action?
Inexcusable/ Indefensible action	Do the actions about which concerns are expressed fall well short of what any practitioner would be expected to do in similar circumstances?

14.2 If any of the criteria in table 1 are met, the basis for suggesting poor performance may have been established. If this is so, two key questions arise:

Criterion	Definition
Are there mitigating circumstances which are now resolved?	Temporary circumstances inside or outside the practice that might reasonably have been expected to affect the Practitioner's performance.
Is the practitioner aware and taking action to address the concerns?	The Practitioner has acknowledged areas of poor performance and is addressing them.

15. Detailed Process Flow and Action for the Management of Concerns Raised in Relation to Primary Care Independent Contractors

15.1 The following processes are involved in local procedures:

15.1.1 Concern received by Medical Director / Primary Care Director.

15.1.2 Collation of preliminary investigation information, which should include:

- Contacting the complainant to clarify the key concerns (where necessary).
- Contacting the practitioner to provide them the opportunity to comment on the concerns raised.
- Conducting basic checks on the practitioner with other PCT colleagues eg Medicines Management Team, Complaints Team, Contracting Team, PALS
- Requesting relevant documentation.

15.1.3 Decision whether to proceed to formal Investigation taken.

15.1.4 Lead Investigator appointed.

15.1.5 Terms of reference formulated and agreed, to establish clear objectives taking into account timescales.

15.1.6 Lead investigator meets with complainant to gather in depth information about the concern.

15.1.7 Lead investigator and practitioner whose performance is under review meet to:

- Discuss concern
- Discuss information gathering processes, confidentiality and legal framework.
- Discuss involvement of practitioner support e.g. MDDA, LRC, professional colleague ('friend'), GP Tutor, PCT, Defence Organisation, Dental PASS.
- As necessary, agree the process to arrange dates for:
 - Occupational Health Service (OHS) assessment.
 - Assessments of the Primary Care Independent Contractor's knowledge and skills.
 - Practice visit.
 - In the case of a non-principal / locum elements contributing to alleged Performance that raises concerns that could possibly be attributable to the practice, in which they had worked, would trigger a request to that practice to undertake a practice visit. Practices in which they had recently worked may also be contacted to request access to assess the referred contractor's quality of work.
 - In the case of a contractor working for a provider organisation at the time a concern arose, (e.g. the out of hours service) then the provider management would be requested to undertake an investigation and provide a report of clinician's performance, and any organisational factors were thought to have possibly contributed to the alleged Performance that raises concerns.

15.1.8 The initial report is shared with the Performance Advisory Group to review all relevant information.

15.1.9 Performance Advisory Group assesses risk, and agrees outcome from the initial assessment.

- Rated green - no further action required.
- Rated amber - additional investigation may be required, or, an action plan can be agreed to support performer.
- Rated red - serious concerns are raised, necessitating the referral to the performer's regulatory panel, for consideration of action under the performer's regulations.

15.1.10 When further information is required, this may be derived from various sources.
e.g.:

- An Occupational health assessment. Where the PCT decides to refer a practitioner for an Occupational Health Assessment, the matter should first be discussed with the practitioner and a copy of the referral provided to them. The practitioner's consent is required for the Occupational Health Consultant's report to be shared with the PCT.
- A developmental appraisal, which may involve one or more of the following:
 - A self-assessment of the practitioners performance
 - A self assessment health questionnaire
 - A structured interview discussing reported concerns
 - Agreeing learning objectives and time frames
 - Agreeing what is to be considered as evidence of achievement
 - Agreeing a date for review of progress
- An agreed educational assessment, which may include:
 - RCGP Summative assessment MCQ.
 - A videotape of consultations or a simulated surgery

15.1.11 Prior to an agreed practice assessment visit the following will be considered.

- Practice Professional Development Plan
- Practice policies / procedures
- Relevant public health data
- Review local opinion from local health community e.g. the community pharmacist, attached community staff, local nursing homes etc

15.1.12 The practice visit has a standard format referring to the Performance Assessment Framework as detailed in **Appendix 2**. The visit assesses the following areas (where applicable):

- Premises & equipment.
- Access & availability.
- Workforce management and development.
- Services, including:
 - Health promotion.
 - Chronic disease management.
 - Cytology and Immunisation Targets.
- Teamwork & communication.
- Record keeping and information management.
- Complaints procedures.
- Health & Safety.
- Prescribing.
- Audit.

15.1.13 The information from the practice visit is evaluated in the context of confounding variables such as practice population, demographics, the working environment and access to resources.

- 15.1.14 In all cases, an agreed Professional Support Plan is produced and agreed with the practitioner. The Performance Advisory Group agrees the support plan and makes recommendations to the practitioner, the practice and the PCT about the appropriate level of support that should be provided to complete the support plan.
- 15.1.15 The Professional Support Plan will be in the format that is adopted from the NCAS Action plan template, addressing the key areas of personal, professional development, team development or organisational development.
- 15.1.16 The Plan will summarise the background to the case, the objective findings, and an assessment of the root causes for the concerns and conclude with recommendations / objectives. If the practitioner does not agree with the draft Professional Support Plan, the reasons for this must be stated in writing by the Practitioner and this information is then passed with the draft Plan to the Performance Advisory Group.
- 15.1.17 Once the draft report is agreed, it is signed by the practitioner and the Lead investigator. If during the practice visit, development needs of staff other than the practitioner are identified, the draft Professional Support Plan will include recommendations for the development of these staff in the Team Development section of the plan.
- 15.1.18 The affected member(s) of staff will each receive a brief personalised draft Professional Support Plan with findings and recommendations specifically relevant to them. These draft plans will require agreement by the relevant professional and the practitioner (as employer) and will require the professional's signature. They will then be added to the Team Development Section of the overall Plan for the practitioner and the practice. The Team Development Section must be complete prior to the practitioner agreeing and signing the final Professional Support Plan.
- 15.1.19 The recommendations of the Professional Support Plan fall into two categories:
- Personal Professional Development.
 - Practice Organisational Development
- 15.1.20 The agreement of the practitioner is sought to implement any recommendations regarding professional development of practice staff and the development of the practice as an organisation.
- 15.1.21 The educational resources for professional development may be provided by the PCT or commissioned from other agencies e.g. The Yorkshire Deanery.
- 15.1.22 The learning objectives agreed in the Professional Support Plan recommendations, are translated with the help of educational advisors into Personal Professional Development Plans (for the Primary Care Independent

Contractor) that have agreed timescales and agreed criteria for evidence of Achievement and in addition are both workable and achievable.

15.1.23 The PCT may appoint a mentor to the Primary Care Independent Contractor.

15.1.24 Following the agreed period of practice development, the criteria for evidence of achievement in the Professional Development Plan should have been clearly met.

15.1.25 An assessment of satisfactory attainment of educational objectives should be performed at the end of each training activity undertaken by the practitioner.

15.1.26 At the end of the agreed retraining period as defined in the Professional Development Plan, the educational advisor working with the Primary Care Independent Contractor sends a Training and Development Report to the Performance Advisory Group. The report details the training undertaken and the evidence of achievement with reference to the recommendations in the Professional Support Plan.

15.1.27 The practitioner will complete a reflective template (see **Appendix 8**) in relation to the concerns that have been investigated and the actions taken, which will then form part of their appraisal discussion.

16. Supporting Practitioners

16.1 The practitioner should be advised to contact their Defence Organisation Representative and/or Local Representative Committee (LRC) for support.

16.2 The PCT can support practitioners with access to counselling services, available via local Occupational Health Services.

17. Resourcing Support Arrangements for Individual Practitioners

17.1 It is important that this process is properly resourced. Failure to do so will undermine the process which is designed to protect patients and support independent contractors

17.2 Costs which will have to be met include:

- Meeting of Performance Advisory Group and or the Performers Regulatory Panel including payments to members where appropriate
- Locum costs at the agreed PCT rate to Primary Care Independent Contractors involved in the process if required, to ensure that they are able to engage fully with the process
- The PCT will consider appropriate resources to practitioners and practices to help comply with the professional support plan.

- The PCT will fund occupational health, or other specific assessments as deemed necessary by the PAG / PRP
- Costs of reimbursing training panel members and external assessors
- Payments to external assessors for their work
- Legal costs for advice / support to PAG / PRP members.

17.3 Primary Care Independent Contractors supporting this process will be reimbursed at the rate agreed between the PCT and the relevant LRC

18. Equality & Diversity Statement

18.1 The PCT recognises the diversity of the local community and those in its employ.

18.2 Our aim is to provide a safe environment free, from discrimination and a place where all individuals are treated fairly and with dignity, respecting their rights under the Human Rights Act 1998.

18.3 The services we provide will be appropriate to their need, regardless of age, disability, race, nationality, ethnic or national origin, gender, religion, beliefs, sexual orientation, gender reassignment or employment status.

18.4 The PCT recognises that equality impacts on all aspects of its day to day operations and has produced an Equality and Human Rights Strategy and Equal Opportunities Policy to reflect this.

18.5 All policies and procedures are assessed in accordance with the Equality Impact Assessment Toolkit, the results for which are monitored centrally.

19. Data Protection Act 1998

19.1 The Data Protection Act 1998 protects personal data, which includes information about staff, patients and carers.

19.2 The NHS relies on maintaining the confidentiality and integrity of its data to maintain the trust of the community. Unlawful or unfair processing of personal data may result in the PCT being in breach of its Data Protection obligations.

20. Freedom of Information Act 2000

20.1 Any information that belongs to the PCT may be subject to disclosure under the Freedom of Information Act 2000. Personal information, or that deemed to be commercial in confidence may be redacted where this is appropriate and in the best interests of the PCT or those involved.

21. Appeals Process and Follow-Up

21.1 Appeals Process

21.1.1 In conjunction with normal disciplinary procedures, the appeals process allows the Primary Care Independent Contractor to have a right of appeal to the Chief Executive of the Primary Care Trust.

21.1.2 The appeal will be submitted in writing to the Chief Executive's office.

21.1.3 For each stage of the information-gathering process, the informed consent and agreement of the Primary Care Independent Contractor should be sought. The need for clarification by the practitioner should be met by full explanation.

21.1.4 The criteria for appeal are:-

- New information that is likely to change a decision.
- Concerns/evidence that an assessment was performed in a manner that would bias outcome.
- Concerns/evidence that an assessment failed to take into consideration adverse environmental factors that would have been likely to have altered the outcome of that assessment.
- Inability of the Primary Care Independent Contractor to comply with the relevant elements of the agreed action plan or with the training programme due to clearly identified external factors.

22. Consultation, Approval and Ratification Process

22.1 The draft policy will be presented to the Local Representative Committee's, Local Negotiating Committee and Primary Care Clinical Governance Group for consultation and approval.

22.2 The draft policy, Equality Impact Assessment and Policy Submission Form will be presented to the Integrated Governance Sub Committee for final approval and ratification. The ratifying committee is responsible for ensuring policy and procedures comply with legal requirements and national guidance, that they comply with the requirements of this policy and are assured that they are capable of being implemented within the allocated resource before signing off the Policy Submission Form.

23. Dissemination and Implementation

23.1 The secretary of the ratifying committee will notify the Policy Author that the policy has been ratified by forwarding an electronic copy of the completed Policy Submission Form within one week of ratification. The Policy Author will forward the final approved policy document, Equality Impact Assessment and completed

Policy Submission Form to the Designated Lead for Policy Management (Commissioning/CMHS) who, on behalf of the ratifying committees, is the central control point for administering the distribution of all policies and maintains a central database of all PCT policies and procedures.

- 23.2 The Primary Care Performance Manager will communicate details of this policy and any updated versions to all Primary Care Independent Contractors and LRCs electronically.

24. Document Control including Archiving Arrangements

- 24.1 Register of Procedural Documents – This policy and equality impact assessment will be stored on the PCT's Intranet, in the policies and procedures section. The Directorate Policy Coordinator will keep a register of policies and procedures for the directorate. This list will be shared with the Designated Lead for Policy Management (Commissioning/CMHS, or subsequent agency depending on organisational change as outlined in Health & Social Care Bill DOH 2011).

- 24.2 Archiving Arrangements – On review of this policy, archived copies of previous versions will be held by the Directorate Policy Coordinator on behalf of the policy owner. The Directorate Policy Coordinator will keep an up to date list of the archived policies and their location. The Policy will be available as an archived document as soon as the latest version has been made available on the PCT Intranet/Internet.

- 24.3 Process for Retrieving Archived Documents – To retrieve a former version of this policy, contact the relevant Directorate Policy Coordinator. The Designated Lead for Policy Management will maintain an up to date list of all Directors and Directorate Policy Coordinators.

25. Training and Awareness

- 25.1 Awareness of this policy and any subsequent updated versions will be cascaded from the Primary Care Performance Manager to all Primary Care Independent Contractors, Local Representative Committees and relevant PCT colleagues.
- 25.2 This Policy will be made available on both the PCT's internal and external websites.

26. Monitoring

- 26.1 Monitoring of compliance with this policy will currently be the responsibility of the Head of Governance in Primary Care or subsequent nominated representative in line with Equity and Excellence: Liberating the NHS. DOH. 2010). An annual audit will be undertaken for completed performance investigation files. The audit

will ensure that the process for managing Primary Care Professionals in difficulty is operating effectively and actions are escalated accordingly to minimise risk.

- 26.2 The audit will include checking that all documentation held within the performance investigation files is correctly logged and all actions have been completed.
- 26.3 Internal reporting mechanisms have been outlined in Appendix 10. This reporting structure will ensure that all actions and recommendations are undertaken to maximise patient safety and minimise risk.

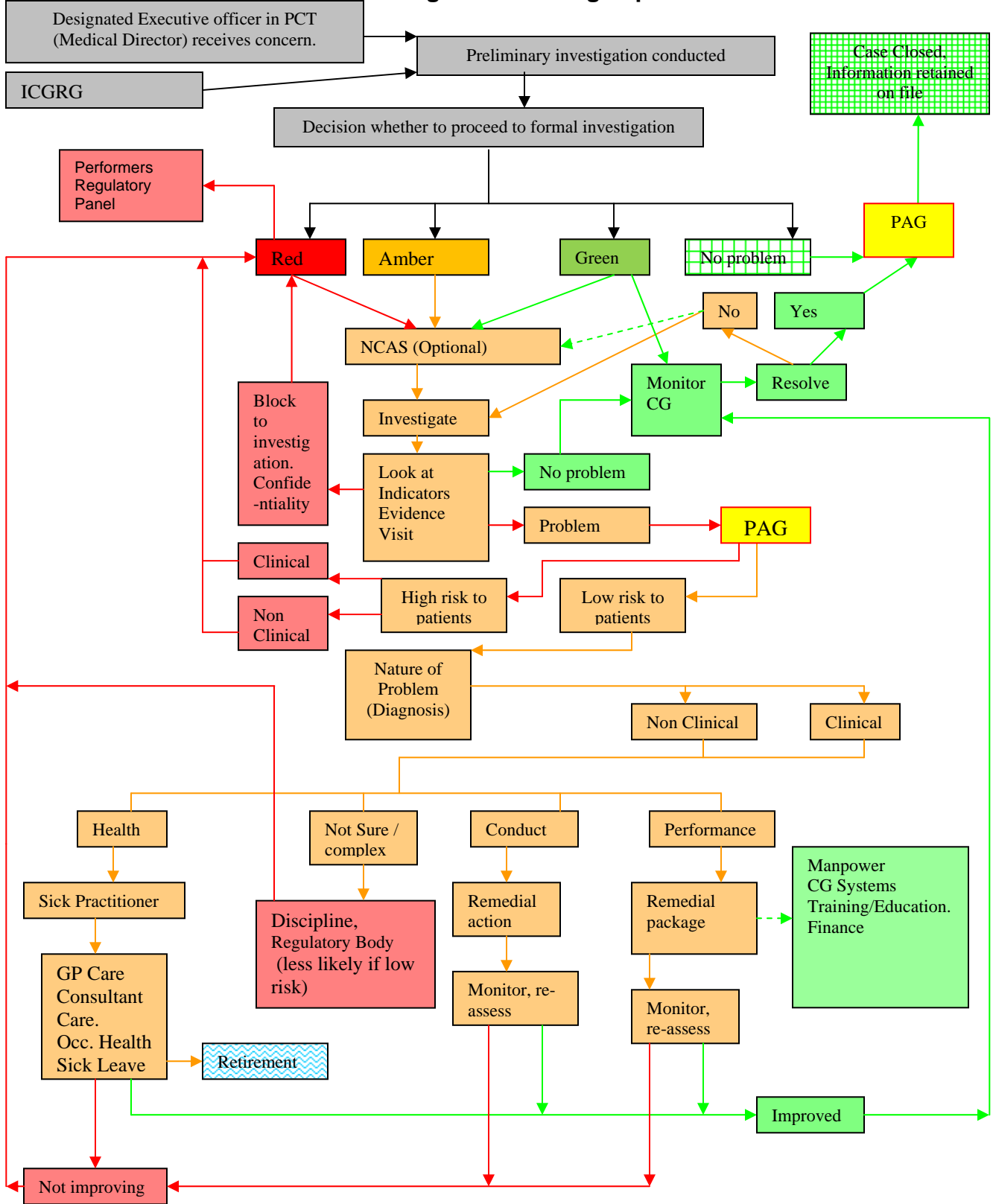
27. Review

- 27.1 This policy will be reviewed on an annual basis. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation or guidance.

28. References

1. Department of Health; Towards a Primary Care Led NHS; EL(94)79; London; HMSO; 1994
2. Department of Health; Primary Care: Delivering the Future; London; HMSO; 1996
3. University of Sheffield School of Health and Related Research; Measures to Assist GPs whose Performance Gives Cause for Concern; University of Sheffield; 1997
4. Handling Performance Concerns in Primary Care – an NCAS good practice Guide; NCAS; <http://www.ncas.npsa.nhs.uk/resources/good-practice-guides/>; 2010
5. Royal College of General Practitioners; Toolkit for Managing GPs whose Performance Gives Concern; from
6. www.rcgp.org.uk/rcgp/quality_unit/toolkit/index.as at December 2001
7. How to conduct a local performance investigation; NCAS ; <http://www.ncas.npsa.nhs.uk/resources/good-practice-guides/> ; 2010

Process flow Chart for local management of alleged performance Issues



Appendix 2

Performance Assessment Framework Criteria/Indicators

Area	Examples of Sources of Indicators	Red	Amber	Green
Chronic disease management	Audit register Prescribing information			
Soft information	Practice staff PCT staff LRC's			
Complaints – formal/ informal expressions of concern	Practice staff PCT NCAS Regulatory Bodies Information from PALS/ complaints			
Whistle-blowing	GP colleagues/partners Practice staff PCT staff Community staff			
Infrastructure - of practice	Record-keeping Staff turnover Premises			
Critical incident episodes	Practice log			
Quality framework of PCT	Failure to meet agreed levels in framework			
Self assessment	Practitioner asking for help			
Evidence of CPD	Personal learning plan Practice development plan			
Prescribing – deviation from expected	Prescribing adviser Prescribing group			
Referrals – deviation from expected	Commissioning Hospital feedback			
Patients' perspective	Feedback Satisfaction surveys Participation groups			
Evidence of audit	Clinical governance input Contract monitoring			
Use of A&E – inappropriate or excessive	Feedback from A&E			
Financial probity	Reporting from Director of Finance as by Standing Financial Instructions			
Other				

Membership and Remit of the PCT Performance Advisory Group

Functions

- Undertakes local assessment of Primary Care Independent Contractors
- To act as an expert advisory body
- Be aware of concerns from the GP appraisal system
- Monitor poor performance of Primary Care Independent Contractors (with appropriate additions and substitutions to membership)
- Make recommended action for the support and development of Primary Care Independent Contractors

Underpinning principles

- Safety of Patients and the public
- Confidentiality, with information passed only on a 'need to know' basis.
- Voluntary participation of the Primary Care Independent Contractors involved.
- Transparency and fairness of process.
- Clear arrangements for communications with other bodies
- Process has support of profession.

Process

- The advisory group does not deal with complaints and is not a disciplinary body
- The advisory group will report to the primary care governance group. This report will allow the PCT to form an opinion of whether the advisory group is fulfilling its responsibilities properly. The report will be recognised as confidential and respect the controls governing the release of sensitive information. However, the primary care governance group will need to understand the types of problems, which the advisory group is asked to, investigate.
- The advisory group will prepare an annual report on its activities, which will be presented to the primary care governance group.

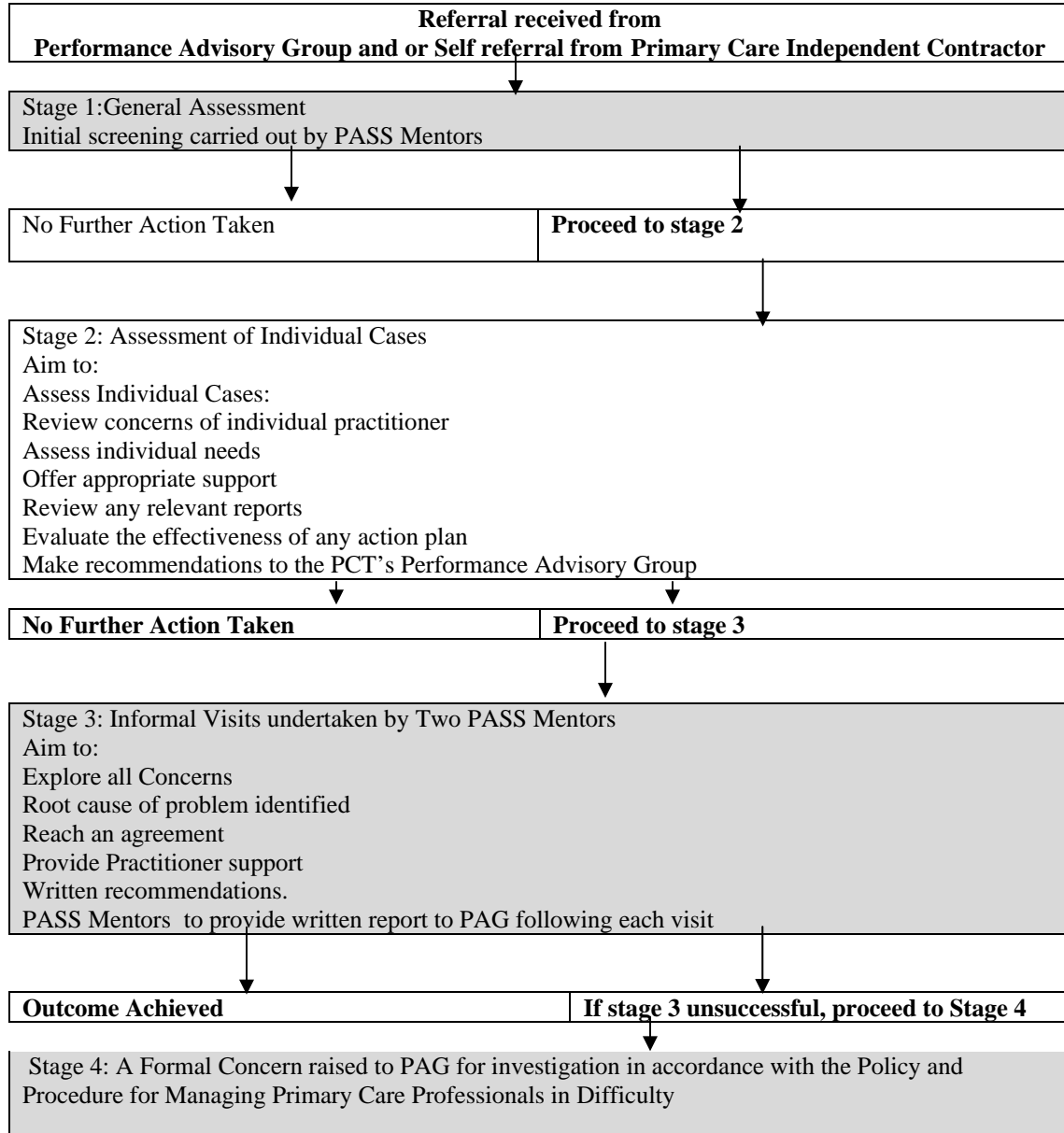
Membership

Medical Director / Primary Care Director
Lay Member - non-executive director (to chair)
Contractor representative (e.g. LMC, LDC, LPC, LOC)
Clinical adviser as per discipline
Head of Governance in Primary Care (to present information)
Senior Quality Assurance and Performance Manager
Primary Care Performance Manager
Legal Services Manager
Co-opted members as required

Quorum

The group will be quorate if 75% of the group members are present to include the PCT non - executives and the Medical Director / Primary Care Director.

Dental Pass Scheme



Membership and Remit of the PCT Performers Regulatory Panel

Functions

- To take overall delegated responsibility for managing Primary Care Independent Contractors performance as part of the PCT clinical governance arrangements.
- To consider concerns about the performance of practitioners.
- To undertake or arrange for investigations of any concerns.
- To determine on behalf of the PCT board decisions to be taken on any of the problems received. Actions could include (this list is not exhaustive) no further action, continual monitoring, seeking advice, exercising the PCTs powers in accordance with NHS (Performers List) Regulations 2004.
- To take advice from the NCAS at any stage.
- To liaise with other bodies, who have a role in handling performance concerns, e.g. HCC.
- To assist in spreading the practice in handling performance concerns throughout the PCT.

Underpinning principles

- Safety of Patients and the public
- Confidentiality, with information passed only on a 'need to know' basis.
- Voluntary participation of the Primary Care Independent Contractors involved.
- Transparency and fairness of process.
- Clear arrangements for communications with other bodies
- Process has support of profession.

Process

- In making decisions on behalf of the PCT board the Performers Regulatory Panel, should record all decisions in writing, including the reasons and criteria used in its decision-making.
- The Performers Regulatory Panel should meet in private, when necessary.
- The Performers Regulatory Panel should provide all necessary reports to the PCT governance committee.

Membership

Three PCT Directors, one of whom should be a Non-Executive Director (NED). Where the Performers Regulatory Panel meets to determine whether or not suspension is a necessary step or some other action preparatory to a final hearing, it's membership shall comprise of two Directors

Quorum

The group shall not be quorate unless three members (or two as specified above) are present.

Written Procedures For Performers Regulatory Panel Hearings

1.0 Introduction

- 1.1 The PCT will follow the specific Regulations set out in the Statutory Instruments relevant to the Practitioner and shall take account of the Guidance provided by the Department of Health in respect of the Practitioner concerned.
- 1.2 These written procedures for PCT Panel hearings are intended to supplement the Regulations and the Department of Health Guidance and are not intended to replace the same. **The relevant statutory instrument(s) and Guidance shall be available for reference by the Panel at and following the hearing.**
- 1.3 The current relevant Regulations and Guidance are as follows: -

Practitioner	Regulations	Department of Health Guidelines
GPs	NHS (Performer's Lists) Regulations 2004 SI 2004/585	DOH Guidance on Management of GPs August 2004 (amended 2006)
Dentists	NHS (Performer's Lists) Amendment Regulations 2005 SI 2005/3491	DOH Guidance on General Dental Practitioners April 2004
Optometrists	NHS (Performer's Lists) Regulations 2004 SI 2008/1187 and NHS (General Ophthalmic Supplementary List) and (General Ophthalmic Services Amendment and consequential Amendment) Regulations 2005 SI 2005/480	DOH Guidance on NHS (Performers List) Amendment Regulations 2008
Pharmacists	NHS (Pharmaceutical Services) Regulations 2005 SI 2005/641	Pharmaceutical List Regulations Guidance July 2005

- 1.4 The PCT will follow the principles of natural justice and in the exercise of public law functions will act with fairness, impartiality and proportionality. This includes giving the Practitioner the right to be heard by an unbiased Panel, the right to have notice of the charges of misconduct and the right to be heard in answer to such charges.

2.0 Onus of Proof/Standard of Proof

- 2.1 The burden of proof with regard to Panel Hearings will rest with the PCT and the standard of proof will be the civil standard namely the balance of probabilities test.
- 2.2 The Panel will therefore be satisfied that an event occurred if it considers that, on the evidence, the occurrence of the event was more likely than not.
- 2.3 A sliding scale applies such that the more serious the allegation, the more cogent will be the evidence required to overcome the unlikelihood of what is alleged.
- 2.4 The Panel may itself determine, dependent on the nature of the allegation(s) that it will adopt a criminal standard of proof, namely that the Panel is satisfied beyond reasonable doubt that the event occurred.
- 2.5 For suspension hearings the onus of proof is on the PCT and the standard of proof is that the PCT must be satisfied that there is sufficient evidence of a case to answer and that it has reasonable and proper cause to suspend. The extent of the evidence available to the panel at the suspension stage will vary from case to case. The DoH Guidance gives three examples where suspension is likely to be warranted:
 - Compelling evidence of culpability, serious sub-standard performance or lack of competence or:
 - Sufficient evidence to warrant suspension pending detailed further investigation or:
 - An allegation or allegations that is sufficiently serious to justify suspension whilst an investigation is undertaken.
- 2.6 There may be other circumstances where a suspension is justified and the examples above are not exhaustive. However the decision to suspend must be capable of being substantiated against the essential criteria that the suspension is necessary to protect patients or is otherwise in the public interest.
- 2.7 If the Panel considers that it would be helpful and in the interests of justice for particular evidence to be heard it may, at its discretion and subject only to the requirements of relevance and fairness, receive any oral or documentary evidence, or other evidence whether or not that evidence would be admissible in any proceedings in a court.

3.0 Notification to the Practitioner

- 3.1 The Practitioner shall be advised of the allegations against him. He must be given precise details of the disciplinary charge or charges made against him and the facts alleged in support of the allegations together with notice of what action the PCT is proposing to take against him and on what grounds. The Practitioner must be given a copy of any documentary evidence that the Panel will consider at the hearing together with a copy of these written procedures.
- 3.2 The Investigating Officer shall ensure that the Practitioner has been sent notification of the date, time and venue of the hearing and informed of his right to make written representations to the Panel or to attend the hearing and make oral representations to the Panel and that he may be assisted at the hearing by a friend or LMC representative or his MDO representative and that he may adduce evidence for consideration by the Panel.
- 3.3 Any notification to the Practitioner for the purposes of the Panel hearing will be sent by special delivery and any such notification shall be treated as having been sent on the day on which it was posted. Personal Service of any notification shall be proved by a signed statement from any person delivering the notification by hand. Any document or notice that needs to be given to a Practitioner may be given by delivering it to him or sending it addressed to him at any address notified by him to the PCT for inclusion in the Practitioners list as a place at which he has undertaken to provide services. If post is utilised this will be by special delivery but personal service of the Practitioner is preferred.
- 3.4 The Practitioner shall be informed that the Panel has power to proceed with the hearing in his absence.
- 3.5 The PCT shall seek to ensure that any documents that will be considered by the Panel are made available to the Practitioner no less than 7 days before the hearing except when an urgent suspension hearing is necessary when a minimum of 24 hours notice of the hearing must be given. If late service is unavoidable the Practitioner shall be given the opportunity to consider the evidence and if need be an adjournment of the hearing shall be offered to enable the Practitioner to do so.
- 3.6 The Practitioner shall be asked to confirm if he intends to attend the hearing. If he seeks legal representation at the hearing, the request shall be referred to the Chair of the Panel to determine as a preliminary issue whether the request should be granted. When considering any such request the Chair shall have regard to the matters raised by Judicial Review decisions that provide further guidance on legal representation for Practitioners, requesting witnesses to attend the Panel hearing and questioning and cross-examination of witnesses. The fundamental question of legal representation is whether the Practitioner could fairly be expected to represent them having regard to the nature and complexity

of the allegations made. If the Practitioner is permitted legal representation the PCT Legal Services Manager shall determine whether to instruct solicitors or counsel to represent the PCT at the hearing.

4.0 Pre-Hearing Issues

4.1 If the Practitioner seeks to make any pre-hearing representations that will require a determination by the Chair of the Panel then such representations shall be made to the Chair in writing no less than 7 days prior to the hearing. The Chair shall make an adjudication on the issue either on the basis of the written representations received or following a preparatory hearing with the Practitioner and/or his representative and the Investigating Officer present and shall confirm that adjudication to the Practitioner in writing as soon as possible thereafter and in any event no less than 2 days prior to the panel hearing.

5.0 Composition of the Panel

5.1 The panel will consist of no less than three members, subject to the provisions of paragraph 5.4. The Investigating Officer will not be a member of the Panel and must not be present with the Panel when it retires to deliberate its findings in private.

5.2 Composition of the panel will be determined by the PCT. The Panel will include a PCT non-executive member and may include a suitably qualified clinician from the establishment or the Professional Executive Committee of the PCT (or a neighbouring PCT). The Executive Board Member will be the Chair of the Panel.

5.3 The Panel shall have delegated authority from the PCT Board for taking Performer's List decisions including suspension, contingent inclusion, refused inclusion, contingent removal and removal from the list held by the PCT.

5.4 For interim Panels convened to determine whether or not suspension or action preparatory to a final hearing is a necessary step, the Panel shall comprise not less than two members who are Directors of the PCT.

5.5 The Chair shall ensure that the hearing is conducted in a fair and reasonable way. He shall ensure that each party conducts itself fairly and that the parties act in a fair and reasonable way in the presentation of evidence, in challenging the other's evidence and in making submissions to the Panel. The Chair shall adjudicate on disputed submissions regarding the calling of witnesses, the disclosure of documentary evidence, the admissibility or otherwise or relevance of disputed documentary evidence or other testimony and any request for an adjournment or any amendment of the disciplinary charges. He shall determine,

in the exercise of his discretion, if such matters should be dealt with as a preliminary issue having regard to the overriding obligation to ensure that the panel hearings are conducted in a fair and reasonable way to both parties.

- 5.6 The panel shall not include any member who has been actively involved in the PCT investigation or who may be called as a witness at the hearing. The roles of investigation and adjudication must be kept separate.
- 5.7 In the event that the Chairman is unable to continue the hearing due to ill health or other unavoidable circumstances, the hearing shall not resume and a fresh Panel shall be appointed by the PCT as soon as is practicable.

6.0 Legal Advisor to the Panel

- 6.1 At any stage the Panel may appoint an advisor to assist it on any matter of law or procedure. Such advisor may be present at any hearing and may give such advice to the members of the Panel during any private deliberations as may be requested by them.
- 6.2 Where the Panel seeks legal advice the parties shall be informed and when the Panel considers that the interests of any party might be substantially affected by the results of the consultation, the Panel shall give to the parties such opportunity as the Panel considers reasonable in the circumstances to make observations on the results.

7.0 The Hearing

- 7.1 The Panel hearing will take place in private and no member of the public will be allowed to attend. The Chair and the parties to the hearing shall seek to agree a list of the people who may attend the Panel Hearing. The Chair will have the right to adjudicate in cases of any dispute. The decision as to whether to call witnesses is that of the party who seeks to rely on their evidence. In the ordinary course, no witness will be called unless they have also made a statement which has been disclosed in advance. The Chair shall have the power to exclude a witness where he is satisfied that they are unlikely to add materially to the decision making process.
- 7.2 Normally witnesses of fact shall not be allowed in to a hearing until they are called to give evidence and must leave once they have done so unless the Chairman and the parties agree that they may remain. In addition, witnesses who have given evidence must not be permitted to speak with witnesses who have not yet given evidence.
- 7.3 The PCT shall ensure that a detailed record of the Panel hearing is made. This may be recorded in writing or electronic form by the tape recording of the

proceedings. This does not, however, include tape recording of the Panels private deliberations.

- 7.4 Subject to alternative representation the Investigating Officer will present the PCT's case to the Panel. The Investigating Officer shall refer the Panel to the relevant Regulations and DoH Guidance in his submissions.
- 7.5 The Practitioner and the Panel members may question any witnesses called by the Investigating Officer. When the Investigating officer has completed presenting evidence, the Practitioner may make his representations to the Panel. This may include a submission that the Investigating Officer has failed to establish a case against the Practitioner for example through lack of evidence or if it has been so discredited as a result of questioning by or on behalf of the Practitioner or is so manifestly unreliable that the Panel could not reasonably accept the same. If such a submission is made then the Panel will adjourn and deliberate in private for the purpose of determining whether to accept the submission. The Chair of the Panel shall announce whether the submission that there is no case to answer has been accepted. If the Panel determine that none of the facts alleged in the disciplinary charges have been proved against the Practitioner and/or there is insufficient evidence of a case to answer then it shall make such a finding. If however the Panel determine that the submission of no case to answer is not accepted then the Practitioner shall have the right to present evidence and/or make further representations to the Panel against the action proposed by the Investigating Officer in his report to the Panel.
- 7.6 Upon conclusion of the representations and summing up made by both the Investigating Officer and the Practitioner respectively the Panel shall withdraw to deliberate in private to determine the facts and to determine whether the proposed action recommended by the Investigating Officer in his report to the Panel should be accepted or if an alternative course should be taken.
- 7.7 Subject to the Chairman's discretion the Panel hearing may proceed in the following order;
 1. Chairman's introduction and outline of the purpose of the hearing.
 2. Presentation of Investigating Officer's report.
 3. Practitioner's questions relating to Investigating Officer's report.
 4. Re-examination.
 5. Panel questions relating to Investigating Officer's report.
 6. Witness evidence given to the Panel.
 7. Questions to witness by or on behalf of the Practitioner.
 8. Re-examination.
 9. Panel questions to witnesses.
 10. Representations made by or on behalf of the Practitioner.
 11. Questions to the Practitioner by the Investigating Officer.
 12. Re-examination.

13. Panel questions to the Practitioner.
14. Investigating officer summing up.
15. Practitioners summing up.
16. Meeting adjourned for Panel to consider case in Private.
17. Panel decision.

7.8 In accordance with Department of Health Guidance Panel proceedings are for the PCT to determine. This procedure is not intended to be prescriptive and in all cases the Chairman of the Panel will be able to vary the procedure as appropriate depending on the particular circumstances of the case. The Chairman's decisions shall be final and binding.

8. Decision

- 8.1 The Panel shall have regard to the Department of Health Guidance on mandatory and discretionary decision-making and take into account the criteria set out in the Guidance for such decisions. The Decision must be fair, reasonable and proportionate..
- 8.2 Where the Panel decide that removal from the List or refusal of admission to the List is appropriate the Panel shall consider whether national disqualification is appropriate. If the Panel consider that national disqualification is appropriate, the Practitioner will be informed as part of the Panel's decision.
- 8.3 The Panel shall notify the Practitioner of the decision, the reasons for it (including the facts relied upon), any right of appeal and any right of review within 7 days of the making of the decision. The decision must be justified by the evidence submitted to the Panel. The Panel shall give adequate reasons for its decision so that the Practitioner is aware of the basis for any decision that is made against him and so that he can take such details into account when considering whether to appeal against the decision and so that the FHSAA can understand why the Panel reached its decision if such an appeal is pursued.
- 8.4 There is no right of appeal to the FHSAA against a decision to suspend a Practitioner.
- 8.5 The PCT will notify its decision to the relevant bodies set out in the Regulations within 7 days of the making of the decision.

Performers / practice

Risk assessment

This *Risk matrix is for the ICCGRG*, to be used in conjunction with the information that is presented at the meeting to determine if there is an increased risk which may need support from the NHS NYY Primary Care directorate.

Table 1 Consequence scores

Choose the most appropriate domain for the identified risk from the left hand side of the table
Then work along the columns in same row to assess the severity of the risk on the scale of 1 to 5 to determine the consequence score, which is the number given at the top of the column.

	Consequence score (severity levels) and examples of descriptors				
	1	2	3	4	5
Domains	Negligible	Minor	Moderate	Major	Catastrophic
Impact on the safety of patients, staff or public (physical/psychological harm)	Minimal injury requiring no/minimal intervention or treatment. No time off work	Minor injury or illness, requiring minor intervention Requiring time off work for >3 days Increase in length of hospital stay by 1-3 days	Moderate injury requiring professional intervention Requiring time off work for 4-14 days Increase in length of hospital stay by 4-15 days RIDDOR/agency reportable incident An event which impacts on a small number of patients	Major injury leading to long-term incapacity/disability Requiring time off work for >14 days Increase in length of hospital stay by >15 days Mismanagement of patient care with long-term effects	Incident leading to death Multiple permanent injuries or irreversible health effects An event which impacts on a large number of patients
Quality/complaints/audit	Peripheral element of treatment or service suboptimal Informal complaint/inquiry	Overall treatment or service suboptimal Formal complaint (stage 1) Local resolution Single failure to meet internal standards Minor implications for patient safety if unresolved Reduced performance rating if unresolved	Treatment or service has significantly reduced effectiveness Formal complaint (stage 2) complaint Local resolution (with potential to go to independent review) Repeated failure to meet internal standards Major patient safety implications if findings are not acted on	Non-compliance with national standards with significant risk to patients if unresolved Multiple complaints/independent review Low performance rating Critical report	Totally unacceptable level or quality of treatment/service Gross failure of patient safety if findings not acted on Inquest/ombudsman inquiry Gross failure to meet national standards

Human resources/ organisational development/staffing/ competence	Short-term low staffing level that temporarily reduces service quality (< 1 day)	Low staffing level that reduces the service quality	Late delivery of key objective/ service due to lack of staff Unsafe staffing level or competence (>1 day) Low staff morale Poor staff attendance for mandatory/key training	Uncertain delivery of key objective/service due to lack of staff Unsafe staffing level or competence (>5 days) Loss of key staff Very low staff morale No staff attending mandatory/ key training	Non-delivery of key objective/service due to lack of staff Ongoing unsafe staffing levels or competence Loss of several key staff No staff attending mandatory training /key training on an ongoing basis
Statutory duty/ inspections	No or minimal impact or breach of guidance/ statutory duty	Breach of statutory legislation Reduced performance rating if unresolved	Single breach in statutory duty Challenging external recommendations/ improvement notice	Enforcement action Multiple breaches in statutory duty Improvement notices Low performance rating Critical report	Multiple breaches in statutory duty Prosecution Complete systems change required Zero performance rating Severely critical report
Adverse publicity/ reputation	Rumours Potential for public concern	Local media coverage – short-term reduction in public confidence Elements of public expectation not being met	Local media coverage – long-term reduction in public confidence	National media coverage with <3 days service well below reasonable public expectation	National media coverage with >3 days service well below reasonable public expectation. MP concerned (questions in the House) Total loss of public confidence
Finance including claims	Small loss Risk of claim remote	Loss of 0.1–0.25 per cent of budget Claim less than £10,000	Loss of 0.25–0.5 per cent of budget Claim(s) between £10,000 and £100,000	Uncertain delivery of key objective/Loss of 0.5–1.0 per cent of budget Claim(s) between £100,000 and £1 million Purchasers failing to pay on time	Non-delivery of key objective/ Loss of >1 per cent of budget Failure to meet specification/ slippage Loss of contract / payment by results Claim(s) >£1 million
Service/business interruption Environmental impact	Loss/interruption of >1 hour Minimal or no impact on the environment	Loss/interruption of >8 hours Minor impact on environment	Loss/interruption of >1 day Moderate impact on environment	Loss/interruption of >1 week Major impact on environment	Permanent loss of service or facility Catastrophic impact on environment

Table 2 Likelihood score (L)

What is the likelihood of the consequence occurring?

The frequency-based score is appropriate in most circumstances and is easier to identify. It should be used whenever it is possible to identify a frequency.

Likelihood score	1	2	3	4	5
Descriptor	Rare	Unlikely	Possible	Likely	Almost certain
Frequency How often might it / does it happen	This will probably never happen/recur	Do not expect it to happen/recur but it is possible it may do so	Might happen or recur occasionally	Will probably happen/recur but it is not a persisting issue	Will undoubtedly happen/recur, possibly frequently

Note: the above table can be tailored to meet the needs of the individual organisation.

Some organisations may want to use probability for scoring likelihood, especially for specific areas of risk which are time limited. For a detailed discussion about frequency.

Table 3 Risk scoring = consequence x likelihood / Frequency (C x L)

	Likelihood				
	1	2	3	4	5
	Rare	Unlikely	Possible	Likely	Almost certain
5 Catastrophic	5	10	15	20	25
4 Major	4	8	12	16	20
3 Moderate	3	6	9	12	15
2 Minor	2	4	6	8	10
1 Negligible	1	2	3	4	5

Instructions for use

- 1 Define the risk(s) explicitly in terms of the adverse consequence(s) that might arise from the risk.
- 2 Use table 1 to determine the consequence score(s) (C) for the potential adverse outcome(s) relevant to the risk being evaluated.
- 3 Use table 2 (above) to determine the likelihood score(s) (L) for those adverse outcomes. If possible, score the likelihood by assigning a predicted frequency of occurrence of the adverse outcome. If this is not possible, assign a probability to the adverse outcome occurring within a given time frame, such as the lifetime of a project or a patient care episode. If it is not possible to determine a numerical probability then use the probability descriptions to determine the most appropriate score.
- 4 Calculate the risk score the risk multiplying the consequence by the likelihood: C (consequence) x L (likelihood) = R (risk score)
- 5 Identify the level at which the risk will be managed in the organisation, assign priorities for remedial action, and determine whether risks are to be accepted on the basis of the colour bandings and risk

ratings, and the organisation's risk management system. Include the risk in the organisation risk register at the appropriate level.

Current risk rating for practice / Practitioner (Date – XX/XX/XXXX)

Number	Risk	Likelihood	Impact	Risk Score (LxI)	Likely Impact
1	Impact on the safety of patients, staff or public (physical/psychological harm)	1	1	1	L(1)
2	Quality/complaints/audit	1	1	1	L(1)
3	Human resources/ organisational development/staffing/ competence	1	1	1	L(1)
4	Statutory duty/ inspections	1	1	1	L(1)
5	Adverse publicity/ reputation	1	1	1	L(1)
6	Finance including claims	1	1	1	L(1)
7	Service/business interruption Environmental impact	1	1	1	L(1)
OVERALL RATING		1	1	1	L(1)

Ongoing Risk Assessment (Date – XX/XX/XXXX)

Number	Risk	Likelihood	Impact	Risk Score (LxI)	Likely Impact
1	Impact on the safety of patients, staff or public (physical/psychological harm)	1	1	1	L(1)
2	Quality/complaints/audit	1	1	1	L(1)
3	Human resources/ organisational development/staffing/ competence	1	1	1	L(1)
4	Statutory duty/ inspections	1	1	1	L(1)
5	Adverse publicity/ reputation	1	1	1	L(1)
6	Finance including claims	1	1	1	L(1)
7	Service/business interruption Environmental impact	1	1	1	L(1)
OVERALL RATING		1	1	1	L(1)

Ongoing Risk Assessment (Date – XX/XX/XXXX)

Number	Risk	Likelihood	Impact	Risk Score (LxI)	Likely Impact
1	Impact on the safety of patients, staff or public (physical/psychological harm)	1	1	1	L(1)
2	Quality/complaints/audit	1	1	1	L(1)
3	Human resources/ organisational development/staffing/ competence	1	1	1	L(1)
4	Statutory duty/ inspections	1	1	1	L(1)
5	Adverse publicity/ reputation	1	1	1	L(1)
6	Finance including claims	1	1	1	L(1)
7	Service/business interruption Environmental impact	1	1	1	L(1)
OVERALL RATING		1	1	1	L(1)

Ongoing Risk Assessment (Date – XX/XX/XXXX)

Number	Risk	Likelihood	Impact	Risk Score (LxI)	Likely Impact
1	Impact on the safety of patients, staff or public (physical/psychological harm)	1	1	1	L(1)
2	Quality/complaints/audit	1	1	1	L(1)
3	Human resources/ organisational development/staffing/ competence	1	1	1	L(1)
4	Statutory duty/ inspections	1	1	1	L(1)
5	Adverse publicity/ reputation	1	1	1	L(1)
6	Finance including claims	1	1	1	L(1)
7	Service/business interruption Environmental impact	1	1	1	L(1)
OVERALL RATING		1	1	1	L(1)



Reflective Template

Name:	Performers List Inclusion No:
Description of Event to Be Reflected On:	
Thoughts and Feelings (At the time)	
Thoughts and Feelings (Now)	
What have I learned (any discussion with colleagues):	
What will I do the same or differently next time:	

Any educational needs identified:
Final outcome after discussion at appraisal: (complete at appraisal considering how your outcome will improve patient care)

Note to Appraiser: Please ensure that the outcome of the discussion regarding this reflective template is fed back within the Form 4.

Please return the completed document to Dr David Geddes, Investigating Officer, NHS North Yorkshire and York, Sovereign House, Kettlestring Lane, Clifton Moor, York, YO30 4GQ.

Title: *Raising Concerns at Work / Whistleblowing*

Reference No: *NYYPCTHR07*

Owner: *Amanda Wilcock, Associate Director of Human Resources*

Author: *Sheila Duckett, Locality HR Manager*

First Issued On: *4 June 2007*

Latest Issue Date: *1 March 2010*

Operational Date: *1 April 2008*

Review Date: *1 year*

Consultation Process: *HR Employment Policy Group
SMT
Governance Committee*

Policy Sponsor: *Amanda Wilcock, Associate Director of HR*

Ratified and Approved by: *JNCC 11 July 2007
Governance Committee 18 October 2007
LNC
Directors*

Distribution: *All staff in line with Policy on Policies*

Compliance: *Mandatory for all permanent & temporary employees, contractors & sub-contractors of NHS North Yorkshire & York*

Equality Statement: *This policy has been subject to a full equality impact assessment.*

CHANGE RECORD			
DATE	AUTHOR	NATURE OF CHANGE	VERSION No
27.11.07	Sheila Duckett, Senior HR Advisor	New Policy for NYYPCT	1.0
Sept 09	Sheila Duckett	Policy Review i) Cross-referenced with Adverse Incident Reporting System (5.2) ii) Updated designated officers and nominated lead (Appendix A) iii) Relevant legislation added in section 12.	2.0



C O N T E N T S

1. Introduction
2. Scope.
3. Policy Statement
4. Types of concerns covered by the Policy
 - 4.1 Relevant disclosure events.
 - 4.2 Rules for making a protected disclosure.
 - 4.3 When a worker will not be protected.
5. Procedure.
 - 5.1 Raising concerns internally
 - 5.2 Adverse Incident Reporting system (Ulysses)
 - 5.3 PCT nominated lead
 - 5.4 PCT's responsibility
 - 5.5 Support.
6. Responsibility of Manager
7. Investigation
 - 7.1 Terms
 - 7.2 After the investigation
8. Internal Inquiry
9. If a worker raising the concern remains dissatisfied
10. Raising concerns externally
 - 10.1 Regulatory disclosures
 - 10.2 Wider disclosures
11. Role of Trade Union and recognised employee associate
12. Other Policies and Procedures
13. Monitoring
14. Appeals
15. Further Advice

APPENDICES

- | | |
|---|---|
| A | Nominated Lead + Designated Officers and their roles and responsibilities in relation to the Whistleblowing Policy. |
| B | Checklist for Managers/ Designated Officers. |
| C | Interview form |
| D | Flowchart outlining procedure for raising concerns. |

POLICY FOR RAISING CONCERNS AT WORK OR “WHISTLEBLOWING”

1. INTRODUCTION

North Yorkshire and York Primary Care Trust (PCT) is committed to ensuring the highest possible standards of service and the highest possible ethical standards are met in delivering the service. Where patients may be at risk, or there is unlawful conduct or financial malpractice, employees can find it difficult to know what to do, perhaps feeling it is not their business, being fearful of repercussions, not having proof, or feeling disloyal to colleagues/managers.

This policy has been designed to support and assist staff to bring genuine concerns to the attention of the appropriate people, who can take the relevant action. This policy makes it clear that staff can do so without fear of reprisal. It is intended to encourage staff to raise serious issues of concern within the PCT rather than overlook the problem or “blowing the whistle” outside. The PCT welcomes genuine concerns and is committed to dealing responsibly, openly and professionally with them. However, if the information is provided anonymously it will be much more difficult for the concern to be investigated and for the PCT to protect positions or provide feedback. Accordingly, while we consider what action may be justified by an anonymous report, we will not be able to handle such reports under this policy.

2. SCOPE

Please note that the provisions of this policy apply to everyone working for the PCT. This includes all employees of the PCT, self-employed persons, contractors, agency workers, trainees and volunteers who may be working in the PCT (all known as “workers” throughout this document).

3. POLICY STATEMENT

The PCT Board recognises the importance of reporting on Critical Incidents, such as unlawful conduct, financial malpractice, or dangers to the public or the environment. This document sets out the procedure for workers to raise concerns without fear of recrimination.

The aim of the policy is to encourage employees to raise concerns at an early stage and in the right way. The PCT will take all concerns seriously and is committed to developing a climate of openness and free expression whereby raised concerns are welcomed, appreciated and acted upon positively.

The PCT will take all reasonable steps to protect those raising concerns in accordance with this policy and will, as far as is reasonably practicable, respect their request to protect their identity and to maintain confidentiality. Such information will only be disclosed in exceptional circumstances, (e.g. where evidence is needed in court), and only after consultation with the individual and with their written consent.

The most important aspects of Healthcare Governance and the good running of any PCT relies on procedures, however, it also relies fundamentally on adherence at all levels to the maintenance of the values of public services, most notably:-

- Accountability – As the recipient of public funding, the PCT has to answer to the public for how it uses its resources in providing health care;
- Probity – The PCT must act with honesty and integrity in its dealings;
- Openness – The PCT has to ensure an atmosphere of trust, both in relationships within and outside the organisation, and ensure that confidentiality of patients is respected at all times

4. TYPES OF CONCERNS COVERED BY THE POLICY

The Public Interest Disclosure Act 1998, commonly referred to as “The Whistleblowers Act” and which came into force on 2 July 1999, makes clear that a worker who has a reasonable belief that a “disclosure event” has occurred should be able to raise a concern without fear of dismissal or suffering another form of detriment as a result of the disclosure.

4.1 The “disclosure event” must relate to:-

- a criminal offence about to be, or having been, committed;
- a failure to comply with a legal obligation;
- a miscarriage of justice;
- endangering an individual’s health & safety;
- damage to the environment; or
- concealment of information relating to the above.

4.2 The Act has rules for making a protected disclosure:-

- workers must disclose the information in good faith;
- workers must believe it to be substantially true;
- workers must NOT act maliciously or make false allegations;
- workers must NOT seek any personal gain

4.3 A worker will not be protected under the Act if:-

- the worker knows the allegation is not true;
- the worker believes it, but has no grounds for such belief;
- where there are grounds to believe the allegations, but these grounds have been collected recklessly, disregarding the possibility of an easily obtainable, innocent explanation

5. *PROCEDURE*

5.1 Raising Concerns Internally

The PCT encourages workers to raise concerns either verbally or in writing with an appropriate person who has the responsibility to take action under this policy. This will often be their line manager or manager next in line. However if, for some reason this is not possible (e.g. if the concern is regarding their line manager, or their line manager is not available), workers should still raise their concern.

Workers should refer to the Fraud and Corruption Policy regarding suspicions of fraud.

If the concerns are still not dealt with fully or (because of the particular circumstances) workers feel unable to speak to their immediate Managers, then the worker should contact a designated officer requesting a confidential meeting. Designated officers are:

- Associate Director of Human Resources
- Non-Executive Director
- Director of Finance
- Medical Director (Primary Care)
- Medical Director (Provider Services)

Names and roles in relation to this Policy are shown at Appendix A. Checklist to assist Managers/Designated Officers is shown at Appendix B.

Where exceptionally the concern is about the Chief Executive, the Chair of the Board would decide on how to proceed. This may include an external investigation.

5.2 Workers can also raise concerns under this policy on the Adverse Incident Reporting system. This can be found on the home page of the PCT intranet under “Ulysses – Report an incident”. There is an option for staff to bypass notification rules, which means that if they have concerns which they do not want their manager to know about it can still be reported through the system.

5.3 The PCT has a nominated lead, a Non-Executive Director, whose responsibility is to ensure the effectiveness of this process. The role of the nominated lead is to undertake periodic reviews of the policy in liaison with HR and to deal with any issues or complaints regarding the policy which may arise. See Appendix A for the details of the nominated lead.

5.4 By raising the concern, workers should understand that the PCT has a duty to assess and examine the situation, which may involve an investigation or internal inquiry. If a worker has any personal interest in the matter they need to declare this at the outset and they will be informed if the concern falls more properly within the grievance or other procedures. Workers dissatisfied with this process should refer to Section 9 of this policy.

Only where mistaken allegations are made maliciously will it be considered appropriate to act against the worker who raised the concern and this would likely result in disciplinary action.

5.5 At any stage of this procedure, if considered appropriate, workers should seek guidance from their Trade Union or Staff Organisation representatives. Workers are encouraged to raise all concerns as early as possible and it is reiterated that workers can be assured that the matter will be treated in the strictest confidence and that there will be no recriminations resulting from them raising concerns. Raising concerns of this nature can give rise to anxiety and a support mechanism for workers involved in this process is available via the Associate Director of Human Resources.

6. **RESPONSIBILITY OF MANAGER**

Managers have a duty to take employee concerns seriously and to understand the difficult position a worker may be in. They will, as far as is reasonably practicable, respect their request to protect their identity and to maintain their confidentiality and will not tolerate any victimisation of individuals raising genuine concerns.

When a worker raises a concern to their manager, an initial interview will be arranged. The worker should be asked to make a written or verbal statement. In either case the line manager should complete the summary of Initial Interview at Appendix C, which should be agreed and signed by both parties.

The manager will then inform a Designated Officer within 5 working days (see list at Appendix A) who will decide on the method of investigation. The Human Resources department will maintain a record of all instances where a concern is raised in line with this policy and record the outcome/action that follows.

Where concerns are not raised with the line manager, the Designated Officer will be the point of contact for workers who wish to raise concerns under the provisions of this policy. The designated officer should complete the summary of initial interview at Appendix C and then decide on the method of investigation. *Checklist to assist Designated Officers is shown at Appendix B and flowchart at Appendix D.*

7. **INVESTIGATION**

7.1 The investigation may need to be carried out under the terms of strict confidentiality i.e. by not informing the subject of the complaint until it becomes necessary to do so. In certain very serious cases it may be necessary to inform the Regulatory Body or the Police at an early stage so that evidence is not destroyed or made inadmissible at a later date.

In certain cases, such as allegations of ill treatment of patients, suspension or paid leave from work may have to be considered in accordance with the Disciplinary Procedure, as protection of patients/clients is paramount.

It is intended and expected that concerns of workers will be resolved as speedily as possible. Managers should always take such expressions of concern seriously and consider them fully and sympathetically, seeking advice as appropriate. Where such concerns can be acted upon, action should be taken promptly and the worker kept informed about the investigation and notified in writing, within 14 days, of the action taken. This would not include details of any disciplinary action, which would remain confidential. Such an approach will demonstrate that the matter has been fully and fairly considered and in most cases will resolve the issue.

7.2 If the result of the investigation is that there is no case to answer but the worker held a genuine concern and was not acting maliciously, the Designated Officer should ensure that the worker suffers no reprisals.

Further information on what to do if the worker is not satisfied with the outcome of the investigation is included at section 9 of this policy.

8. **INTERNAL INQUIRY**

If the concern raised is very serious or complex, an internal inquiry may be held and will be commissioned by the Chief Executive or Chair as appropriate.

The PCT recognises the contribution trade unions/employee associations can make to an inquiry and will consult with trade unions/employee associations about the scope and details of the inquiry, including the implementation of the recommendations of the inquiry.

9. IF A WORKER RAISING THE CONCERN REMAINS DISSATISFIED

If the individual who raised the concern is not satisfied with the outcome of the investigation or inquiry, the PCT recognises the lawful rights of employees and ex-employees to make disclosures to prescribed persons, listed in section 10.1. The individual may also wish to seek further advice from their trade union representative, employee associate, or the independent charity Public Concern at Work, whose details can be found in section 11.1.

10. RAISING CONCERNS EXTERNALLY

10.1 **Regulatory Disclosures.** Whilst it is intended that this policy provides the reassurance needed to raise matters internally, it is recognised that there may be circumstances where an individual would wish to seek advice from, or to report matters to, a prescribed regulator (known as a regulatory disclosure). Prescribed regulators relevant to the NHS are:

- The Audit Commission in relation to public sector finance
- The Serious Fraud Office, Inland Revenue, Customs and Excise, Financial Services Authority for fraud and fiscal irregularities
- The Health and Safety Executive in relation to Health and Safety matters
- The Environment Agency in relation to environmental dangers
- The Charity Commission
- The Occupational Pensions Regulatory Authority
- Data Protection Registrar
- The Commission for Social Care Inspection
- Foods Standards Agency
- General Social Care Council
- Information Commissioner relating to data protection and freedom of information
- National Care Standards Commission
- The Commission for Healthcare audit & Inspection

Further information on prescribed regulators can be located on the Public Concern at Work website, www.pcaaw.co.uk.

10.2 **Wider Disclosures.** In line with the Public Interest Disclosure Act 1998, wider disclosures are protected if they are reasonable in all circumstances and not made for personal gain. In these circumstances, a disclosure may be made to either the police, the media, or to an MP and satisfies any of the following preconditions:

- There is a reasonable belief that the employee would be victimised if the matter was raised internally or with a prescribed regulator
- There is no prescribed regulator and there is a reasonable belief that the evidence would be concealed or destroyed
- The concern had already been raised internally or to a prescribed regulator
- The concern is of an exceptionally serious nature

Whilst not wishing to discourage openness and public accountability, the PCT will view most seriously any public statements about PCT services which are disclosed inappropriately. We

believe that discussion of sensitive issues in the press, or other media is unhelpful and potentially damaging to the PCT's reputation, which may undermine public confidence in the service and consequently this could result in disciplinary action being taken against the employee.

The PCT also recognises employees rights to contact other external bodies, such as the Secretary of State for Health, or the NHS Counter Fraud Service (08702 400 100).

11. ROLE OF TRADE UNION AND RECOGNISED EMPLOYEE ASSOCIATE

A worker raising concerns has the right to be represented by their trade union representative or work colleague at all stages. The PCT recognises workers may wish to seek advice and acknowledges and endorses the role employee representatives play in this area.

If an employee is unsure whether to use this procedure or wants independent advice at any stage they may also contact the independent charity Public Concern at Work www.pcaw.co.uk (Helpline 020 7404 6609). Their lawyers can provide free confidential advice at any stage about how to raise a concern about serious malpractice at work.

12. OTHER POLICIES AND PROCEDURES

The PCT has a range of policies and procedures which deal with standards of behaviour and conduct at work, they cover Discipline, Grievance, Bullying and Harassment and Recruitment and Selection. Workers are encouraged to use the provisions of these procedures when appropriate. Any worker who holds or discovers any suspicion of fraud should refer to the Fraud and Corruption Policy. The Local Counter Fraud Specialist, North Yorkshire Audit Services can be contacted on Tel: 01904 725145. If you are unsure as to which policy to use, clarification can be provided by contacting the Human Resources Department.

NHS Employers has also issued relevant guidance to GPs following publication of the Shipman Inquiry Report –
“Whistleblowing for a healthy practice – guidance for GPs.
www.nhsemployers.org

Legislation and other documents/studies relevant to this policy:

Public Interest Disclosure Act 1998 (PIDA)
Police Reform Act 2002
Employment Rights Act 1996
Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)
Public Interest Disclosure (Compensation) Order 1999 (SI 1999/1548)
Public Interest Disclosure (Prescribed Persons) Order 1999 (SI 1999/1549)
Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2003 (SI 2003/1993)
Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2004 (SI 2004/3265)
Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2005 (SI 2005/2464)

13. **MONITORING**

The Human Resources Department will, via receipt of the form shown at Appendix C, monitor the use of this policy, and on an annual basis will:-

- Initiate monitoring and evaluate the use of this Policy.
- report frequency of incidents of whistleblowing to the PCT Board three times per annum as part of the Human Resources Performance Report

14. **APPEALS**

If a worker feels that this procedure has been breached in any way, they should raise the matter initially with the Associate Director of Human Resources.

If necessary the Associate Director of Human Resources will arrange for the matter to be dealt with by a Panel consisting of:-

PCT Chairman/Non-Executive Director

Another (to be nominated as appropriate, e.g., internal audit / Director of Mental Health etc.).

The Associate Director of Human Resources will act as Secretary to the Panel.

(Names of the current post-holders mentioned in this policy are shown at Appendix A, together with their role in relation to the Whistleblowing Policy)

15. **FURTHER ADVICE/PUBLICITY**

All workers may contact the following for further advice on this Policy & Procedure:-

Human Resource Department:

York: 01904 724066

Northallerton: 01609 751343

Harrogate: 01423 859615

Malton: 01653 604690

Details of this policy will be included in the Staff Induction Handbook which is given to all new starters. It is also included in the Managers' Handbook, highlighted in the Statutory and Mandatory training sessions and publicised in the quarterly HR Bulletin. The policy is also available on the intranet.

APPENDIX A

NOMINATED LEAD

NON-EXECUTIVE DIRECTOR currently Stephanie Sturrock
(who can be contacted through the Chairman's Executive Assistant)

DESIGNATED OFFICERS

ASSOCIATE DIRECTOR OF HUMAN RESOURCES	Amanda Wilcock
DIRECTOR OF FINANCE	
NON-EXECUTIVE DIRECTOR	Stephanie Sturrock
MEDICAL DIRECTOR (PRIMARY CARE)	Dr David Geddes
MEDICAL DIRECTOR (PROVIDER SERVICES)	Dr Jim Isherwood

Role of above in respect of Whistleblowing Policy:-

1. To listen to concerns raised by members of staff.
2. To ensure the member of staff raising the concern has a copy of the current Whistleblowing Policy.
3. To advise members of staff as appropriate.
4. To ensure that the interview form (shown at Appendix C is completed and filed securely within the Human Resources Department). *The form should be completed in all cases for monitoring purposes.*
5. To ensure that the matter is not currently being dealt with via another PCT Policy or Procedure.
6. To make enquiries, where agreed, on behalf of the member of staff.
7. To refer concerns to the appropriate person, where necessary.
8. To provide support for the member of staff until the issue is resolved.
9. To report back to the member of staff, where appropriate.
10. To participate in initial and on-going training and supervision.

WHISTLEBLOWING POLICY

CHECKLIST FOR MANAGERS/DESIGNATED OFFICERS

1. Explain process:-
 - initial interview
 - action plan
 - support
 - feedback
2. Discuss and agree:
 - Confidentiality (give member of staff copy of the whistleblowing policy, pointing out reference to anonymous reports in the introduction)
 - Note taking/tape recording
 - Records to be kept
3. Obtain information on member of staff raising concern
4. Obtain information on the concern:
 - the issue
 - time and place
 - details of potential witnesses
 - any previous incidents/concerns
5. What advice has already been given, and by whom?
6. Ask: what would they like to happen?
7. Is there an appropriate policy that covers this? If so, are they happy to handle it themselves?
8. If not, summarise action you intend to take and when.
9. Complete summary of initial interview. (Form available from Human Resources Department)
10. Agree it and both sign it.

11. Give copy to individual.
12. Take further action, record it.
13. File securely, in Human Resources Department, with note to bring forward when appropriate.
14. Note any further action and feed back to individual.
15. Once case closed, complete documentation and forward to Associate Director of Human Resources.

IN STRICT
CONFIDENCE

APPENDIX C

WHISTLEBLOWING POLICY (RAISING CONCERN)

SUMMARY OF INITIAL INTERVIEW

No.

Name:	Job Title & Grade:
<u>Location & Directorate:</u>	<u>Telephone Number:</u>
<u>Date of discussion:</u>	
<u>Brief Outline of Concern:</u>	
<u>Advice Given to Individual:</u>	
<u>Action Agreed, including timescales</u> where appropriate:	
<u>Further Action</u> (see overleaf)	
YES / NO	
<u>Date Completed:</u>	
<u>Adviser's Signature:</u>	
<u>Individual's Signature</u>	

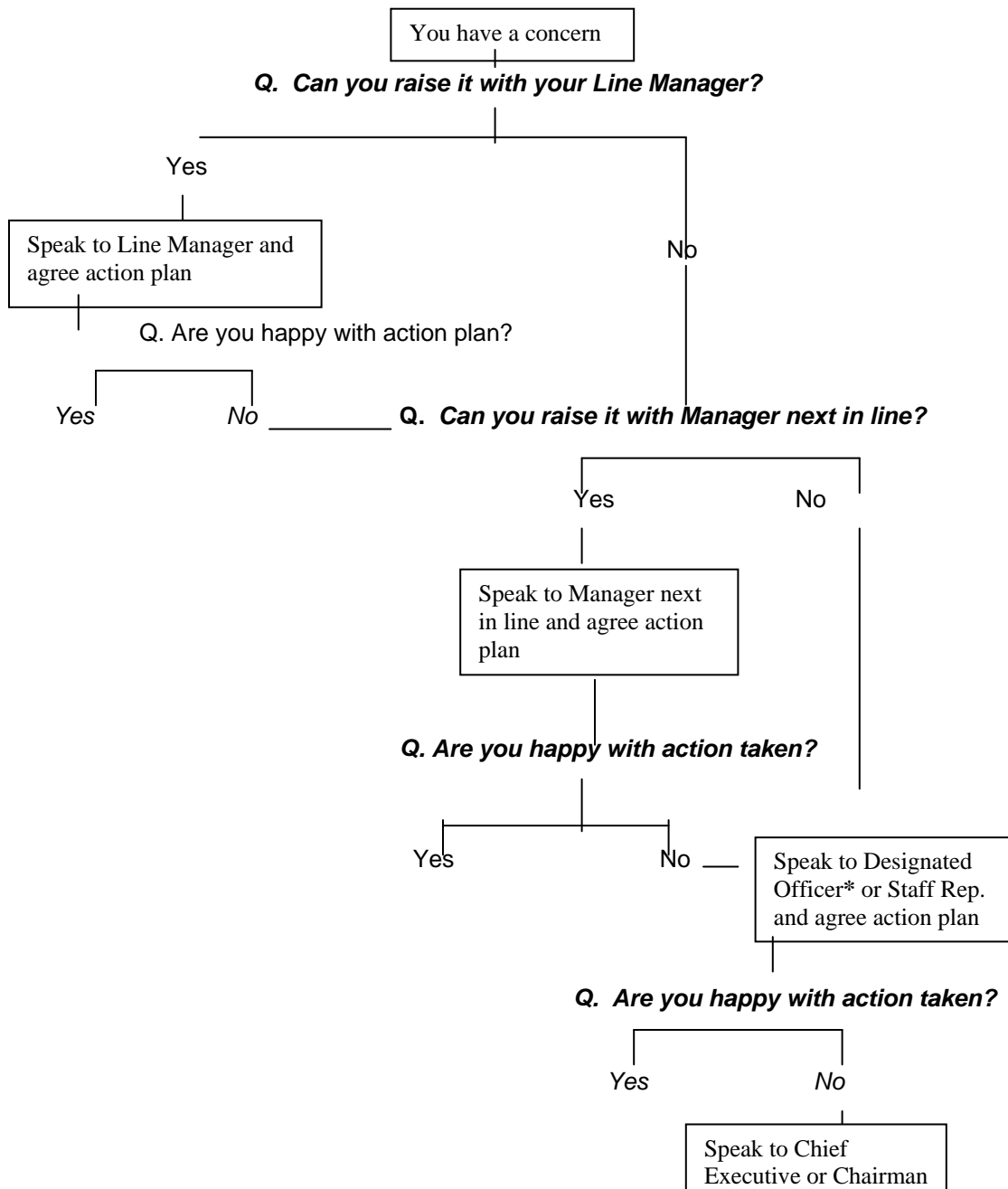
POLICY FOR RAISING CONCERNS AT WORK OR "WHISTLEBLOWING"

FURTHER ACTION TAKEN

<u>Bring Forward Date:</u>			
<u>Further Action Taken /Date:</u>			
<u>Bring Forward Again on:</u>			
<u>Further Action Taken Date:</u>			
<u>Feedback Given to Individual:</u>			
<u>Date Case Closed:</u>			
ONCE CASE IS CLOSED PLEASE ENSURE THIS FORM IS FORWARDED TO HUMAN RESOURCES FOR FILING.			
Monitoring Information completed:	YES/NO	Date:	

APPENDIX D

FLOWCHART OUTLINING PROCEDURE FOR RAISING CONCERNS



*See Appendix 'A' for Names and roles of Designated Officers in relation to Whistleblowing policy.

Internal reporting Mechanisms in NHS NYY PCT – Information process flow

