



**UPHOLDING PROFESSIONAL STANDARDS IN  
WALES**

August 2015

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## PREFACE

This procedure sets out the approach for addressing concerns about capability, performance and conduct for all doctors and dentists (referred to below as “practitioners” in the rest of the document) employed by Local Health Boards or other NHS organisations in Wales.

It replaces all existing procedures in operation within the Local Health Boards and NHS Trusts in NHS Wales or successor bodies with effect from 1 September 2015, “the effective date”.

The new procedure replaces all previous disciplinary procedures enshrined in WHC(90)22 and DGM(95)44, as implemented by any NHS organisation or LHB policy document. The procedure also replaces the provisions in WHC (82)17 for Special Professional Panels (the “Three Wise Men”) as implemented by NHS Wales organisations. The right of appeal to the Secretary of State, held by certain practitioners under paragraph 190 of their terms and conditions of service, is also abolished from the effective date of this procedure.

The procedure applies to all practitioners, which covers all practitioners employed in LHBs or NHS organisations in Wales including those in training and on temporary, locum or honorary contracts and comprises of five parts:

- (I) Action when a concern arises;
- (II) Restriction of practice and exclusion from work;
- (III) Handling concerns about a practitioner’s health;
- (IV) The Standard Procedure;
- (V) Extended Procedure.

All NHS organisations, in their response to performance concerns, will ensure that due account is taken of the potential relevance of the practitioner’s health, system failure and the working environment. The application of this procedure will be considered in conjunction with the relevant organisation’s incident reporting or investigation systems.

Where possible, NHS organisations will seek to address capability and/or performance concerns through training or other local remedial action. It will continue to support practitioners in their professional development in particular, through appraisal, GMC/GDC guidance and other relevant local or Welsh Government processes.

The role of the Welsh Government (WG) in monitoring the effective implementation of this procedure will be coordinated through the Workforce and OD Division and any others as appropriate. Detailed arrangements for practical operation of this procedure will be notified to employers in NHS Wales directly by the Workforce and OD Division.

The NHS organisation will ensure that this procedure is operated in a way that does not discriminate on the grounds of any protected characteristic as defined in the Equality Act 2010.

The NHS organisation will seek to ensure that all those involved in the operation of this procedure have been appropriately trained, including in particular those undertaking investigations and sitting on any relevant panels ( which will include equality training).

## PRINCIPLES

The management of conduct, capability and performance is a continuous process. NHS organisations should seek to identify and respond to concerns at the earliest possible stage, with a view if possible to their informal resolution at local level.

Potential concerns about a practitioner's conduct, capability or performance can come to light in a wide variety of ways, for example:-

- Complaints about care by patients or their relatives;
- Concerns raised by other NHS professionals; health care managers; students and non-clinical staff;
- Job plan reviews, annual appraisals, and through the revalidation process;
- Monitoring of data on performance and quality of care;
- Clinical governance, audit and other quality improvement initiatives;
- Information from the regulatory bodies; the police or coroner;
- A pattern of litigation outside the normal, following allegations of negligence (although this may reflect the nature of the specialty and not necessarily be an indicator of grounds for concern about a practitioner's practice);
- Court judgments.

Unfounded and malicious allegations can cause lasting damage to a practitioner's reputation and career prospects. Therefore allegations must be promptly and thoroughly investigated to verify the facts so that appropriate action can be taken.

Employers should seek to use available sources of specialist and independent advice in responding to the areas of concern covered by this procedure. In particular, where the organisation considers it appropriate, the National Clinical Advisory Service (NCAS) provides advice on the appropriate response to performance concerns and expert guidance on remedial action.

Specific processes exist for referrals to the GMC and GDC. Nothing within this procedure precludes any individual from referring a matter of concern directly to the GMC or GDC where they have concerns regarding a practitioner's compliance with standards laid out in the "Good Medical Practice" or the "Standards for the Dental Team".

## **GLOSSARY**

### **Role of the Case Manager**

The Medical Director will assign the role of Case Manager to a Deputy, Associate or Assistant Medical Director unless it is impracticable for them to do so, in which case the role will be discharged by a senior clinician nominated by the Medical Director.

The Case Manager's role will be to evaluate the nature of the problem or concern raised about a practitioner and to assess the seriousness of the matter based on available information. He/she will undertake an initial assessment of the concern(s) raised and will determine whether a formal investigation needs to be carried out or whether the issue can be resolved informally.

Where it is determined that a formal investigation should be instigated the Case Manager will;

- Formulate the Terms of Reference for an investigation;
- Appoint a Case Investigator;
- Provide progress reports to the Designated Board member;
- Determine what action should be taken in response to the findings and recommendations of the Case Investigator.

### **Role of the Designated Board Member**

When a formal investigation is initiated, the Chairman of the NHS organisation's Board must nominate an Independent Member/non-executive Director as "the Designated Board Member" to oversee the operation of the procedure and to ensure that momentum is maintained.

The Designated Board Member's responsibilities specifically include:-

- Routinely monitoring the grounds for a practitioner's continued exclusion from work, having regard to the requirements of this procedure;
- To consider representations from the practitioner about his or her exclusion and any inappropriate application of the procedure;
- Preparing a report for the Board giving an account of progress where any exclusion has lasted more than six months.

### **Role of Case Investigator**

The Case Investigator shall:-

- Lead the investigation into any allegations or concerns about a practitioner as detailed in Terms of Reference which shall be formulated by the Case Manager;
- Identify what information needs to be gathered and which witnesses should be interviewed in the course of the investigation;
- Maintain and append to the investigation report, a clear and comprehensive record of all interviews conducted in the course of the investigation and documentation which has been collated;
- Undertake a thorough and impartial investigation into the relevant circumstances, inquiring into matters which may exonerate the practitioner as well as matters which may demonstrate fault on their part;
- Where the concerns involve the practitioner's clinical performance, seek advice from an appropriately qualified clinician who has had no prior involvement with the matters under investigation. If such advice is not available within the organisation, this may be sought from an external source;
- Take all necessary steps to ensure that the practitioner's confidentiality and that of other parties, including patients and their families, is maintained as far as practicable;
- Prepare and submit a written report to the Case Manager, detailing the scope of the inquiry undertaken, the information gathered in the course of the investigation (including the witnesses interviewed and documentation considered), the findings reached and a summary of the key evidence relied upon in support of such findings;
- Advise the Case Manager whether the allegations or concerns identified in the Terms of Reference have been established to a standard of proof sufficient to justify the instigation of formal action and the convening of a panel hearing. It shall be for the Case Manager to determine what action should be taken after taking due account of the Case Investigator's advice;
- Provide sufficient information in the report to enable the Case Manager to make a reasoned determination on what further action should be taken. If the Case Manager considers that the report provides insufficient information in relation to any areas of concern identified in the Terms of Reference, they may request the Case Investigator to undertake further inquiry and to prepare a supplementary report;
- Provide the Case Manager with appropriate information to support the Designated Board Member in reviewing the progress of the investigation.



# 1. ACTION WHEN A CONCERN ARISES

## Introduction

- 1.1 Initially, concerns regarding the capability or conduct or performance of a practitioner should be addressed through local mechanisms e.g. appraisal and one to one meetings with the practitioner's consultant/lead clinician. In the majority of cases matters can be dealt with locally and without the recourse to formal procedures.

Where concerns are such that they suggest that an individual may not be complying with the GMC "Good Medical Practice" or the GDC "Standards for the Dental Team" these should be registered with the Medical Director to consider whether a GMC / GDC referral is appropriate.

## Appointment of a Case Manager

- 1.2 Where the Medical Director considers that an investigation into the nature of the problem or concern is required then he or she will appoint a Case Manager to take the matter forward.

### Role of the Case Manager

The Medical Director will assign the role of Case Manager to a Deputy, Associate or Assistant Medical Director unless it is impracticable for them to do so, in which case the role will be discharged by a senior clinician nominated by the Medical Director.

The Case Manager's role will be to evaluate the nature of the problem or concern raised about a practitioner and to assess the seriousness of the matter based on available information. He/she will undertake an initial assessment of the concern(s) raised and will determine whether a formal investigation needs to be carried out or whether the issue can be resolved informally.

Where it is determined that a formal investigation should be instigated the Case Manager will;

- Formulate the Terms of Reference for an investigation;
- Appoint a Case Investigator;
- Provide progress reports to the Designated Board member;
- Determine what action should be taken in response to the findings; and recommendations of the Case Investigator.

- 1.3 All concerns will be investigated promptly with a clear audit route established for initiating and tracking progress of any investigation, its costs and resulting action. The Case Manager will seek the guidance of the Workforce and OD Director or a nominated member of his/her team when deciding the appropriate course of action in each case, including seeking the views of NCAS where appropriate.

The Case Manager must also ensure that the practitioner concerned is kept fully informed of the processes being followed.

### **Right to Representation**

- 1.4 The practitioner may be represented by a workplace colleague or representative who may be from (or retained by) a trade union or defence organisation. If the matter proceeds to a hearing, the practitioner, may be represented at any such hearing by a legally qualified person who is retained by a recognised trade union or defence organisation.

### **Initial Assessment**

- 1.5 The Case Manager will undertake an initial assessment of the concern(s) raised and will determine whether a formal investigation needs to be carried out or whether the issue can be resolved informally.
- 1.6 Consideration should always be given to scope for resolving concerns through informal remedial action, drawing upon guidance and support e.g. NCAS or other external resources as appropriate.
- 1.7 Where, following an initial assessment, it is apparent that the concern has arisen as a result of a system or organisational failure, the implications of such failure shall be weighed by the Case Manager in determining whether a formal investigation should be initiated.

### **Consideration of Referrals**

- 1.8 At any point in the process where the Case Manager has reached the decision that there are reasonable grounds to consider that a practitioner is a serious potential danger to patients or staff, the Medical Director should be informed that a referral to the GMC/GDC is appropriate. Consideration will also be given as to whether a request should be made for an Alert Letter to be issued by the CMO / Medical Director NHS Wales. If it is considered that such action is necessary the practitioner must be informed.
- 1.9 Where it is apparent at the Initial Assessment stage that there are concerns about a practitioner's health, the Case Manager must discuss this with the practitioner and also consult with the practitioner's Clinical Director or appropriate lead clinician and a representative of W&OD. This may result in the practitioner being referred to a

qualified occupational physician with the Occupational Health Service. Concerns about a practitioner's health should also be addressed in accordance with Part 3 of this Procedure.

- 1.10 Where a practitioner refuses to co-operate with a referral to any advisory body or department within or external to the NHS organisation whose function is to assist in addressing performance concerns, this may be viewed as a matter of misconduct giving rise to disciplinary action.

### **Restriction of Practice and Exclusion from Work**

- 1.11 Where serious concerns are raised about a practitioner, the Case Manager, in consultation with the Medical Director, will urgently consider whether temporary restrictions should be placed on their practice. This may include a modification or restriction of their clinical duties. Alternatively, if this is not achievable the practitioner may be excluded from the workplace. Section 2 sets out the relevant procedures.

### **NCAS Advisory Role**

- 1.12 The Medical Director or their nominated deputy shall, where practicable, seek the advice of NCAS before excluding a practitioner. At each stage in the operation of this procedure, NCAS may be approached by the NHS organisation to provide advice and guidance. Section 2 sets out the relevant procedures.

### **Action on Initiating a Formal Investigation**

- 1.13 Where, following the initial assessment of the concern raised, the Case Manager determines that a formal investigation is to be undertaken, they must, in consultation with the Medical Director and Workforce & OD Director (or nominated individual from W&OD), appoint an appropriately experienced or trained person as Case Investigator.
- 1.14 NHS organisations should ensure that appropriately trained senior clinicians and managers are available to undertake investigations under this procedure, adopting best practice guidance.
- 1.15 The Case Manager will formulate the specific allegations and set out the Terms of Reference for an investigation

#### **Role of Case Investigator**

The Case Investigator shall:-

- Lead the investigation into any allegations or concerns about a practitioner

as detailed in Terms of Reference which shall be formulated by the Case Manager;

- Identify what information needs to be gathered and which witnesses should be interviewed in the course of the investigation;
- Maintain and append to the investigation report, a clear and comprehensive record of all interviews conducted in the course of the investigation and documentation which has been collated;
- Undertake a thorough and impartial investigation into the relevant circumstances, inquiring into matters which may exonerate the practitioner as well as matters which may demonstrate fault on their part;
- Where the concerns involve the practitioner's clinical performance, seek advice from an appropriately qualified clinician who has had no prior involvement with the matters under investigation. If such advice is not available within the organisation, this may be sought from an external source;
- Take all necessary steps to ensure that the practitioner's confidentiality and that of other parties including patients and their families are maintained as far as practicable;
- Take all necessary steps to ensure that the practitioner's confidentiality and that of other parties including patients and their families are maintained as far as practicable;
- Prepare and submit to the Case Manager a written report, detailing the scope of the inquiry undertaken; the information gathered in the course of the investigation, including the witnesses interviewed and documentation considered; the findings reached and a summary of the key evidence relied upon in support of such findings;
- Advise the Case Manager whether the allegations or concerns identified in the Terms of Reference have been established to a standard of proof sufficient to justify the instigation of formal action and the convening of a panel hearing. It shall be for the Case Manager to determine what action should be taken, taking due account of the Case Investigator's advice;
- Provide sufficient information in the report to enable the Case Manager to make a reasoned determination on what further action should be taken. If the Case Manager considers that the report provides insufficient information in relation to any areas of concern identified in the Terms of Reference, they may request the Case Investigator to undertake further inquiry and to prepare a supplementary report;
- Provide the Case Manager with appropriate information to support the Designated Board Member in reviewing the progress of the investigation.

- 1.16 At this point the Medical Director will advise the Chairman of the Board that an Independent Member / non-executive Director is required to be appointed as Designated Board Member to oversee the case and to ensure that momentum is maintained.

#### **Role of the Designated Board Member**

When a formal investigation is initiated, the Chairman of the NHS organisation's Board must nominate an Independent Member/non-executive Director as "the Designated Board Member" to oversee the operation of the procedure and to ensure that momentum is maintained.

The Designated Board Member's responsibilities specifically include:-

- Routinely monitoring the grounds for a practitioner's continued exclusion from work, having regard to the requirements of this procedure;
- To consider representations from the practitioner about his or her exclusion and any inappropriate application of the procedure;
- Preparing a report for the Board giving an account of progress where any exclusion has lasted more than six months.

- 1.17 The practitioner concerned must be informed by the Case Manager, as soon as it has been decided that an investigation is to be undertaken. The practitioner will be invited to a meeting to convey this information. Where practicable, the practitioner may be accompanied at the meeting by a workplace colleague or trade union representative.
- 1.18 The practitioner will be made aware of specific allegations that have been raised; the name of the Case Investigator and Designated Board Member and the terms of reference for the investigation. This will be confirmed in writing.
- 1.19 The practitioner will be supplied with a copy of this procedure and encouraged to seek appropriate advice and support.

#### **The Formal Investigation**

- 1.20 Prior to conducting an interview with the practitioner, the Case Investigator must ensure that he or she is aware of the specific allegations or concerns as detailed in the Terms of Reference.

- 1.21 The Case Investigator should ascertain from the practitioner whether there are any witnesses whom they consider potentially relevant and who ought to be interviewed.
- 1.22 Where possible, the Case Investigator will complete the investigation within 28 days of appointment and submit their report to the Case Manager within a further 7 days. It is recognised that there may be circumstances where more time will be required to complete the report. Such situations should be discussed with the Case Manager. The Case Manager shall notify the practitioner and the Designated Board Member of the reasons for the delay and the anticipated date by which the investigation will be completed.

The Case Manager should provide the practitioner and their representative with a copy of the completed investigation report and invite their comments. Unless there are circumstances justifying an extension, such comments should be received within 14 days.

- 1.23 The investigation report, together with the practitioner's comments, should give the Case Manager sufficient information to make a decision whether:-
- There are concerns about the practitioner's capability or performance that should be addressed with assistance from NCAS/or equivalent body;
  - There are concerns about the practitioner's health that should be considered in accordance with Part 3 of this Procedure;
  - There are concerns which should be determined at a hearing in accordance with section 4 or 5 of this Procedure;
  - Restrictions on practice or exclusion from work should be considered in accordance with Part 2 of this Procedure;
  - There are serious concerns that should be referred to the GMC or GDC;
  - No further action is called for.

It may be that in some cases a combination of the above is considered appropriate.

- 1.24 In arriving at a decision on the appropriate course of action, the Case Manager should adopt a decision making framework. The Case Manager must clearly set out the basis upon which the decision to use any particular part of the procedure has been made and the clear rationale for reaching this decision.
- 1.25 The Case Manager and Workforce & OD Director (or nominated individual from W&OD) will meet with the practitioner and his/her representative to explain the decision and outline the process which will follow, this will be confirmed in writing. The Designated Board Member will be informed of this outcome.
- 1.26 Where it has been determined that the matter will proceed to a hearing under the Standard or Extended Procedures, the Case Manager must notify the practitioner in writing of the decision to arrange a hearing. This notification will be made at least 28 days before the hearing and include details of the allegation(s) and the arrangements for proceeding including the practitioner's right to be accompanied in accordance

with paragraph 1.21 and copies of any documentation and/or evidence that will be made available to the panel.

## **Appeal Process**

- 1.27 The practitioner can appeal against the Case Manager's decision on the process to be followed. The practitioner must register the appeal in writing to the Chief Executive within 14 days of receiving written confirmation from the Case Manager of the process to be followed, and must clearly state in writing the grounds of the Appeal. The Appeal will be heard by a panel comprising of an Independent Member/non-Executive Director (other than the Designated Board Member), the Chair of the Medical Staff Committee or equivalent and a consultant nominated by the Chief Executive. The practitioner may be represented by a workplace colleague or representative who may be from (or retained by) a trade union or defence organisation. The decision of the panel will be binding on both parties.

## 2. RESTRICTION OF PRACTICE & EXCLUSION FROM WORK

### Principles

- 2.1 This part of the procedure replaces any previous local policy dealing with exclusion of medical or dental practitioners.
- 2.2 Throughout the procedure, the phrase "exclusion" has been used which should not be confused with action taken by the GMC or GDC to exclude the practitioner from the register pending a hearing of their case or as an outcome of a fitness to practice hearing.
- 2.3 No practitioner will be excluded from work other than through this procedure. The organisation will not use "gardening leave" or other informal arrangements as a means of resolving a problem covered by this procedure.
- 2.4 The organisation's Medical Director has overall responsibility for managing exclusion procedures. The decision to exclude a practitioner must be taken only by persons nominated under paragraph 2.11. The case will be discussed fully with the Medical Director, the Workforce & OD Director or nominated deputy, NCAS (where appropriate) and other relevant interested parties prior to any decision to exclude a practitioner.

Where there are serious allegations which are of a potentially criminal nature, the Director of Workforce & OD must provide advice in respect of the parallel management of the matter with any criminal proceedings.

- 2.5 The authority to exclude a practitioner is set out in LHB/NHS Trust Schemes of Delegation.
- 2.6 The Case Manager will provide factual information to assist the Medical Director in reviewing the need for exclusion and making progress reports to a Designated Board Member.
- 2.7 The organisation will ensure that:
  - Ordinarily exclusions will be confirmed in writing by the Medical Director or nominated deputy within 24 hours of the exclusion being actioned and in any event at the end of the next working weekday;
  - Exclusion from work is used only as an interim measure whilst action to resolve a problem is being considered;



- Where a practitioner is excluded, it is for the minimum necessary period of time: this must be reviewed at four week intervals and the outcome of such reviews, including the justification for any extension, communicated to the practitioner;
- A progress report should be provided by the Case Manager to the Designated Board Member (see Designated Board Member responsibilities under “Roles within the Procedure”), on a 4 weekly basis. The Designated Board Member will be responsible for monitoring the situation, advised by the Medical Director, until the exclusion has been lifted.
- The Board is kept informed at three month intervals of any ongoing exclusion, and the status of the case. Information given to the Board will be sufficient to enable the Board to satisfy itself that the procedures are being followed and that regular reviews are taking place as appropriate;
- The Designated Board Member will monitor whether the investigation and any subsequent action is proceeding in conformity with this procedure and report to the Board accordingly.

### **Right to Representation**

- 2.7 The practitioner may be represented in the exclusion/restriction of practice process by a workplace colleague or representative who may be from (or retained by) a trade union or defence organisation.

### **Restriction of Practice**

- 2.8 When serious concerns are raised about a practitioner, and as an alternative to exclusion, the organisation will consider whether it is necessary and sufficient to place temporary restrictions on their practice. The advice of NCAS advice may be sought where practicable.
- 2.9 Alternative ways to manage risks, avoiding exclusion, include:
- supervision of clinical duties;
  - restricting the practitioner to certain clinical duties or duties at another hospital/clinical site;
  - restricting activities to administrative, research/audit, teaching and other educational duties;
  - In cases relating to a practitioner’s capability, consideration will be given to whether an action plan to address the specific issue of concern can be agreed with the practitioner. Advice on the practicability of this approach may be sought from NCAS.

## **Grounds for Exclusion**

- 2.10 A practitioner will only be excluded where:-
- there are grounds for concern about the risk of harm to or the safety of patients, colleagues or the practitioner; and/or
  - the practitioner's presence in work would impede the gathering of evidence or prejudice the investigation; and/or
  - exclusion is in the practitioner's own interests

## **Immediate Exclusion**

- 2.11 In exceptional circumstances, an immediate time-limited exclusion may be necessary following a critical incident or other event which necessitates the practitioner's immediate exclusion from the workplace by an individual authorised to do so.
- 2.12 This immediate period of exclusion will allow the organisation to carry out the Initial Assessment (see paragraph 1.5) and/or seek further advice from NCAS where appropriate;
- 2.13 The practitioner must be informed why the exclusion is being imposed (there may be no formal allegation at this stage). The Medical Director or their nominated deputy should arrange to meet the practitioner in the presence of their representative at the earliest opportunity and in any event within 5 working days.

## **Formal Exclusion**

- 2.14 Formal exclusion may only take place after the Case Manager has undertaken the Initial Assessment and has considered whether there is reasonable and proper cause to exclude. Where appropriate NCAS will be consulted where formal exclusion is being considered.
- 2.15 The practitioner will be informed in person of the exclusion and will be entitled to be accompanied at this meeting, in accordance with the provisions of paragraph 1.4. The excluding officer will be accompanied by a Workforce and OD representative to advise on any issues of process and to witness the discussion.
- 2.16 At the meeting the practitioner will be notified of the nature of the allegation(s) or areas of concern and they will be informed of the grounds for formal exclusion. At this stage the practitioner or his/her representative will be given the opportunity to propose alternatives to exclusion in accordance with the principles outlined in 2.6.
- 2.17 Ordinarily, formal exclusion must be confirmed in writing within 24 hours of the exclusion being actioned and in any event at the end of the next working weekday. The letter will state the effective date, anticipated duration (up to 28 days), the nature of the allegation(s) or areas of concern and any conditions of the exclusion (e.g. the requirement for the practitioner to remain available for work (para 2.23.);

whether the individual is restricted from attending any of the organisation's sites (para 2.22.), and what other action will follow.

- 2.18 Arrangements will be made to provide support to the practitioner during any period of exclusion. The support will be provided by a senior member of staff e.g. a consultant colleague, agreed with the practitioner who has not been involved in the matters that have led to the exclusion.
- 2.19 In cases when formal procedures are being followed, exclusion may be extended, subject to review at four week intervals, until the completion of formal procedures providing the grounds for requiring a practitioner's exclusion continue. The Case Manager will manage the process of the exclusion and notify the practitioner in writing of the decision to extend a period of exclusion and their grounds for reaching that decision. Such notification must also be provided to the Designated Board Member.
- 2.20 Careful consideration must be given as to whether the interests of patients, other staff, the practitioner, and/or the needs of the investigative process continue to necessitate exclusion. The Medical Director must ensure that the Case Manager gives ongoing consideration to the necessity for the exclusion and the practicability of imposing restrictions instead.
- 2.21 If the Case Manager considers that the exclusion will need to be extended over a prolonged period because of reasons outside of his or her control (for example due to a police investigation), the case should be discussed with NCAS for advice as to possible alternative courses of action. However, even during such a prolonged period, each extension must be kept under review and not exceed a maximum of four weeks.
- 2.22 If, at any time after, the practitioner has been excluded from work investigation reveals that the allegations are without foundation or that further investigation can continue with the practitioner working normally or with restrictions, the Case Manager must lift the exclusion, inform the Medical Director and make arrangements for the practitioner to return to work at the earliest opportunity with any appropriate support, following the principles set out in paragraph 2.6.
- 2.23 Where it is decided that the exclusion should come to an end, there must be formal arrangements for the return to work of the practitioner. It must be clear whether clinical and other responsibilities are to remain unchanged or what the duties, restrictions and any monitoring arrangements are to be to ensure patient safety.
- 2.24 Practitioners will not be barred from the premises upon exclusion from work unless a specific risk is identified in not doing so. The excluding officer must always consider whether a bar from the premises is absolutely necessary. There will, however, be circumstances where the practitioner should be excluded from the premises.
- 2.25 Exclusion under this procedure will be on full pay and the practitioner must remain available for work with their employer during their normal contracted hours. The practitioner must inform the Case Manager of any other organisation(s) with whom they undertake either voluntary or paid work and seek their Case Manager's consent for continuing to undertake such work, and to continue to seek approval for annual leave or study leave. In exceptional circumstances the Case Manager may decide that payment is not justified because the practitioner is no longer available for work (e.g. abroad without agreement).

- 2.26 Where practicable, the Case Manager will make arrangements to ensure that the practitioner can keep in contact with colleagues on professional developments, and take part in Continuing Professional Development (CPD) and clinical audit activities with the same level of support as other doctors or dentists in their employment.
- 2.27 Support from the Occupational Health Service and any other appropriate sources of support will also be made available if required.

### **Informing Other Organisations**

- 2.28 In cases where there is concern that the practitioner's unrestricted practice may give rise to a risk to patient safety, the organisation has an obligation to inform other relevant organisations, including those in the private sector, of any restriction on practice or exclusion and provide a summary of the reasons for it.

Where the organisation has placed restrictions on practice, the practitioner is required to agree not to undertake any work in that area of practice with any other employer or in any other non-employed capacity.

- 2.29 The Medical Director must inform WG as soon as a decision to exclude a practitioner has been made. This will include details of the name and grade of the practitioner, and the reason for exclusion. This information must be updated at 3 month intervals.

### **3. HANDLING CONCERNS ABOUT A PRACTITIONER'S HEALTH**

#### **Introduction**

- 3.1 The key principle for addressing practitioners with health problems is that, wherever possible and consistent with the need for reasonable public protection, such individuals should be allowed time for treatment, rehabilitation or re-training as appropriate (for example if they cannot undertake exposure prone procedures) and kept in employment, rather than be lost from the NHS.

#### **Retaining the Services of Individuals with Health Problems**

- 3.2 Wherever possible the organisation will attempt to support the practitioner remaining at work provided this does not place patients or colleagues at risk. In particular, the organisation will consider the following actions for staff with ill-health problems:

- Modifying the practitioner's duties;
- Reassigning the practitioner to a different area of work;
- Adjusting the practitioner's working environment having regard, if applicable, to the requirements in the Equality Act 2010 and guidance contained in the relevant codes of practice.

#### **Reasonable Adjustment**

- 3.3 At all times the practitioner will be supported by the organisation and the Occupational Health Service (OHS) which will ensure that the practitioner is offered every available resource to get back to practice where appropriate. The organisation will consider what reasonable adjustments could be made to their workplace or other arrangements and where applicable, in line with the Equality Act 2010. For example:-

- Making adjustments to the premises;
- Re-allocating some of the practitioner's duties to another;
- Transferring the practitioner to an existing vacancy;
- Altering the practitioner's working hours or pattern of work;
- Assigning the practitioner to a different workplace;
- Allowing absence for rehabilitation, assessment or treatment;
- Providing additional training or retraining;
- Acquiring/modifying equipment;
- Modifying procedures for testing or assessment;
- Providing a reader or interpreter;
- Establishing mentoring arrangements.

3.4 Due regard should be given to the organisation's Sickness Absence Policy which should be followed as appropriate.

### **Handling Health Issues**

3.5 Where the outcome of an investigation may point to a problem with the practitioner's health, appropriate inquiry should be undertaken to determine whether there is a health problem. If the report recommends OHS involvement, the Case Manager must immediately refer the practitioner to a qualified physician with the Occupational Health Service.

3.6 NCAS may be approached to offer advice on any situation and at any point where the employer is concerned about the health of a practitioner. Even apparently simple or early concerns can be referred as these are easier to deal with before they escalate.

3.7 The occupational physician will recommend a course of action with the practitioner and send his/her recommendations to the Medical Director. A meeting will be convened with the Workforce & OD Director or nominated deputy, the Medical Director or Case Manager and the practitioner to agree a timetable of action and rehabilitation (where appropriate). Confidentiality must be maintained by all parties at all times.

3.7a The practitioner may be represented in the 'health' process by a workplace colleague or representative who may be from (or retained by) a trade union or defence organisation.

- 3.8 If it is considered that a practitioner's ill health may be a risk to patients but the practitioner does not recognise that, or is not prepared to co-operate with measures to protect patients, then exclusion from work and referral to the professional regulatory body must be considered.
- 3.9 In cases where there is impairment of performance solely due to ill health, disciplinary procedures are not considered an appropriate mechanism for managing such situations. The aim is to consider all options for rehabilitation and it would only be in the most exceptional of circumstances, e.g. if the individual concerned refuses to co-operate with the employer to resolve the underlying situation or refuses a referral to OHS or NCAS/equivalent body then the organisation would have to resort to the formal process under this procedure. In these circumstances the procedures in parts 4 or 5 will be followed. Additionally, the Medical Director should consider the appropriateness of referring the matter to the GMC/GDC under the respective Council's Health Procedures.
- 3.10 There will be circumstances where an employee who is subject to disciplinary proceedings puts forward a case, on health grounds, that the proceedings should be delayed, modified or terminated. In such cases the organisation will refer the practitioner to OHS for assessment as soon as possible. Unreasonable refusal to accept a referral to, or to co-operate with the OHS under these circumstances, may give separate grounds for pursuing disciplinary action.

## 4. THE STANDARD PROCEDURE

### The Hearing Framework

- 4.1 The hearing panel will comprise of three persons and shall be chaired by a Clinical Director or equivalent. The panel shall include a senior medical manager and, as appropriate, a third member appointed at the discretion of the organisation which may be a medical or dental practitioner.
- 4.2 The Director of Workforce or nominated deputy will ensure that the no members of the panel have any conflict of interest in the proceedings and will advise on an appropriate individual to sit on the panel as the third member.

In the case of clinical academics the third member of the panel may be appointed with agreement between the employer and the academic institution.

- 4.3 For the purpose of the hearing at least one member of the panel must be a medical or dental practitioner.
- 4.4 No member of the panel shall have had any prior involvement in the matters to be considered at the hearing.
- 4.5 The panel will be advised on matters of procedure by a Workforce & OD manager.

Where the matters under consideration involve clinical issues, advice shall be available to the panel from an appropriately qualified clinician from the same or similar clinical specialty as the practitioner concerned but from another NHS employer, either in person or in writing.

- 4.6 All parties must exchange any documentation concurrently, including witness statements on which they wish to rely, in the proceedings no later than 14 days before the hearing. In exceptional circumstances where late evidence is being presented, the Chairman of the panel will agree whether there is a requirement for a new date to be set for the hearing.
- 4.7 Should either party request a postponement to the hearing, the Chairman of the panel is responsible for ensuring that a reasonable response is made and that time extensions to the process are kept to a minimum and that the hearing is rescheduled within 28 days. The organisation retains the right, after a reasonable period (not less than 28 days), to proceed with the hearing in the practitioner's absence, although the organisation will act reasonably in deciding to do so.
- 4.8 Should the practitioner's ill health prevent the hearing taking place, the organisation



will implement its usual absence procedures and involve the Occupational Health Department as necessary.

- 4.9 Witnesses who have made written statements at the investigation stage may be required to attend the hearing. Following representations from either side contesting a witness statement, which is to be relied upon in the hearing, the Chairman of the panel will invite the witness to attend. The Chairman cannot require anyone other than a Health Board/Trust employee to attend. However, if evidence is contested and the witness is unable or unwilling to attend, the panel may accordingly reduce the weight given to the evidence as there will not be the opportunity to challenge it properly. A final list of witnesses to be called must be given to both parties not less than five working days in advance of the hearing.
- 4.10 Where witnesses attend the hearing and choose to be accompanied, the accompanying person cannot participate in the hearing or make representations to the panel.

### **Right to Representation**

- 4.11 The practitioner may be represented in the Standard Procedure (and in any appeal thereunder) by a workplace colleague or representative who may be from (or retained by) a trade union or defence organisation.
- 4.12 The Case Manager may be supported at the hearing by a member of the Health Board/Trust Workforce & OD team who will take no part in the proceedings.

### **Conduct of the Hearing**

- 4.13 The hearing will be conducted as follows:
- The panel, the practitioner, his or her representative and the Case Manager and Workforce & OD advisors will be present at all times during the hearing;
  - Witnesses will be admitted only to give their evidence and answer questions and will then leave the hearing;
  - The Chairman of the panel will be responsible for ensuring that the proceedings are conducted in a fair and orderly manner. The Chairman will introduce all persons present and announce which witnesses are available to attend the hearing;
  - The procedure for dealing with any witnesses attending the hearing shall be as follows:
    - The witness to confirm any written statement and give any supplementary evidence;
    - The side calling the witness can question the witness;
    - The other side can then question the witness;
    - The Chairman and panel members may question the witness;
    - The side which called the witness may seek to clarify any points which have arisen during questioning but may not at this point raise new evidence.

4.14 The order of presentation shall be:

- The Case Manager presents the employer's case including calling any witnesses. The above procedure for dealing with witnesses shall be undertaken for each witness in turn, at the end of which each witness shall be allowed to leave. The witnesses will be questioned in accordance with the order outlined in paragraph 4.13;
- The Chairman shall invite the Case Manager to clarify any matters arising from the management case on which the panel requires further clarification;
- The practitioner and/or their representative shall present the practitioner's case, calling any witnesses. The procedure in paragraph 4.13 for dealing with witnesses shall be undertaken for each witness in turn, at the end of which each witness shall be allowed to leave. The practitioner and/or his or her representative will then be questioned in accordance with paragraph 4.13;
- The Chairman shall invite the practitioner and/or representative to clarify any matters arising from the practitioner's case on which the panel requires further clarification;
- The Chairman shall invite the Case Manager to make a brief closing statement summarising the key points of the case, but will not allow any new evidence or arguments to be introduced at this stage;
- The Chairman shall invite the practitioner and/or representative to make a brief closing statement summarising the key points of the practitioner's case, but will not allow any new evidence or arguments to be introduced at this stage.;
- The panel may ask questions of anyone present at any time through the Chairman;
- The panel shall then retire to consider its decision.

## Decisions

4.15. The panel will have the power to make a range of decisions which are:

- No action required;
- [Oral statement] that there must be an improvement in clinical performance within a specified time scale with a written statement of what is required and how it might be achieved;
- [Oral statement] concerning the determination by the panel of the practitioner's conduct and any specific action/changes expected;
- [Written warning] that there must be an improvement in clinical performance within a specified time scale with a statement, prepared after consultation with NCAS where relevant, of what is required and how it might be achieved;
- [Written warning] that there must be an improvement in practitioners conduct with a statement of what is required and how it might be achieved;
- In exceptional circumstances referral to the Extended Procedure
- The situation may be more appropriately addressed through another part of the procedure e.g. Health or by another policy e.g. Dignity at Work.
- It is also reasonable for the panel to make comments and recommendations to the Chief Executive of the LHB/Trust Board on issues which have arisen during the case. For example, there may be matters around the systems and procedures operated by the employer that the panel wishes to comment upon.

- 4.16 A record of [oral statements and written warnings] will be kept on the practitioner's personal file for a period not exceeding 12 months.
- 4.17 The decision of the panel will be communicated to the parties as soon as possible and ordinarily within 7 days of the hearing.
- 4.18 The decision must be confirmed in writing to the practitioner. This notification must include the essential reasons for the decision, notification of the practitioner's right of appeal and notification of any intent to make a referral to the GMC/GDC or any other external/professional body.
- 4.19 If the practitioner wishes to appeal against the decision he or she must do so in writing, setting out the reasons to the Chief Executive within 21 days of the date of the written confirmation of the original decision.

## **Appeals**

4.20 The appeals procedure provides a mechanism for practitioners who disagree with the outcome of a hearing to have an opportunity for the decision to be reviewed. The appeal panel will need to establish whether the organisation's procedures have been adhered to and that the panel in arriving at their decision acted fairly and reasonably based on:

- A fair and thorough investigation of the issue;
- Sufficient evidence arising from the investigation or assessment on which to base the decision;
- Whether the sanction imposed was fair and reasonable in all the circumstances of the case

At the discretion of the Appeal Panel Chair the panel can consider new evidence submitted by the practitioner and consider whether it might have significantly altered the decision of the original hearing. The appeal panel, however, will not re-hear the case in its entirety (but in certain circumstances it may order a new hearing see 5.14).

### **The Appeal Process**

4.21 Where a practitioner chooses to register an appeal against a decision under the Standard Procedure then this must be sent to the LHB/Trust Chief Executive in writing. The letter must contain the grounds for their appeal which must be received within 21 days of the date of the issuing of the notice of the decision of the disciplinary sub-committee.

### **The Appeal Panel**

4.22 The panel will consist of three members. The members of the appeal panel must not have had any previous direct involvement in the matters that are the subject of the appeal. These members will be:

- An Independent Member/non-executive Director of the employing organisation;
- A senior clinician/manager nominated by the LHB/Trust appropriate to the matter under consideration
- A medically qualified member (or dentally qualified if appropriate) nominated by LNC and employed by the organisation (who may be a

clinical academic)

- 4.23 Panel members must have had the appropriate training for conducting appeal hearings.
- 4.24 The Workforce & OD Department will make the arrangements for the panel and notify the appellant as soon as possible and in any event within the recommended timetable in paragraph 4.24. The Director of Workforce & OD will take reasonable account of any concerns expressed by the practitioner or his or her representative about the members chosen for the panel.
- 4.25 It is in the interests of all concerned that appeals are heard speedily and as soon as possible after the original hearing. The following timetable will apply in all cases:

- Appeal by letter setting out the reasons to the Workforce & OD Director, within 21 days of the date of the written confirmation of the original decision;
- Hearing to take place, where possible, within 30 days of receipt of the letter lodging the Appeal ; and,
- Decision reported to the appellant and the organisation within 7 working days of the conclusion of the hearing.

- 4.26 The timetable will only be varied by mutual agreement. The Director of Workforce & OD will be informed of any delays and is responsible for ensuring that these are absolutely necessary and kept to a minimum.

### **Conduct of Appeal Hearing**

- 4.27 All parties will already have all documents, including witness statements, from the previous hearing. The practitioner must specify the grounds for appeal and additional new evidence, including witness statements, must be requested by the appeal panel at least 14 days before the appeal hearing and be provided to the parties at least 3 days before the hearing.
- 4.28 The practitioner may be represented in accordance with paragraph 1.4. The representative will be entitled to present a case on behalf of the practitioner, address the panel and question the management case and any written evidence.
- 4.29 The practitioner or his/her representative will present their case to support their grounds for the appeal. The LHB/Trust representative will then respond. Both

parties will be subject to questioning by the other party, as well as by the panel. When all the evidence has been presented, both parties shall briefly sum up. At this stage, no new information can be introduced. The practitioner (or his/her representative) can at this stage make a statement in mitigation.

- 4.30 The panel, after receiving the views of both parties, shall consider and make its decision in private.

### **Powers of the Appeal Panel**

- 4.31 The appeal panel has the power to confirm the decision made which is within the scope of the standard procedure at the hearing or order that the case is re-heard. Where it is clear in the course of the appeal hearing that the proper procedures have not been followed and the appeal panel determines that the case needs to be fully re-heard, the Chairman of the panel shall have the power to direct a fresh hearing.
- 4.32 The appeal panel has the right to call witnesses of its own volition, but must notify both parties at least 14 days in advance of the hearing and shall seek a written statement from any such witness at the same time, to be provided to both parties at least 7 days in advance of the appeal hearing.
- 4.33 Exceptionally, where during the course of the hearing the appeal panel determines that it needs to hear the evidence of a witness not called by either party, then it shall have the power to adjourn the hearing to allow for a written statement to be obtained from the witness and made available to both parties before the hearing reassembles.
- 4.34 If, during the course of the hearing, the appeal panel determines that new evidence needs to be presented, it will consider whether an adjournment is appropriate. Where new evidence emerges during the appeal which results in new or more serious allegations against the employee then these allegations cannot not be dealt with at the appeal hearing. The appeal panel has the power to determine whether to consider new evidence as relevant to the appeal, or whether the case should be re-heard, on the basis of the new evidence, by a panel convened under the Standard or Extended Procedure.

### **Decision**

- 4.35 The decision of the appeal panel is final and binding, and shall be made in writing to the practitioner and shall be copied to the organisation's Case Manager such that it is received within 5 working days of the conclusion of the hearing. There shall be no correspondence on the decision of the panel, except and unless clarification is required on what has been decided (but not on the merits of the case), in which case it should be sought in writing from the Chairman of the appeal panel.

## 5. THE EXTENDED PROCEDURE

### Introduction

- 5.1 This extended procedure will be used when handling more serious issues, where the outcome of disciplinary action could potentially lead to the dismissal of the medical or dental practitioner ('the practitioner') concerned or the issuing of a final written warning.

### Inquiry Panel

- 5.2 An Inquiry Panel will be convened by the LHB/Trust to establish the relevant facts of the case and to make recommendations as to action. The inquiry panel itself will have no disciplinary powers.  
The composition of the Inquiry Panel may differ depending on the issue concerned. No Inquiry panel members shall be current or former employees (including honorary contract holders) with the LHB/Trust or have any other conflict of interest.
- 5.3 The panel shall consist of three members:

- An independent legally qualified member (being a barrister or solicitor) who act as the Inquiry Panel Chairman.
- A professional member chosen after consultation with WJMCC, or British Dental Association as appropriate.
- A second panel member who shall be:
  - a non-medical member or ;
  - a medical/dental professional member in the same specialty as the practitioner where the matter involves solely allegations relating to the practitioner's clinical capability.

- 5.4 Before the professional member is chosen, there shall be consultation with the Welsh Joint Medical Consultants Committee (WJMCC) or in the case of a dental officer, the appointment of the professional member shall be made after consultation with the British Dental Association.
- 5.5 Payment shall be made by the LHB/Trust to the Inquiry Panel Chairman and members of the panel at a rate determined from time to time. This fee covers any preparatory work required and any time spent on preparation of reports. Travelling and subsistence expenses of both the Inquiry Panel Chairman and

members of the panel shall be payable in accordance with the prevailing rates paid by the NHS.

- 5.6 The terms of reference of the panel shall include the specific allegation(s). The practitioner shall be informed of the setting up of the panel and its terms of reference and should be given not less than 21 days' notice in order to prepare their case. The practitioner shall be provided [within at least 14 days] with any copies of correspondence or written statements made. A copy of the list of witnesses referred to in paragraph 5.3.4 and the main points on which they can give evidence, shall be provided to the practitioner unless for some exceptional reason the Inquiry Panel Chairman of the panel determines otherwise.

### **Right to Representation**

- 5.6a The practitioner may be represented in the Extended Procedure (and in any appeal thereunder) by a workplace colleague or representative who may be from (or retained by) a trade union or defence organisation.
- 5.6b The LHB/Trust will also have the right to be represented before the panel. The representative may be legally qualified.

### **Conduct of the Inquiry Panel Hearing**

- 5.7 The inquiry panel shall establish all the relevant facts of the case. To that end, the panel shall ensure, as far as possible, that the practitioner's witnesses be asked to give factual evidence rather than personal impressions or opinions. At the hearing, the case against the practitioner shall be presented by the LHB's/Trust's representative who shall conduct an examination of the witness before the investigating panel acting on the instructions of the LHB/Trust.
- 5.8 The practitioner shall have the right to appear personally before the inquiry panel. The practitioner or their representative shall have the right to cross-examine all witnesses and to produce their own witnesses. Both the practitioner and their witnesses may be subjected to cross-examination. The question of what is to happen upon any application for adjournment in the event of illness or unavoidable absence of the practitioner, or any witness, shall be a matter for the Inquiry Panel Chairman to decide.
- 5.9 The procedure and rules as regards admission of evidence and applications for adjournment before the investigating panel shall be determined by the Inquiry Panel Chairman.
- 5.10 At the conclusion of the hearing the Inquiry Panel Chairman shall write a report together with the other panel members which shall be presented in two parts. The first part shall set out the panel's findings and all relevant facts of the case, but contain no recommendations as to action. The second part shall contain a view as to whether the practitioner is at fault and recommendations as to disciplinary action.



- 5.11 The Inquiry Panel Chairman shall send the practitioner and the Medical Director a copy of the first part of the panel's report, and should allow a period of 14 days for the submission to them of any proposals for corrections of fact. It is for the panel to decide whether to accept any proposed amendments. Subject to this procedure, the facts as set out in the panel's report shall be accepted as established in any subsequent consideration of the matter.
- 5.12 The Inquiry Panel Chairman shall then send the full report of the Inquiry Panel to the LHB/Trust Medical Director who will decide on what action to take.
- 5.13 In the event of the inquiry panel finding that the practitioner is at fault, the substance of their views on the case and recommendations in the second part of their report shall be made available to the practitioner 14 days before any disciplinary hearing takes place.

### **Disciplinary Hearing**

- 5.14 If an extended procedure disciplinary hearing is to take place, the LHB/Trust shall establish a disciplinary panel consisting of three members of the Health/Trust Board which will normally comprise of the Medical Director (who will act as Chairman of the Panel), an Executive Director and a Clinical Director (or equivalent). No member of the panel should have been involved in any formal part of the proceedings concerning the practitioner. The panel will be supported by a representative from the Workforce & OD Department.
- 5.15 Under the Scheme of Delegation the Medical Director will have the full authority to make a decision.

### **Conduct of the Hearing**

- 5.16. The hearing will be conducted as follows:
- The panel, the practitioner, his or her representative and the Case Manager will be present at all times during the hearing.
  - The Chairman of the panel will be responsible for the proper conduct of the proceedings. The Chairman will introduce all persons present
  - Any witnesses attending will be for the purposes of mitigation and not to provide supplementary evidence.
- 5.17. The order of presentation shall be:

- The Case Manager presents both parts of the Independent Panel’s findings and the conclusion and any recommendations as to disciplinary action;
- The Chairman shall invite the Case Manager to clarify any matters arising from the Independent Panel’s findings on which the panel requires further clarification;
- The practitioner and/or their representative shall present the practitioner’s case of mitigation, calling any witnesses. The procedure for dealing with witnesses shall be as follows;
  - The witness to provide any mitigating statement;
  - The Case Manager can then question the witness;
  - The Chairman and panel members may question the witness;
  - The practitioner and/or their representative may seek to clarify any points which have arisen during questioning but may not at this point raise new areas of mitigation evidence.
- This process will be undertaken for each witness in turn, at the end of which each witness shall be allowed to leave. The practitioner and/or his or her representative will then be questioned in accordance with order for questioning witnesses;
- The Chairman shall invite the practitioner and/or representative to clarify any matters arising from the practitioner’s case of mitigation on which the panel requires further clarification;
- The Chairman shall invite the Case Manager to make a brief closing statement summarising the key points of the case, arguments to be introduced at this stage;
- The Chairman shall invite the practitioner and/or representative to make a brief closing statement summarising the key points of the practitioner’s case of mitigation, but will not allow any new grounds for mitigation to be introduced;
- The panel shall then retire to consider its decision.

## Decisions

- 5.18 Action shall not be more severe than that recommended by the Inquiry panel, but may be a lesser action following pleas of mitigation. In no case shall the LHB/Trust sub-committee exceed the sanctions recommended by the Inquiry panel.

The panel will have the power to make a range of decisions which are:

- No action required;
- [Oral statement] that there must be an improvement in clinical performance within a specified time scale with a written statement of what is required and how it might be achieved;
- [Oral statement] concerning the determination by the panel of the practitioner's conduct and any specific action/changes expected;
- [Written warning/Final Warning] that there must be an improvement in clinical performance within a specified time scale with a statement of what is required and how it might be achieved;
- [Written warning/Final Warning] that there must be an improvement in practitioners conduct with a statement of what is required and how it might be achieved;
- Dismissal;
- The situation may be more appropriately addressed through another part of the procedure e.g. Health or by another policy e.g. Dignity at Work;
- It is also reasonable for the panel to make comments and recommendations on issues where these issues are relevant to the case. For example, there may be matters around the systems and procedures operated by the employer that the panel wishes to comment upon.

- 5.19. A record of [oral statements and written warnings] will be kept on the practitioner's personal file for a period not exceeding 12 months.
- 5.20. The decision of the panel will be communicated to the parties as soon as possible and normally within 7 days of the hearing. Because of the potential complexities of the issues under deliberation and the need for detailed consideration, the parties should not necessarily expect a decision on the day of the hearing.
- 5.21. The decision must be confirmed in writing to the practitioner. This notification must include reasons for the decision, clarification of the practitioner's right of appeal and notification of any intent to make a referral to the GMC/GDC or any other external/professional body.

### **The Appeal Process**

- 5.22 Where a practitioner chooses to register an appeal against a decision under the Extended Procedure then this must be sent to the LHB/Trust Chief Executive in

writing. The letter must contain the grounds for their appeal which must be received within 21 days of the date of the issuing of the notice of the decision of the disciplinary sub-committee.

### **Extended Procedure Appeal Process**

- 5.23 Where a practitioner has been issued with a Final Written Warning or has been dismissed by the LHB/Trust he/she may appeal the decision of the LHB/Trust disciplinary hearing panel regarding the nature of the action taken (e.g. dismissal) to an appeal panel (convened by the LHB/Trust and constituted in accordance with paragraph 6.29 below). Where a lesser sanction has been issued by the LHB/Trust sub-committee the practitioner may appeal under the arrangements outlined for the Standard Procedure.
- 5.24 On receipt of a notice of appeal, the Director of Workforce and Organisational Development shall facilitate arrangements for an Extended Procedure Appeal Panel to be convened consisting of three members:
- I. A panel member nominated by the LHB/Trust (not previously involved in the case).
  - II. A professional panel member nominated by the WJMCC or BDA (as appropriate)
  - III. A barrister or solicitor who will undertake the role of Chairman of the Extended Procedure Appeal panel.
- 5.25 The Director of Workforce and Organisational Development shall send to the Chairman of the Extended Procedure Appeal panel the two part inquiry panel report, the recommendations of the disciplinary panel and the practitioner's grounds for appeal.
- 5.26 The Extended Procedure Appeal Panel;
- May, if it thinks fit, interview the appellant and representatives of the LHB/Trust.
  - Shall, so far as is reasonably practicable, hold any such interview no earlier than one month, and no later than three months, after receipt by the Chairman of the appeal panel of the appellant's views.
  - Shall communicate its decision to the LHB/Trust Chief Executive within four weeks of the hearing.
- 5.27 The appellant and Health Board/Trust Case Manager shall have the right to appear personally before the Appeal Panel. The practitioner may be represented in the Extended Procedure Appeal Process by a workplace colleague or representative who may be from (or retained by) a trade union or defence organisation. If the matter proceeds to an extended procedure hearing, the practitioner may be represented at any such hearing by a legally qualified person who is retained by a recognised trade union or defence organisation.

- 5.28. Where it appears to the appeal panel that a solution other than upholding of the decision of the disciplinary sub-committee may be appropriate, it shall:
- Ascertain as far as possible the extent to which such a solution is likely to be accepted by the appellant and the LHB/Trust, and
  - Include in the decision given to the Chief Executive of the LHB/Trust any advice to arrange such a solution.
- 5.29 The decision of the panel will be communicated by the LHB/Trust Chief Executive.
- 5.30. The Health Board/Trust will confirm the decision in writing to the practitioner. This notification must include reasons for the decision, and notification that this process concludes all steps and process within this procedure.