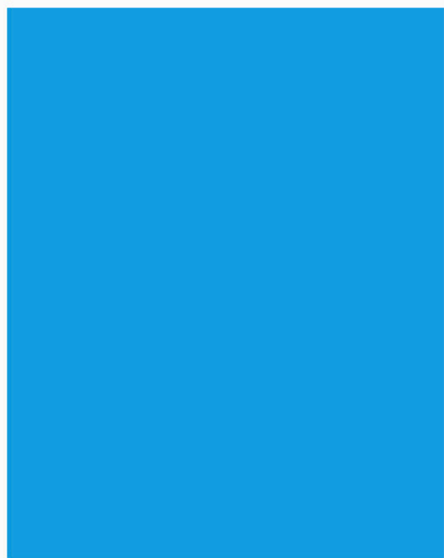
NHS
Commissioning Board

Standard operating policies and procedures for primary care

Policy for the identification, management and support of primary care performers and contractors whose performance gives cause for concern



THE NHS CONSTITUTION
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Policy for the identification, management and support of primary care performers and contractors whose performance gives cause for concern

Standard operating policies and procedures for primary care

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Prepared by Primary Care Commissioning (PCC)

Contents

Contents 3
Purpose of policy 4
Scope of the policy 6
Policy aims and objectives 7
Regulation of the Performers Lists 13
Regulation of the Pharmaceutical Lists 15
Governance Arrangements 17
Monitoring and review of policy 21
Annex 1: Abbreviations and Acronyms 22
Annex 2: Performance Screening Group – Terms of Reference 25
Annex 3: Performance List Decision Panel – Terms of Reference 28
Annex 4: Legislation Governing the Management of Medical, Dental and Ophthalmic Performers Lists and Contracts 32
Annex 5: Legislation Governing the Management of Pharmaceutical Lists and theProvision of Pharmaceutical Services 34

Purpose of policy

1) The NHS Commissioning Board (NHS CB) is responsible for direct commissioning of services beyond the remit of clinical commissioning groups, namely primary care, offender health, military health and specialised services.

2) This document forms part of a suite of policies and procedures to support commissioning of primary care. They have been produced by Primary Care Commissioning (PCC) for use by NHS CB's area teams (ATs).

3) The policies and procedures underpin NHS CB's commitment to a single operating model for primary care – a "do once" approach intended to ensure consistency and eliminate duplication of effort in the management of the four primary care contractor groups from 1 April 2013.

4) All policies and procedures have been designed to support the principle of proportionality. By applying these policies and procedures, area teams are responding to local issues within a national framework, and our way of working across the NHS CB is to be proportionate in our actions.

5) The development process for the document reflects the principles set out in *Securing excellence in commissioning primary care*[1], including the intention to build on the established good practice of predecessor organisations.

6) Primary care professional bodies, representatives of patients and the public and other stakeholders were involved in the production of these documents. NHS CB is grateful to all those who gave up their time to read and comment on the drafts.

7) The authors and reviewers of these documents were asked to keep the following principles in mind:

- Wherever possible to enable improvement of primary care
- To balance consistency and local flexibility
- Alignment with policy and compliance with legislation
- Compliance with the Equality Act 2010
- A realistic balance between attention to detail and practical application
- A reasonable, proportionate and consistent approach across the four primary care contractor groups.

8) This suite of documents will be refined in light of feedback from users.

[1] *Securing excellence in commissioning primary care http://bit.ly/MJwrfA*

This document should be read in conjunction with:

Procedure for the identification, management and support of primary care performers and contractors whose performance gives cause for concern

National Performers List Policy

Assurance frameworks for primary dental, eye care, medical and pharmaceutical services

Scope of the policy

This policy applies to general medical practitioners (GPs), general dental practitioners (GDPs), ophthalmic medical practitioners (OMPs) and optometrists included in a performers list for the provision of clinical services in primary care. It also applies to pharmacy contractors and dispensing appliance contractors (DACs) on a pharmaceutical list.

The term primary care performer is used throughout this document to mean medical, dental or ophthalmic performers registered on a performers list for the provision of primary care services to include military health and offender health services. The term contractor is also used throughout this document to mean pharmacy contractors and dispensing appliance contractors (DACs) included in the pharmaceutical list as currently there are no equivalent lists for individual pharmacists or DAC performers.

The policy will apply where NHS CB employed doctors, dentists and optometrists are also registered on a performers list and where NHS CB employed pharmacists or dispensing appliance contractors are on a pharmaceutical list and are providing services in primary care.

The policy does not apply to NHS CB employed doctors, dentists, optometrists and pharmacists who are providing clinical advice and/or undertaking non - clinical roles within the NHS CB, as performance concerns about directly employed clinical staff will be dealt with through the NHS CB's internal HR procedures.

It should be noted that pharmacy contractors working under either a Local Pharmaceutical Services (LPS) contract or an Essential Small Pharmacy Local Pharmaceutical Services (ESPLPS) contract are not included in the pharmaceutical list. Any concerns regarding their performance would be dealt with under the contract.

Policy aims and objectives

Key Principles

All those within the NHS CB who are involved with the handling of concerns about performance in primary care will seek to ensure that their working arrangements and procedures comply with these key principles.

- Protecting patients and the public, and enhancing their confidence in the NHS
- Identifying the possible causes of underperformance
- Ensuring equality and fairness of treatment and avoiding discrimination
- Being supportive of all those involved
- Confidentiality
- Ensuring that action is based on reliable evidence and
- Being clearly defined and open to scrutiny.

This policy and its associated procedures are part of the responsible officer functions as set out in the Medical Profession (Responsible Officers) Regulations 2010. The principles above are also principles of the responsible officer role which will seek to:

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

The NHS CB is aware that lasting damage can be caused to the reputation and future career of a primary care performer or contractor by unfounded and malicious allegations. Any and all allegations, including those made by patients or relatives of patients, or concerns expressed by colleagues, will therefore be investigated fully to properly establish the facts. The facts will be considered and a decision made whether there is a case to answer.

Cases handled under these arrangements could range from primary care performers or contractors needing temporary support whilst they resolve a short-term issue to more complex cases involving quite clear clinical, professional, management or organisational underperformance. It is important that all parties have confidence in the process and accordingly the NHS CB will seek to raise awareness and understanding amongst primary care performers and contractors and others about this policy.

Protecting Patients and the Public

Whenever concerns are raised about the performance of a primary care performer or contractor there is always the potential for the matter to have an impact upon patient safety or for it to impinge upon the wider public interest. In all cases where a concern is raised the NHS CB will therefore evaluate the particular circumstances and associated risks to determine whether any immediate action is required in order to protect patients.

The duty to protect patients is of paramount importance to the NHS CB and the priority in the NHS CB's performance procedure will be to assure and maintain patient safety and public protection. In these instances care will also be taken to protect the performer or contractor, for example referral to occupational health services.

Identifying the possible causes of underperformance

Whilst most health care professionals practise to a very high standard, some individuals may occasionally work in ways that pose a serious risk to patient safety. In many instances this can be unintentional and the clinician's performance may be affected by a combination of personal and situational factors, such as illness or professional isolation. The NHS CB will therefore always seek to take the most appropriate action in order to protect patient safety and to help the primary care performer or contractor involved.

It is acknowledged that concern about a primary care performer's or contractor's conduct or performance may come to light in a number of ways and in implementing the policies and procedures outlined in this document the NHS CB will use a variety of sources of information.

The NHS CB may become concerned about a primary care performer's or contractor's performance either proactively, through information it routinely collects, or reactively, through information received from a third party (e.g. concerns raised by colleagues or patient complaints).

When performance issues arise they may relate solely to an individual primary care performer or contractor who is performing services under an NHS contract or agreement or in certain circumstances may relate to the contractor who is the person (or persons) who is the holder of the NHS contract or agreement. It is therefore important to identify who is involved as this will dictate the course of action that needs to be taken.

Equally, concerns about a primary care performer or contractor may relate to any one of a number of areas, including:

- Poor clinical performance
- Ill-treating patients
- Unacceptable behaviour such as harassing or unlawfully discriminating against staff or patients
- Breaching sexual or other boundaries with patients, colleagues or staff
- Poor teamwork that compromises patient care
- Personal health problems leading to poor practice or conduct
- Not complying with professional codes of conduct
- Not complying with medical revalidation requirements
- Poor management or administration that compromises patient care or
- Suspected fraud or criminal offence.

This list is not exhaustive and there may be other areas of concern that the NHS CB will need to consider.

Ensuring equality and fairness of treatment and avoiding discrimination

The NHS CB is committed to valuing diversity and promoting equality throughout the NHS CB, ensuring that our processes and procedures are fair, objective, transparent and free from unlawful discrimination. Promoting equality is also a requirement under current equality legislation. Everyone who is acting for the NHS CB is expected to adhere to the spirit and the letter of this legislation.

This policy complies with the Equality Act 2010 which requires the NHS CB to ensure that they eliminate discrimination based on nine protected characteristics: race, sex, disability, age, sexual orientation, religion or belief, gender re-assignment, marriage and civil partnership, pregnancy and maternity.

Unfair discrimination occurs as a result of prejudice, misconception and stereotyping which can hinder the proper consideration of an individual’s skills and ability. The NHS CB has a statutory responsibility to ensure equality,

fairness of treatment and avoid discrimination. Consequently, when implementing any of the policies within this document, the NHS CB will ensure that any process is fair and reasonable and complies with regulatory and/or statutory provisions. In particular this will mean ensuring that:

- There is no discrimination on the grounds of gender, faith, race, disability, age or sexual orientation in the operation of any of the procedures dealt with in this document and that no person is treated less favourably than anyone else would be treated in the same or similar circumstances
- Every case is dealt with according to individual circumstances and that the utmost care is taken to avoid any risk of imposing preferences or prejudices, or of targeting the performance or actions of individual performers or contractors because they appear to the NHS CB, or to NHS CB staff, to fit a stereotype
- Any substantive action such as a decision to remove a performer from the performers list or to terminate a contract or agreement is well founded and based on evidence that is credible, cogent and sufficient and reliable
- All decisions made by the NHS CB relating to the admission to, and removal or suspension from, a primary care performers list or to the imposition of sanctions under a contract will be made in accordance with the relevant statutory regulations
- Every effort is made to ensure that any decision taken by the NHS CB is procedurally robust, complies with all statutory regulatory requirements and is likely to be held to be lawful if it comes under judicial scrutiny and
- The appropriate Local Representative Committee (LRC) is involved in the process wherever possible. In some instances it may however be possible to have an LRC member from an area other than the area in which the contractor is located.

The application of the policy will be monitored in line with the NHS CB's policy for monitoring, governance and reporting arrangements.

Being supportive of all those involved

The NHS CB acknowledges the impact that an investigation of performance issues can have on all those involved, including the primary care performer or contractor, the person raising the concern and staff within the NHS CB. With this in mind the NHS CB will aim to be as sensitive and supportive as possible without diminishing its overall responsibility for protecting the public and will seek, wherever possible, to establish a supportive and formative approach to

help a primary care performer or contractor to improve performance. However, it must be recognised that this approach will in some cases fail and in others (involving very serious circumstances) will not be appropriate. It should be remembered that having established the facts, and upon investigation of the facts relating to the performer/contractor that there may be no case to answer.
A primary care performer or contractor under investigation or assessment will on all occasions be encouraged to identify someone to provide personal support. This may be a friend or work colleague or could be a representative of the appropriate LRC, or professional or representative body. Primary care performers or contractors and contractors will also be advised to consult their defence organisation at all stages.

The NHS CB will also seek to protect whistleblowers and other people raising concerns about a primary care performer's or contractor's performance through the NHS CB's policy on whistleblowing and, where applicable, the Public Interest Disclosure Act 1998.

Those within the NHS CB who are involved with conducting investigations will be provided with clear terms of reference and will have access to relevant advice and expertise from colleagues both within the organisation and externally. NCAS can advise on the correct processes at any stage.

Confidentiality

The NHS CB is governed by the law, which requires confidentiality about concerns relating to an individual primary care performer or contractor to be respected unless the duty of confidentiality to the individual is outweighed by the public interest for the information to be disclosed to another body or to support the statutory duties of the responsible officer, the General Medical Council, (GMC), General Dental Council, (GDC), General Optical Council, (GOC) or the General Pharmaceutical Council, (GPhC). The NHS CB will therefore, in all cases, take appropriate steps to ensure that confidentiality is safeguarded where necessary.

Ensuring that action is based on reliable evidence

The NHS CB will follow appropriate steps to ensure the evidence they consider is reliable. The NHS CB may admit any evidence it consider fair and relevant to the case, whether or not such evidence would be admissible in a court of law.

- The case manager/investigator will assess the reliability of the evidence and the sources of the evidence
- If the evidence is in the form of a witness statement, the individual introducing the evidence must demonstrate the credibility of the witness
- Hearsay will not be deemed as reliable.
- In order for evidence to be admissible, it must be relevant and without prejudice
- Any individual raising a concern must clearly define their complaint.

Regulation of the Performers Lists

The NHS CB has a statutory responsibility for commissioning, through contractual arrangements, all primary medical, dental and ophthalmic services it considers necessary to meet the reasonable requirements of its population. Any NHS contracts or agreements entered into by the NHS CB under these arrangements must at all times comply with the appropriate legislative frameworks. It should be noted that enhanced services may be commissioned by CCGs and local authorities.

The NHS Act 2006 as amended by the NHS Health and Social Care Act 2012 and the National Health Service (Performers Lists) Regulations 2013 give the NHS CB powers, which allow it to regulate the performance of primary care services in England which are being delivered under NHS contracts. Formally, this means that the NHS CB has the power to prevent a general medical practitioner (GP), a general dental practitioner (GDP), optometrist or ophthalmic medical practitioner (OMP) from performing services, or to place restrictions (conditions) on a doctor, dentist or optician with which he/she is obliged to comply. These powers do not extend to the delivery of non NHS primary care services provided under private contracts.

The Performers List Regulations 2013 enable the NHS CB to:

- Admit a performer to a list
- Refuse to admit a performer to the list
- Place conditions on a performer
- Remove a performer's name from the list; or
- Suspend a performer from the list.

For medical performers (including OMPs, the Medical Profession (Responsible Officer) Regulations 2010 came into force on 1 January 2011. The regulations require designated bodies to nominate or appoint responsible officers. They set out the duties of responsible officers in two broad areas:

- Evaluating fitness to practice; and
- Monitoring conduct and performance.

Under the second it gives responsible officers in the NHS CB the duty of managing admission to the performers list.

The Responsible Officer Amendment Regulations 2013 designates the NHS CB and gives it the power to appoint sufficient responsible officers. In practice there will be one responsible officer in each area team to undertake this duty.

The Medical Act 1983 (as amended by the Health and Social Care Act 2008) enables regulations to provide for the responsible officer to be given duties that include the evaluation of doctor's fitness to practise. The Health and Social Care Act 2008 also enables regulations to provide for the monitoring of the conduct and performance of doctors. Responsible officers will also liaise directly with the employer liaison advisers at the GMC over thresholds for referral about a doctor's issues in relation to fitness to practise issues and will liaise with the other regulatory bodies as part of their duties in managing the national performers lists.

Responsible officers, in England, are integral to improving the quality of care and ensuring a focus on the three core components of quality:

- **Patient Safety** – by ensuring that doctors are maintaining, and raising further, professional standards
- **Effectiveness of care** – by supporting professional ethos to improve further the effectiveness of clinical care
- **Patient experience** – by ensuring that patients' views are integral to evaluations of a doctor's fitness to practise.

The responsible officer is accountable for ensuring effective clinical governance systems in respect of the identification, management and support of independent performers and contractors whose performance gives cause for concern are in place in the local area team. The responsible officer as the senior clinician has overall responsibility for responding to concerns about performers or contractors. Sufficient funds and resources necessary to enable the responsible officer to discharge his/her duties is set out in legislation will be made available.

Regulation of the Pharmaceutical Lists

The NHS CB has a statutory responsibility for commissioning, through contractual frameworks, of pharmaceutical services it considers necessary to meet the reasonable requirements of its population. Any contractual agreements entered into by the NHS CB under these arrangements must at all times comply with the appropriate legislative frameworks.

The NHS Act 2006 as amended by the NHS Health and Social Care Act 2012 and the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, give the NHS CB powers, which allow it to regulate the performance of pharmaceutical services in its area which are being delivered by contractors. Formally, this means that the NHS CB has the power to prevent a contractor from providing pharmaceutical services, or to place restrictions (conditions) on a contractor with which they are obliged to comply. These powers do not extend to the delivery of private services.

Where a contractor is a limited company, fitness to practise requirements, declarations and updates to information apply to the directors and, for pharmacy contractors, the superintendent. The same applies to sole traders and partners, including those in a limited liability partnership.

Since a contractor must be on the pharmaceutical list in order to provide pharmaceutical services, the NHS CB is able to regulate them by:

- Deferring a decision about an application on fitness grounds
- Refusing to admit a contractor to its list
- Placing a contractor on its list subject to conditions
- Removing a contractor from its list
- Contingently removing a contractor from its list or
- Suspending a contractor from its list
- Applying for a national disqualification

For dispensing doctors where dispensing performance is an issue this will be addressed as part of the primary medical services contractual arrangements, and the assurance management of primary medical services.

Details of all current regulations governing the management of pharmaceutical lists and provision of pharmaceutical services are shown at annex 5.

Governance arrangements

An essential element of good governance arrangements for local performance management schemes is the establishment of a clear decision-making process for handling concerns when they arise.

The NHS CB has set up a formal decision-making and management support process to deal with individual performance and contractual compliance of primary care contractors. There are clear roles and responsibilities for individuals and groups involved in both processes. This policy deals only with the individual primary care performer or contractor performance and separate policies cover contractual compliance. The policy aligns to the NHS CB's four primary care assurance management frameworks which address contractual compliance.

This policy forms part of the wider clinical governance and patient safety framework. Patient safety and protection of the public are its primary purpose and the primary consideration in its application.

In order to manage performance concerns it is important to maintain a separation of responsibilities between the identification and analysis of performance issues and the responsibility for the final decisions regarding primary care performers or contractors. This means that responsible officers or medical directors are not able to undertake the role of investigating officers or be involved with the report preparation stages of an investigation. The responsible officer must ensure that those undertaking investigations are properly trained. It is important that individuals remain impartial and that no-one who is appointed to undertake an investigation will be involved in making a subsequent decision about taking formal action against a primary care performer or contractor. It is important to ensure there are no conflicts of interest that prevent an individual from taking part in making a decision.

The governance arrangements in place ensure that any final determinations about management of the National Performers Lists and Pharmaceutical Lists are not made by individuals who have been involved in investigating concerns and have a conflict of interest and this policy clearly describes the required separation.

In each area team, a performance screening group will manage the identification and analysis of performance concerns and a performers list decision panel will take responsibility for the final decisions regarding primary

care performers or contractors, subject to the right of appeal. Details of the two groups are given below.

Performance screening group

The performance screening group (PSG) will be a repository of expertise provided by individuals with in-depth knowledge of performance procedures and professional standards and able to provide advice on handling individual cases. The group will review on a regular basis all new and ongoing cases of performance concerns.

This group will not be responsible for making decisions under the National Performers List Regulations or the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 about individual primary care performers or contractors.

Core membership of the PSG is:

- Senior manager with responsibility for quality and performance - chair
- GP appointed by the responsible officer
- Appropriate clinicians from each of the other primary care performer or contractor groups
- Direct report to the head of primary care
- Local representative committee (LRC) nominees.

Co-opted membership will be determined by the chair or responsible officer.

Annex 2 details the terms of reference for the PSG.

Performers list decision panel

The performers list decision panel (PLDP) will take overall responsibility for the management of primary care performer's or contractor's performance, to decide on actions required on individual performance cases, in line with statutory regulations, and to make referrals to other bodies where appropriate. The role of the panelist is to:

- Hear the evidence
- Make decisions on the case
- To give reasons for decisions.

Core membership of the PLDP is

- An independent lay chair
- The Medical Director or their nominated deputy
- The Nurse Director of the Area Team or their nominated deputy
- An LRC nominee – discipline specific
- Senior manager with responsibility for quality and performance.

The panel is formally constituted and members of the panel cannot be members of the PSG and cannot be involved in any element of screening cases for concern, with the exception of the senior manager with responsibility for quality and performance. The senior manager:

- Is fully informed about each case as the chair of PSG and the case manager of every case
- Presents each case to the PLDP
- Assists the discussion about each case but does not take part in the decision making.

The AT must consider how the PLDP is best able to receive legal advice, either through a legally qualified chair or a legal clerk.

Annex 3 details the terms of reference for the PLDP.

Ultimately the local area team director has overall responsibility for managing performance procedures and for ensuring that all cases are properly managed. The responsible officer as the senior clinical lead in the AT will be responsible for initiating/overseeing listing actions for all primary care performers and contractors and will hold executive responsibility for the process and the management of all cases of underperformance, reporting to the local area director. The responsible officer will report all serious concerns to the local area director. The responsible officer/medical director will seek the appropriate clinical advice when exercising discretion or making listing decisions about a non-medical professional.

The PSG and PLDP can commission a case manager and an investigating officer to take action in instances where the NHS CB considers it necessary for a formal investigation to be undertaken, as reflected by NCAS best practice.

The senior manager with responsibility for quality and performance is responsible for the management of all cases of underperformance. This will

include investigating and/or coordinating investigations, presenting cases to the PSG and the PLDP, coordinating assessments, providing and/or coordinating support with improvement/action plans, servicing the PSG and PLDP. The manager will ensure a clear audit route for initiating and tracking progress of all investigations, costs and resulting action. The manager will report to the line manager as detailed in the chief operating officer's staffing structures.

The process is supported by the clinical advisers and accountable officer for controlled drugs, as required.

Monitoring and review of policy

The policy will be reviewed on a regular basis frequency to be determined by the NHS CB. There are robust arrangements for the maintenance and storage of all records, minutes, and reports associated with the procedure in order to ensure a clear audit route through the procedure for each primary care practitioner. The NHS CB may instigate an internal audit, or be required to submit information to an external body for scrutiny.

The NHS CB will quality assure the policy through audit of the outcomes of the PSG and PLDP. The AT will be required to review these outcomes and provide the NHS CB board with an annual report. The AT will ensure that members of both groups and those undertaking investigations receive appropriate training and feedback.

Annex 1: abbreviations and acronyms

A&E	accident and emergency
APHO	Association of Public Health Observatories (now known as the Network of Public Health Observatories)
APMS	Alternative Provider Medical Services
AT	area team (of the NHS Commissioning Board)
AUR	appliance use reviews
BDA	British Dental Association
BMA	British Medical Association
CCG	clinical commissioning group
CD	controlled drug
CDAO	controlled drug accountable officer
CGST	NHS Clinical Governance Support Team
CIC	community interest company
CMO	chief medical officer
Contractor	The term contractor means pharmacy contractors and dispensing appliance contractors (DACs) included in the pharmaceutical list as currently there are no equivalent lists for individual pharmacists or DAC performers.
COT	course of treatment
CPAF	community pharmacy assurance framework
CQC	Care Quality Commission
CQRS	Calculating Quality Reporting Service (replacement for QMAS)
DAC	dispensing appliance contractor
Days	calendar days unless working days is specifically stated
DBS	Disclosure and Barring Service
DDA	Disability Discrimination Act
DES	directed enhanced service
DH	Department of Health
EEA	European Economic Area
ePACT	electronic prescribing analysis and costs
ESPLPS	essential small pharmacy local pharmaceutical services
EU	European Union
FHS	family health services
FHS AU	family health services appeals unit
FHSS	family health shared services
FPC	family practitioner committee
FTA	failed to attend
FTT	first-tier tribunal

GDP	general dental practitioner
GDS	General Dental Services
GMC	General Medical Council
GMS	General Medical Services
GP	general practitioner
GPES	GP Extraction Service
GPhC	General Pharmaceutical Council
GSMP	global sum monthly payment
HR	human resources
HSE	Health and Safety Executive
HWB	health and wellbeing board
IC	NHS Information Centre
IELTS	International English Language Testing System
KPIs	key performance indicators
LA	local authority
LDC	local dental committee
LETB	local education and training board
LIN	local intelligence network
LLP	limited liability partnership
LMC	local medical committee
LOC	local optical committee
LPC	local pharmaceutical committee
LPN	local professional network
LPS	local pharmaceutical services
LRC	local representative committee
MDO	medical defence organisation
MHRA	Medicines and Healthcare Products Regulatory Agency
MIS	management information system
MPIG	minimum practice income guarantee
MUR	medicines use review and prescription intervention services
NACV	negotiated annual contract value
NCAS	National Clinical Assessment Service
NDRI	National Duplicate Registration Initiative
NHAIS	National Health Authority Information System (also known as Exeter)
NHS Act	National Health Service Act 2006
NHS BSA	NHS Business Services Authority
NHS CB	NHS Commissioning Board
NHS CfH	NHS Connecting for Health
NHS DS	NHS Dental Services
NHS LA	NHS Litigation Authority
NMS	new medicine service
NPE	net pensionable earnings
NPSA	National Patient Safety Agency
OJEU	Official Journal of the European Union

OMP	ophthalmic medical practitioner
ONS	Office of National Statistics
OOH	out of hours
PAF	postcode address file
PALS	patient advice and liaison service
PAM	professions allied to medicine
PCC	Primary Care Commissioning
PCT	primary care trust
PDS	personal dental services
PDS NBO	Personal Demographic Service National Back Office
Performer	The term primary care performer means medical, dental or ophthalmic performers registered on a performers list for the provision of primary care services to include military health and offender health services.
PGD	patient group direction
PHE	Public Health England
PLDP	performers' list decision panel
PMC	primary medical contract
PMS	Personal Medical Services
PNA	pharmaceutical needs assessment
POL	payments online
PPD	prescription pricing division (part of NHS BSA)
PSG	performance screening group
PSNC	Pharmaceutical Services Negotiating Committee
QOF	quality and outcomes framework
RCGP	Royal College of General Practitioners
RO	responsible officer
SEO	social enterprise organisation
SFE	statement of financial entitlements
SI	statutory instrument
SMART	specific, measurable, achievable, realistic, timely
SOA	super output area
SOP	standard operating procedure
SPMS	Specialist Personal Medical Services
SUI	serious untoward incident
UDA	unit of dental activity
UOA	unit of orthodontic activity

Annex 2: Performance Screening Group – Terms of Reference

Constitution and authority

The NHS CB has established a sub-group to be known as the performance screening group (PSG). It has authority to undertake any activity within these terms of reference.

Membership

Core membership of the group is:

- Senior manager with responsibility for quality and performance - chair
- GP appointed by the responsible officer
- Appropriate clinicians from each of the other primary care performer or contractor groups
- Direct report to the head of primary care
- Local representative committee (LRC) nominees.

Co-opted membership will be determined by the chair or responsible officer.

Frequency

The PSG will meet every month.

Purpose

To provide advice on the handling of cases where performance concerns have been raised about a primary care performer or contractor and ensure that all reported cases relating to the under performance and misconduct of primary care performers or contractors are investigated and managed in accordance with the NHS CB policy and procedure for primary care performers or contractors whose performance gives cause for concern (GPs,

dentists, pharmacy contractors, dispensing appliance contractors optometrists and optometric medical practitioners).

Objectives

- To ensure that all reported cases of underperformance and misconduct are considered, investigated, where appropriate, and managed in the interest of patient safety and high standards of patient care
- To ensure that primary care performers or contractors whose performance or conduct has given cause for concern are supported to improve to a satisfactory standard
- To ensure a fair, open, consistent and non-discriminatory approach to the management of underperformance issues
- To resolve cases of a non-serious nature through local action and support for improvement.

Duties

- To receive all intelligence which highlights issues of concern relating to the performance and conduct of primary care performers or contractors
- To consider each individual case presented in detail and decide whether further action is required, further information is required, or that there is no case to answer
- Where appropriate to initiate an investigations
- To decide upon and agree ideally through consensus but if not through the majority, a relevant course of action, the level of support required and the resources required
- To monitor progress against all cases and action plans, and decide when the case can be closed, or whether further action is required
- To consider referring for external advice from the National Clinical Assessment Service (NCAS), national professional and representative bodies, local representative committees, local education and training boards, or other advisory bodies
- For cases of a serious nature, or in cases where the primary care performer or contractor has failed to make significant improvements, to refer cases to the PLDP
- To monitor and review actions and recommendations arising from the PLDP
- To ensure that details of the primary care performer or contractor whose performance has been discussed, details of the actions and outcome, and details of the whistleblower remain strictly confidential.

Quorum

Business shall only be transacted at the meeting when all core members of the PSG (or nominated deputies) are present.

Attendance

Attendance is required by all members or nominated deputies.

Reporting

- The chair of the PSG will carry out referrals to the PLDP
- The chair of the PSG will report serious professional issues to the responsible officer
- The PSG will present an anonymised report to the NHS CB as required.

Annex 3: Performers List Decision Panel – Terms of Reference

Constitution and authority

The NHS CB has established a sub-group to be known as the Performers List Decision Panel (PLDP). The group is authorised by the NHS CB to undertake any activity within this terms of reference. The decision makers are the independent lay chair, the medical director or their nominated deputy, the nurse director of the local area team or their nominated deputy and the local representative committee nominee. The senior manager with responsibility for quality and performance, as they are the link between the PSG and the PLDP, is not a decision maker.

Membership

Membership of the group shall be as follows:

Core Members:

- An independent lay chair
- The Medical Director or their nominated deputy
- The Nurse Director of the Area Team or their nominated deputy
- An LRC nominee – discipline specific
- Senior manager with responsibility for quality and performance.

The LRC official as a core member of this group is responsible for providing advice as the clinical expert to the NHS CB in this decision making process. Within that role they are not representing the profession or the individual performer/contractor. In some instances it may be possible to have an LRC nominee from an LRC other than the one in which the contractor is located.

The AT must consider how the PLDP is best able to receive legal advice, either through a legally qualified chair or a legal clerk.

Frequency

The PLDP will meet monthly. It may also be convened urgently when required to consider a referral from the PSG or in serious cases a referral may bypass the PSG and be presented directly to the PLDP.

In cases when immediate suspension is required a decision may be taken outside of the PLDP meetings by two of the core members. As soon as practical, an appropriately convened oral hearing, in line with the Performers Lists Regulations or the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as appropriate, will be held.

Purpose

To take overall responsibility for the management of primary care performer's or contractor's performance. The group will consider and take appropriate action on all referrals of a serious nature in relation to the underperformance or misconduct of primary care performers or contractors (GPs, dentists, pharmacy contractors, dispensing appliance contractors, optometrists and optometric medical practitioners.)

Objectives

a) To consider information presented to the PLDP in response to referrals about serious underperformance or misconduct of primary care performers or contractors from the PSG or urgent referrals from the Responsible Officer or the Medical Director which have bypassed the PSG
b) Agree relevant and appropriate action in the interest of patient safety, and staff safety
c) To ensure that action is taken in line with NHS CB policy and procedure, and in line with NHS regulations
d) In addition, to provide a formal route for the consideration of applications to join the medical, dental and ophthalmic performers lists when deferral, conditional inclusion or refusal of an application applies.

Duties

a) To consider the information received, and make one or more of the following decisions:
   i. Take no further action and refer back to the PSG
   ii. Request a formal investigation
   iii. Make recommendations for improvement through remedial action
   iv. Take disciplinary action in compliance with current and relevant National Health Service regulations which result in conditional inclusion, contingent removal, suspension, exclusion and removal
   v. Consider action under the contractual arrangements
   vi. Refer to the relevant professional regulatory body
   vii. Refer to the National Clinical Assessment Service for advice and consideration of an assessment and/or remedial action
   viii. Refer to the police
   ix. Refer to NHS Protect
   x. To request the issue of an alert through the agreed NHS CB mechanism according to the Healthcare Professionals Alert Notice Direction (2006)
   xi. Referral to occupational health.

b) To reach a majority decision for appropriate action and/or recommendations. The independent lay chair, the medical director or their nominated deputy, the nurse director or their nominated deputy and the LRC official will have voting rights, to:
   i. Agree an action plan for remediation of the primary care performer or contractor when appropriate
   ii. Agree a reporting process for monitoring of the implementation of any action plans
   iii. Keep cases under review while primary care performers or contractors pursue remedial measures short of disciplinary action
   iv. Review actions taken under the performers list regulations or the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as relevant ie conditions, suspension and removal.

   In terms of decision making the panel will discuss the case presented to it and where they are unable to reach a majority decision then the chair will have the casting vote.

The senior manager with responsibility for quality and performance does not have voting rights.

Quorum

No business shall be transacted at the meeting unless 4 attendees are present.

Annex 4: Legislation Governing the Management of Medical, Dental and Ophthalmic Performers Lists and Contracts

The National Health Service Act 2006 as amended by the Health and Social Care Act 2012
The National Health Service (Performers Lists) Regulations 2004
The National Health Service (Performers Lists) Amendment Regulations 2005
The National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008
The National Health Service (Performers Lists) Direction 2010
The National Health Service (Performers Lists) (England) Regulations 2013
The National Health Service (General Medical Services Contracts) Regulations 2004
The National Health Service (Personal Medical Services Agreements Regulations 2004
The National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2004
The National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2005
The National Health Service (Primary Medical Services) (Miscellaneous Amendments) (No 2) Regulations 2005
The National Health Service (Primary Medical Services and Pharmaceutical Services) (Miscellaneous Amendments) Regulations 2006
The National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2007
The National Health Service (General Dental Services Contracts) Regulations 2005
The National Health Service (Personal Dental Services Agreements) Regulations 2005
The General Ophthalmic Services Contracts Regulations 2008
The Medical Profession (Responsible Officer) Regulations 2010

Guidance

Local GP Performance Procedures (NCAS, 2006)
Investigating Performance Concerns: Primary Care (NCAS, 2007)
Managing dental underperformance (NCAS, 2006)
How to conduct a local performance investigation (NCAS, 2010)
Primary medical performers lists delivering quality in primary care – advice for NHS CBs on list management (2004)
Supporting doctors to provide safer healthcare responding to concerns about a doctors practice (Revalidation Support Team)
NHS Act 1977 Secretary Of State's Determination - Payments to medical practitioners suspended from medical performers lists
http://bit.ly/XJTc92
Guidance on National Health Service (Performers List) Amendment Regulations 2008
http://bit.ly/Yg4YHu
The Performers Lists (Suspended Dentists' NHS Earnings) Determination 2006
http://bit.ly/Z51GVg
Information Management Guidance, The Revalidation Support Team
http://bit.ly/Z51plb

Annex 5: Legislation Governing the Management of Pharmaceutical Lists and the Provision of Pharmaceutical Services

The National Health Service Act 2006 as amended by the Health and Social Care Act 2012
The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013
The Pharmaceutical Services (Advanced and Enhanced Services) (England) Directions 2013
The Payments to Suspended NHS Chemists (England) Determination 2012

Guidance

Delivering quality in primary care. Primary Care Trust management of primary care practitioners' lists. Community chemist contractors/bodies corporate - http://bit.ly/zbYKth

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