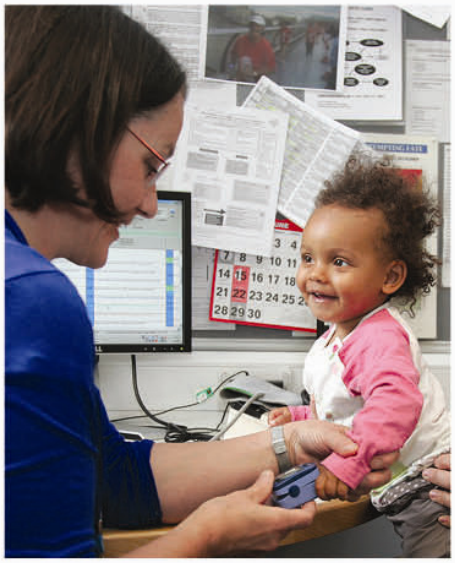
NHS
Commissioning Board

Standard operating policies and procedures for primary care



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

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Procedure 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

First published: 27 March 2013

Prepared by Primary Care Commissioning (PCC)

Contents

Purpose of procedure

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
- 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.
- 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.

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

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

This document should be read in conjunction with:

- Policy 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 procedure

This procedure should be read in conjunction with the policy for the investigation, management and support of primary care performers and contractors whose performance gives cause for concern.

The policy and procedure are compliant with the Performers List Regulations 2013 as a result of the current consultation on national performers lists for GPs, dentists and ophthalmic practitioners.

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.

Section 1 of the document applies to general practitioners (GPs), general dental practitioners (GDPs), ophthalmic medical practitioners (OMPs) and optometrists registered on a performers list for the provision of clinical services in primary care, which includes include military health and offender health services.

Section 2 applies to pharmacy contractors and dispensing appliance contractors (DACs) on a pharmaceutical services list. For ease of use, this procedure will refer to GPs, GDPs, OMPs and optometrists as performers, and pharmacy contractors and DACs will be referred to as contractors. It should be noted that 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 will be dealt with through HR internal 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.

Procedure aims and objectives

The aim of the procedure is to describe the process for the investigation, management and support of primary care performers and contactors whose performance gives cause for concern.

The procedure adheres to national guidance and regulations.

Definitions of underperformance

The procedure has been produced to support area teams to take appropriate and proportionate action in the area of performance concerns. Underperformance can be defined as a failure to meet accepted standards of professional practice as determined by the professional regulators (fitness to practice), reference Annex 5. The procedure also guides areas teams in managing performance concerns where there is a failure to meet acceptable standards of practice expected by the NHS CB (fitness for purpose). Underperformance can fall into one or more of the following categories:

- Personal conduct, performance or behaviour due to factors other than those associated with exercising of clinical skills
- Professional conduct, performance or behaviour arising from the exercise of clinical skills
- Professional competence, adequacy of performance related to the exercise of clinical competence
- Health issues - concerns relating to the health of a performer or contractor may be a significant contributory factor in underperformance
- Organisational or systems failure - for example:
    - Inadequate administrative or professional support
    - Failure to apply policies and procedures
    - Failure to check on the qualifications and competence of locum or recruited staff

As many performance problems relate to the interaction between the performer/contractor and the health care system in which they work, broader contributory factors need to be taken into account.

This could mean that recommendations for dealing with concerns extend beyond the individual, to arrangements within the practice, or, indeed, to the wider system of primary care. Elements of underperformance may need to be dealt with through the contractual route. Elements of underperformance may also need to be considered in instances where the performer is also a signatory to the contract.

The National Health Service (Performers List) Regulations 2013, define three areas of performance concerns:

- Efficiency – eg seriously compromising/disrupting the efficient delivery of health care. This area would mainly cover competence and quality of performance.
- Fraud – eg obtaining or attempting to obtain resources to which the primary care practitioner is not entitled.
- Suitability – eg evidence of unsuitable or dangerous clinical practice or inappropriate personal behaviour both within and out with the work context. This may include (but is not limited to) criminal offences, for example those of a sexual or violent nature. It also includes satisfactory qualifications and registration.

Further information about these areas is contained in Annex 2.

Procedure

Identification of performance that gives cause for concern

All concerns about the performance of a performer or contractor must be reported to the senior manager with responsibility for quality and performance, preferably in writing and for doctors these concerns will also be discussed with the responsible officer.

Information about potential poor performance may be received by the NHS CB from a wide variety of sources, which include:

- Health care employee from within and outside of the NHS CB
- Member of staff from within general practice, dental practice, optometric practice, pharmacies or dispensing appliance contractors
- Information from patients through the complaints procedure, patient advice and liaison service (PALS) enquiries, patient safety incidents, and patient, public and carer engagement groups
- Local professional networks (LPNs)
- Care Quality Commission (CQC)
- National professional regulatory or representative bodies
- Local representative committees
- Self-identification
- Monitoring of services provided by out of hours, review of complaint, incidents and clinical review meetings
- The systematic review of incidents, serious incidents, complaints and clinical negligence claims
- The GP appraisal process
- Through the GP revalidation process
- Routine monitoring and inspection to ensure the safe management and use of controlled drugs
- Visits to practices and pharmacies e.g. Quality & Outcomes Framework (QOF) assessments, contract reviews, clinical governance visits, Local Healthwatch organisations visits
- People and organisations outside of the NHS, e.g. police, coroner, social services, courts, and the Health and Safety Executive (HSE).

Recording concerns

Each concern that is reported to the senior manager with responsibility for quality and performance will be recorded using a unique identifier. All correspondence, file notes, reports, action plans and other documentation relating to each case will be maintained in chronological order under that identifier, in files marked confidential, and stored in a locked cabinet. All electronic files will be password protected, and a limited number of named personnel only will have access to both written and electronic files.

On receipt of a letter, email or telephone call raising a concern about a performer or contractor the senior manager with responsibility for quality and performance will acknowledge receipt, in writing.

Assessment of the reported concern

The NHS CB is committed to valuing diversity and promoting equality throughout the organisation, 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 NHSCB is expected to adhere to the spirit and the letter of this legislation.

All panel members will have up to date training on equality and diversity.

- Equality - treat everybody equally and fairly in a non discriminatory manner
- Diversity - recognising variety of cultural and different backgrounds
- Fairness - the consistent application of the standard.

The NHS CB should be aware that there may be cultural differences in the way that insight is expressed, for example, whether or how an apology or expression of regret is framed and delivered and the process of communication, and that this may be affected by the practitioners circumstances, for example their ill health.

Cross -cultural communication studies show that there are great variations in the way individuals from different cultures and language groups use language to code and de-code message. This is particularly the case when using a second language, where speakers may use the conventions of their first language to frame and structure sentences, often translating as they speak

and may also be reflected in the intonation adopted. In addition, there may be differences in the way that individuals use of non-verbal cues to convey a message, including eye contact, gestures, facial expressions and touch.

Awareness of and sensitivity to these issues are important in determining the following:

- How a practitioner frames his / her 'insight'
- Whether or how a practitioner offers an apology
- The practitioner's demeanour and attitude during the hearing.

A preliminary investigation is undertaken to establish the facts. NCAS advice may be sought at this stage. NCAS has produced a good practice guide entitled *How to conduct a local performance investigation* - http://www.ncas.nhs.uk/resources/good-practice-guides/ investigations/ #34 Support-the-practitioner, which sets out the principles to be considered when investigating cases about professional performance. The guide contains report templates, check lists and stock letters which area teams may find useful.

Before deciding if there is a case to answer and deciding if a formal investigation is required. This will include:

- A review of any relevant clinical or administrative records, the extent of any review of clinical records will be determined by the preliminary discussions and advice from NCAS.
- Review of any report or documentation relating to the issues in question (e.g. serious untoward incident report, any letters relating to the issues or notes/statements made by individuals with knowledge of the issues). Formal witness statements may not have been drafted at this stage, but the individuals concerned should always make a written record as soon as they can while matters are still fresh in their minds
- Where there has been a patient safety incident, Root Cause Analysis (RCA) toolkit (http://www.nrls.npsa.nhs.uk/resources/?entryid45=59901) will be used to support the performance screening group (PSG) decision making process by identifying whether the incident was a system failure or relates to an action by an individual
- Interviewing of individuals may be appropriate as part of the preliminary investigation where clarification of the substance of the individuals' comments or the extent of his/her involvement is necessary
- The preliminary investigation should be completed as quickly as possible, normally within, at most, 10 working days of issues being

raised. At this initial stage of investigation it is important that all matters are dealt with sensitively and in confidence. Generally performers or contractors will be made aware of the complaints made against them at the outset and have the opportunity to feed into the preliminary investigation and provide information to the AT about the context of the complaint or concern.

- The AT will use discretion and judgment in notifying the performer or contractor where there is a vexatious complaint. The performer or contractor will not be made aware of the complaint or investigation at the initial stages in cases of fraud.
- The preliminary investigation is undertaken by the senior manager with responsibility for quality and performance, with advice and guidance of the NHS CB professional advisors and the relevant local representative committee (LRC), appropriately and when required.
- The senior manager with responsibility for quality and performance will present all the information gathered during the preliminary investigation to the PSG.

Performance screening group

Stage 1

The PSG will review all new cases of concern presented by the senior manager with responsibility for quality and performance, and is responsible for monitoring all on-going cases until they have been formally closed. This will include keeping written minutes of meetings setting out the reasons for decisions and actions taken.

It is the responsibility of the PSG to review each case on an individual basis as each case is different and needs to be dealt with according to the case circumstances.

It is the responsibility of the PSG to consider verifiable information and evidence.

Where a case relates to a member of the PSG or close colleague (e.g. partner), a conflict of interest arises. This should be declared by the PSG member who should not then take part in any discussions relating to the case in question. The appearance of potential conflicts of interest should also be considered.

The PSG will consider if all immediate necessary steps have been taken to protect patients and the wider public by responding promptly and effectively to the concerns that have been raised.

The PSG will ensure that all immediate necessary steps have been taken to protect staff, including whistle-blowers, to support the subject of the proposed investigation and protect any sources of evidence.

The PSG will also consider if immediate necessary steps have been taken to protect the performer or contractor, for example recommending a referral to occupational health services.

The PSG will consider and agree if simple measures applied locally are appropriate, and if they will be an effective method of resolving concerns. Local resolution and a supportive approach to resolving concerns to the benefit of performers or contractors and patients alike should be a first consideration.

Based upon the information from the preliminary investigation, the PSG will decide whether there is a case to answer. If on preliminary investigation it is agreed that the process has gathered as much information as possible, and from that information there are no grounds to substantiate the reported concerns the case will be closed. Reasons for the findings of the decision will be given to the performer or contractor.

Stage 2

If the PSG agrees that there may be substance in the allegations it will then decide upon the following:

- Who should meet with the performer or contractor and inform them of the concern raised, explain the process being followed and give them the opportunity to respond to the allegation.
- Who should support the performer or contractor
- How the actions are going to be monitored

The senior manager with responsibility for quality and performance will formally write to the performer or contractor to advise them of the concern raised and confirm that a meeting will be arranged

Action might include the following:

- Developing a formal local action plan agreed with the performer or contractor with clear outcomes, timescales, progress measures and review procedure
- Education or update training
- Referral for an occupational health assessment
- Request for a formal investigation
- Support with specific issues from appropriate members of the AT
- Referral to the performers lists decision panel (PLDP) if it is considered that local resolution is inappropriate due to the serious nature of the concerns raised, or the performer or contractor is failing to improve, or the performer or contractor is non-compliant with advice from the National Clinical Assessment Service (NCAS) or non-compliant with local resolution.

Stage 3

The PSG and the PLDP can take advice from NCAS, LRCs, local education and training boards (LETBs), NHS CB lawyers, professional regulatory bodies or other appropriate external bodies in order to assist the decision making process for appropriate action and monitoring.

The PLDP will refer cases to the regulatory body, police and/or NHS Protect where appropriate and necessary. There may be instances where it is appropriate for the AT's responsible officer (RO) and or the medical director, as the senior clinicians with responsibility for all primary care performers and contractors, to refer to the regulatory body, police and/or NHS Protect, for example, following advice from the regulatory body's employment advisers outside the mechanisms of the PSG and PLDP.

Stage 4 – remediation and closure

The PSG will monitor the implementation and progress of the performer's or contractor's local action plans, NCAS actions plans, recommendations made by the PLDP, and action plans arising from the PLDP.

Whilst the PSG will adopt a supportive approach it should also actively encourage the performer or contractor under consideration to seek outside support mechanisms such as occupational health, their own GP, family, friends, defence organisations and the relevant LRC.

The PSG has the authority to close cases when all the actions have been implemented, improvements have been made, and/or all the reported

concerns have been resolved. The performer or contractor will be informed that the case has been closed, and that the case file will be archived.

A risk assessment of each case will be made using the risk quantification matrix in Annex 3. Cases assessed as high risk will be entered onto the NHS CB risk register on an anonymous basis using a unique identifier until all actions have been implemented and the concerns resolved.

Where the PSG agrees to close a case a final risk assessment will be made using the risk quantification matrix in Annex 3 and the residual risk priority table in Annex 4. This will be used to trigger the appropriate level of escalation should further issues be identified.

Stage 5 – Liaison between investigating organisations

Where the performer or contractor is the subject of an on-going investigation by the police, NHS Protect or their professional regulatory body, this does not prevent a local investigation into related or unrelated matters taking place, but the PSG will consult with the relevant organisation before commencing any local investigations. Where a local investigation is already underway and the PSG becomes aware of another investigation, liaison with the relevant body will take place. It might also be appropriate for the PSG to continue local assessment/investigation for cases that are also being investigated by another external body, but the PSG will consult with the external body to ensure it is appropriate and necessary, in order to ensure that it does not compromise their investigation.

Where an RO becomes aware of an issue about a performer or contractor for whom they are not responsible, the RO must pass information about the concern to the relevant AT RO who has governance oversight. This is part of the general duties of a doctor to pass on information to the appropriate part of the system.

The PSG may reach one of the following decisions:

i. Following risk assessment there is no case to answer and the matter should be dismissed and the case closed. A record of the proceedings is made and retained by the senior manager with responsibility for quality and performance and the performer or contractor informed of the reasons for the findings and the decision reached. It is necessary to keep a record of these incidences in order to effectively monitor and manage either vexatious complaints, or a repetition/s of the concern.
ii. Further guidance is required. This may be sought in consultation with NCAS, professional regulatory bodies, lawyers, or LRCs.

iii. The case in question, or some of the issues relating to the case in question are not issues of underperformance and should be considered in another forum. The PSG may continue to discuss some of the issues relating to the case if relevant.

iv. Formal investigation. In this case the PSG may choose to request a formal investigation of the performer or contractor.

v. There is sufficient information for a remedial action plan to be agreed with the performer or contractor. In this case a process will be agreed for developing a remedial action plan with the performer or contractor involved. The remedial action plan will include a timetable, details of the evidences required to agree that the plan has been achieved, identification of any resources required and a review date for the matter to be reconsidered by the PSG.

vi. There is sufficient information to come to the conclusion that patients' well-being is compromised and the performer or contractor should not be performing or providing services. In this instance a request to convene the PLDP will be made who will consider the information presented by the PSG under current and relevant NHS regulations. The issue may require immediate referral to the relevant professional regulatory body, or other external body such as the police or the NHS Protect. Where this is deemed necessary, the performer or contractor about whom there may be allegations or cause for concern will be notified and offered an opportunity to make representation to the PLDP. It is expected that any dental, medical or pharmaceutical case referred to the PLDP will be brought to the attention of NCAS for advice and support. Performers or contractors have the right to representation and an observer of their choice may accompany them.

vii. The case is on-going and requires further monitoring. Some performers or contractors will choose to discontinue practice before these procedures have run their course. In such cases the PSG will refer to the PLDP to ensure appropriate regulatory action is taken. It should be noted that performers may not withdraw from the performers list where they are being investigated by the PLDP. Similarly pharmacy contractors and DACs must remain included in the pharmaceutical list until the relevant investigation or proceedings have been concluded.

It is also possible that some performers or contractors will refuse to co-operate with the procedures and adopt a confrontational approach. In cases of non-cooperation the PSG should seek guidance (NCAS, LRCs lawyers and relevant professional regulatory body) as to what, if any, further action should be taken.

Formal investigation

For cases where a single serious incident has occurred, or allegation made, or cases where there are outstanding and unanswered facts, information, or data from the preliminary investigation, or there are continual concerns reported about a performer or contractor, a formal investigation will be requested by the PSG or the PLDP.

A case manager and a lead investigator will be nominated by the PSG or PLDP. The case manager will always be the senior manager with responsibility for quality and performance who is Chair of the PSG or nominated deputy. The terms of reference for the investigation and the timescale will be agreed by the PSG or PLDP. The investigator should not be the person who takes any decision to suspend, include with condition or remove the performer/contractor. The case manager and the lead investigating officer must be appropriately trained and there should be no potential conflict of interest. The case manager and investigator must take into account information contained in NCAS guidance *How to conduct a local performance investigation 2010 and Handling concerns about a practitioner's behaviour and conduct 2012.*

Advice from NCAS or other external bodies will be accessed in order to inform the terms of reference, and/or for advice and guidance on the investigation process.

The performer or contractor will be informed in writing that the formal investigation is being undertaken, of the terms of reference of the investigation, the allegations or concerns being investigated, and be provided with the name of the case manager. The performer or contractor will be made aware of the procedure, the likely course of action if they are compliant or non-compliant, and be given an opportunity to make oral and written representations.

The investigation will normally be completed within six weeks of appointment and a report submitted to the case manager within a further five working days. In cases where it is not possible to comply with the timescale the performer or contractor will be notified of the delay, the reasons for such delay and the expected timescale for completion of the investigation and the report.

When the investigation is complete, the information will be presented to the PSG or the PLDP, who will take appropriate and necessary action.

The NHS CB's assurance management frameworks may be of use during the investigation.

Where a serious incident has taken place, the incident decision tree will be used in order to assist in identifying whether the incident was a system failure or relates to an individual.

Performers list decision panel

The PLDP will be convened when required at the request of the PSG, the RO or the area director.

If a member of the PLDP considers they have a conflict of interest in a case then they must declare it and should not then take part in any discussions relating to the case in question. The appearance of potential conflicts of interest should also be considered by the chair of the panel prior to any discussions being held.

The PLDP will be convened to consider cases of a serious and/or urgent nature, where disciplinary procedures may need to be implemented. The role of the panellist is to:

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

Disciplinary procedures can take any of the following courses of action:

i. Refer the case immediately to the professional regulatory body or other external bodies such as the police or NHS Protect, NHS Business Services Authority.
ii. Manage the case formally by requiring additional investigation, remediation and/or other support/actions.
iii. The matter is considered to be health related, and is referred to occupational health for assessment, onward referral or care co-ordination as appropriate, and management advice.
iv. The complaint or concern is not justified, in which case no further action is taken. The reasons for this decision must be clear and explicit. The PLDP will inform the performer or contractor, in writing, that no further action is being taken and also inform the individual who raised the concern
v. Removal, inclusion with conditions or suspension from the list. NCAS and/or the relevant professional regulatory body must be contacted if this course of action is envisaged. Suspension should not be considered as an endpoint in itself, but may be necessary to ensure patient safety whilst further action is on-going.

Section 1 – GP, GDP, OMP and optometrists

When referring to this section of the procedure please note that NCAS does not provide support in connection with optometrists.

Suspension

In respect of all performers, suspension is only justifiable if it is considered necessary for the protection of members of the public or otherwise in the public interest. The NHS (Performers List) Regulations 2013 allow an AT to apply immediate suspension. In order to determine whether to suspend a performer the AT may consider the following circumstances:

i. Whilst the PLDP considers whether to remove or include with conditions the performer;
ii. Whilst it awaits:
    - the outcome of a criminal or regulatory investigation affecting the performer; or
    - the decision of a court or body, which regulates the performer's profession anywhere in the world affecting the performer;
iii. Where it has decided to remove the performer but before the decision can take effect;
iv. Whilst an appeal is being considered.

A suspension under (i) cannot exceed six months. The PLDP is obliged to tell the performer the extent of the suspension and where that is less than six months the PLDP can extend the period but not in such a way that the overall period exceeds six months.

A suspension under (ii) is not restricted to six months but any period of suspension that follows the decision of the court or body cannot exceed six months. The performer must be told the length of any additional period of suspension.

Suspension under (iii) lasts until the removal is affected.

Suspension under (iv) lasts until the appeal is disposed of by the First-tier Tribunal.

Suspension under (i) and (ii) can be extended beyond six months by the First-tier Tribunal on application. There will be cases where the original six months

suspension expires after the PLDP has reached a decision. In such cases the suspension will continue until the First-tier Tribunal has reached a decision. In such cases the suspension will continue until the First-tier Tribunal has disposed of the application. Applications may also be made to the First-tier Tribunal to extend any period of suspension that they have already imposed.

Conduct

A suspension can be put into effect immediately where patients are at risk but the AT must review this decision, as detailed below. In such circumstances, it will probably not be possible for the case manager to have collected all relevant evidence to consider the case. The investigating officer does not have the power to suspend a performer. Any decision to suspend, and to notify the performer of this, must be put into effect by the area director and RO.

In legal terms suspension is a neutral act in so far as a judgement has not been arrived at in terms of regulatory action and undertaken whilst investigations are proceeding and as such will not be used by the PLDP as a disciplinary sanction. During the period of a suspension the performer will be remunerated in accordance with the Secretary of State's determination and statements of financial entitlements in force at that time. In the case of a single-handed performer they must make their own arrangements to cover their practice whilst they are suspended. They must ensure they employ or engage a performer for the period of the suspension for the provision of clinical services under their contract. The NHS CB will support both the suspended performer and their practice throughout the suspension period in line with current legislation.

If immediate suspend is not required in order to reach a decision about suspension under Regulation 12 of the NHS (Performers List) Regulation 2013 PLDP shall:

- Give notice to the performer in writing of any allegation against him/her.
- Give notice of the action they are considering taking and on what grounds; and
- Give the performer the opportunity to put their case in writing and/or attend an oral hearing before NHS CB on a specified day provided that at least two working days' notice of the hearing is given (beginning on the day on which the notice is given). Copies of any documents and witness statement upon which the NHS CB proposes to rely at the hearing shall if reasonably practical accompany the notification. The performer is free to attend the hearing accompanied by a LRC

member/officer and/or a member of their defence organisation, who may support and/or advise. However, the unavailability of such an individual shall not normally be a reason for delaying the suspension hearing.

If the performer does not wish to have an oral hearing or does not attend the oral hearing, the PLDP shall inform him/her of their decision and the reasons for it in writing (including any facts relied upon).

If an oral hearing takes place, PLDP shall advise the performer of the names of the chair and PLDP members. The PLDP will take into account any representations made by the performer before they reach their decision at the hearing.

The PLDP shall notify the performer of their decision and the reasons for it in writing (including any facts relied upon) and may suspend the performer with immediate effect or allow the performer to resume practice subject to conditions imposed by the PLDP.

The PLDP shall notify the relevant bodies and agencies of the decisions as required by the NHS (Performers Lists) Regulations [2004 as amended].

The effect of a suspension is that although the performer's name remains on the relevant NHS CB performers list the performer is treated as though he/she has been removed. The effect is therefore, that the performer cannot perform primary medical, dental or ophthalmic services.

The PLDP can revoke a suspension at any time.

A contemporaneous written record of proceedings will be maintained in line with the NHS CB's retention and storage of records policy.

Immediate suspension

Where the PLDP considers it necessary to do so for the protection of patients or members of the public or that it is otherwise in the public interest, it may decide that a suspension is to have immediate effect without carrying out the steps above.

Where the performer is suspended immediately the PLDP must:

- Notify the performer of its decision, the reasons for it and the allegations against him/her

- Review its decision within two working days of the performer being suspended (beginning of the day that the performer was suspended) and
- Give the performer the opportunity to put his/her case to an oral hearing, on a specified day, provided that at least two working days notice of the hearing is given (beginning on the day that the performer was suspended)

If the PLDP does not review the decision to suspend, within two working days, by following the points above then the suspension will cease to have affect.

If the performer does not wish to have an oral hearing or does not attend the hearing, the PLDP can confirm or revoke the suspension.

If the oral hearing does take place, the PLDP must take into account any representations made before it reaches its decision and the PLDP may:

- Confirm or revoke the suspension or
- Allow the performer to resume practice subject to conditions imposed by the PLDP.

Where the PLDP decides to confirm a suspension the PLDP must notify the performer of:

- It's decision and the right of review under regulation 16 of the NHS (Performers Lists) Regulations 2013, immediately, and
- The reasons for the decision (including any facts relied upon) within 7 days of the decision.

Review

The PLDP is able to review a suspension for a case whilst it considers whether to remove or include with conditions the performer and/or whilst it awaits the decision of a court or body, which regulates the performer's profession anywhere in the world affecting the performer, if it considers it appropriate. It must review the decision to suspend if the performer requests a review in writing subject to the request being no earlier than:

i. Three months and no later than six months after the performer was suspended from the list; or
ii. Six months after the decision on any previous review.

On any such review the PLDP can:

i. Maintain the suspension;
ii. Revise the period of the suspension;
iii. Revoke the suspension in full or with conditions, subject to the performer's agreement.

The PLDP cannot be required to review a suspension where it has decided to remove the performer but before the decision can take effect and/or whilst an appeal is being considered. However, it can of its own volition revoke or extend the period of a suspension at any time. Where it extends a suspension it must follow the same procedures that apply to a review and must be within the time limits permitted to the PLDP i.e. 6 months.

For suspension whilst the PLDP awaits the decision of a court or body, which regulates the performer‘s profession anywhere in the world affecting the performer it may lift a suspension when the criminal process or the regulatory, licensing or other body investigation is completed and there is no finding against the performer. Where there is a criminal conviction or a "finding against" by the professional, regulatory or licensing body the PLDP must consider whether there are grounds to remove or include with conditions the performer from the relevant list under the normal procedures. This can include a further suspension not exceeding six months where all the usual criteria are met.

Removal from the Performers List

Mandatory removal

The PLDP must remove a performer from its list where they become aware that he/she:

i. Has been convicted in the United Kingdom of murder
ii. Has been convicted in the United Kingdom of a criminal offence, committed after 13 December 2001 and has been sentenced to a term in prison that exceeds six months.
iii. Has been nationally disqualified by their professional body.
iv. Is no longer a member of the relevant professional body
v. Has died
vi. Doctors suspended by the GMC

The PLDP shall notify the performer immediately that he/she has been removed from the list.

Discretionary Removal

Where the PLDP is considering, in relation to the relevant list:

a. Removing a performer,
b. Removing a performer for breach of a condition;

The PLDP will follow the procedure set out in paragraphs below.

The PLDP shall remove the performer and shall notify him/her immediately that they have done so.

Before reaching a decision the PLDP shall give the performer:

a) Notice in writing of any allegation against him/her;
b) Notice of what action the PLDP is considering and on what grounds;
c) Opportunity to make written representations to the PLDP within 28 days of the date of the notification under sub-paragraph (b);
d) Opportunity to put his/her case at an oral hearing before the PLDP, if he/she so requests within the 28 day period mentioned in the sub-paragraph (c).

If the performer makes no representations within the period specified, the PLDP shall inform him/her of their decision, the reasons for it (including any facts relied on), and of any right of appeal.

If the performer makes representations, the PLDP must take them into account before reaching their decision and notifying the performer of their decision, the reasons for it (including any facts relied upon), and of any right of appeal.

If the performer requests an oral hearing, this must take place before the PLDP reach their decision and the PLDP must then notify the performer of their decision, the reasons for it (including any facts relied upon), and of any right of appeal (see appeals section of this document).

When the PLDP notifies the performer of any decision, they will inform him/her that if he/she wishes to exercise his/her right of appeal, he/she has 28 days from the date of the decision to do so, and tell him/her how to do so.

The PLDP will also notify the performer in accordance with his/her rights under statute or regulations as may be in force from time to time.

A contemporaneous written record of proceedings will be maintained indefinitely as a record of the case. Information that is older than seven years will not be used as evidence in any future complaint about the performer or contractor. See information governance section.

Conditions

Where the PLDP considers it appropriate for the purpose of preventing any prejudice to the efficiency of the services or for the purpose of preventing frauds, the PLDP may impose conditions on the performer for their continued inclusion in the performers list.

Where the PLDP is considering imposing conditions it must give the performer:

- Notice of any allegation against the performer
- Notice of what action the PLDP is considering and on what grounds
- The opportunity to make representations to the PLDP within a period of 28 days from the date of the notification and
- The opportunity to put the performer's case at an oral hearing of the PLDP, if the performer requests it, within the 28 day period mentioned above.

After consideration of any representations made by the performer and any oral hearing held, the PLDP must decide whether or not to impose conditions on the performer's inclusion in the performers list within 7 days of making that decision and notify the performer of:

- The decision and the reasons for it (including any facts relied upon)
- Any right of review and
- Any right of appeal – at which time the PLDP must confirm:
    - that the right of appeal must be exercised within a period of 28 days from the date the PLDP informed the performer of their decision
    - How to exercise any right of appeal

Where the PLDP decides to impose conditions the performer must within 28 days of the date of notification of the decision:

- Notify the PLDP whether he/she wishes to be included in the performers list subject to those conditions and
- If the performer does wish to be included, provide an undertaking that he/she will comply with the conditions specified.

These conditions can be removed at any time by the PLDP. The PLDP will review the conditions applied to a performer where it considers such action

appropriate and will review those conditions, if the performer requests a review in writing, subject to the request being no earlier than:

i. Three months after the decision of the PLDP to impose conditions;
ii. Six months after the decision on any previous review.

On any such review the PLDP can:

i. Maintain the existing conditions;
ii. Remove some or all of the existing conditions;
iii. Impose fresh conditions

If the PLDP determines that the performer has failed to comply with any conditions imposed, it may:

- Vary all or any of the conditions imposed
- Impose new conditions or
- Remove the practitioner from it list (subject to Regulation 14 of the NHS (Performers Lists) Regulations 2013.

There the PLDP makes a decision to remove a performer from the performers list it must notify the performer of:

- The decision and the reasons for it (including any facts relied upon)
- The right of appeal
- The right of review.

The PLDP may remove a performer, subject to normal procedures, at any time where there is evidence that there has been a breach of a condition (or variation of the terms of service) imposed as a result of a subsequent review.

The PLDP cannot review conditions decided upon by the First-tier Tribunal at an appeal. These must be reviewed by the First-tier Tribunal although the PLDP may seek such a review in the same way as the performer.

Constitution of panels for oral hearings

The PLDP will conduct an oral hearing in cases of suspension, removal, or review.

The Chair and all members of the PLDP must be present at the commencement of an oral hearing but such a hearing may, if necessary, continue in the absence of one member (other than the Chair) in the event of

illness or unavoidable absence. A member who has been so absent shall take no further part in the hearing or in the deliberations of the panel.

In the event that the Chair is unable to continue the hearing due to ill health or other unavoidable circumstances, the hearing shall not resume and a fresh panel should be appointed by the responsible officer as soon as practicable.

Decisions shall be taken by a majority of votes. The independent chair, the medical director or their nominated deputy, the performer/contractor specific LRC official and the nurse director or their nominated deputy have voting rights.

Persons attending the hearing

The Chair will agree a list of the people who may attend the meeting. The Chair will have the right to adjudicate in cases of dispute.

The performer may be accompanied and/or represented at the hearing by a person or persons of their choice (who may be a representative of the LRC – who cannot be the same LRC nominee who has voting right - or a professional defence organisation). A person who gives evidence at a hearing shall not be entitled to represent or accompany the practitioner at the hearing.

The NHS CB may be accompanied and/or represented at the hearing by a person, or persons, of their choice.

The performer and the NHS CB shall each nominate an individual person who shall, subject to the discretion of the Chair have the right to address the PLDP and put questions to witnesses.

Either party may propose the calling of witnesses to give evidence in support of statements being used during the hearing. Witnesses are not under any legal obligation to attend and they will only be asked to do so where the Chair is satisfied that their attendance would add materially to the decision-making process.

Arrangements for a hearing in removal and review proceedings

Where an oral hearing is requested by a performer in, removal or review proceedings, within the time period required by the regulations, the PLDP will, wherever reasonably practicable, set the date for the hearing within 7 days of

receiving the performer's representations, served in compliance with the regulations.

The date set for the hearing will, where reasonably practicable, be within 28 days of receiving the performer's representations.
Not less than 14 days before the date set for the hearing, the NHS CB shall send to the performer the following:

- Notice of the time, date and place fixed for the oral hearing;
- Notice that the performer has the right to apply in writing to the Chair to have the date of the hearing moved for good reason in which event he should submit details of his availability;
- Notice of the name of the Chair and those of the other members of the panel;
- Notice that the performer has the right to object to any member of the PLDP on the grounds of conflict of interest or prejudice;
- Copies of any documents on which the NHS CB proposes to rely at the hearing and copies of any witness statements on which the NHS CB intends to rely without calling the witness who made the relevant statement;
- The names of any witnesses whom the NHS CB proposes to call to give evidence at the hearing and copies of relevant statements and any other associated documents to be relied upon at the hearing;
- Notice that he/she should send to the NHS CB not less than 7 days before the date set for the hearing, copies of any documents upon which he/she proposes to rely and the names of any witnesses whom he/she proposes to call.

In the event that the performer makes a request to move the date of the hearing, the Chair will consider the request and may accede or refuse it at his discretion.

In the event that the performer lodges an objection to any member of the PLDP, the Chair will consider the request and may accede or refuse it at his discretion. In the event that the performer objects to the identity of the Chair, then the matter shall be referred to the responsible officer for resolution.

Unless the performer requests, and is granted, a deferment of the hearing date or attends the hearing on the date notified to him/her, the oral hearing will proceed in his/her absence.

Where the performer has put forward a proposal to call witnesses, the Chair shall consider the proposal and may accede or refuse it at his discretion.

Any further documents or statements, which have not been issued in accordance with the timescale set out above and on which the NHS CB or the performer proposes to rely, may be served on the performer or the NHS CB as the case may be, at any time up to 2 working days before the date set for the hearing.

Subject to the overriding duty not to unduly prejudice the performer or the NHS CB, the Chair shall have the discretion to abridge any time set for the submission of documents or statements or to permit their provision at the hearing.

The Chair may at any time, at the request of either party or of his own motion, direct that the hearing date be deferred to another date for good cause. If the Chair makes such a direction, the performer shall be notified in writing of the time, date and place of the deferred hearing.

In the event that the Chair is satisfied that the performer is unable to attend the hearing by reason of ill-health or for other good reason supported by evidence, then he shall defer the hearing for such a period as is deemed reasonable in the circumstances.

Where a performer's ill-health prevents a hearing from taking place, the PLDP shall consider at what point it is reasonable for him/her to be referred to the occupational health service.

Any date set for a resumed hearing shall be notified to the performer and/or his/her representative who shall be invited to submit such further representations and evidence concerning the performer's fitness to attend as appropriate not less than 7 days before the deferred hearing date.

After a reasonable period following a deferment, the PLDP will consider holding a hearing in the performer's absence unless there are compelling reasons for further postponement.

The hearing in removal and review proceedings

The hearing will take place in private.

The performer and the NHS CB shall each nominate an individual person to present their case and subject to the discretion of the Chair, will have the right to address the panel and put questions to witnesses.

A clerk appointed by the PLDP, who will deal with all administrative matters associated with the hearing, shall assist the PLDP. The clerk and any necessary support staff may be present throughout the hearing, but shall take no part in the proceedings.
The Chair may, at his discretion, appoint a legally qualified clerk to advise the panel on any points of law which might arise during the hearing. Any lawyer so appointed shall not be a member or employee of the firm of lawyers engaged to represent or advise the NHS CB in these proceedings. In the event that a lawyer is so appointed he shall be present throughout the hearing, but shall take no part in the proceedings unless the panel seeks his advice.

At the commencement of the hearing the Chair shall explain:

- The purpose of the hearing;
- The standard of proof to be applied in suspension and removal cases;
- The procedure that will be followed; and
- The process to be followed, after the panel has finished hearing the representations and taking evidence and after the parties have left the hearing.

The procedure to be followed at the hearing will be as set out in this document. However, the overriding duty on the panel is to ensure that the matters before it are considered in a way that is fair to both the performer and the NHS CB.

In order to give effect to the overriding duty of fairness, the Chair shall have a general discretion to conduct the hearing in a way that he considers just, and he may vary any procedural requirement herein in order to achieve this objective.

In these procedures the ‘’hearing’’ means the open part of the PLDP meeting (that is, not including any initial pre-meeting by the panel or the subsequent deliberations of the PLDP).

Subject to the discretion of the Chair, the following procedures should be followed at the hearing:

- All parties, their representatives and any observers must be permitted to be present throughout the hearing unless a direction to the contrary is made by the Chair;
- The determination of any procedural and/or legal matters at the hearing shall be for the PLDP and not just the Chair alone. Any party present may seek to raise any such matter at any point and the panel may

consider the matter or adjourn consideration of it to such time as they consider fit, in their absolute discretion;

- The nominated representative of the NHS CB should first present the NHS CB's case specifying clearly the issues to be considered by the PLDP and making reference as appropriate to the documentation and witness statements;
- The NHS CB will then call any witnesses on its behalf. Witnesses should not be allowed into a hearing until they are called to give evidence and must leave once they have done so unless the panel agrees that they may remain. In addition, witnesses who have given evidence must not be permitted to speak with witnesses who have not yet given evidence;
- Subject to the following provision, the performer and/or his/her representative and/or members of the panel may question those present representing the NHS CB and/or any witnesses. The panel may consider that it is appropriate that questions should be asked through the Chair. If such a direction is made, the Chair should not reject a question unless it is irrelevant to the matters at issue;
- The performer or his/her representative shall then be invited to present the case and call any witnesses on his/her behalf following the same procedure as was applicable to the NHS CB witnesses;
- The NHS CB representative and/or members of the panel may put questions to the performer and his/her witnesses on the same basis as questions may be put to representatives of the NHS CB and its witnesses;
- The PLDP may also receive oral or written evidence on its own initiative from third parties provided that such evidence has been sufficiently disclosed to the performer and the NHS CB;
- At the conclusion of the evidence the NHS CB and then the performer should be invited to sum up their cases and add any final comment. Following the final summing up of the cases, the parties will withdraw from the hearing and the panel will consider what action should be taken.

In proceedings before the panel, the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as vulnerable witnesses:

- Any witness under the age of 17 at the time of the hearing
- Any witness with a mental disorder within the meaning of the Mental Health act 1983
- Any witness who is significantly impaired in relation to intelligence and social functioning

- Any witness with physical disabilities who requires assistance to give evidence
- Any witness where the allegation against the practitioner is of a sexual nature and the witness was the alleged victim
- Any witness who complains of intimidation.

The PLDP may adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable person. Measures adopted by the PLDP may include, but shall not be limited to:

- Use of video links
- Use of pre-recorded evidence as the evidence in chief of a witness, provided always that such witness is available at the hearing for cross - examination and questioning by the committee or panel
- Use of interpreters (including signers and translators) or intermediaries
- Use of screens or such other measures as the committee or panel consider necessary in the circumstances, in order to prevent access to the witness by the practitioner.

PLDP members may take their own notes of the proceedings throughout the hearing. All notes made by PLDP members shall be collected by the Clerk to the panel at the end of deliberations and securely stored with a set of the hearing papers.

In the event that the performer does not attend the hearing at the time and place fixed for the hearing; and the panel is satisfied that notice has been served upon the performer, the Chair will consider the circumstances and may decide that the hearing proceeds in the performer's absence.

If the hearing proceeds in the absence of the performer, the PLDP shall first consider the written evidence. The PLDP should weigh the allegations and evidence cited as proof in support of them against any representations, documents and written evidence submitted by the performer. The PLDP may then require the NHS CB to call such oral evidence, as it considers necessary to determine the matters before the panel.

The hearing in suspension proceedings

In the event that the PLDP is considering suspending a performer it shall serve a written notice upon the performer of the following:

- The allegations against him/her and the facts on the basis of which the PLDP considers it necessary, for the protection of the public or

otherwise in the public interest, that the performer should be suspended;
- The action the PLDP is considering and on what grounds;
- The date, time and place for an oral hearing by a panel;
- The name of the Chair and other members of the panel.

The notice shall be served not less than 24 hours before the date and time set for the hearing. Copies of any documents and witness statement upon which the NHS CB proposes to rely at the hearing shall, if reasonably practicable, accompany the notification.

The Chair may direct that the date set for the oral hearing to consider suspension be deferred to another date, but unless such a direction is made, the oral hearing shall commence on the date and time notified to the performer.

The procedure for the conduct of a suspension hearing shall, as far as possible, follow the procedure set out above for a formal hearing save that the PLDP shall be entitled to make greater use of written documentation not supported by oral testimony to make its case for suspension than would be the case at a formal hearing.

Evidence

The rules of evidence applying to either criminal or civil court proceedings shall not apply to oral hearings.

The burden of proving the case is on the NHS CB. Where there is any dispute of facts, the standard of proof in relation to allegations against a performer in removal cases shall, unless otherwise directed by the Chair, is the civil standard: on a balance of probability. The quality of the evidence to get to the balance of probability for some cases may need to be higher, although the balance of probability is still the threshold.

Any issue as to whether any evidence should be admitted shall be determined by the PLDP.

In the event that the NHS CB seeks to cite evidence in support of allegations concerning the performer that go beyond those originally notified to the performer, then the PLDP may agree to admit such evidence and permit the issues before the panel to be extended to include the investigation of the further allegations.

Where the PLDP has permitted the extension of issues the performer shall have the right to seek to have the hearing adjourned. The PLDP shall consider and rule on such an application and may adjourn the hearing if it considers that it is appropriate to do so.

The decision

Following the conclusion of evidence and final statements, the PLDP shall withdraw to consider its decision. No person other than a member of the PLDP shall be entitled to be present during their deliberations.

The PLDP may, but are not required to, announce their decision (but not necessarily their reasons) at the conclusion of their deliberations, which may be on the final day of the hearing. If the decision is announced it takes effect as a decision of the PLDP from the date and time of the announcement.

The Chair shall, within 7 days of the PLDP making a decision, set out in writing details of that decision and the reasons for it. The decision shall contain, in so far as is appropriate:

- A summary of the material evidence given to the PLDP;
- The PLDP's findings on all relevant questions of fact;
- Any right of appeal under; and
- In removal proceedings a statement as to whether the PLDP was satisfied that a case has been made out for removal or inclusion with conditions on the grounds of:
    - Efficiency
    - Fraud; or
    - Suitability (save that this shall not apply in the case of inclusion with conditions)

The clerk shall arrange for the PLDP's decision to be communicated to the performer and the NHS CB.

A contemporaneous written record of proceedings will be maintained indefinitely as a record of the investigation. Information that is over seven years old will not be used as evidence in any future complaint about the performer or contractor case. See information governance section.

Appeals

A performer has the right of appeal to the First-tier Tribunal (by way of re-determination) against any decision to remove from the performers' list on discretionary grounds. There is also a right of appeal to the First-tier Tribunal

against any conditions applied to a performer's retention on the list or to any decision made by the PLDP about such conditions on a review. Appeals must be made in writing to the First-tier Tribunal within 28 days of the PLDP's decision.

The PLDP will formulate its view based on any or all of the information considered. No decision, other than dismissing the complaint, will be made without the referred performer having an opportunity to respond.

Section 2 – pharmacy contractors and dispensing appliance contractors

When referring to this section of the procedure please note the following:

- There is no professional regulatory body for DACs
- LPCs do not generally represent DACs
- NCAS does not provide support in connection with DACs.

Suspension

In respect of all contractors, suspension is only justifiable if it is considered necessary for the protection of members of the public or otherwise in the public interest. This is in the following circumstances:

i. Whilst the PLDP considers whether to remove or contingently remove the contractor;
ii. Whilst it awaits the decision of a court or body anywhere in the world, which regulates the:
    a. contractor's profession,
    b. the profession of a person providing services on behalf of the contractor, or
    c. if the contractor is a body corporate, the profession of one of its directors, or one of the body of persons controlling it or (if is a limited liability partnership) one of its members

    or one of that regulatory body's committees.
iii. Pending an appeal being made or whilst an appeal is being considered.

A suspension under (i) cannot exceed six months. The PLDP is obliged to tell the contractor the extent of the suspension and where that is less than six months the PLDP can extend the period but not in such a way that the overall period exceeds six months.

A suspension under (ii) is not restricted to six months but any period of suspension that follows the decision of the court or body cannot exceed six months and again the contractor must be told the length of any additional period of suspension.

Suspension under (iii) lasts until either the end of the 30 day appeal period or until the appeal is disposed of by the First-tier Tribunal.

Suspension under (i) and (ii) can be extended beyond six months by the First-tier Tribunal on application. There will be cases where the original six months suspension expires after the PLDP has reached a decision. In such cases the suspension will continue until the First-tier Tribunal has reached a decision. Applications may also be made to the First-tier Tribunal to extend any period of suspension that they have already imposed.

Conduct

A suspension can be put into effect on 24 hours' notice. In such circumstances, it will probably not be possible for the case manager to have collected all relevant evidence to consider the case. The investigating officer does not have the power to suspend a contractor. Any decision to suspend, and to notify the contractor of this, must be put into effect by the area director and RO.

In legal terms suspension is a neutral act in so far as a judgement has not been arrived at in terms of regulatory action and undertaken whilst investigations are proceeding and as such will not be used by the PLDP as a disciplinary sanction. During the period of a suspension the contractor will be remunerated in accordance with the directions in force at that time. Contractors may nominate another person to provide pharmaceutical services at their premises whilst they are suspended. The nominated person must apply for temporary inclusion in the pharmaceutical list under the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 and the NHS CB will consider any such applications accordingly.

Should the contractor choose not to nominate another person then the NHS CB will need to consider any impact this may have on its statutory duty to ensure people can access pharmaceutical services. Where the contractor has premises across more than one AT, the RO will need to notify their counterpart in other ATs.

Additionally the NHS CB will need to notify the relevant health and well-being board or boards (HWB) and clinical commissioning groups (CCG) who may be commissioning services from the suspended contractor.

NHS CB will support the suspended contractor throughout the suspension period.

Before reaching a decision to suspend a contractor from the pharmaceutical list under section 154(1) or section 155(2) of the National Health Service Act 2006[2], the PLDP shall:

- Give notice of the action it is considering taking and the grounds for such action;
- Where the PLDP is considering a suspension under section 154(1), inform the contractor of any allegation against them, and
- Give the contractor the opportunity to put their case in writing or attend an oral hearing before the PLDP on a specified day provided that at least 24 hours' notice of the hearing is given. Copies of any documents and witness statement upon which the NHS CB proposes to rely on at the hearing shall if reasonably practical accompany the notification. The contractor is free to attend the hearing accompanied by a LRC member/officer and/or a member of their defence organisation, who may represent and or advise. However, the unavailability of such an individual shall not normally be a reason for delaying the suspension hearing.

If the contractor does not wish to have an oral hearing or does not attend the oral hearing, the PLDP shall inform him/her of their decision and the reasons for it in writing (including any facts relied upon).

If an oral hearing takes place, the PLDP shall advise the contractor of the names of the chair and PLDP members. The PLDP will take into account any representations made by the contractor before they reach their decision at the hearing.

The PLDP shall notify the contractor of their decision and the reasons for it in writing (including any facts relied upon) and may suspend the contractor with immediate effect following the hearing.

[2] *Section 154(1) relates to suspensions whilst the PLDP decides whether to remove or contingently remove. Section 155(2) relates to suspensions pending an appeal.*

Where the PLDP suspends the contractor under section 154(1) the letter must include the arrangements for the review of the suspension under section 157(1).

The PLDP shall notify the relevant bodies and agencies of the decisions as required by the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

The effect of a suspension is that although the contractor's name remains on the relevant NHS CB pharmaceutical list the contractor is treated as though they have been removed. The effect is therefore, that the contractor cannot perform or provide pharmaceutical services.

The PLDP can revoke a suspension at any time.

A contemporaneous written record of proceedings will be maintained indefinitely as a record of the investigation. Information that is over seven years old will not be used as evidence in any future complaint about the performer or contractor case. See information governance section.

Review

The PLDP is able to review a suspension for a case whilst it considers whether to remove or contingently remove the contractor and/or whilst it awaits the decision of a court or body which regulates the contractor‘s profession anywhere in the world affecting the contractor, if it considers it appropriate. It must review the decision to suspend if the contractor requests a review in writing subject to the request being no earlier than:

i. Three months beginning with the date of the decision to suspend them, or (as appropriate)
ii. Six months beginning with the date of a decision on the previous review.

Where the PLDP reviews a suspension (either of its own volition or at the request of the suspended contractor) it must allow the contractor the opportunity to make written and/or oral representations. Written representations must be submitted within 30 days beginning with the date the PLDP notifies the contractor that it is to review the suspension. Oral representations may be made provided the contractor advises that it wishes to make them within 30 days beginning with the date the PLDP notifies the contractor that it is to review the suspension and attends the hearing.

The oral hearing will be held 10 working days after the end of the 30 day period referred to above.

On any such review the PLDP can:

i. Maintain the suspension;
ii. Revise the period of the suspension up to a maximum of six months;
iii. Revoke the suspension in full or with conditions, subject to the contractor's agreement.

Once the PLDP has made its decision it must notify the contractor of it and the reasons for it. If the contractor remains suspended, the letter must also set out the arrangements for a review of the suspension.

The PLDP cannot be required to review a suspension where it has decided to remove the contractor but before the decision can take effect and/or whilst an appeal is being considered. However, it can of its own volition revoke or extend the period of a suspension at any time. Where it extends a suspension it must follow the same procedures that apply to a review and must be within the time limits permitted to the PLDP i.e. 6 months.

For suspension whilst the PLDP awaits the decision of a court or body, which regulates the contractor‘s profession anywhere in the world affecting the contractor, it may lift a suspension when the criminal process or the regulatory, licensing or other body investigation is completed and there is no finding against the contractor. Where there is a criminal conviction or a finding against by the professional, regulatory or licensing body the PLDP must consider whether there are grounds to remove or contingently remove the contractor from the pharmaceutical list under the normal procedures. This can include a further suspension not exceeding six months where all the usual criteria are met.

Removal from the Pharmaceutical List

Mandatory Removal

The PLDP must remove a contractor from the pharmaceutical list where they become aware that:

i. The contractor (or where the contractor is a body corporate, any director or superintendent) has been convicted in the United Kingdom of murder; [or]

ii. The contractor (or where the contractor is a body corporate, any director or superintendent) has been convicted in the United Kingdom of a criminal offence, other than murder, which was committed after 1 April 2005 and has been sentenced to a term of imprisonment of over six months; or
iii. The contractor is subject to a national disqualification].

If however the contractor is a body corporate [and the case falls within (i) or (ii) above)] the PLDP will advise the contractor that it will not be removed from the pharmaceutical list provided that:

i. The director or superintendent ceases to be such within the period of 30 days that begins on the date of the PLDP's letter, and
ii. Within that period, the contractor notifies the PLDP of the date on which the director or superintendent has ceased or is to cease to be a director or superintendent of the body corporate.

Process for removal

Where the PLDP is considering, in relation to the pharmaceutical list:

a. Removing a contractor,
b. Contingently removing a contractor, or
c. Removing a contractor for breach of a fitness condition;

the PLDP will follow the procedure set out in paragraphs below.

The PLDP shall remove the contractor and shall notify the contractor immediately that they have done so.

Before reaching a decision the PLDP must write to the contractor, and the letter will include:

d. Set out the action the PLDP is proposing to take, and the grounds for this,
e. Inform the contractor of any allegation against them,
f. Advise that any written representations that the contractor may wish to make should be sent within 30 days beginning with the date of the PLDP's letter, and
g. That if the contractor wishes to make oral representations, they must advise the PLDP of that fact within 30 days beginning with the date of the PLDP's letter, and attend or be represented at the oral hearing that is subsequently arranged.

If the contractor makes no representations within the period specified, the PLDP shall inform the contractor of their decision, the reasons for it (including any facts relied on), and of any right of appeal (see appeals section of this document).

If the contractor makes written representations, the PLDP must take them into account before reaching their decision and notify the contractor of their decision, the reasons for it (including any facts relied upon), and of any right of appeal (see appeals section of this document)..

If the contractor requests an oral hearing, this must take place before the PLDP reach their decision and the PLDP must then notify the contractor of their decision, the reasons for it (including any facts relied upon), and of any right of appeal (see appeals section of this document).

When the PLDP notifies the contractor of any decision, the PLDP will inform the contractor that if they wish to exercise their right of appeal, they have 30 days from the date of the decision to do so, and tell them how to do so

The PLDP will also notify the contractor in accordance with their rights under statute or regulations as may be in force from time to time.

A contemporaneous written record of proceedings will be maintained indefinitely.

Contingent Removal

In relation to cases of fraud and/or efficiency, contingent removal can be considered. A contractor may be retained on the pharmaceutical list subject to conditions – a contingent removal. These conditions may be free standing or may vary the formal terms of service. They will be devised so as to minimise any risks associated with fraud and efficiency matters that have been identified by the PLDP's deliberations.

These conditions can be removed at any time by the PLDP. The PLDP will review the conditions applied to a contractor where it considers such action appropriate and will review those conditions if the contractor requests a review in writing, subject to the request being no earlier than:

i. Three months after the decision of the PLDP to impose conditions; or
ii. Six months after the decision on any previous review.

On any such review the PLDP can:

i. Maintain the existing conditions;
i. Remove some or all of the existing conditions; or
ii. Impose fresh conditions

The PLDP may remove a contractor, subject to normal procedures, at any time where there is evidence that there has been a breach of a condition (or variation of the terms of service) imposed as part of a contingent removal or as a result of a subsequent review. The contractor can appeal against contingent removal to the First-tier Tribunal.

The PLDP cannot review conditions applying to a contingent removal decided upon by the First-tier Tribunal at an appeal. These must be reviewed by the First-tier Tribunal although the PLDP may seek such a review in the same way as the contractor.

Before making a contingent removal the PLDP shall give the contractor 30 days' notice of its intention and why it proposes a particular course of action. The contractor has an opportunity of making representations to the PLDP orally or in writing as they so wish.

Constitution of panels for oral hearings

The PLDP will conduct an oral hearing in cases of suspension, removal, or review.

The Chair and all members of the PLDP must be present at the commencement of an oral hearing but such a hearing may, if necessary, continue in the absence of one member (other than the Chair) in the event of illness or unavoidable absence. A member who has been so absent shall take no further part in the hearing or in the deliberations of the panel.

In the event that the Chair is unable to continue the hearing due to ill health or other unavoidable circumstances, the hearing shall not resume and a fresh panel should be appointed by the responsible officer as soon as practicable.

Decisions shall be taken by a majority of votes. The independent chair, the medical director or their nominated deputy, the contractor specific LRC official and the nurse director or their nominated deputy have voting rights.

Persons attending the hearing

The Chair will agree a list of the people who may attend the meeting. The Chair will have the right to adjudicate in cases of dispute.

The contractor may be accompanied and/or represented at the hearing by a person of their choice (who may be a representative of the LRC or a professional defence organisation).

The NHS CB may be accompanied and/or represented at the hearing by a person, or persons, of their choice.

Since these are internal proceedings the PLDP will consider whether, in certain cases, legal representation is necessary to afford a proper presentation of the case. This will depend on the circumstances of the case, and in particular, the complexity of the allegations and the evidence.

The contractor and the NHS CB shall each nominate an individual person who shall, subject to the discretion of the Chair have the right to address the PLDP and put questions to witnesses.

Either party may propose the calling of witnesses to give evidence in support of statements being used during the hearing. Witnesses are not under any legal obligation to attend and they will only be asked to do so where the Chair is satisfied that their attendance would add materially to the decision-making process.

Arrangements for a hearing in removal and review proceedings

Where an oral hearing is requested by a contractor in removal or review proceedings the PLDP will, wherever reasonably practicable, set the date for the hearing within 7 working days of receiving the contractor's representations, served in compliance with the regulations.

The date set for the hearing will, where reasonably practicable, be within 28 days of receiving the contractor's representations.

Not less than 14 days before the date set for the hearing, the PLDP shall send to the contractor the following:

- Notice of the time, date and place fixed for the oral hearing;

- Notice that the contractor has the right to apply in writing to the Chair to have the date of the hearing moved for good reason in which event the contractor should submit details of its availability;
- Notice of the name of the Chair and those of the other members of the panel;
- Notice that the contractor has the right to object to any member of the PLDP on the grounds of conflict of interest or prejudice;
- Copies of any documents on which the NHS CB proposes to rely at the hearing and copies of any witness statements on which the NHS CB intends to rely without calling the witness who made the relevant statement;
- The names of any witnesses whom the NHS CB proposes to call to give evidence at the hearing and copies of relevant statements and any other associated documents to be relied upon at the hearing;
- Notice that the contractor should send to the NHS CB not less than 7 days before the date set for the hearing, copies of any documents upon which it proposes to rely and the names of any witnesses whom it proposes to call.

In the event that the contractor makes a request to move the date of the hearing, the Chair will consider the request and may accede or refuse it at his/her discretion.

In the event that the contractor lodges an objection to any member of the PLDP, the Chair will consider the request and may accede or refuse it at his/her discretion. In the event that the contractor objects to the identity of the Chair, then the matter shall be referred to the RO for resolution.

Unless the contractor requests, and is granted, a deferment of the hearing date or attends the hearing on the date notified to it, the oral hearing will proceed in its absence.

Where the contractor has put forward a proposal to call witnesses, the Chair shall consider the proposal and may accede or refuse it at his/her discretion.

Any further documents or statements, which have not been issued in accordance with the timescale set out above and on which the NHS CB or the contractor proposes to rely, may be served on the contractor or the NHS CB as the case may be, at any time up to 2 working days before the date set for the hearing.

Subject to the overriding duty not to unduly prejudice the contractor or the NHS CB, the Chair shall have the discretion to abridge any time set for the

submission of documents or statements or to permit their provision at the hearing.

The Chair may at any time, at the request of either party or of his/her own motion, direct that the hearing date be deferred to another date for good cause. If the Chair makes such a direction, the contractor shall be notified in writing of the time, date and place of the deferred hearing.

In the event that the Chair is satisfied that the contractor is unable to attend the hearing by reason of ill-health or for other good reason supported by evidence, then he/she shall defer the hearing for such a period as is deemed reasonable in the circumstances.

Where a contractor's ill-health prevents a hearing from taking place, the PLDP shall consider at what point it is reasonable for it to be referred to the occupational health service.

Any date set for a resumed hearing shall be notified to the contractor and/or his/her representative who shall be invited to submit such further representations and evidence concerning the contractor's fitness to attend as appropriate not less than 7 days before the deferred hearing date.

After a reasonable period following a deferment, the PLDP will consider holding a hearing in the contractor absence unless there are compelling reasons for further postponement.

The hearing in removal, and review proceedings

The hearing will take place in private.

The contractor and the NHS CB shall each nominate an individual person to present their case and subject to the discretion of the Chair, will have the right to address the panel and put questions to witnesses.

A clerk appointed by the PLDP, who will deal with all administrative matters associated with the hearing, shall assist the PLDP. The clerk and any necessary support staff may be present throughout the hearing, but shall take no part in the proceedings.

The Chair may, at his/her discretion, appoint a legally qualified clerk to advise the panel on any points of law which might arise during the hearing. Any lawyer so appointed shall not be a member or employee of the firm of lawyers engaged to represent or advise the NHS CB in these proceedings. In the

event that a lawyer is so appointed he/she shall be present throughout the hearing, but shall take no part in the proceedings unless the panel seeks his/her advice.

At the commencement of the hearing the Chair shall explain:

- The purpose of the hearing;
- The standard of proof to be applied in suspension and removal cases;
- The procedure that will be followed; and
- The process to be followed, after the panel has finished hearing the representations and taking evidence and after the parties have left the hearing.

The procedure to be followed at the hearing will be as set out in this document. However, the overriding duty on the panel is to ensure that the matters before it are considered in a way that is fair to both the contractor and the NHS CB.

In order to give effect to the overriding duty of fairness, the Chair shall have a general discretion to conduct the hearing in a way that he/she considers just, and he/she may vary any procedural requirement herein in order to achieve this objective.

In these procedures the ‘’hearing’’ means the open part of the PLDP meeting (that is, not including any initial pre-meeting by the panel or the subsequent deliberations of the PLDP).

Subject to the discretion of the Chair, the following procedures should be followed at the hearing:

- All parties, their representatives and any observers must be permitted to be present throughout the hearing unless a direction to the contrary is made by the Chair;
- The determination of any procedural and/or legal matters at the hearing shall be for the PLDP and not just the Chair alone. Any party present may seek to raise any such matter at any point and the panel may consider the matter or adjourn consideration of it to such time as they consider fit, in their absolute discretion;
- The nominated representative of the NHS CB should first present the NHS CB’s case specifying clearly the issues to be considered by the PLDP and making reference as appropriate to the documentation and witness statements;
- The NHS CB will then call any witnesses on its behalf. Witnesses should not be allowed into a hearing until they are called to give

evidence and must leave once they have done so unless the panel agrees that they may remain. In addition, witnesses who have given evidence must not be permitted to speak with witnesses who have not yet given evidence;

- Subject to the following provision, the contractor and/or its representative and/or members of the panel may question those present representing the NHS CB and/or any witnesses. The panel may consider that it is appropriate that questions should be asked through the Chair. If such a direction is made, the Chair should not reject a question unless it is relevant to the matters at issue;
- The contractor or its representative shall then be invited to present the case and call any witnesses on its behalf following the same procedure as was applicable to the NHS CB witnesses;
- The NHS CB representative and/or members of the panel may put questions to the contractor and its witnesses on the same basis as questions may be put to representatives of the NHS CB and its witnesses;
- The PLDP may also receive oral or written evidence on its own initiative from third parties provided that such evidence has been sufficiently disclosed to the contractor and the NHS CB;
- At the conclusion of the evidence the NHS CB and then the contractor should be invited to sum up their cases and add any final comment. Following the final summing up of the cases, the parties will withdraw from the hearing and the panel will consider what action should be taken.

PLDP members may take their own notes of the proceedings throughout the hearing. All notes made by PLDP members shall be collected by the Clerk to the panel at the end of deliberations and securely stored with a set of the hearing papers.

In the event that the contractor does not attend the hearing at the time and place fixed for the hearing; and the panel is satisfied that notice has been served upon the contractor, the Chair will consider the circumstances and may decide that the hearing proceeds in the contractor's absence.

If the hearing proceeds in the absence of the contractor, the PLDP shall first consider the written evidence. The PLDP should weigh the allegations and evidence cited as proof in support of them against any representations, documents and written evidence submitted by the contractor. The PLDP may then require the NHS CB to call such oral evidence, as it considers necessary to determine the matters before the panel.

The hearing in suspension proceedings

In the event that the PLDP is considering suspending a contractor it shall serve a written notice upon the contractor of the following:

- The allegations against it and the facts on the basis of which the PLDP considers it necessary, for the protection of the public or otherwise in the public interest, that the contractor should be suspended;
- The action the PLDP is considering and on what grounds;
- The date, time and place for an oral hearing by a panel;
- The name of the Chair and other members of the panel.

The notice shall be served not less than 24 hours before the date and time set for the hearing. Copies of any documents and witness statement upon which the NHS CB proposes to rely at the hearing shall, if reasonably practicable, accompany the notification.

The Chair may direct that the date set for the oral hearing to consider suspension be deferred to another date, but unless such a direction is made, the oral hearing shall commence on the date and time notified to the contractor.

The procedure for the conduct of a suspension hearing shall, as far as possible, follow the procedure set out above for a formal hearing save that the PLDP shall be entitled to make greater use of written documentation not supported by oral testimony to make its case for suspension than would be the case at a formal hearing.

Evidence

The rules of evidence applying to either criminal or civil court proceedings shall not apply to oral hearings.

The standard of proof in relation to allegations against a contractor in removal cases shall be the balance of probability.

Any issue as to whether any evidence should be admitted shall be determined by the PLDP.

In the event that the NHS CB seeks to cite evidence in support of allegations concerning the contractor that go beyond those originally notified to the

contractor, then the PLDP may agree to admit such evidence and permit the issues before the panel to be extended to include the investigation of the further allegations.

Where the PLDP has permitted the extension of issues the contractor shall have the right to seek to have the hearing adjourned. The PLDP shall consider and rule on such an application and may adjourn the hearing if it considers that it is appropriate to do so.

The decision

Following the conclusion of evidence and final statements, the PLDP shall withdraw to consider its decision. No person other than a member of the PLDP shall be entitled to be present during their deliberations.

The PLDP may, but are not required to, announce their decision (but not necessarily their reasons) at the conclusion of their deliberations, which may be on the final day of the hearing. If the decision is announced it takes effect as a decision of the PLDP from the date and time of the announcement.

The Chair shall, within 7 days of the PLDP making a decision, set out in writing details of that decision and the reasons for it. The decision shall contain, in so far as is appropriate:

- A summary of the material evidence given to the PLDP;
- The PLDP's findings on all relevant questions of fact;
- Any right of appeal under; and
- In removal proceedings a statement as to whether the PLDP was satisfied that a case has been made out for removal or contingent removal on the grounds of:
    - Efficiency
    - Fraud; or
    - Suitability (save that this shall not apply in the case of contingent removal)

The clerk shall arrange for the PLDP's decision to be communicated to the contractor and the NHS CB.

A contemporaneous written record of proceedings will be maintained indefinitely as a record of the investigation. Information that is over seven years old will not be used as evidence in any future case. See information governance section.

Appeals

A contractor has the right of appeal to the First-tier Tribunal (by way of re-determination) against any decision to remove from the pharmaceutical list. There is also a right of appeal to the First-tier Tribunal against any conditions applied to a contractor's retention on the list or to any decision made by the PLDP about such conditions on a review. Appeals must be made in writing to the First-tier Tribunal within 28 days of the PLDP's decision.

The PLDP will formulate its view based on any or all of the information considered. No decision, other than dismissing the complaint, will be made without the referred contractor having an opportunity to respond.

Information governance

A strict code of confidentiality will be maintained through adherence to the NHS CB information governance policy and procedures. Only individuals directly involved will have access to information or be aware of individual performers or contractors about whom there is a cause for concern.

The sharing of information will be based strictly on a need-to-know basis and reviewed periodically when it may be considered necessary to widen the network. Any pertinent records will be kept securely. Performers and contractors will be provided with information about the process and any other relevant details as soon as a decision is made to proceed with review, assessment, investigation or further action. They will be provided with an update of progress of the case at each stage on a regular basis.

In order to meet data protection requirements NHS CB will be clear and transparent in the use of the information it collects, and is aware that the performer or contractor will have right of access to any records kept about the performer or contractor's performance.

Any information stored must comply with the Data Protection Act 1998. All records associated with this procedure will be stored indefinitely for the following reasons:

- Audit trail
- To effectively monitor and manage vexatious complaints
- To effectively monitor and manage a repetition/s of each concern
- In the event that NHS CB is required to disclose information relating to a performer or contractor, e.g. professional regulatory body, responsible officer, police, coroner or etc.
- To ensure that information is retained in the event of a change in the personnel who manage and administer the process

During meetings of the PLDP and the PSG, members will be made aware of the name of each performer or contractor, but will not disclose this information outside of the meeting. In the event of a breach of confidentiality, action will be taken. All meeting agendas and minutes will record the performer or contractor's unique identifier only, and all papers will be collected in at the close of the meeting for shredding.

Resourcing local procedures

The NHS CB's ATs will, from their own resources fund the PSG and PLDP.

The ATs as part of the responsible officer function are also responsible for funding the provision of supervised training programmes. At this point in time, the funding to support the responsible officer function is subject to on going discussion by the remediation steering group. The procedure will be updated to reflect the decision of the group.

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: Removal or inclusion with conditions/contingent removal: criteria that must be considered

Efficiency

These grounds may be used when the inclusion in a performers list or the pharmaceutical list would be “prejudicial to the efficiency of the service” that is provided. Broadly speaking, these are issues of competence and quality of performance. They may relate to everyday work, inadequate capability, poor clinical performance, bad practice, repeated wasteful use of resources that local mechanisms have been unable to address, or actions or activities that have added significantly to the burdens of others in the NHS (including other primary care practitioners).

When considering the removal or inclusion with conditions/contingent removal of a performer or contractor on discretionary efficiency grounds the PLDP must, in respect of the information it is relying on, consider:

- The nature of any incident of conduct which was prejudicial to the efficiency of the services provided by the performer or contractor
- The length of time since the last such incident (if any) occurred, and since any investigation into that incident was concluded
- Any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such incident
- The nature of the incident and whether there is a likely risk to patients
- Whether the performer or contractor has ever failed to comply with a request by the NHS CB (or previously by a primary care organisation or an equivalent body) to undertake an assessment by NCAS
- Whether the performer or contractor has previously failed to make a declaration or comply with an undertaking required by regulations. Performers and contractors are required to notify any changes to their circumstances to the NHS CB.
- Whether the performer or contractor has been refused admittance to, included with conditions , removed, or is currently suspended from a performer’s or pharmaceutical list (or equivalent lists (in Wales,

Scotland and Northern Ireland), and if so, the facts relating to the matter which led to such action and the reasons given by NHS CB (or previously by a primary care organisation equivalent body) for such action

- Whether they were at the time, or had in the preceding six months been, or were at the time of the originating events a director of a body corporate which was refused admittance to, included with conditions, removed or from a performer's list or a pharmaceutical list or equivalent lists (in Wales, Scotland and Northern Ireland), and if so, the facts relating to the matter which led to such action and the reasons given by NHS CB (or previously by a primary care organisation or equivalent body) for such action
- Whether they are at the time, had in the preceding six months been, or were at the time of the originating events, a director of a body corporate which is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by NHS CB or equivalent body for the suspension.

Fraud

Generally, fraud is not defined in law. It happens when someone has obtained or attempted to obtain resources to which they are not entitled. Fraud may involve the misappropriation (or attempted misappropriation) of NHS resources for personal gain or the gain of others. Section 49F(3) of the NHS Act 1977 and Section 151 of the NHS Act 2006 say that a "fraud case" is where the person has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit and knew that he or the other was not entitled to the benefit.

The PLDP must alert NHS Protect where fraud is alleged or suspected.

Providing that there are sufficient substantiated facts to satisfy the PLDP that a person has secured (or attempted to secure) financial or other benefits for himself or others, and that person knew that he had no such entitlement, a criminal conviction may be unnecessary.

The PLDP should be alert, however, to alleging fraud where this is not substantiated. The PLDP should consider the possible implications of any findings, or of any professional disciplinary action, civil or criminal sanctions that might be imposed. The PLDP would always expect a business to declare the outcome of any criminal proceedings.

When considering the removal or inclusion with conditions of a performer or contractor on discretionary fraud grounds the PLDP must, in respect of the information it is relying on, consider:

- The nature of the incidents of fraud
- The length of time since the last incident of fraud (if any) occurred, and since any investigation into that incident of fraud was concluded
- Whether there are other incidents of fraud or other criminal offences to be considered
- Any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such incident
- The relevance of any investigation into the incident of fraud to the provision by the performer or contractor of primary medical services, primary dental services, primary ophthalmic services and pharmaceutical services and the likely risk to patients or to public finances
- Whether the performer or contractor has been refused admittance to, included with conditions or removed or is currently suspended from a performer's list, a pharmaceutical list or equivalent lists (in Wales, Scotland and NI), and if so, the facts relating to the matter which led to such action and the reasons given by NHS CB or equivalent body for such action
- Whether he was at the time, has in the preceding six months been, or was at the time of the originating events a director of a body corporate which was refused admittance to, included with conditions or removed from a performer's list, a pharmaceutical list or equivalent lists (in Wales, Scotland and NI), and if so, the facts relating to the matter which led to such action and the reasons given by NHS CB or equivalent body for such action
- Whether he is at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by NHS CB or equivalent body for the suspension.

Suitability

Suitability as a ground for action could be relied on in circumstances including:

- It is a consequence of a decision taken by others (for example, by a court, by a professional regulatory body, or the contents of a reference)

- There is a lack of tangible evidence of a performer or contractor's ability to undertake the professional role (for example, satisfactory qualifications and experience).
- In addition to the above mandatory issues for consideration, the PLDP may also consider any other evidence it feels is appropriate to the case.

The term is used in its everyday meaning and so provides the PLDP with a broad area of discretion. Suitability and efficiency grounds may overlap and in many cases, the PLDP may find itself able to take action against a performer or contractor under either ground. It is unlikely that the PLDP would be accused of acting wrongly by using efficiency grounds to remove a performer or contractor who had been convicted of serious violence, or by using unsuitability as a ground for removing a performer or contractor who had defrauded the NHS.

When considering the removal or inclusion with conditions of a performer or contractor on discretionary unsuitability grounds the PLDP must, in respect of the information it is relying on, consider:

- The nature of any criminal offence, investigation or incident
- The length of time since any offence, incident, conviction or investigation
- Whether there are other criminal offences to be considered
- The penalty imposed on any criminal conviction or the outcome of any investigation
- The relevance of any criminal offence, or investigation into professional conduct, on the provision by the performer or contractor of primary medical services, primary dental services, primary ophthalmic services and pharmaceutical services and the likely risk to patients
- Whether any criminal offence was a sexual offence to which Part I of the Sexual Offences Act 2003 applies
- Whether the performer or contractor has been refused admittance to, included with conditions or removed or is currently suspended from a performer's list, a pharmaceutical list or equivalent lists (in Wales, Scotland and NI), and if so, the facts relating to the matter which led to such action and the reasons given by NHS CB or equivalent body for such action
- Whether he was at the time, has in the preceding six months been, or was at the time of the originating events a director of a body corporate which was refused admittance to, included with conditions or removed from a performer's list, a pharmaceutical list or equivalent lists (in Wales, Scotland and NI), and if so, the facts relating to the matter

which led to such action and the reasons given by NHS CB or equivalent body for such action

- Whether he is at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by NHS CB or equivalent body for the suspension.

Annex 3: NHS CB risk matrix

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

Risk matrix – severity

	1	2	3	4	5
Descriptor	**Insignificant**	**Minor**	**Moderate**	**Major**	**Catastrophic**
Injury	Minor injury not requiring first aid	Minor injury or illness, first aid treatment needed	Over three days off "sick" = **RIDDOR** reportable. 10 days to report to the HSE.	Major injuries, or long term incapacity / disability (loss of limb)	Death or major permanent incapacity
Patient Experience	Unsatisfactory patient experience not directly related to patient care	Unsatisfactory patient experience - readily resolvable	Mismanagement of patient care – short term effects	Mismanagement of patient care – long term effects	Totally unsatisfactory patient outcome or experience
Complaint/Claim Potential	Locally resolved complaint	Justified complaint peripheral to clinical care	Justified complaint involving lack of appropriate care	Multiple justified complaints	Multiple claims or single major claim
Objectives/ Projects	Insignificant cost increase/schedule slippage. Barely noticeable reduction in scope or quality	< 5% over budget/schedule slippage. Minor reduction in quality/scope	5 -10% over budget/schedule slippage. Reduction in scope or quality requiring client approval	10 - 25% over budget/schedule slippage. Doesn't meet secondary objectives	> 25% over budget/schedule slippage. Doesn't meet primary objectives
Service/ Business Interruption	Loss/interruption > 1 hour	Loss/interruption > 8 hours	Loss/interruption > 1 day	Loss/interruption > 1 week	Permanent loss of service or facility
Human Resources/ Organisational Development	Short term low staffing level temporarily reduces service quality (< 1 day)	Ongoing low staffing level reduces service quality	Late delivery of key objective/service due to lack of staff (recruitment, retention or sickness). Minor error due to insufficient training. Ongoing unsafe staffing level	Uncertain delivery of key objective/ service due to lack of staff. Serious error due to insufficient training	Non-delivery of key objective/ service due to lack of staff. Loss of key staff. Very high turnover. Critical error due to insufficient training
Financial	Small loss (> £100)	Loss > £1,000	Loss > £10,000	Loss > £100,000	Loss > £1,000,000
Inspection/ Audit	Minor recommendations. Minor non-compliance with standards	Recommendations given. Non-compliance with standards	Reduced rating. Challenging recommendations. Non-compliance with core standards	Enforcement Action. Low rating. Critical report. Multiple challenging recommendations. Major non-compliance with core standards	Prosecution. Zero Rating. Severely critical report
Adverse Publicity/ Reputation	Rumours	Local Media - short term	Local Media - long term	National Media < 3 Days	National Media > 3 Days. MP Concern (Questions in House)

Risk matrix – likelihood

	Likelihood rating	Description
5	Certain	this type of event will happen frequently
4	Highly Likely	this type of event will happen, but it's not a persistent concern
3	Likely	this type of event may well happen (e.g. 50/50 chance)
2	Unlikely	unlikely that this type of event will happen
1	Rare	cannot believe that an event of this type will occur in the foreseeable future

Annex 4: Residual risk priority

Risk	Further Concern Identified	By Whom
High (H)	Significant Residual Risk: If **ANY** further concerns raised: • Instigate policy and procedure • Report to Performers List Decision Panel	Performers list decision panel
Moderate P(M)	Moderate Residual Risk: If further **repetitive** concerns or any relating to health, conduct or clinical management of patients raised: • Instigate policy and procedure • Report to next meeting of Performance Screening Group	Performance screening group with ability to refer to the performers list decision panel
Low (L)	Acceptable Residual Risk: If further complaints/incidents, whistle blowing or health concerns raised: • Instigate policy and procedure • Assess/validate/risk assess concern • Report to Performance Assessment Team if concern validated	Performance screening group

Annex 5: 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
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Local GP Performance Procedures (NCAS, 2006)
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http://bit.ly/XJTc92
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The Performers Lists (Suspended Dentists' NHS Earnings) Determination 2006
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Annex 6: 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 Payments to Suspended NHS Chemists (England) Determination 2013

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First published 27 March 2013
Published to www.commissioningboard.nhs.uk in electronic format only