



**FRAMEWORK FOR SUPPORT FOR MEDICAL AND DENTAL
EMPLOYEES**

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The provisions of this policy, which was developed by a partnership group on behalf of the BMA JNC, apply equally to all Medical and Dental employees who hold a current contract of employment with NHS Grampian.

NHS GRAMPIAN

FRAMEWORK FOR SUPPORT

If you have difficulty understanding the English language, this policy can be made available to you in a language of your choice.

This policy can also be made available, on request, in other formats e.g. in large print or on a computer disk.

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**NHS Grampian
Framework for Support for Medical and Dental Employees**

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Section 1: Introduction

The purpose of this policy is to provide a framework for NHS Grampian, as an employer, to fairly and consistently address concerns about the conduct and/or capability of all Medical and Dental Staff, who are unable or unwilling to achieve required standards.

This policy is in line with the Staff Governance Standard which requires all NHS Boards to demonstrate that staff are:

- Well informed;
- Appropriately trained and developed;
- Involved in decisions;
- Treated fairly and consistently with dignity and respect, in an environment where diversity is valued; and
- Provided with a continuously improving and safe working environment, promoting the health and wellbeing of staff, patients and the wider community.

The Standard also requires all staff to:

- Keep themselves up to date with developments relevant to their job within the organisation;
- Commit to continuous personal and professional development;
- Adhere to the standards set by their regulatory bodies;
- Actively participate in discussions on issues that affect them either directly or via their trade union/professional organisation;
- Treat all staff and patients with dignity and respect while valuing diversity; and
- Ensure that their actions maintain and promote the health, safety and wellbeing of all staff, patients and carers.

It is therefore the responsibility of managers to make their staff aware of the standards that are expected of them and for staff to adhere to the above standards and to professional standards, seeking further guidance, where those standards are unclear.

Where concerns arise that there may have been a failure to achieve required standards, prompt action is required in the interests of both the Board and the employee. A failure to deal with those concerns may also adversely affect colleagues and standards of patient care, and the quality and efficiency of the service can quickly deteriorate.

A. Principles

The process detailed in this policy has been carefully designed to protect both the employer - NHS Grampian - and the employee. It is vitally important that the public, the professions and the organisation can have confidence in the process to deliver a fair system of accountability for medical and dental practitioners.

B. Responsibilities – Employer and Employee

The Employer - NHS Grampian

Has a primary role in safeguarding patients and staff. It is also essential that any practitioner potentially experiencing difficulties in achieving, or sustaining, appropriate levels of performance, or conduct, receives suitable support.

This framework is aimed at reaching resolution to problems where possible and reasonable. It is not designed to be punitive or necessarily to attribute blame. The ethos is to identify problems early and instigate solutions. There will be respect for practitioners by focusing on reasons for problems rather than on individuals.

Wherever possible, the approach to the management of any issue identified will be one that can be jointly agreed. However, in more serious cases or in the event that a practitioner refuses to co-operate, managers must take the action they deem appropriate, as defined by this suite of policies and procedures.

It is the intention of NHS Grampian to provide a fair, consistent, open and non-discriminatory approach to all capability and/or conduct issues and every practitioner will be offered the services of the Occupational Health Service.

Issues will be dealt with in strictest confidence. Information will only be shared on a need to know basis.

The Employee - The Practitioner

Also has a primary role in safeguarding patients. The standards against which doctors and dentists performance is judged are set out clearly in the GMC guidance 'Good Medical Practice' and in the General Dental Council document 'Standards for the Dental Team' respectively. In addition, each practitioner has a responsibility to achieve acceptable standards of personal conduct.

In the event that a practitioner perceives that they are not fulfilling their role for any reason, they must seek appropriate support at an early stage.

There is an expectation that confidentiality will be maintained and information only shared on a need to know basis.

NHS Education for Scotland

Has a responsibility for the commissioning and oversight of postgraduate medical education in Scotland. The four regions of the Scotland Deanery (with the North covering NHS Grampian) have operational responsibility for ensuring that all aspects of postgraduate medical education are delivered to the highest standards.

This includes the Postgraduate Dean having responsibility as Responsible Officer for doctors in training. Additionally NHS Education for Scotland has a key role in working in partnership with NHS Grampian, where the framework is being followed in relation to doctors in training.

Colleagues

If you have concerns that a colleague may not be fit to practise and may be putting patients at risk, you must act in accordance with the GMC's "Raising and Acting on Concerns About Patient Safety" [GMC | Raising and acting on concerns about patient safety](#) or the General Dental Council document 'Standards for the Dental Team' respectively ([standards dental team](#)).

Individuals with first-hand concerns about a colleague's wellbeing, performance or conduct are strongly encouraged to raise these concerns, where appropriate, with the colleague; or thereafter, with the line manager in a responsible manner at the earliest possible stage. This should be done in the knowledge and with the confidence that the situation will be dealt with in a supportive manner, hopefully without the need to institute any formal procedure with the potential for a punitive outcome.

Practitioners have a professional duty to act quickly to protect patients from risk if they have good reason to believe that a colleague may not be fit to practise. Concerns should have a basis in fact. NHS Grampian reserves the right to take disciplinary action against the complainant if vexatious concern(s) are raised.

NHS Grampian recognises that taking such action can be stressful/difficult and individuals should be assured that every support will be afforded to all parties.

Where the employee is a doctor in training, concerns about fitness to practise also require to be shared with the relevant Responsible Officer. In Grampian, this is the Postgraduate Dean, who has delegated authority from the NHS Education for Scotland Medical Director.

C. What Does this Policy Cover?

This is an employer process with the main types of conduct/performance covered by this policy and procedure being as follows:

- **Health** – Health related issues which have an impact on practitioners' performance
- **Personal Conduct** - behaviour of practitioners not associated with the exercise of medical or dental skills.
- **Professional Conduct** - performance or behaviour of practitioners arising from the exercise of medical or dental skills.
- **Professional Competence** - adequacy of performance of practitioners related to the exercise of their medical or dental skills and professional judgement.

[NOTE: The Scottish Executive Report "Prevention – Better than Cure" [NHS Circular: HDL \(2001\)60](#) provides expanded definitions and useful examples within each of these definitions.]

D. Other Key Policies

NHS Grampian has a range of other Policies and Procedures and some matters may be more appropriately dealt with through these. For example, if a concern extends beyond an individual's practice it may be more appropriate to take the matter forward in

accordance with the Whistleblowing Policy. If the matter pertains to concerns regarding bullying and harassment the Bullying and Harassment Policy will be followed.

Additionally, the grievance policy would be followed, in cases of individual or collective grievances arising out of employment, including grievances related to pay or conditions of service

These policies are located on the NHS Grampian intranet on the Human Resources webpage.

E. Licensing, Revalidation and Appraisal

Any doctor in the UK who treats patients must hold GMC registration and a licence to practise.

Regular appraisal along with multisource feedback from colleagues and patients will enable doctors to demonstrate to the GMC that they are practicing in accordance with the generic standards described in Good Medical Practice.

Each doctor will be linked to a designated body i.e. for career grade doctors this is NHS Grampian and for Grampian employed trainee doctors it is NHS Education for Scotland. Each organisation will have a Responsible Officer. When a doctor is due to revalidate their Responsible Officer will check they have undertaken the required activities and are not known to have an active performance problem, before recommending to the GMC that they can be revalidated.

The Responsible Officer will, at all times, follow the GMC Protocol for making revalidation recommendations. This will include having regard for information generated by local processes that provides robust evidence for a recommendation judgment. These processes may include, but are not limited to, disciplinary or other HR processes.

Additionally, on an ongoing basis, all relevant information gathered through this employer process will be shared with the statutory and regulatory framework.

Doctors should follow the GMC Guidance summarised in "Revalidation what you need to do" as well as, NHS Grampian's Appraisal and Revalidation Policies.

F. Circulars

This suite of Policies complies with the Terms and Conditions for Medical and Dental Staff and extant Scottish Government and predecessor bodies Circulars. A full list of extant circulars can be found at **Appendix 1**.

The Framework in Operation

It is essential that decisions are made on an informed basis. The foundation for informed decision making is an understanding of the pertinent facts. These facts can be gained either from the parties involved, and/or from a proportionate investigation.

It is only when understanding the pertinent facts that a decision can be made on whether any failure to achieve required standards is due to conduct or capability, including health; and the best method for resolving the identified concerns.

See flow-charts (attached):

- a) An overview of the Framework for Support for Medical and Dental Employees;
- b) Support Scheme for Medical and Dental Employees;
- c) Capability Policy and Procedure for Medical and Dental Employees;
- d) Disciplinary and Dismissal Policy and Procedure for Medical and Dental Employees.

Section 2: Issue Raised – Informal Approach

Throughout the implementation of this policy the line manager for the practitioner concerned shall be the key decision maker, taking advice from the HR Operational Team and Clinical Management as appropriate. Where the line manager believes it is inappropriate for them to fulfil this role, another manager will be involved.

When an issue is raised about a practitioner, the practitioner's line manager should meet with the practitioner to discuss the particular issues, ascertain whether or not there is a problem and explore possible solutions. The exception to this is in cases involving potential fraud, criminal activity, vulnerable groups or information security and governance (which are referenced in **Appendix 2**)

Concerns may be raised in a wide variety of ways – through a colleague, a patient or another process, such as appraisal and may not even involve a person (e.g. data suggests a practitioner is a significant outlier in some respects).

The key first step is a one to one meeting between the line manager and the practitioner concerned. The purpose of this meeting is to determine 'is there, or is there likely to be, a case to answer'.

It is not possible to give a comprehensive list of potential scenarios but an example follows:

Example

***A colleague raises a concern that Dr Jones is 'never at their clinic'.
The line manager goes along to the next clinic and finds Dr Jones is absent.
The line manager writes to Dr Jones and explains that he/she needs to meet to discuss his/her absence from the clinic. The letter makes clear this is an informal meeting and no one else will be present, but that it will assist the line manager to determine whether there is a problem or not.***

At the meeting Dr Jones explains that he/she has been busy overseeing medical student exams that clashed with his/her clinic – he/she produces an email confirming that the clinic had been cancelled.

The line manager checks this and determines there is no case to answer.

The Practitioner must be informed in advance of the reason(s) for the meeting, the policy context and who will be present.

Exceptionally, it might be desirable for another member of staff to be present at the meeting e.g. an HR Operational colleague or where the doctor is in training, the Educational Supervisor, however, the reason for this must be made clear by the line manager or practitioner making the request, in advance. A Staff Side Representative may also be present, at the request of the practitioner.

Checklist in Preparation for and During the Meeting

- a. The line manager should 'sense check' the issue raised – system issues should not be directed to individual practitioners and personal preferences are similarly not valid.
- b. Where the line manager determines that some clarification is required, they shall write to the practitioner concerned to indicate the reason for meeting, and that it shall be on a one to one basis. The minimum content of the letter is indicated at **[IL1]**.
- c. The meeting shall take place at a mutually convenient time, preferably within 5 working days and normally not more than 2 weeks after the issue has been raised with the practitioner (excepting leave).
- d. The meeting shall be on an informal basis. The line manager shall explore the issue(s) with the practitioner.
- e. The line manager shall keep a note of the issues raised and salient points made and shall ensure a copy of this is provided to the practitioner within 5 working days. The line manager may check any information given at the meeting by the practitioner.
- f. The line Manager will seek the practitioner's consent for OHS referral where they consider this appropriate.
- g. The line manager shall determine (seeking advice from Operational HR and Clinical Management if required) an outcome of the meeting as follows:
 - No case to answer. The minimum content of the letter is indicated at **[IL2]**
 - Standard Setting **[IL3]** and refer to **Appendix 3**.
 - Or reach a decision to implement a policy (i.e. health, conduct, capability) or Preliminary Enquiry. The minimum content of the appropriate letter is as indicated at **[HP1, CP1 or PE1]**
 - Where concerns are serious in nature and there is the potential for risk to clinical, financial or staff governance, the line manager will seek guidance from the HR Operational Team in relation to suspending the practitioner concerned. Suspension will only be used as a last resort and in line with the provisions highlighted in this suite of policies (attached).

Note: With **IL2** there may be standard setting included if appropriate.

Section 3: Preliminary Enquiry

The purpose of a Preliminary Enquiry (PE) is to fully identify the nature of a potential problem, form a view as to whether it is of a serious nature and report findings based on the allegation(s) and subsequent investigation. See flowchart 1 attached

A PE is commissioned by a line manager, with input from a member of the HR Operational Team.

The first action for a PE is letter **PE1** to the Practitioner which shall include:

- a. A comprehensive list of detailed allegation(s);
- b. The name of the HR case holder for queries (HR Manager will appoint);
- c. The name of PE panel members (HR Manager to co-ordinate appointment);
- d. Details of the process by which the practitioner may challenge the panel composition if he/she believes there may be a conflict of interest;
- e. The likely timescale for the PE. It is anticipated that this will be within six weeks. In the event it is not possible to achieve this, the timescale will be discussed and agreed with the Practitioner.

PE Panel Composition

- A panel shall be appointed by the HR Manager involved:
 - The PE shall be conducted by a Service Clinical Lead or Division/Area/Cluster Lead who has no identifiable conflict of interest with the line manager or practitioner involved (if the practitioner concerned has managerial responsibilities then the next level of seniority in line management shall be involved);
 - A member of the HR Operational Team;
 - For trainees, a representative from the Postgraduate Deanery will be invited to participate;
 - A note taker;
 - Each PE member will complete a declaration (**Appendix 4**).
- For those with honorary contracts, the principal employer will be informed and agreement reached between the principal employer and NHS Grampian regarding which organisation shall progress the matter.
- Anyone committing to participate in a PE must make this a priority in their diary and must be released to allow them to make it a priority. PE's are time-consuming, particularly where a large number of interviews are necessary. A discussion will therefore be required with Senior/Medical Management, in advance of the process commencing, in order to agree how best workload can be managed and whether the clinicians' diaries need to be cleared/partly cleared in order to undertake the PE within six weeks, unless an extension is agreed by both parties involved. Anyone committing to PE Panel membership is required to make progressing the PE a priority over other commitments.

Guidance regarding how to conduct a PE:

The panel shall gather evidence from relevant parties according to the agreed timetable.

Should an unrelated concern/issue arise during the process, this must revert to the commissioning line manager who shall determine whether or not the issue should be dealt with as part of the PE, or if there shall be a separate case to answer in line with this policy. The Practitioner will be notified of this.

Notes will be taken of PE interviews. Statements will be drafted up by the PE panel for agreement/amendment and signing by interviewees. It is imperative interviewees know that their agreed statements will form part of the PE report.

It is vital that the panel and its witnesses are aware that the evidence it gathers shall form the core of any management case in any subsequent proceedings. Data and evidence should therefore be accurately gathered and carefully recorded.

- A standardised PE Report Template shall be followed which shall include:
 - List of PE panel members including conflict of interest forms
 - Background
 - Issues/Allegations
 - Methodology
 - Statements
 - Findings
 - Analyses
 - OHS report
 - Confirmation of whether or not the Practitioner holds a training role
 - Confirmation of whether or not the Practitioner holds a role as an appraiser.
 - When the Practitioner was last appraised
 - Where appropriate, current PVG status
 - Recommendations*
 - Declaration of the panel that the report represents a true account of the facts and recommendations are based solely on the report contents.

(* note the PE shall not recommend classification which is a line management responsibility).

- The PE report shall be agreed by the Panel and then simultaneously be sent to the commissioning line manager and the practitioner concerned.
- The commissioning line manager (with advice from a member of HR Operational Team) shall, in light of the PE report, have the option to decide that:
 - There is no case to answer. The minimum content of the letter is indicated at **[PE2]**.
 - Standards be put in place. **See Appendix 3 and [IL3] for guide.**

- There is a need to progress to the Support Scheme. The minimum content of the letter is indicated at **[PE3]**.
- There is a need to progress to the Capability Policy and Procedure. The minimum content of the letter is indicated at **[PE4]**.
- There is a need to progress to categorisation of professional/personal misconduct proceedings. The minimum content of the letter is indicated at **[PE5]**.

Training for those who undertake PE's shall be developed and delivered on an ongoing basis for PE members who may not have already been trained.

Section 4: Classification

Defining the Problem

If a possible problem has been identified and a PE undertaken and completed, it is essential to analyse what kind of performance is in question. Consideration should initially be given to the possibility of any health issues, depending on the situation at hand.

The line manager has the following options to deal with any matters raised under these procedures, once a PE is complete. In advance of making a decision about what course of action to follow, the line manager should discuss the matter with the appropriate member of the HR Operational Team.

- a. There is no substance in the allegations and therefore no further action is necessary;
- b. The case is one which the line manager considers suitable to be dealt with outwith the formal disciplinary process;
- c. The procedures for sick doctors set out in NHS Circular 1982 will apply;
- d. The allegation is of personal misconduct, in which case the disciplinary provisions set out in the Disciplinary and Dismissal Policy and Procedure (as detailed in Section 7 of this Framework) will apply;
- e. The case is appropriate to be dealt with under the Professional Review Machinery (1990 (PCS) 8, Annex A);
- f. The case involves less serious allegations about professional misconduct or competence and is suitable for the intermediate procedure (1990 (PCS) 8, Annex B);
- g. The case involves allegations concerning serious professional conduct or competence and should be dealt with in terms of (1990 (PCS) 8, Annex C);
- h. Involvement of the relevant Royal College External Advisory Team (ECAT) as set out in PCS 9DD) 1999/7 or another agreed College process.

Note: If the doctor is a trainee, the manager must always involve and inform the Regional Postgraduate Dean or Deputy.

In considering whether d, f or g above is appropriate; the line manager will have regard to the content of NHS Circular PCS 2011 (DD) 9 in determining the classification of conduct and will notify the practitioner accordingly. If the practitioner is dissatisfied with the decision they may appeal.

In this instance the Medical Director will be responsible for convening a Classification Appeal Committee, as specified in the aforementioned circular.

[NOTE: The Scottish Executive Report "Prevention – Better than Cure" (NHS Circular: HDL (2001)60) provides expanded definitions and useful examples within each of these definitions.]

Appeals

Please see **Appendix 9** in relation of whom to notify of the wish to appeal the classification; panel composition; timescales and process.

Section 5: Health related issues in the Medical and Dental Professions

If at either the Informal Meeting or the Preliminary Enquiry (PE) stage or at a later stage, it has become apparent that health is the major issue then this Policy should be followed.

Wherever possible and consistent with reasonable public protection, practitioners should be treated, rehabilitated or re-trained (for example if they cannot undertake exposure prone procedures) and kept in employment, rather than be lost from the NHS.

Handling Health Issues

1. Where there is an incident that points to a problem with the practitioner's health, the incident may need to be investigated at the same time as support being offered through referral to the Occupational Health Service.
2. The Occupational Health Service will propose a course of action, in agreement with the practitioner and send their recommendations to the referring Manager. Joint meetings involving OHS, the practitioner, his/her representative, the practitioner's line manager and a member of the HR Operational Team will be held as appropriate. The practitioner is entitled to bring a representative to these meetings. Confidentiality must be maintained by all parties at all times.
3. If a doctor or dentist's ill health makes them a danger to patients and they do not recognise that, or are not prepared to co-operate with measures to protect patients, then suspension from work must be considered and the professional regulatory body will require to be informed.
4. Where there is impairment of performance solely due to ill health, disciplinary procedures would only be considered in the most exceptional of circumstances, for example if the individual concerned refuses to co-operate with the employer to resolve the underlying situation e.g. by repeatedly refusing a referral to the Occupational Health Service (OHS). In these circumstances the procedures in the Disciplinary and Dismissal Policy and Procedure should be followed.

Retaining the services of individuals with health problems

Wherever possible, NHS Grampian will continue to employ the individual provided this does not place patients, colleagues or the practitioner at risk.

Reasonable Adjustment

The practitioner will be supported by NHS Grampian with assistance from the Occupational Health Service. NHS Grampian will ensure that the practitioner is offered every available resource to get back to practice where appropriate. NHS Grampian will also fully consider what reasonable adjustments could be made to their workplace conditions or other arrangements.

Examples of reasonable adjustment:

- Make adjustments to the premises
- Re-allocate some duties
- Redeploy the practitioner to an existing vacancy
- Alter the practitioner's working hours or pattern of work
- Assign the practitioner to a different workplace
- Allow absence for rehabilitation, assessment or treatment
- Provide additional training or retraining
- Acquire/modify equipment/or services
- Establish mentoring arrangements

Termination of contract on the grounds of ill health

In some cases ill health termination and/or ill health retirement may need to be considered. This should be approached in a reasonable and considerate manner. The decision as to whether early payment of pension will be granted rests with the Scottish Public Pensions Agency (SPPA). OHS and HR would work closely with the practitioner to guide them through this procedure. The process to be followed in this instance will be a non-disciplinary dismissal process - attached at Appendix 11.

Should there also be issues in relation to conduct and capability, alongside health issues, these may still require to be resolved using the appropriate procedures.

Confidential Support

NHS Grampian and all its practitioners have a role to play in developing a culture where practitioners feel able to share a health related or other problem which may be creating difficulties in the workplace.

Recognised and independent advice is available from the following:

- **Independent Medical Advice** - Clearly it will be necessary for practitioners to receive some form of independent medical support/advice. Either self or management referral to NHS Grampian's Occupational Health Service is encouraged.
- **General Doctor/Dentists** - All medical staff should be registered with a GP which offers another source of independent medical advice.

- Additionally the following hyperlink provides details of organisations who support doctors in difficulty in the UK <http://www.gmc-uk.org>

Note 1 - Where the Occupational Health Service recommends that a trainee should work less than full time, NHS Grampian should approach NHS Education for Scotland to discuss the possibility of funding. In such an instance reimbursement for out of hours work would require to be clarified - this may differ depending on the training requirements in individual specialties.

Note 2 – Where the Occupational Health Service recommends that a career grade Practitioner should work less than full time or have some other form of workplace adjustment this should be considered by the line manager and implemented when possible and practical.

Section 6: Capability Policy and Procedure for Medical and Dental Employees

1. Policy Statement

If at the Informal meeting it is agreed, or following a Preliminary Enquiry it has become apparent that capability is the major issue, then this Policy should be followed.

NHS Grampian will ensure that all medical and dental employees receive adequate training to undertake the duties of their post.

All medical and dental employees are required to perform the duties of their post to an acceptable standard; where this standard is not met, they will be offered support to improve their work performance. A distinction must be drawn however, between incapability and an apparent refusal to work satisfactorily. The latter is a matter of conduct and would be dealt with under the Disciplinary and Dismissal Policy & Procedure for Medical & Dental Employees (Section 7).

Where a practitioner's lack of performance is related to a capability issue, the primary objective must be to assist and support the individual to improve to the required standard in their current role or, agree a change in their responsibilities in keeping with their knowledge, skills and ability. To improve the performance the reason(s) for the unacceptable performance needs to be identified and an appropriate course of action put in place. A plan with clear objectives and timescales for review must be agreed.

Practitioners are entitled to be accompanied by a member of their professional organisation/trade union, defence union or a fellow member of staff at all stages. Practitioners also have the right to state their own case at all stages of this procedure.

Human Resources (HR) Operational Team advice will also be available at all stages of the procedure.

2. Definition

Capability is assessed by reference to the skills, aptitude, health and any other physical or mental quality. Capability must relate to the work that the employee is contractually employed to do.

This policy and procedure is designed to deal with those cases where the practitioner is lacking in some area of knowledge, skill or ability which results in a failure to be able to carry out the required duties to an acceptable standard. Where that lack of capability is an acknowledged health issue, the appropriate policy may be the Support Scheme for Medical and Dental Employees.

Capability issues may arise for a variety of reasons, including:

- Ill health, or changes in health status
- Personal circumstances
- Changes in the workplace
- Changes in what is required of the practitioner

- Bullying and/or harassment
- Significant concerns re training/development.

3. Aims of the Policy

This policy will ensure that capability issues are dealt with in a fair and consistent manner and provide for:

- Assistance being made available to practitioners to improve their performance when such deficiencies exist
- A means of addressing capability issues where improvement in the current role, following support, is not achieved or where it is agreed that this is not appropriate
- A clear and consistent approach for dealing with capability problems, normally without recourse to the Disciplinary and Dismissal Policy & Procedure for Medical & Dental Employees

In order to achieve this, the following principles and values are required:

- Capability issues must always be dealt with in a way that shows respect for the practitioner as an individual and recognises diversity
- The encouragement of early intervention, which enables a supportive approach to be taken, when under-performance is identified. There should be a range of options available to deal with such matters
- Every practitioner will be offered and encouraged to accept the services of the Occupational Health Service at an early stage
- With regard to doctors and dentists in training, as trainee doctors and dentists have NHS Education for Scotland/the Community Dental Service Regional Adviser's Office respectively as their Responsible Officer and are in a managed educational system, capability issues need to be handled with NHS Education Scotland/the Community Dental Service Regional Adviser's Office respectively
- NHS Grampian reserves the right to enter the Disciplinary and Dismissal Policy and Procedure for Medical & Dental Employees at any stage should it deem this to be appropriate (for example, in the case of refusal on the part of a practitioner to recognise a problem/accept support).

Summarised details on Responding to Capability Issues and an Employee Capability Flow Chart are attached at **Flow Chart 3**

4. Procedure – Informal Approach

Is there a Capability Issue?

Line Managers and Clinical Leads (the management "team") should usually manage issues of performance locally in the first instance through the informal approach. In many cases a conversation between a member of staff and their management team will be enough. The management team must, however, involve NHS Education for Scotland (NES) in the case of doctors in training and the Community Dental Service Regional Adviser (Scotland) in the case of dentists in training.

Practitioners are subject to professional regulations and therefore due reference to the necessary capability/competency procedures for the particular profession must be considered from the outset:

- General Medical Council 'Good Medical Practice'
- General Dental Council 'Standards for the Dental Team'

An initial discussion between the practitioner and the management team, which focuses on the particular performance issues, should take place to ascertain whether or not the practitioner accepts that there is an issue. If the practitioner accepts that there is an issue, they will be more likely to respond positively to constructive support and assistance to improve their performance.

The practitioner's manager must always bear in mind that the aim is to assist the practitioner to improve to an acceptable standard.

This will require a sensitively handled discussion, conducted privately in an atmosphere of trust and openness and free from interruption. It may be necessary to conduct more than one meeting to secure a positive outcome.

At the meeting the discussion should:

- Encourage the practitioner to describe the situation from their perspective
- Probe the practitioner's description by the use of open-ended and non-negative questions e.g. how, what, why, when and where
- Persuade the practitioner to elaborate on generalities that may conceal details of the problem
- Explore possible contributing factors e.g. relationships with colleagues, fears of inadequacy/failure, insufficient training, domestic/health reasons, etc
- Avoid unconstructive criticism
- Ensure relevant questions are answered by the practitioner
- Focus the discussion in order to achieve:
 - the identification of any underlying issues
 - identification of any contributing factors
 - possible solutions
 - an agreed action plan with time-scales and a review mechanism

Outcome of Informal Approach

The management team will record the key points of the discussion and detail the agreed action plan, timescales and review mechanism from the meeting in a letter to the practitioner within 5 working days. A copy of this letter will be kept and used for review of the action plan until this process has been concluded.

In the event that there is failure to agree that a capability issue exists and/or support is refused, it may be necessary to move to other policies from within this Suite of

Policies (Health or Disciplinary) or to seek a review of the practitioner's practice from an independent reviewer (this may be an internal or external review)

5. Further Action

If, following the agreed review of the practitioner's performance, there has been inadequate improvement within an agreed period of time, further action may need to be taken. Prior to entering this stage of the procedure, the relevant management team will ensure that the practitioner has had the necessary training, guidance and support required to undertake the job.

5.1 Stage 1

5.1.1 Approach

Where a practitioner is failing to perform to an acceptable standard, having been given initial guidance and support as above, further action may need to be taken. In these circumstances, the relevant management team should arrange a meeting with the practitioner, their staff side representative should they wish one and a member of the HR Operational Team and in the case of doctors/dentists in training, a representative from NHS Education for Scotland /the Community Dental Service Regional Adviser's Office. The practitioner must be afforded at least 5 working days notice of the meeting.

The written confirmation (template letter attached at CP1: can be adapted for all stages) of the meeting will include:

- The procedure and stage being used
- Clear details of the shortfall in performance
- All necessary supporting documentation
- Details of any initial discussion which has already taken place
- The employee's right to be represented at the meeting

The purpose of this meeting will be to discuss:

- The areas in which their performance is unsatisfactory
- The improvement in performance which is required and how it will be measured
- Learning points from any previous action plan under the informal stage
- An action plan for addressing the performance issues with an agreed time-scale for improvement to take place
- The date their performance will be reviewed again
- The action which may follow if the required improvement in performance is not achieved.

During this meeting the practitioner will be told clearly and precisely of the deficiencies which have been identified and of the improvement in work standard which is required (with the possible consequences of not doing so). There must be an opportunity for the practitioner to answer these points and to explain any difficulties which they may be having. There must

also be a discussion on the ways and means by which the desired improvement may be achieved.

5.1.2 Outcome of Meeting

An accurate note of the key points discussed at the meeting will be made by the HR Operational Team Member and sent to the practitioner, along with a copy of the action plan agreed at the meeting, within five working days of the meeting. These should be agreed and signed off by both parties.

The letter will include a statement that if at the agreed review date the desired improvement has been achieved, this will be confirmed and followed up in writing to the practitioner within five working days of the review.

5.2 Stage 2

If at the overall review of Stage 1, the desired improvement has not been achieved, a further meeting with the practitioner will be arranged as detailed in Stage 1, paragraph 5.1.1.

In addition, the support measures previously identified will also be reviewed and there will be discussion as to whether they should continue or if additional measures or an extension of timescale would be helpful. The practitioner will again be given the opportunity to answer the points raised and provide any other relevant information.

Consideration should be given at this stage to involve external agencies e.g. NHS Education for Scotland and/or GMC/GDC, to discuss formal career counselling appropriate to the practitioner's needs and/or whether permanent redeployment would be possible and practical, and if so, whether it is an agreeable option for the practitioner:

- Where redeployment is agreed as an option, the provisions of NHS Grampian's Redeployment Policy will apply. Where, however, the redeployed post is at a lower grade, protection arrangements will not normally apply* and, under these circumstances, the practitioner will be offered redeployment on the salary and the terms and conditions applicable to the new post.

[*Exception: Where a practitioner takes an appointment in a lower grade which is recognised by NHS Grampian as being for the purpose of obtaining approved training (which may include training to enable the practitioner to follow a career in another specialty), the practitioner shall, while in the lower grade, continue to be paid on the incremental point the practitioner had reached in his or her previous appointment. This shall include any general pay awards].

If the practitioner is successfully redeployed, the matter will be considered to have been resolved.

- If the practitioner accepts the possibility of redeployment but, after the appropriate period on the Redeployment Register, is unsuccessful in obtaining suitable alternative employment, a Hearing will be convened in accordance with the Disciplinary and Dismissal Policy & Procedure for Medical & Dental Employees. This Hearing may result in the practitioner being dismissed on the grounds of capability.
- With regard to the period that the practitioner is on the Redeployment Register, there will be joint discussion around how best the practitioner's skills can be used during this time.

Ideally any external review/input will be mutually agreed between the parties concerned. Where this is not the case, however, the practitioner will have the right of appeal against management's proposed course of action.

A formal record will be made of this meeting as detailed in paragraph 5.1.2 above.

5.2.1 Possible Outcomes

- Where it is believed that adequate improvement is possible within a reasonable time-scale, the letter will include details as outlined in paragraph 5.1.2.

If, at the agreed review date, the desired improvement has been achieved, this will be confirmed and followed up in writing to the practitioner within five working days of the review.

- Where redeployment is agreed as an option the provisions of the Redeployment Policy will apply (see above).
- In the event that the practitioner is offered but declines redeployment, a Hearing will be convened in accordance with the Disciplinary and Dismissal Policy & Procedure for Medical & Dental Employees. It should be noted that a possible outcome might be dismissal on the grounds of capability.
- If the medical/dental manager does not offer redeployment and considers that adequate improvement is not possible within a reasonable time-scale, a Hearing will be convened in accordance with the Disciplinary and Dismissal Policy & Procedure for Medical & Dental Employees. It should be noted that a possible outcome might be dismissal on the grounds of capability.

6. Appeals

The right to an appeal exists at the informal and formal stages of the procedure. There will not be a delay in implementing management decisions pending an appeal, but they may be subsequently amended, or reversed, as a result of an appeal hearing.

A practitioner, who is aggrieved at a decision made, has the right to appeal to the line manager to whom the person making the decision reports. Any appeal must be made in writing and should be received within 10 working days of receipt of the confirmation letter.

Section 7: Disciplinary and Dismissal Policy and Procedure for Medical and Dental Employees

Introduction

1.1 This document sets out the Disciplinary and Dismissal Policy and Procedure, applicable to medical and dental employees of NHS Grampian with regard to:

- Alleged failures in personal conduct
- Capability issues which it has not been possible to resolve through another NHS Grampian policy
- Alleged failures in professional conduct and competence
- Repeated failures to meet contractual commitments

1.2 It is in accordance with the circulars listed in **Appendix 1**.

1.3 It applies to all medical and dental staff employed by NHSG.

1.4 Definitions of misconduct likely to lead to disciplinary action are given at **Appendix 6**.

1.5 In relation to honorary staff, NHS Grampian will aim to ensure that the general principles in this policy are, where appropriate, pursued in co-operation with the employer of the honorary staff.

Definitions

2.1 The main types of conduct/performance covered by this policy and procedure are as follows:

- **Personal Conduct** - performance or behaviour of practitioners not associated with the exercise of medical or dental skills.
- **Professional Conduct** - performance or behaviour of practitioners arising from the exercise of medical or dental skills.
- **Professional Competence** - adequacy of performance of practitioners related to the exercise of their medical or dental skills and professional judgement.

NOTE: The Scottish Executive Report "Prevention – Better Than Cure" NHS Circular: HDL (2001)60 describes these definitions in more detail.

The Basis for Decision Making

3.0 The foundation for informed decision making is an understanding of the pertinent facts gained either by agreement or from a proportionate investigation.

It is therefore only once there is agreement, or that a proportionate investigation has been undertaken, that a decision can be made on whether the failure to achieve

required standards is due to conduct or capability and what the best method is for resolving the identified concerns.

3.1 A proportionate investigation will usually be through a Preliminary Enquiry, the outcome of which will be summarised in a report (see page12). The appropriate Medical Manager will subsequently determine the classification of the case

3.2 A disciplinary hearing may arise as follows:

- In **Personal Conduct** cases where the outcome of the PE investigation indicates/recommends that a disciplinary hearing is warranted.
- In cases where **Consultants repeatedly fail to honour their contractual commitments** and the use of the procedure in Annex A of NHS Circular No PCS (1990)08 has failed to remedy the situation.
- In **Professional Conduct/Competence** cases (**Consultants only**) where the outcome of an investigation in accordance with Annex B of NHS Circular No PCS (1990)08 (less serious matters which may warrant disciplinary action short of dismissal) indicates that disciplinary action may be warranted.
- In **Professional Conduct/Competence** cases (**all grades of Hospital and Community Medical Staff**) where the outcome of an investigation in accordance with Annex C of NHS Circular No PCS (1990)08 (serious matters which may lead to the dismissal of the practitioner) indicates/recommends that disciplinary action may be warranted. For Doctors in Training see also NHS Circular: HDL (2001)60.
- In **Professional Conduct/Competence** cases (**all grades of Community Dentists**) where the outcome of an investigation in accordance with SHM No49/1968 (serious matters which may lead to the formal reprimand or dismissal of the practitioner) indicates/recommends that disciplinary action may be warranted. (For Dentists in Training see also NHS Circular: HDL (2001)60).
- In **Professional Conduct/Competence** cases (**all Salaried Dental Practitioners**) will be treated in the same way as Community Dentists.
- In **Professional Conduct/Competence** cases (**all Salaried General Practitioners, including sessional General Practitioners**) will be treated in the same way as Consultants.

3.3 Nothing in this Disciplinary and Dismissal Policy and Procedure precludes the direct referral of the conduct/competence of any practitioner to the General Medical Council or General Dental Council at any time

Attendance at Disciplinary and Appeal Hearings

(refer to Appendix 12 for template letters)

Except where a case is classified as an Annex C case, Disciplinary Hearings will comprise the Hearing Panel, the Practitioner and the medical or dental management representative. In Annex C cases the procedure defined at Appendix 9.1 will be followed.

The Hearing Panel comprises a Chair in accordance with the principles described in the scheme of delegation (**Appendix 7**) and a member of the HR Department. The Chair may request a third member of the Panel, in a professional capacity. In the case of practitioners in the training grades, the Chair should ensure the advice/involvement of the Postgraduate Dean/Community Dental Service Regional Adviser (Scotland) during the hearing of a case. To ensure impartiality, panel members, including the Chair, must have had no prior involvement in the case.

The Practitioner has the right to be accompanied by a member of their professional organisation / trade union representative, or colleague not acting in a legal capacity.

The management representative may be accompanied by the investigating officer or member of the HR Operational Team.

Any witnesses called have the right to be accompanied.

Disciplinary Hearing

With the assistance of the HR Operational Team, the Chair is responsible for ensuring that the employee and their representative are advised in writing, no later than 15 working days prior to the hearing, of the following:

- The date, time and location of the hearing;
- The specific allegations to be considered;
- The potential outcomes. Where the potential outcome may be dismissal (either summary dismissal due to the severity of the allegations or dismissal with notice, where the allegations are less serious, but there is a relevant live final/first and final written warning on file) this must be stated;
- Who will be attending the hearing;
- The right to be accompanied;
- Arrangements for the exchange of cases and
- A copy of the policy.

Thereafter, and no later than 10 working days in advance of the hearing, the investigatory report including the full PE Report (where appropriate) will be shared with the panel and Chair, and with the Practitioner and their representative. The Practitioner will already have had an opportunity to see the full PE Report where one has been commissioned (see page12).

Thereafter, and no later than 5 working days in advance of the hearing, the practitioner, or, with their consent their representative, should submit a written statement of their

case, which will be shared with the panel and Chair and those presenting the investigatory report.

Such cases should include details of any witnesses which either party intends to call to the hearing. It is the responsibility of the party calling the witness to inform them of the arrangements for the hearing.

The disciplinary hearing will be held in accordance with the provisions in **Appendix 8**. **In the event that no case is submitted by the practitioner the hearing may still proceed with the practitioner present.**

If a practitioner does not attend the hearing without prior notification it may be held in absentia.

Disciplinary Hearing Outcome

Following the hearing, the panel will adjourn to consider the case.

There are three potential outcomes:

- No case to answer;
- Informal action required; or
- Formal disciplinary sanction required.

Where a formal disciplinary sanction is required, the following are available to the panel:

- First Written Warning – usually 6 months; will normally be issued in respect of failure to achieve standards or less serious misconduct/incompetence taking into account the individual circumstances and seriousness.
- Final/First and Final Written Warning – usually 12 months; will be appropriate where there is failure to adhere to a first written warning, or where a practitioner's conduct/competence is considered to be particularly serious but not sufficient to justify dismissal.
- Alternatives to Dismissal; or
- Dismissal:
 - In cases of gross misconduct/incompetence without notice i.e. summary dismissal.
 - In cases of persistent misconduct/incompetence/incapability following previous warnings – with notice

Warnings

The sanction applied by the disciplinary panel should take into account the seriousness of the allegations against the practitioner and any mitigation offered.

Previously issued warnings must be disregarded for disciplinary purposes after their expiry. They will be removed from the practitioner's file and the practitioner will be notified of this. Consideration may be given to the circumstances which resulted in such warnings being issued where subsequent allegations of misconduct arise; where this can be shown to demonstrate a repeated pattern (although any such reference must be

reasonable and appropriate, considering the severity of the earlier matter and the period of time which has since elapsed).

Where the outcome of the disciplinary hearing is such that dismissal would be an appropriate action, it may be that, following clarity around mitigating circumstances, some form of disciplinary action other than dismissal may be deemed appropriate. Any such alternatives should be based on the general principles of equity and consistency and may be subject to review, and will normally be in conjunction with an appropriate level of warning.

Alternatives to dismissal may include a permanent or temporary demotion (protection of earnings would not apply in such cases), relocation to another suitable post/location, or a period of reasonable re-training. Movement into another post (including demotion) will only be an option where it is identified that such a post exists. A post will not be created to facilitate such a move, and if the practitioner has not been successful in securing alternative employment within NHS Grampian within 6 months of the disciplinary hearing, their contract of employment will be terminated in the grounds of "Some Other Substantial Reason".

Some acts, termed 'gross misconduct', are so serious in themselves, or have such serious consequences that the relationship of trust and confidence which is needed between NHS Grampian and the practitioner is damaged irreparably, and therefore call for summary dismissal without notice for a first offence.

All disciplinary hearing outcomes must be confirmed in writing to the practitioner and their representative (where applicable) within 5 working days following the hearing. The letter should confirm the following:

- Details of who was present at the disciplinary hearing
- The allegations considered
- The hearing outcome (including any disciplinary sanctions issued) and the reason such a decision was taken
- The date on which any issued warning will expire or, in the case of dismissal, the date on which employment will terminate (recognising, except in the case of dismissal on grounds of gross misconduct, the employee's contractual notice)
- In the case of warnings, the potential consequences of further misconduct prior to expiry of the warning (particularly the potential for consideration of dismissal prior to expiry of a final/first and final written warning)
- In the case of dismissal, any necessary administrative or financial arrangements.
- Whether or not the Practitioner will be referred to their professional body and if so, by whom
- Details of the right of appeal.

Appeals

All Practitioners have a right to appeal against any decision taken.

Details of the right of appeal must be clearly set out within the letter confirming the outcome of a disciplinary hearing, detailing to whom such an appeal must be made and the timescale within which it must be lodged (i.e. no later than 15 days following the

disciplinary hearing). At this stage a practitioner must indicate his/her wish to appeal and give a summary of the grounds for the appeal.

Attendance at Appeal Hearings

Appeal Hearings will comprise the Appeal Hearing Panel, the employee and the medical management representative.

The Appeal Hearing Panel comprises of a Chair, in accordance with the scheme of delegation in **Appendix 7** and a member of the HR Operational Team. The Chair may request a third member of the Panel in a professional capacity. In the case of practitioners in the training grades, the Chair should ensure the advice/involvement of a Postgraduate Dean/Community Dental Service Regional Adviser (Scotland). To ensure impartiality, panel members, including the Chair, must have had no prior involvement in the case.

The practitioner has the right to be accompanied by a member of their professional organisation trade union representative, or colleague not acting in a legal capacity.

The management representative may be accompanied by the investigating officer or member of the HR Operational Team.

Any witnesses called have the right to be accompanied.

Appeal Hearings

The identified Chair, in accordance with the scheme of delegation, will be responsible for identifying membership of the appeal hearing panel.

The Chair will also be responsible for ensuring that the employee and their representative are advised in writing, no later than 15 working days prior to the hearing, of the following:

- The date, time and location of the hearing
- Who will be attending the hearing
- The right to be accompanied
- Arrangements for the exchange of cases
- A copy of the policy.

Thereafter, and 10 working days in advance of the hearing, the practitioner's full appeal case will be shared with the appeal panel and Chair, and with the manager who chaired the earlier hearing and issued the disciplinary sanction against which the practitioner is appealing.

Similarly, 5 working days following receipt of the practitioner's appeal case, the written case produced by the medical manager, who chaired the earlier hearing will be shared with the appeal panel and Chair and the practitioner and their representative.

Such cases will include details of any witnesses which either party is calling to the appeal hearing. It is the responsibility of the party calling the witness to inform them of the arrangements for the appeal hearing.

The appeal hearing will be heard in accordance with the provisions in **Appendix 8**

An appeal cannot result in any increase in penalty.

Following the hearing, the Chair will be responsible for ensuring that the practitioner and their representative are advised in writing of the outcome of the appeal hearing. This should include the rationale behind any decisions taken in response to the employee's grounds for appeal. Such a letter must be issued within five days following the appeal hearing.

The outcome of the appeal will be final, with no further internal right of recourse, **unless** the circumstances are covered by **Appendix 10** of the Hospital Medical and Dental Staff and Doctors in Public Health and the Community Health service (Scotland) Consultant Grade Terms and Conditions of Service in relation to Appeals against dismissal (Paragraph 190 rights)

Section 8: Procedure for Dealing with the Suspension of Medical/Dental Staff

This procedure should be used in respect of the suspension of medical or dental staff on any grounds, including both personal and professional conduct and professional competence.

1. Suspension may be considered when a member of staff needs to be immediately removed from the employing body's premises to protect the interests of patients, other staff, or the practitioner and /or to assist in the investigative process.
The authority to suspend, or extend a suspension period is vested in the Medical Director who will make such decisions in conjunction with the Unit Clinical Director or equivalent for the service, or in the case of Dentists in conjunction with the Dental Public Health Consultant .
2. The Practitioner will be advised of the reason for the suspension and their rights by the suspending officer.
3. Suspension is not a disciplinary sanction and will only be considered when all alternative options have been fully considered. In all cases there will be a clear and justifiable reason for a suspension and alternatives to suspension will have been considered with these being explained to the Practitioner and documented. In the event that it is felt necessary to withdraw work email access, this should be notified to the Practitioner at the time of suspension, along with the reasons for this.
4. The decision to suspend will be conveyed to the practitioner concerned privately, with a management witness present. The Practitioner will be advised at the commencement of the meeting that they have a right to be accompanied. It may be necessary for the meeting to be adjourned for a short period of time for this to be sought. Failure to source a colleague etc will not delay the suspension. In addition to the Medical Director being aware of the suspension, the appropriate General Manager/Chief Officer and Director of Workforce should be informed of the suspension by the suspending manager at the earliest opportunity.
5. Identification badges will be retained by the Board during the period of suspension and will be requested during the verbal suspension meeting. If for any reason the identification badge cannot be provided during this meeting, the doctor or dentist will be required to return it to the relevant line Manager at the earliest opportunity.
6. The Director of Workforce, or delegated Deputy will inform Scottish Government Health and Social Care Department (SGH&SCD) when any Practitioner is suspended. The name of the practitioner, their specialty, the date of suspension and the reasons for the suspension should be given. The Director of Workforce, or delegated Deputy will provide monthly progress reports, which will include information on progress to date, the reasons for any delay in resolving the case, an explanation of how it is proposed to overcome these delays, the costs incurred and the anticipated date of conclusion of the disciplinary process.
7. The suspension should be immediately confirmed in writing, to the suspended Practitioner. This confirmation will clearly state the effective date, time and the content of the allegations. The suspended Practitioner will be advised that an investigation will follow; its anticipated duration; which policy applies; and all other relevant conditions.

8. The nature of suspension isolates practitioners from their normal organisational support mechanisms. Suspended practitioners must not contact any colleagues on any work-related matter, (this does not preclude social, non-work related, contact), other than the suspending officer and a designated HR contact person, who will be identified at the outset and who is responsible for keeping the suspended practitioner updated on the progress of the investigation.
9. The Board recognises its ongoing duty of care to the suspended practitioner. If requested by the suspended practitioner they may nominate a colleague, independent of the issue the suspension pertains to, who may provide peer support. This should be notified to the suspending officer by the practitioner and the colleague should independently indicate their willingness to fulfill this role. The Practitioner will also be informed of what other support can be offered e.g. OHS referral as well as contact details for any other agencies who may provide support.
10. The suspension will be on full pay.
11. The particulars of the allegations should be investigated and clarified within six weeks. Where this is not possible, the practitioner should be told why and informed when further information will be provided.
12. There should be provision in all cases for review of the suspension as the investigation continues. At each review, careful consideration should be given as to whether the interests of patients, other staff, or the practitioner and/or the needs of the investigative process continue to necessitate suspension. This process should also take into account the option of the practitioner returning to limited or alternative duties where practicable.
13. A review of the position should normally be undertaken at least every 2 weeks or otherwise as agreed by the parties and the outcome reported to the General Manager, Medical Director and Director of Workforce, and the appropriate Committee of the Board.
14. The practitioner will be invited to attend a review meeting every two weeks, or as otherwise agreed by the parties, along with their representative. The Practitioner will be informed of the outcome of each review at the meeting and/or in writing thereafter.
15. After a minimum period of 8 weeks of suspension, a doctor can request a review of their situation by writing to the Commissioning Manager stating the reasons why they feel their suspension should be lifted. The Director of Workforce and the Medical Director will commission a review of the reasons for suspension and the current status of any investigation is undertaken and will inform the doctor within 2 weeks from the date of his/her letter of the decision.
16. If the investigation has not been completed within three months of the date of suspension, a report should be made to the General Manager/Chief Officer, Medical Director and Director of Workforce, outlining the reason for the delay and indicating how long the suspension is expected to continue, together with a plan for completion of the investigation.
17. If the suspension continues, reports should be made by the suspending manager on a monthly basis to the General Manager/Chief Officer, Medical Director and Director of Workforce.
18. If at any time after the practitioner has been suspended, investigation shows that either the allegations are without foundation or that further investigation can continue with the practitioner being in the workplace, be that by working normally, or in another work area, the suspension should be lifted and the practitioner

allowed to return to work as soon as practicable. Appropriate arrangements will be put in place to facilitate the return.

19. Whilst it is impractical to lay down strict time limits for the overall duration of suspension, it should be kept to an absolute minimum in all cases.
20. During the period of suspension, practitioners may not take up locum employment without the express permission of the Board. The practitioner will be required to inform any prospective employer, including those within the private sector, of his or her suspension and advise them that they are required to contact the Board, in writing, with reference to the reasons for the suspension. Practitioners who undertake private work for another employer(s) should advise them of their suspension.
21. NHS Grampian shall keep a record of the numbers of current Medical and Dental staff suspensions. This record will include the grade of the suspended Practitioner and the duration of their suspension. These statistics shall be reported to the BMA JNC, confidentially, on a quarterly basis.

NB: The role of the Medical Director in having the authority to suspend and the Director of Workforce in having awareness of the suspension does not constitute involvement in an earlier part of the process and therefore does not preclude them from later stages in the process.

A Full List of Extant Circulars

NHS Circular No. 1990 (PCS) 8

Disciplinary Procedures for Hospital Medical and Dental Staff, Community Medicine Staff and Doctors in Public Health Medicine. Amended by NHS Circular No. 1990(PCS)32

NHS Circular No. PCS(DD) 1994/11

Disciplinary Procedures for Hospital Medical and Dental and Community Medical Staff -
SUSPENSION

NHS Circular No. PCS(DD)1996/6

Procedure for Suspensions in the Community Dental Service (agreement reached that the guidance in NHS Circular No. PCS(DD) 1994/11 should also apply to those dentists working in the Community Dental Service, including those in dental public health).

NHS Circular No. PCS(DD)1999/7

Report of the Short-Life Working Group on Suspension of Medical and Dental Staff. (Annex to Circular amplified, amended or updated NHS Circulars 1990 (PCS)8 and PCS(DD)1994/11).

NHS Circular No. PCS(DD) 2001/9

Discipline Procedures: Classification of Conduct

PARA 190

PARA 190 - Extract from Hospital Medical and Dental Handbook.

PARA 190 - Extract from Community Medical Handbook.

PARA 190 - Extract from Community Dentists' Handbook

NHS Circular No. HDL(2005)5

Tackling Fraud in NHS Scotland – Joint Action Programme

Financial Control: Procedure Where Criminal Offences Are Suspected

OTHER REPORTS

HDL (2001) 60 - "Prevention - Better Than Cure", Doctors and Dentists in Training, July 2001

Report of the Short-Life Working Group on Poor Performance amongst Doctors and Dentists in Training.

"Prevention Better Than Cure - Ensuring Safer Patients and Better Doctors", July 2001

Report of Short-Life Working Group on identifying and preventing under performance amongst General Medical Practitioners.

Issues of Fraud, Criminal Activity and/or Vulnerable Groups

Fraud – Contact Counter Fraud Services via HR Operational Team or Fraud Liaison Officer (Assistant Director of Finance). DO NOT INFORM employee of allegations

Criminal Activity – Inform HR Operational Team and then contact Police. DO NOT INFORM employee of allegations

Vulnerable Groups – Inform Council who will determine who is the leading investigation authority

Information Security and/or Governance – Contact Information Security or Information Governance for advice. DO NOT INFORM employee of allegations

Protocol – Standard Setting

Standard setting is a positive means by which line managers can advise and guide members of medical and dental staff to achieve acceptable standards of conduct and performance. This is usually best dealt with on an informal basis by a staff member's immediate medical or dental manager.

Standard setting is **not** part of the formal disciplinary procedure but may be used to reaffirm and clarify existing standards to secure the necessary improvement in behaviour/performance without having recourse to the formal procedure. Where a medical or dental manager considers the conduct of a practitioner to be below an acceptable standard, it is the duty of the medical or dental manager to meet with the member of staff (and his/her representative if this will assist the process), and the following points should be noted:

- (a) Each member of medical and dental staff has a responsibility to achieve an acceptable level of conduct and performance and should be given help and encouragement to reach it. In all cases, medical and dental managers should specify in what way the current performance fails to meet the required standard. After establishing the facts there may be no need to resort to standard setting and this should be made clear to the practitioner.
- (b) Every effort must be made to ascertain any contributory factors which may have led to the practitioner's apparent failure to meet the required standards. The medical or dental manager should offer any assistance that may be at their disposal to help the member of staff overcome any problem or difficulty.
- (c) During the course of the discussion the practitioner must be made aware of the acceptable standard of work performance/behaviour and informed that their progress will be monitored and reviewed. The practitioner must be told of the duration of such a monitoring and review process. While the agreed period of time can vary, depending on individual circumstances, it should not normally exceed 6 months.
- (d) The medical or dental manager should inform the practitioner that failure to meet the agreed standard, within the specified period of time, may result in formal disciplinary action being taken which could ultimately lead to dismissal.
- (e) The agreed standard should be confirmed in writing to the practitioner together with the monitoring arrangements and the assistance which can be provided. In the case of doctors and dentists in training, the deanery should be involved and consideration should be given to designating a senior clinician to act as the trainee's mentor.
- (f) Improvements achieved by the employee during the monitoring and review process should be recorded.

- (g) Where members of medical and dental staff transfer within NHSG, all current standard setting letters and current progress reports should be forwarded to the new medical or dental line manager.
- (h) The record will be completely removed from the personal file at the end of the monitoring and review process and the individual notified.

Preliminary Enquiry Group Members Confidentiality Statement

Name:

Designation:

In the course of your role undertaking a Preliminary Enquiry pertaining to a Medical and Dental employee you may have access to confidential material about patients, members of staff or other matters. On no account must information relating to patients be divulged to anyone other than those who are concerned directly with the care, diagnosis and/or treatment of the patient, or other persons specifically authorised. Similarly no information of a personal or confidential nature about individual members of staff or the organisation should be divulged without proper authority having been obtained. If you are in any doubt whatsoever as to the person or body requesting such information, you must seek advice from your line manager. Failure to observe this will be regarded by NHS Grampian as serious misconduct, which could lead to disciplinary action being taken against you.

Signed: **Date:**

Name (Block Capitals):

PROCEDURE FOR RESOLVING DIFFERENCES AS TO WHETHER ALLEGATIONS SHOULD BE CONSIDERED UNDER PERSONAL CONDUCT, PROFESSIONAL CONDUCT OR PROFESSIONAL COMPETENCE

To ensure that the appropriate formal investigation procedure is used, the line manager will determine, following the report of the preliminary investigation, which of the definitions of conduct/competence in paragraph 2.1 of the Disciplinary and Dismissal Policy and Procedure is most applicable in each case. In deciding, the line manager will have regard to representations from the individual(s) concerned, their representative(s), medical/dental managers and the advice of the Directorate of Workforce.

If the practitioner is dissatisfied with the decision made by the line manager he/she may appeal to the Classification Appeal Committee within 7 working days of receipt of the formal notification.

The Classification Appeal Committee will be convened and will be constituted as follows:

- 1 A Chairman, to be drawn from an agreed list, who will be a solicitor and not in the employment of the NHS or the Central Legal Office;
- 2 A Medical Director from another Health Board Area;
- 3 A medically (or dentally in appropriate cases) qualified professional who is not a member of the NHSG Board or employed by NHSG and who has been nominated by the Local Negotiating Committee following consultation with the Scottish Secretary of the BMA or Scottish Secretary of the BDA as appropriate.

All three members must be acceptable to NHSG and to the Local Negotiating Committee.

The practitioner may be accompanied at the appeal by his/her representative. The informal rules of natural justice will apply to the appeal proceedings. The proceedings should normally be completed and the decision confirmed within one month of the first meeting of the Classification Appeal Committee. The Committee's decision shall be binding on both parties.

A formal record of the proceedings, including the reasons for the decision reached, shall be sent to both parties.

Source:

NHS Circular: PCS (DD) 2001/9 Appendix 53

Note: Medical Director amended to Line Manager

MISCONDUCT LIKELY TO LEAD TO DISCIPLINARY ACTION

It would be impossible to record all the various types of personal conduct which could be viewed as misconduct or gross misconduct. The listings below must therefore be seen as a guide only and in no sense as an exhaustive list.

It must also be stressed that each situation will be judged on its merits. Depending upon the context, circumstances and degree, the items listed below could be instances of misconduct or gross misconduct, and personal or professional conduct:

1. Misconduct

- (a) Poor attendance record;
- (b) Bad timekeeping;
- (c) Refusal to carry out a reasonable instruction;
- (d) Failure to observe Departmental or NHSG rules and regulations;
- (e) Rudeness;
- (f) Persistent time-wasting or misuse of NHSG time;
- (g) Misuse of NHSG property or equipment;
- (h) Involvement in 'blameworthy' accidents with NHSG vehicles or in a series of minor accidents. Failure to notify such accidents or damage;
- (i) Unauthorised absence from work;
- (j) Unacceptable standard of dress or general appearance;
- (k) Bullying, harassment or victimisation.

2. Gross Misconduct

The following examples of gross misconduct could lead to summary dismissal, again depending on the particular circumstances of the case:

- (a) Theft;
- (b) Dishonesty, fraud or attempted fraud;
- (c) Unauthorised possession and or use of property belonging to the NHSG, patients, staff or members of the public;

- (d) Intoxication and/or drug abuse;
- (e) Contravention of safety regulations or failure to follow safe working practices, thereby endangering others or oneself;
- (f) Wilful damage of property or equipment belonging to the NHSG, patients, employees or members of the public;
- (g) Acts or threats of violence against fellow staff members, superiors, patients or members of the public;
- (h) Criminal offences outside work which may affect the ability of a practitioner to carry out his/her contract of employment;
- (i) Gross insubordination;
- (j) Corrupt practices which may include the receipt of money, goods or pecuniary advantage in respect of any services rendered;
- (k) Falsification of records;
- (l) Breach of confidentiality;*
- (m) Serious bullying, harassment or victimisation.

Note:

* Excluding protected disclosures under the Public Interest Disclosure (Whistle blowing) Act 1998/covered by the Voicing Concerns Policy

Scheme of Delegation

Allegations of Misconduct with no Extant Disciplinary Sanctions

The authority to issue a formal warning to a practitioner is vested in the practitioner's next-in-line manager. If the next in-line manager was the investigation officer who undertook the Preliminary Enquiry, the authority is vested in an equivalent manager within the organisational hierarchy or the next in-line manager again. For example, if the line manager and investigation officer was a Unit Clinical Director, the Chair of a disciplinary panel considering an allegation of misconduct could be either another Unit Clinical Director (or equivalent), or the Associate Medical Director.

In the case of Doctors in Training the appropriate representative of NHS Education for Scotland should also be present at any hearing.

Allegations of either Gross Misconduct or Misconduct with an Extant Disciplinary Sanction

The authority to dismiss a practitioner is vested in the Medical Director.

In the case of Doctors in Training the appropriate representative of NHS Education for Scotland should also be present at any hearing

Appeals

Appeals against a formal warning will be heard by a line manager at least one level above the manager who issued the formal warning.

Appeals against dismissal will be heard by a panel which should consist of senior managers of the Board – e.g.:

- Chief Executive;
- Other Executive or Corporate Director;
- Deputy Chief Executive;
- Directors/Senior Managers.

(A senior member of the Workforce Directorate will be in attendance to provide advice and support to the panel).

If the employee is a direct report of the Chief Executive and the Chief Executive made the decision to dismiss, the Appeal Panel will consist of 3 non-executive Directors of the Board.

In addition, whoever hears the disciplinary or appeal hearing must be impartial and have had no prior involvement in the case.

Procedure at a Disciplinary Hearing (Unless handled under NHS Circular 1990 (PCS) 8 Annex C*)

The purpose of the Hearing is to inform the practitioner, in detail, of the alleged offence against them and to give them the opportunity to state their case before a decision is reached. The basic pattern that will be followed is:

1. Introductions
2. Management Case
3. Questions from Practitioner/Representative
4. Questions from Panel
5. Practitioner's Case
6. Questions from Management
7. Questions from Panel
8. Management Summing Up
9. Practitioner Summing Up
10. Adjournment
11. Decision

Management Case

1. Management present their case and call any witnesses.
2. Both the management presenter and witnesses are open to questions from the staff-side and the Panel.
3. The management presenter may re-question the witness/es to clarify any points that have arisen from the staff-side/Panel questions.

Practitioners Case

1. The practitioner (or their representative) presents their case and call witnesses.
2. The practitioner, the representative and witnesses are then open to questions from the management presenter and from the Panel.
3. The staff-side presenter may then re-question the witness(es) to clarify any points that have arisen from the management-side/Panel questions.

Summing Up

The management and staff-side representative will be given the opportunity to sum up their cases. Neither side may introduce new information at this stage or ask any further questions. The practitioner always has the opportunity to speak last.

Decision

Both management-side and staff-side must leave at the end of the summing up stage. The Panel will discuss and come to a decision in private. Where practicable the Panel

will recall the staff-side and management presenters to inform them of the decision verbally. All decisions must be communicated in writing within 5 working days.

In reaching a decision the Chair of the Panel will consider the following factors:

- Any relevant disciplinary record and whether the practitioner concerned was aware of the standards required;
- The practitioner's position, length of service and general conduct;
- The action taken in identical cases in the recent past, where known;
- Whether the proposed action is reasonable after due consideration of the evidence presented and any mitigating factors.

The Chair of the Panel must therefore establish:

- What actually happened, including the when and where and taking account of witness statements;
- What rules, if any, were broken and whether they had been clearly made known, in advance, to the practitioner;
- What the practitioner's explanation was and whether there were any mitigating circumstances for the practitioner's actions, or failure to act.

ADDITIONAL PRINCIPLES

1. Witnesses

Witnesses will only be present while giving their particular evidence and will leave once they have given their evidence. Witnesses will not be recalled unless clarification of a particular aspect is crucial to the outcome of the Hearing.

2. Adjournment

The Panel may agree to halt a Hearing temporarily where this would assist its progress.

3. Clarification

In the course of making their decision after the formal management and staff submissions, the Panel may require clarification from one or other of the sides. In such circumstances both sides must be present in order that they hear the query and have the opportunity to respond.

4. Departures from Procedure

The procedure is designed to be fair and a degree of flexibility may be used where it is agreed that this would assist in eliciting the facts. The basic pattern of approach should, however, be followed and any amendments to the procedure outlined above must be agreed.

* See Appendix 8.1 below

Disciplinary Matters handled under NHS Circular 1990 (PCS) 8 Annex C

The process for dealing with matters of Serious Professional Conduct or Competence are outlined in Annex C of PCS 8. This clearly defines a prescribed role for the NHS Board Chair and Board Members in matters of professional conduct and personal competence that are considered sufficiently serious that they may warrant dismissal.

Within Annex C, the Board is required to appoint an independent Inquiry Panel, members of which are external to the Board. This Panel should meet in private and seek to establish all of the relevant facts of the case, including witness statements. At the Inquiry Panel hearing, the Practitioner should appear personally before the panel and hear all the evidence presented.

Procedure to be followed

1. On decision that a prima facie case exists, the Practitioner will be informed of the allegation or complaint and will be given 4 weeks to respond before a decision is taken on whether or not an inquiry is necessary.
2. A decision to proceed will be taken within 2 weeks of receipt of the Practitioners' comments.
3. An Independent Inquiry Panel will then be set up. The Practitioner will be informed of the panel, including the terms of reference and will be given 21 days to prepare a case. The panel will meet in private to establish the relevant facts of the case.
4. A hearing will be convened, at which cases will be presented by NHS Grampian and by the Practitioner. The hearing shall take place no more than 13 weeks from the decision to proceed, and the hearing shall normally conclude within one week.
5. The panel will produce a report in 2 parts. The first part will set out the panel's findings and all relevant facts. The second part will contain a view as to whether or not the Practitioner is at fault.
6. Within 4 weeks of the hearing, the first part of the report will be sent to NHS Grampian and to the Practitioner. Both sides will have 4 weeks to submit proposals for the correction of facts.
7. Within 4 weeks of comments being received, the Board Chair will receive the full report of the Inquiry Panel and, should the report findings warrant consideration

of disciplinary action, ask the Director of Workforce, or representative, to convene a Panel of Board members to determine what action to take.

8. Executive and non-Executive members of the Board may sit on the disciplinary hearing panel. The Director of Workforce, or representative, will be the professional advisor to the Board and the Hearing.
9. Where the Medical Director is unable, due to prior significant involvement with a particular case, the Board retains the right to seek advice from an external Medical Director, or other appropriately trained professional.
10. The Practitioner will be given 15 working days¹ notice of the date of the Hearing.
11. The Director of Workforce will send a copy of the Inquiry Panel Report to the Practitioner no less than ten working days before the date of Hearing.
12. The Practitioner will be given the opportunity to put any plea in mitigation to the Director of Workforce, in writing, at least seven working days before the date of the Hearing, including any requests for witness attendance. If agreed, it is the Practitioners responsibility to arrange for their witness to attend.
13. The Director of Workforce will provide the Panel, the Practitioner and the management side with the full case at least three working days before the date of the hearing.
14. The Practitioner has the right to be accompanied by a member of their professional organisation or trade union, a fellow member of staff. In cases of gross misconduct, it is open to both parties to be represented as they consider appropriate. Where the Practitioner elects to be represented by legal counsel, the Board retains the right to be similarly represented. Only one representative is permitted.
15. The right for either side to bring witness testimony is a decision for the Panel and shall be limited to testimony as to mitigation and/or impact.
16. Process to be followed at the Hearing:

This process is not a rehearing of the case but to make a decision as to disposal of the case, where the facts have been established by the independent Inquiry Panel.

¹ Working Days is defined as Monday – Friday, excluding public holidays.

Management

The Management side will present the facts of the case, as provided by the Inquiry Panel, as established fact.

The Management side case will make representation as to the means of disposal.

Staff Side

The Practitioner, or appropriate representative, will offer mitigation as to the established facts.

Decision

Both the management side and the staff side must leave once the mitigation has been presented. The Panel will consider the facts and mitigation in private.

Written Confirmation

The decision of the Panel will be communicated in writing within five working days and shall include the relevant right of appeal, as per the Framework of Support.

Appeals

Annex C refers to any decision to dismiss being for the Board. Within any disciplinary procedure, the opportunity to appeal the decision taken is a statutory requirement. PCS 8 describes two separate mechanisms for appeal. One reflects the requirements of the contract of consultants appointed before 1990, where the right to Appeal to the Cabinet Secretary². For others appointed after that date, the Board will require to establish an appeal panel, which will include a Board nominee.

² The Circular refers to the Secretary of State

Appeal Hearings

The conduct and procedure outlined in APPENDIX 8 for Disciplinary Hearings will also apply to Appeal Hearings; however in the case of an appeal, the employee's case will be heard first.

The purpose of an Appeal Hearing, however, is not to re-hear the original case, but to provide the practitioner with the opportunity to challenge the conduct of the initial hearing, i.e. whether it was conducted fairly and whether the disciplinary action was reasonable in the circumstances, and to present any new evidence that may not have been submitted at the original hearing. It also allows management to review the original decision and reach a view on whether, based on all the circumstances, the original outcome was fair. The Appeal Panels decision should therefore be based on a review of any new evidence presented, and consideration of whether the original decision was within a range of reasonable responses, not whether they would have made the same decision themselves.

It is clear from current unfair dismissal case law that, where an original decision to dismiss may have been unfair for a procedural reason and if the opportunity for this to be rectified is taken, the decision to dismiss can still be upheld. In some circumstances, therefore, it may be appropriate for an appeal to be heard as a complete rehearing of the case rather than a mere submission of management's conclusions and the employee's point of view.

Para 190 Rights

Paragraph 190a of the Hospital Medical & Dental Staff and Doctors & Dentists in Public Health Medicine and the Community Health Service Terms & Conditions states:

'Subject to sub-paragraph (c), a consultant, SMHO, SHDO, AS, senior clinical medical officer, senior medical officer community medicine), clinical medical officer on or above the 6th point of the salary scale or hospital practitioner who considers that his or her appointment is being unfairly terminated may appeal to Scottish Ministers against the termination by sending to the Scottish Ministers a notice of appeal at any time during the period of notice of termination of his or her appointment.'

Paragraph 10.4.1 of the Consultant Grade (2004) Terms & Conditions of Service states:

'A consultant employed prior to 1 April 2004, and whose contract included a right of appeal to Scottish Ministers under the provisions of Paragraph 190 of the terms and conditions of service then applying, will continue to benefit from this right of appeal.'

Non disciplinary dismissal procedure – NDDP

There is a legal requirement when considering termination of an employees' Contract of Employment for reasons other than conduct, to follow a fair and reasonable process; within this Framework for Support Policy, the following process must be followed.

Reasons that a manager may have for considering the termination of an employee's contract for a reason other than one of a disciplinary nature include:

- Redundancy
- Expiry of a fixed term contract
- Ill health termination
- Some other substantial reason (SOSR) e.g. employee does not appear for work and has not notified manager or responded to letters from manager

Any manager considering a termination of employment for any of the above reasons must discuss the matter with a member of their HR team before commencing this process.

A meeting will be convened to discuss the matter which has led to the NDDP. At the meeting will be an independent panel, the Practitioner and their representative (should they wish to bring one) and the medical or dental management representative who has been managing the case.

The Panel will comprises of a Chair, in accordance with the principles described in the scheme of delegation (**Appendix 7**) a senior manager and a member of the HR Department. In the case of practitioners in the training grades, the Chair should ensure the advice/involvement of the Postgraduate Dean/Community Dental Service Regional Adviser (Scotland) during the meeting. To ensure impartiality, panel members, including the Chair, must have had no prior involvement in the case.

The Practitioner has the right to be accompanied by a member of their professional organisation / trade union representative, or colleague not acting in a legal capacity.

The medical/dental management representative may be accompanied by an investigating officer or member of the HR Operational Team.

Should any witnesses be called, they have the right to be accompanied.

Meeting

With the assistance of the HR Operational Team, the Chair is responsible for ensuring that the employee and their representative are advised in writing, no later than 15 working days prior to the meeting, of the following:

- The date, time and location of the meeting
- Full details of the specific issues to be considered, with supporting papers from the medical/dental management representative
- The potential outcomes, including the potential for dismissal

- Who will be in attendance
- The right to be accompanied
- The option for the staff member to submit any documentation to the panel in advance of the meeting; this should be no later than 5 days prior to the meeting
- Copies of all relevant policies, if not already provided

Documentation provided by both parties should include details of any witnesses which either party intends to call to the meeting. It is the responsibility of the party calling the witness(es) to inform them of the arrangements for the meeting.

The meeting will be held in accordance with the provisions in **Appendix 8**.

In the event that no case is submitted by the practitioner the hearing may still proceed with the practitioner present.

If a practitioner does not attend the hearing without prior notification it may be held in absentia.

Meeting Outcome

Following the meeting, the panel will adjourn to consider the matter.

There are three potential outcomes:

- No action
- Informal action
- Formal action

Where formal action is required, the following are available to the panel:

- Alternatives to Dismissal
- Dismissal:

Alternatives to dismissal may include a permanent or temporary demotion (protection of earnings would not apply in such cases), relocation to another suitable post/location, or a period of reasonable re-training. Movement into another post (including demotion) will only be an option where it is identified that such a post exists. A post will not be created to facilitate such a move, and if the practitioner has not been successful in securing alternative employment within NHS Grampian within 6 months of the hearing, their contract of employment will be terminated in the grounds of "Some Other Substantial Reason".

All meeting outcomes must be confirmed in writing to the practitioner and their representative (where applicable) within 5 working days following the hearing. The letter should confirm the following:

- Details of who was present at the meeting
- The issues considered
- The outcome and the reason such decisions were taken

- In the case of termination of contract, the date on which employment will terminate (recognising the employee's contractual notice), and any necessary administrative or financial arrangements.
- Whether or not the Practitioner will be referred to their professional body and if so, by whom*
- Details of the right of appeal.

Appeals

All Practitioners have a right to appeal against any decision taken.

Details of the right of appeal must be clearly set out within the letter confirming the outcome of the meeting, detailing to whom such an appeal must be made and the timescale within which it must be lodged (i.e. no later than 15 days following the meeting). At this stage a practitioner must indicate his/her wish to appeal and give a summary of the grounds for the appeal.

Attendance at Appeals

Appeals will comprise the Appeal Hearing Panel, the employee and the medical management representative.

The Appeal Panel comprises of a Chair, in accordance with the scheme of delegation in **Appendix 7**, a more senior manager than attended the first meeting and a member of the HR Operational Team. In the case of practitioners in the training grades, the Chair should ensure the advice/involvement of a Postgraduate Dean/Community Dental Service Regional Adviser (Scotland). To ensure impartiality, panel members, including the Chair, must have had no prior involvement in the case.

The practitioner has the right to be accompanied by a member of their professional organisation trade union representative, or colleague not acting in a legal capacity.

The management representative may be accompanied by the investigating officer or member of the HR Operational Team.

Any witnesses called have the right to be accompanied.

Appeals

The identified Chair, in accordance with the scheme of delegation, will be responsible for identifying membership of the appeal panel.

The Chair will also be responsible for ensuring that the employee and their representative are advised in writing, no later than 15 working days prior to the meeting, of the following:

- The date, time and location of the meeting
- Who will be attending the meeting
- The right to be accompanied
- Arrangements for the exchange of cases

Thereafter, and 10 working days in advance of the meeting, the practitioner's appeal case will be shared with the appeal panel and Chair, and with the manager who chaired the earlier meeting and issued the outcome against which the practitioner is appealing.

Similarly, 5 working days following receipt of the practitioner's appeal case, the written case produced by the medical manager, who chaired the earlier meeting will be shared with the appeal panel and Chair and the practitioner and their representative.

Such cases will include details of any witnesses which either party is calling to the appeal. It is the responsibility of the party calling the witness to inform them of the arrangements for the appeal.

The appeal will be heard in accordance with the provisions in **Appendix 9**

An appeal cannot result in any increase in penalty.

Following the appeal, the Chair will be responsible for ensuring that the practitioner and their representative are advised in writing of the outcome. This should include the rationale behind any decisions taken in response to the employee's grounds for appeal. Such a letter must be issued within five days.

The outcome of the appeal will be final, with no further internal right of recourse, **unless** the circumstances are covered by **Appendix 10** of the Hospital Medical and Dental Staff and Doctors in Public Health and the Community Health service (Scotland) Consultant Grade Terms and Conditions of Service in relation to Appeals against dismissal (Paragraph 190 rights)

Private and Confidential

Dear

Informal Discussion

A matter has come to my attention which I would like to discuss with you on an informal, one to one basis, over the next few days*

I have the following availability:

<Insert range of dates/times/venue>

The purpose of the discussion is to explore the following:

<Describe the alleged issue/s or concern/s >

I hope that our discussion will help us to reach a mutual understanding of the facts of the matter raised and assist me to decide whether or not further exploration is appropriate, or whether this is the end of the matter.

If you have any queries in relation to the above, I would suggest we can address those when we meet.

Yours

notes

- if a Dr in training, consider whether an Educational Supervisor should be present (discuss with ES). If it is agreed that the need for ES presence *is* required, then explain this in the letter
- similarly if you consider it would be beneficial to have a member of the HR team present (discuss with HR) include and explain this in the letter

*as this is the informal stage of the process, it is intended to be a 1-1 discussion; however if the practitioner wishes to be accompanied by a Staff Side Representative that is acceptable. Should HR's presence be sought at the meeting, then the person calling the meeting should highlight to the staff member they may wish to bring a staff side representative.

IL2

Template letter for outcome of informal meeting - no case to answer

Private and Confidential

Dear

Note of Meeting

Thank you for attending our meeting on the ... at ... inIn addition to ourselves
....was also in attendance.

The meeting was held at my request to discuss..... as detailed in my earlier letter to
you dated

Our discussions on theincluded the following key points.....

On receiving the above information/explanation I can advise you that I now consider
this matter closed.

May I thank you for your cooperation in exploring this matter.

Yours sincerely,

Suspension (refer to Section 8 of FFS Policy)

Dear

Suspension from duty

I refer to our meeting on.....in..... where we discussedAlso present at the meeting in addition to ourselves were

In accordance with NHS Grampian's Framework for Support for Medical and Dental Employees I write to confirm that you have been suspended from duty, on full pay, with effect from xx pending a Preliminary Enquiry into the following allegation(s)

.....
Suspension is not a disciplinary sanction and is only used when all alternative options have been fully considered. The reason we have taken the decision to suspend in this instance is.....

This suspension pertains to all employment you have with NHS Grampian. The terms of suspension require that you do not make or respond to any contact with colleagues, other than your representative and the members of any investigating team, to discuss work or the circumstances associated with your suspension (n.b. this does not intend to prevent social contact with colleagues out with the workplace). Similarly, you should not enter NHS Grampian premises, other than to attend your own hospital/GP appointments or visit a relative/friend who is likewise receiving care. Please advise your contact officer if you do need to be on NHSG premises. Suspension reviews will be arranged with you on a regular ongoing basis during the period of your suspension.

I would remind you that you remain contracted to NHS Grampian and will be required to attend for interview(s) in connection with the investigation during your period of suspension; therefore you should ensure your availability during normal working hours and should not be unavailable due to other activities. During the period of suspension you may not take up locum employment, or any prospective employment, without the express permission of the Board. If you undertake private work for another employer, you should also advise them of your suspension.

I enclose a copy of the Framework for Support for your reference, and specifically direct you to Section 8.

NHS Grampian is aware that suspension can be a difficult experience and our duty of care for employees remains during this period. If you feel you would benefit for peer support, you can nominate a colleague (who is not involved with the issues relating to the suspension) who can be asked to take on this role. I asked for your permission to make a management referral to Occupational Health as a means of support for you and you agreed. I will ensure this referral is made immediately.

Xx from the HR team has been identified as your contact officer during this period of suspension. XX can be contacted onand they will ensure you are kept updated with the progress of any investigation and will be the contact point for any query you may have. This contact is on an ad hoc basis. Please note your contact officer is not

a substitute for your Trade Union, Staff or Professional Organisation representative, and is not there to represent you.

Should your address and /or telephone number change during the period of suspension, you must advise me immediately.

Should you wish to book annual leave during your suspension, you should advise your contact officer.

Please be advised that you are entitled to make a representation against the decision to suspend you. Should you wish to do so, please write to the Chief Executive, NHS Grampian, Summerfield House, Eday Road, Aberdeen AB15 6RE within 7 working days of receipt of this letter i.e. no later than xx.

The outcome of the Preliminary Enquiry will be made known to you as soon as possible.

Finally for the time-being I must make you aware that the Board are required by the Scottish Government's Health and Social Care Department to notify them of any practitioner who is suspended from work. The information provided will be your name, work location/speciality area and the reason for the suspension.

Yours sincerely

Cc's to include: Director of Workforce
Medical Director

IL3 – Standard Setting Letter – adapt as appropriate and please see template attached which may be beneficial to support the standard setting process

Private and Confidential

Dear

Standard Set

I refer to our meeting on.... which was also attended by.....

I confirm that as a result of our discussions, I have decided it is appropriate to set standards with you in respect of [*detail type of standard, e.g. attendance. Specify ways in which current conduct/performance fails to meet expected standards*].

The aim of standard setting is to support staff achieve acceptable standards of conduct and/or performance and is not part of a formal disciplinary procedure. Please refer to Appendix 3 of the attached Framework for Support Policy for further information on standard setting.

We agreed that you would meet these standards detailed in the attached document by (date). The document also details what measures will be put in place to support you achieve these.

Your future performance against this standard will be monitored with review meetings taking place as follows:

[REVIEW DATE 1, TIME AND LOCATION]
[REVIEW DATE 2, TIME AND LOCATION] etc

We agreed that this should provide you with sufficient opportunity to achieve the standards; however it is important to note that failure to achieve these within the agreed period *may* lead to further action under the Framework for Support Policy.

Please sign and return one copy of the standards to me as confirmation that you understand the improvements expected of you and the potential consequences if you fail to attain the required standard.

Yours sincerely

***Standard Setting Template**

Area of Concern	Expected Level of Performance	Support Measures Identified	Review Date	Evidence of Performance

Additional Comments

PE1 - Preliminary Enquiry Notification

Private and Confidential

Dear

Preliminary Enquiry Notification

Following our recent conversation, I am writing to confirm I have commissioned a Preliminary Enquiry under the Framework for Support Process into the following:

Give detail of allegations/concerns

The Preliminary Enquiry panel will comprise < insert names & job titles>. The role of the panel is to gather facts under the Terms of Reference - attached – and prepare a report which will be shared with you at the same time it is sent to me as the commissioning manager.

If you believe that there may be a conflict of interest in relation to you with any member of the Panel in respect of this remit, you must notify me immediately on receipt of this notification and arrangements will be made to consider your view.

It is anticipated that the Preliminary Enquiry will conclude its work within six weeks of its commencement; however if this is not going to be achievable as the investigation progresses, the reasons for this will be discussed with you.

<insert name> of the Human Resources Department has been identified as the Caseholder to whom you should address any queries you may have. S/he can be contacted at < insert email address> or telephone< insert>.

The Panel will arrange to meet with you in due course and you are entitled to be represented at this investigatory interview by your union/professional organisation representative or a colleague not acting in a legal capacity.

I appreciate that this process may cause you some anxiety therefore I would ask that you agree to a management referral to the Occupational Health Service for your support. Please let me know if you wish to accept this offer.

I enclose a copy of the Framework for Support policy for your information.

Yours sincerely,

Line Manager

Cc: HR Caseholder

If honorary NHS worker – the primary employer
PE Panel

PE2 Preliminary Enquiry Outcome – No case to answer/standard set*

Private and Confidential

Dear

Outcome of Preliminary Enquiry

I refer to my letter of <insert date> advising you that a Preliminary Enquiry Panel had been commissioned to investigate and report their findings in respect of the following alleged concerns/issues:

give details of allegations/concerns

A copy of the Preliminary Enquiry Panel report has already been shared with you and following consideration of its findings, which I discussed with you on x in y, I wish to confirm I am satisfied that the matter has been thoroughly reviewed and that no action required in relation to you/standards will be set with you*

Thank you for your cooperation in exploring this/these matter/s.

Yours sincerely,

Line Manager

Cc HR Caseholder

If honorary NHS worker – the primary employer

*refer to IL3 for additional information to add to this letter

PE3 Preliminary Enquiry Outcome - Progress to Support Scheme - Section 5 - Health

Private and Confidential

Dear

Outcome of Preliminary Enquiry

I refer to my letter of <insert date> advising you that a Preliminary Enquiry Panel had been commissioned to investigate and report their findings in respect of the following alleged concerns/issues:

give details of allegations/concerns

A copy of the Preliminary Enquiry Panel report has already been shared with you and following consideration of its findings, which I discussed with you on x in y, I wish to confirm I have decided that the matter should be managed in line with section 5 of the Framework for Support policy which relates to Health.

I would therefore wish to make a management referral to NHS Grampian's Occupational Health Service and will progress this matter with you when feedback from OHS is available / As you are currently attending the Occupational Health Service, I am going to arrange a joint meeting with you, OHS, a member of HR and your representative (should you wish to bring one) to discuss how best to progress this matter.

Should you have any query on the above in the meantime, please do not hesitate to contact me.

Yours sincerely,

Line Manager

Cc HR Caseholder

If honorary NHS worker – the primary employer

PE4 Preliminary Enquiry Outcome - Progress to Capability Policy

Private and Confidential

Dear

Outcome of Preliminary Enquiry

I refer to my letter of <insert date> advising you that a Preliminary Enquiry Panel had been commissioned to investigate and report their findings in respect of the following alleged concerns/issues:

give details of allegations/concerns

A copy of the Preliminary Enquiry Panel report has already been shared with you and following consideration of its findings, which I discussed with you on x in y, I wish to confirm I am of the opinion that this matter should progress via section 6 of the Framework for Support Policy – Capability.

I will therefore arrange a meeting with you in the near future to discuss how this matter will progress in line with Section 6, which will include formulating an action plan for the way forward.*

You have the right of appeal against this categorisation and should you wish to exercise this right, please write to the Medical Director, NHS Grampian, Summerfield House, Eday Road, Aberdeen AB15 6RE within 7 working days of receipt of this letter i.e. no later than xx and a Classification Appeal Committee will be convened to consider you appeal. Please refer to Appendix 5 of the Framework for Support Policy for further information.

Yours sincerely,

Line Manager

Cc HR Caseholder

If honorary NHS worker – the primary employer

*Suggest using action plan template from standard setting for developing a plan

PE5 Preliminary Enquiry Outcome – Progress to categorisation

Private and Confidential

Dear

Outcome of Preliminary Enquiry

I refer to my letter of <insert date> advising you that a Preliminary Enquiry Panel had been commissioned to investigate and report their findings in respect of the following alleged concerns/issues:

give details of allegations/concerns

A copy of the Preliminary Enquiry Panel report has already been shared with you and following consideration of its findings, which I discussed with you on x in y, I wish to confirm I am of the opinion that this matter should progress under the categorisation of personal/professional * misconduct and the issues will be managed through Section 7 Disciplinary and Dismissal Policy and Procedure/Annex A/Annex B /Annex C*

You have the right of appeal against this categorisation and should you wish to exercise this right, please write to the Medical Director, NHS Grampian, Summerfield House, Eday Road, Aberdeen, AB15 6RE within 7 working days of receipt of this letter i.e. no later than xx and a Classification Appeal Committee will be convened to consider your appeal. Please refer to Appendix 5 of the Framework for Support policy for further information.

Meantime I will arrange for the matter to progress via the xx above and further correspondence will come to you in the near future with details of the xx hearing.

Yours

*Delete as appropriate

CP1 –Capability*

Private and Confidential

Dear

Invitation to a Formal Stage 1 Meeting – Capability Policy

I write to advise that a meeting has been arranged under Stage 1 of the Formal Capability Policy contained within the Framework for Support. The meeting arrangements are as follows:

Date:

Time:

Location:

This meeting will be conducted in line with Appendix 4 of the Framework for Support Policy and will be chaired by xxx. xxx will be supported at this meeting by yyy, HR representative. Your line manager, [name], will also be present.

The purpose of the meeting is to review the capability issue(s) which we have been focussing on over the course of the [timescale]. A summary of the main areas of concern are as follows:

[summary of capability issues]

I enclose a copy of:

[details of any supporting documentation]

As this capability meeting is a formal meeting, you are entitled to be accompanied by a trade union/professional organisation representative, or a work colleague.

The purpose of the meeting at Stage 1 will be to discuss and agree:

[Refer to points under 5.1.1 in the policy for points of inclusion]

A note of the key points discussed at the meeting will be made and sent to you, with a copy of the agreed improvement plan. At the end of the Stage 1 process a meeting will be convened with the following possible outcomes:

- Performance has improved to the required standard and performance has been maintained to the extent that unsatisfactory performance is no longer an issue and application of the Capability Policy will cease; or
- The required improvement has not been satisfactorily achieved and maintained, but it is agreed that this is likely to be the case following an extension to the supported improvement plan timescale for a reasonable period or through the introduction of further support measures not previously identified. In such cases the process should remain at the current stage; or
- The required improvement has not been satisfactorily achieved and maintained and management are of the opinion that this is unlikely to be the case following an extension the supported improvement plan timescale for a reasonable period, and no further support measures have been able to be identified. In such cases the matter will be progressed to the next stage of the Capability Policy.

Please contact **[name, job title and contact details]** by **[date]** to confirm whether this date is suitable or not. Please also advise me by **[date]** if you will be accompanied at the meeting and if so, by whom.

If for any reason either you or your representative/colleague are unable to attend at the specified time you must ensure you give me adequate notice of this. The meeting will then be postponed to an alternative time suggested by yourself; provided that such an alternative time is reasonable and falls before the end of five working days after the original proposed date as above.

[If applicable] If it has not already been arranged, a management referral can be made to Occupational Health Service for you, should you require health related support while this process is underway. Please discuss this with **[name]** (tel. no. XX).

In the meantime, if you have any queries please do not hesitate to contact me on [phone number].

Yours sincerely

[Chair of Stage 1 meeting]

**Cc Manager
 HR
 Employee's file**

Enc [Any supporting documentation]

***CP2 Letter – as above but with the additions of the points under 5.2 of the policy:**

Invite to hearing letter

Private and Confidential

Dear

ATTENDANCE AT A DISCIPLINARY HEARING

I am writing to advise you that a Disciplinary Hearing, which you are required to attend, has been arranged for xx in yy at zz. This Hearing will be held in zz. Please take a seat in the yy when you arrive.

The purpose of the Hearing is to determine whether or not disciplinary action is to be taken against you in connection with the following alleged offence:

Detail offence

This Hearing is being convened in terms of NHS Grampian's Framework for Support for Medical and Dental Employees, a copy of which is enclosed, and will be conducted in accordance with Appendix 8 of that document. There is a number of possible outcomes from a Disciplinary Hearing.

The potential outcomes are:

List appropriate outcomes in relation to each case

You have the right to be accompanied at the Hearing by a representative of a Trade Union, Staff Organisation or Professional Organisation, or by a colleague. Please advise me in advance of the hearing if you are going to be accompanied and if so, by whom.

The Disciplinary Panel will comprise of xx, yy and zz.

The management Statement of Case will be presented by xx, *title* and will be forwarded to you no later than ten working days prior to the hearing. Please provide me with your Statement of Case, plus any corroborating evidence, no later than five working days before the date of the Disciplinary Hearing i.e. by **9am xx**.

You have the right to call witnesses in your defence at the Hearing or, if any witness is unable to attend the Hearing, to submit written evidence from such witnesses. I would, therefore, ask you to provide me with the names and designations of any witnesses you wish to call or, alternatively, enclose written statements from witnesses, when you submit your Statement of Case.

In the event that you fail to attend this Hearing without having notified me that the above date and/or time is unsuitable for you, it may be held in your absence.

Yours sincerely

Enc. Copy of NHS Grampian's Framework for Support Policy

Outcome of hearing

Private and Confidential

Dear

Confirmation of detail outcome i.e. first warning, first and final etc

I refer to the letter from xx dated yy and to the subsequent Disciplinary Hearing held in xx on zz in connection with the alleged offence outlined in the letter.

As you are aware the disciplinary panel comprised myself as Chair, xx and yy. The Management case was presented by zz and you were accompanied/represented by xx .

In accordance with Appendix 8 of NHS Grampian's Framework for Support for Medical and Dental Staff the Hearing began by xx verbally presenting the management case, a copy of which had been circulated to all parties prior to the Hearing. There was then an opportunity for yourself, your representative and the panel to ask questions.

You/Your representative then presented your case, a copy of which had also been circulated to all parties prior to the Hearing. There was then an opportunity for xx and the panel to ask questions.

Neither side called any witnesses/xx witnesses were called and questioned by both parties

Management summed up their case. This was followed by you summing up your case and the Panel adjourned to make a decision.

The Hearing reconvened approximately xx minutes later. During the adjournment the Panel carefully considered both the written and verbal submissions and on your return advised you that the outcome of the disciplinary hearing was that the allegation had been upheld and that as a result you would be issued with xx in accordance with the Disciplinary and Dismissal Procedure for Medical and Dental Staff which is part of the Framework for Support.

The offence for which this Warning is being issued is as follows:-

Add details

The panel's decision has not been made lightly. These matters are clearly serious and, in terms of identifying the appropriate disciplinary sanction in the circumstances, full consideration was given to a number of options. However, having heard and considered all of the evidence, the panel based its decision on the following:

Add details

You should be aware that any further acts of misconduct, whether of the same or a different nature, may lead to further investigation and more serious disciplinary action being taken against you.

In order to support you to achieve xx, the following will be put in place.....

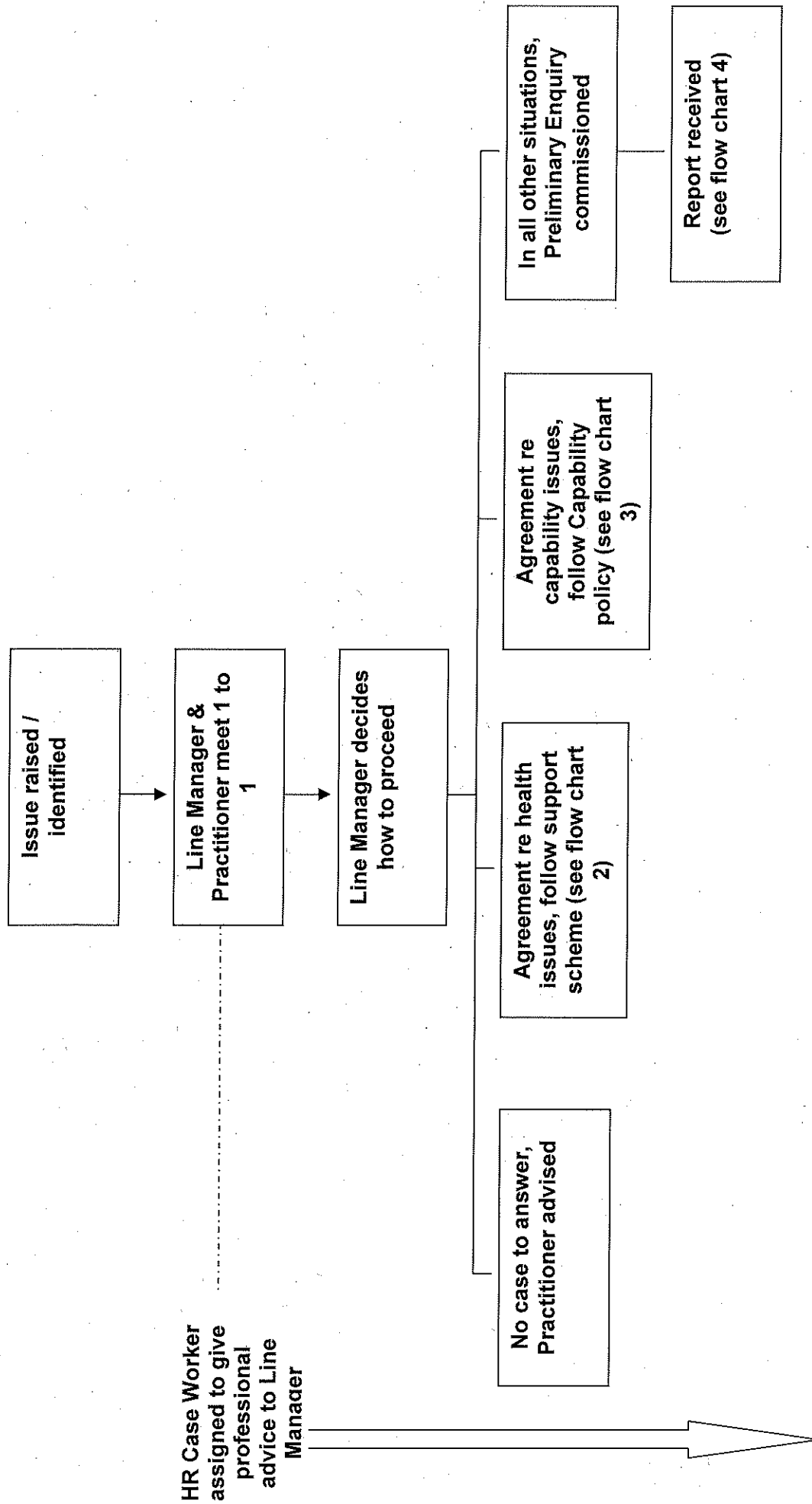
This warning will remain in your personal file for six months and once expired, will not referred to again. In accordance with NHS Grampian's Framework for Support Policy you will be notified of the removal of the Warning

You have the right of appeal against this decision. Should you wish to exercise this right, you should write to xx within 15 days of receiving this letter. Please refer to the NHS Grampian Framework for Support, a copy of which was previously issued to you, for further details.

Yours sincerely

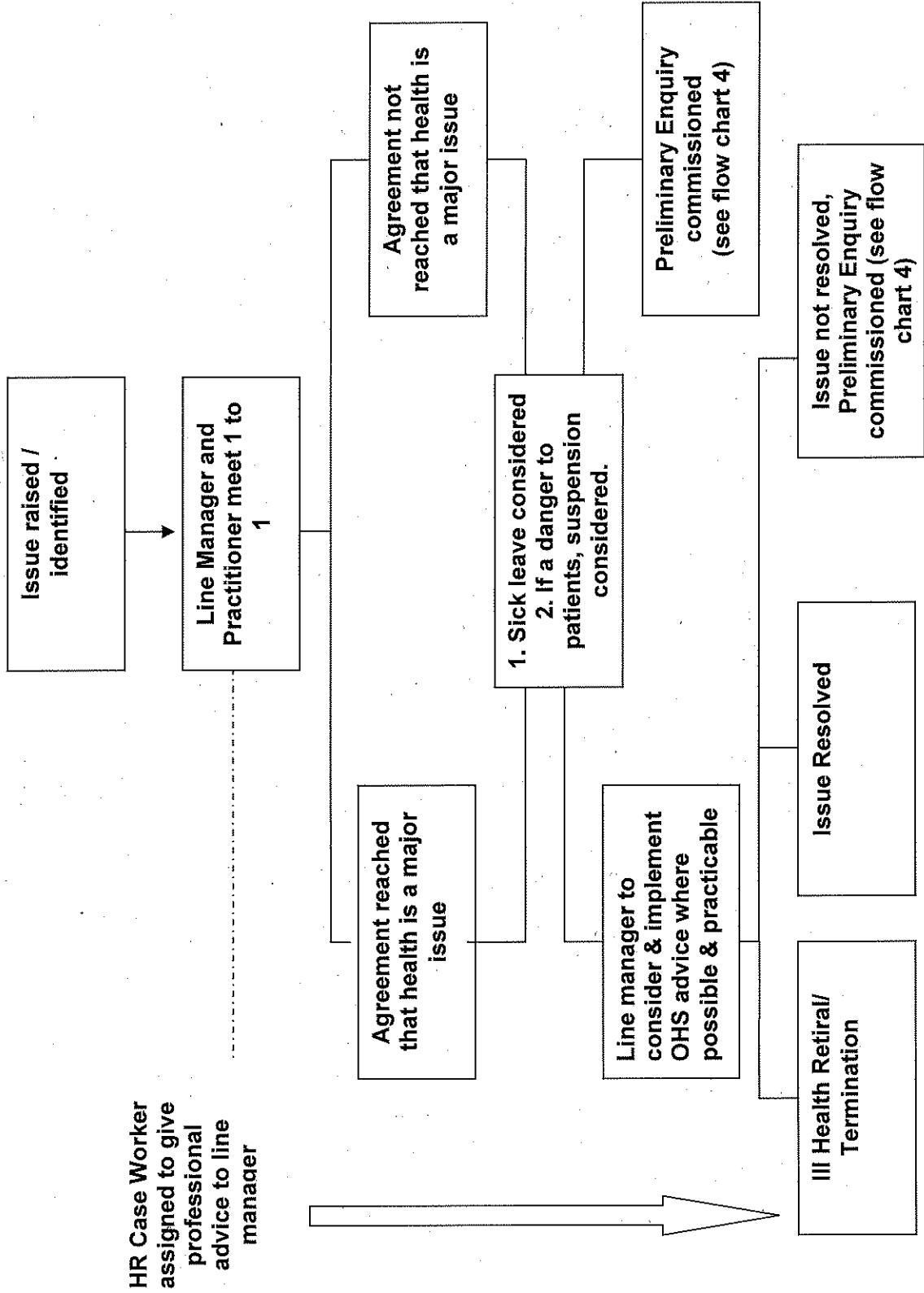
Cc Manager
HR

an overview of the Framework for Support Suite of Policies



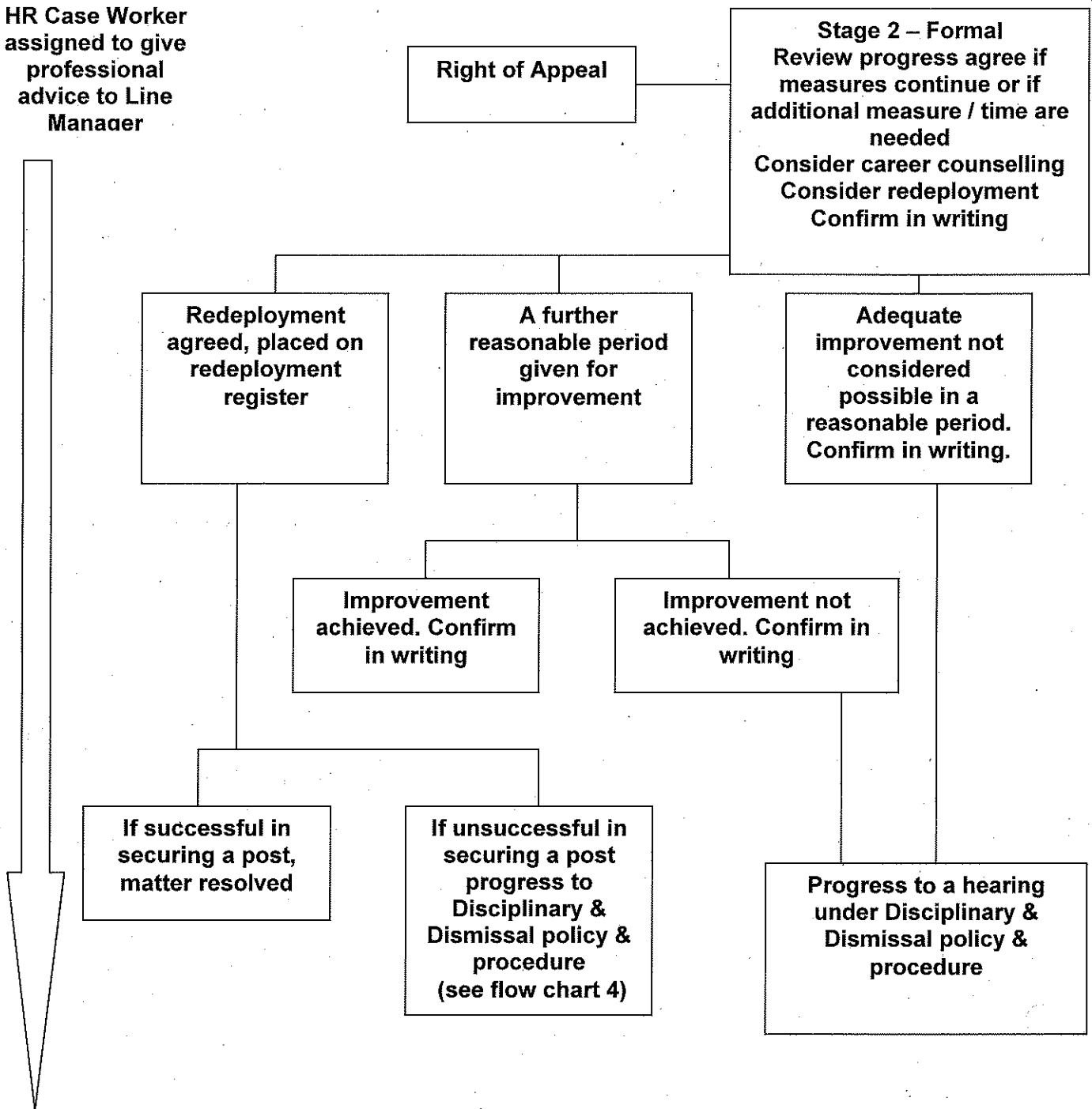
Please Note: the requirement to involve NHS Education for Scotland in matters pertaining to doctors & dentists in training

Support Scheme Health Related



HR Case Worker assigned to give professional advice to line manager

HR Case Worker assigned to give professional advice to Line Manager



Disciplinary & Dismissal Policy & Procedure

HR Case Worker assigned to give professional advice to line manager

Preliminary Enquiry completed & report passed to commissioning manager

OR

Adequate improvement not demonstrated in relation to a Capability Issue

[Empty box]

Commissioning manager to determine next steps

No case to answer
Practitioner notified

Standard setting to be implemented

Formal Hearing - Manager to take categorisation decision

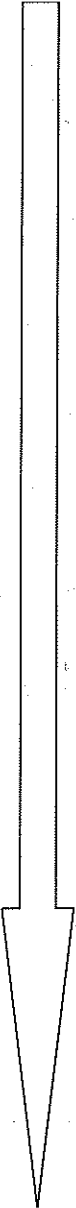
Practitioner has right of appeal

Personal Conduct

Professional Conduct

Professional Competence

Disciplinary Hearing



Flow-chart 4

