

Remediation, Reskilling and Rehabilitation Policy

Policy Owner	Responsible Officer Manager People Partner
Corporate Lead	Executive Medical Director
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Executive summary

This policy describes the process of addressing concerns about doctors and dentists in difficulty with Leeds Community NHS Trust (excluding those in training roles).

This Remediation Policy has been developed in order to support the management of performance of staff across LCH. The Trust recognises that the success of our service is dependent upon the effectiveness of our employees. Our aim throughout this Policy is to resolve situations, which relate specifically to the lack of capability of an employee to perform the work which they are employed to do.

This policy adheres to the principle that all qualified medical and dental staff will undertake annual appraisal in keeping with process agreed at the time by the GMC, BMA, GDC and the Department of Health and Social Care, and follow appropriate guidance and standards.

Equality Analysis

Leeds Community Healthcare NHS Trust's vision is to provide the best possible care to every community. In support of the vision, with due regard to the Equality Act 2010 General Duty aims, Equality Analysis has been undertaken on this policy and any outcomes have been considered in the development of this policy.

1 National Clinical Assessment Service. Back on track Restoring doctors and dentists to safe professional practice. Framework Document (NCAS, 2006)

2 Maintaining high professional standards in the modern NHS: a framework for the initial handling of concerns about doctors and dentists in the NHS (DoH 2003)

3 Tackling Concerns Locally: report of the Working Group (DoH 2009)

1. Introduction

- 1.1. The Chief Medical Officer's Report 'Good Doctors, Safer Patients'¹ published in 2006, recommended that “a clear and unambiguous set of standards should be set for each area of specialist medical practice. This work should be undertaken by the Medical Royal Colleges and specialist associations, with the input of patient representatives, led by the Academy of Medical Royal Colleges. This would enable the specification of good practice to be extended from the generic into each specialist field of practice (including general practice) and provide the basis for a regular objective assessment of standards”.
- 1.2. The Academy of Medical Royal Colleges' first report on the remediation of doctors was published in 2009. It considered how, in the context of revalidation, a need for remediation of a doctor's practice might arise, how this need might be met and who might be involved in the delivery of remediation.
- 1.3. When things go wrong it is best that they can be resolved as soon as possible and services should actively seek to build a culture in which concerns are raised quickly. Leeds Community Healthcare is committed to the instilling the mentality of 'People Before Process' to build a Just Culture². The fair treatment of staff supports a culture of fairness, openness and learning in the NHS by making staff feel confident to speak up when things go wrong, rather than fearing blame. Blame is a natural human response when things go wrong. It allows us to simplify emotional events that happen in incredibly complex systems. The 2019 NHS Patient Safety Strategy³ points out that blame relies on two myths “First, the perfection myth: that if we try hard, we will not make any errors. Second, the punishment myth: if we punish people when they make errors, they will not make them again.” It is important that when mistakes are made and freely admitted, individuals are met with compassion, understanding, and support. Any remediation process is therefore key in supporting staff to be open about mistakes and allows valuable lessons to be learnt so the same errors can be prevented from being repeated.

2. Policy Scope

- 2.1. This policy and its supporting procedures cover all doctors employed by the Trust; it does not apply to training grade doctors who have the Post Graduate Deanery as their Responsible Officer (RO). The Trust will seek to fully co-operate with the Deanery where there are issues with trainees and to supply relevant information in a timely manner.
- 2.2. The policy provides a clear, formal framework to apply in order to address issues of remediation which arise in relation to an inability to perform to and/or sustain the

¹https://webarchive.nationalarchives.gov.uk/20120503224921/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4137276.pdf

² <https://resolution.nhs.uk/resources/being-fair-report/>

³ https://improvement.nhs.uk/documents/5472/190708_Patient_Safety_Strategy_for_website_v4.pdf

required standard for a post because of a shortfall in knowledge, skills or behaviours.

3. Definitions

- 3.1. **Remediation** is the process of addressing performance concerns (Knowledge , skills and/or behaviours) that have been recognised through assessment, investigation, review or appraisal so that the practitioner has the opportunity to practice safely. It is an umbrella term for all activities which can provide help from the simplest advice through formal mentoring, further training, reskilling and rehabilitation.
- 3.2. **Reskilling** is the process of addressing gaps in knowledge, skills and/or behaviours where a practitioner is performing below the required standard or as a result of an extended period of absence (usually over 6 months) so that the practitioner has the opportunity to return to safe practice. This may be, for example, following suspension, exclusion, maternity leave, career break or ill health.
- 3.3. **Rehabilitation** is the process of supporting the practitioner, who is disadvantaged by chronic ill health or disability, and enabling them to access, maintain or return to practice safely.
- 3.4. **Practitioner** refers to doctors and dentists throughout this document.
- 3.5. **Appraisal** is the process that gives doctors an opportunity to formally discuss their professional roles, clinical practice, and their contribution to service delivery.

4. Roles and responsibilities

- 4.1. The primary responsibility of the Trust is to ensure patient safety and to provide the highest quality of patient care. As an employer the Trust is also responsible for enabling its employees to meet their performance standards. This includes the provision of structures and processes to enable effective remediation to occur in line with local and national guidance. The Trust has a role in providing a supportive environment which allows remediation to take place without putting patients, the public or the doctor at risk. The Trust also has a responsibility to maintain confidentiality and to ensure fairness for an individual. However, it may be necessary to breach confidentiality where there are concerns about patient or public safety. It is the Trust's responsibility to ensure those involved in the remediation process are adequately trained with an effective quality assurance process in place.
- 4.2. All staff employed by Leeds Community Healthcare NHS Trust (LCH) must work in concordance with LCH Policies and guidelines to include the Leeds safeguarding Multi-agency policies and procedures and local guidelines in relation to any safeguarding concerns they have for children or adults they are in contact with.
- 4.3. Once performance concerns are identified and it is agreed that remediation is appropriate, support from a range of individuals or external agencies will be

necessary. The roles and responsibilities of a range of stakeholders in relation to remediation and revalidation are as follows:

4.3.1. Chief Executive

The Chief Executive is accountable to the LCH Board for ensuring all systems are in place if any concerns about the fitness to practice of any doctor or dentist within LCH are raised.

4.3.2. Responsible Officer

The Responsible Officer (RO) will ensure every practitioner (for whom they have a prescribed connection) has appropriate training and experience for their role. This also extends to those doctors who are employed by LCH but do not have a prescribed connection with the Trust. The RO/Medical Director will ensure that any issues with performance are addressed by the Trust, including remediation where appropriate. They will manage any conduct or performance procedures and have responsibility for actions arising out of any procedures.

The RO will determine whether a practitioner needs to undertake remediation and they will need to be clear about their recommendations, the objectives and the evidence they will expect to see, and the timescales by which they expect to undertake a review.

The RO will make a recommendation to the GMC that the doctor is up to date and fit to practice, (as a positive statement of assurance, not simply an absence of concerns).

4.3.3. Practitioners

Practitioners are responsible for ensuring that they are able to demonstrate, through the appraisal process, that they are meeting the described standards and are making use of the measurements generated to identify their development needs. If remediation is necessary practitioners are responsible for engaging fully with the process to ensure that the concern is resolved.

4.3.4. Deputy Medical Directors (DMD) / Medical Leads (ML) and Dental Leads

DMD, ML and Dental Leads are responsible for the monitoring, job planning of the doctors and dentists in their service and need to ensure that practitioners are undertaking their appraisals. They are also responsible for acting as Programme Supervisors.

4.3.5. Appraisers

Appraisers will be adequately trained and supported to undertake their role in remediation.

Appraisers will have responsibility for gathering relevant evidence and monitoring through the appraisal process and for ensuring action plans are incorporated into the appraisal process and PDP of the appraisee.

4.3.6. Clinical Supervisors

May be asked to support a doctor whose clinical skills or knowledge is giving cause for concern. As part of remediation direct clinical supervision may be necessary particularly following an extended period away from the clinical environment or when concerns have been identified through assessment or an investigation. Professional supervision, defined 'as, 'participation in regular and supported time out to reflect on the delivery of professional care to identify areas for further development and to sustain improved practice', may be an alternative to regular direct clinical supervision when intermittent or less frequent clinical supervision is required.

4.3.7. Mentors

Mentors will be an important element of any remediation programme, providing personal support, challenge and help developing reflective skills. The mentoring relationship is not intended as a line management role. Mentoring is a developmental process where a more experienced individual ('mentor') helps a less experienced individual ('mentee') in his/her personal and professional development. It does not include formal supervision; it is outside the direct reporting line and has no formal input to the appraisal or revalidation process, except to confirm to the Appraiser this has satisfactorily occurred.

4.3.8. Employers/contractors

The employer /contractor has a role in providing a supportive environment which allows remediation to take place without putting patients, the public or the doctor at risk.

4.3.9. Occupational Health Services

The Occupational Health Service is responsible for providing confidential support and advice for employees, as well as providing independent, competent occupational health advice in order to assist the Trust support an employee who is having difficulties with their health.

4.3.10. Human Resources

The Human Resources team are available to provide advice on the implementation of policies. Where there are underlying health concerns, the HR team are able to provide further guidance on supporting the employee.

4.3.11. Royal Colleges and Faculties

These are responsible for standard setting for their specialty and have a direct role if the concerns relate to a clinical service or department. The Colleges will also be involved in individual cases to provide advice about standards, courses and supervision.

4.3.12. Deaneries

Their assistance is statutory for trainees only but they may also offer assistance for practitioners in:

- Planning remedial clinical training.

- Arranging clinical supervision.
- Arranging a mentor.
- Offering access to supportive interventions such as coaching, counselling, career counselling

4.3.13. NHS Resolution

NHS Resolution will provide, through its action planning support service, advice and support in developing remediation, reskilling and rehabilitation programmes, monitoring progress and developing exit strategies. As part of the revalidation process NHS Resolution will provide advice and support to the doctor, Appraiser, RO and employer/contractor.

NHS Resolution should be contacted:

- If there are general concerns about a doctor's performance, conduct or competence;
- If there are concerns that might require exclusion or suspension;
- and in any other situation out with the revalidation process where the local organisation is unsure how to proceed.

4.3.14. General Medical Council (GMC)

The GMC role in revalidation is closely linked to the output of the appraisal process. A recommendation will be made to the GMC by the RO about the doctor's suitability for revalidation. If the concern identified, whether performance, health or conduct, is so serious as to call into question the doctor's licence to practise, then the GMC's advice must be taken.

4.3.15. Trade Unions

Trade Unions are responsible for working in partnership with managers to ensure individuals who go through a period of remediation have access to support and advice.

5. Action When a Concern Arises

- 5.1. As stated above, the primary responsibility of the Trust is to ensure patient safety and to provide the highest quality of patient care. Where concerns arise, it is vital that the concepts of People Before Process and a Just Culture are reflected upon. Concerns should be met with a mind-set of understanding and compassion as opposed to seeking to assign blame. This will help ensure that the Trust has the best opportunity to ensure valuable lessons to be learnt as well as providing the best opportunity to support an individual to be able to provide high quality patient care.
- 5.2. The management of performance within LCH is a continuous process, which is intended to identify any capability issues as they arise. Numerous ways now exist in which concerns about a practitioners performance can be identified;

- Concerns expressed by other NHS professionals, health care manager, students and non- clinical staff;
 - Review of performance against job plans, annual appraisal, revalidation;
 - Monitoring of data and quality of care to include incidents, complaints and patient activity;
 - Clinical governance, clinical audit and other quality improvement activities;
 - Complaints about care by patients or relatives of patients;
 - Information from the regulatory bodies;
 - Litigation following allegations of negligence;
 - Information from the police or coroner;
 - Court judgements
- 5.3. Performance concerns may emerge through clinical governance processes and it is unusual for the first suggestion of concern to be at appraisal. The appraisal process (LCH policy on Appraisal) and the feedback from the medical/dental lead should ensure that both the doctor and appraiser are aware of concerns in the service and discussed as part of supporting information.
- 5.4. The medical or dental lead can identify performance issues through the bringing together of information from adverse events, routine performance data, and/or complaints and concerns raised directly with the lead in a structured way. The collation of such data should enable clinical management to take an informed review. Once an issue is uncovered it must be deal with using the appropriate mechanisms and not ignored.
- 5.5. The usual pathway for the medical & dental lead to respond will initially be an informal 1:1 meeting with the clinician, regardless of the nature of the problem. There may be a mixture of responses and proposed outcomes to move towards resolution of the issues in keeping with the mixed nature of problems. An action plan will be agreed between a clinician and the lead, or may identify that there is no underlying issue.
- 5.6. If such a meeting has an unsatisfactory outcome or the matter is of a more serious nature, the lead will refer it to the Medical Director. Where there are significant concerns about patient safety the matter will always be referred directly to the Medical Director.
- 5.7. Where concerns are raised in relation to the Deputy Medical Director the usual pathway would be for the Medical Director to lead and follow the action set out in paragraph 5.5 above.
- 5.8. If concerns relate to the Medical Director, then these matters should be raised with the Chief Executive.
- 5.9. The Trust will work with the Universities and other provider organisations to ensure that jointly agreed procedures are in place for dealing with any concerns about practitioners with honorary contracts.
- 5.10. Concerns about the capability of doctors and dentists in training should be considered initially as training issues and the Postgraduate Dean should be involved from the outset.
- 5.11. In significant events the Medical Director/RO will work with the Director of Workforce to decide the appropriate course of action in each case. This will involve

the categorisation of the investigation for the case. If the individual disagrees with the process being followed their concerns should be expressed to the Case Manager as early as practicable. The Medical Director will act as the Case Manager in cases involving Consultants and may delegate this role to a senior manager to oversee the case on his or her behalf in other cases. The Medical Director may delegate authority in cases to the Deputy Medical Director or medical/dental lead as considered appropriate taking into account the profile and details of a particular case.

- 5.12. There may be a mixture of responses and proposed outcomes to move towards a resolution of the issues in keeping with the mixed nature of problems. Where the concerns are of a less serious nature and do not involve patient safety, an action plan will be agreed between the practitioner and the Medical Director/RO, a template action plan can be found at NHS Resolution <https://resolution.nhs.uk/>
- 5.13. Where there are concerns of a more serious nature, inability to resolve issues with an action plan or concerns of patient safety, the use of the Trust's Maintaining High Professional Standards in the Modern NHS may be considered.
- 5.14. It is inevitable that some cases will cover conduct and capability issues. It is recognised that these cases can be complex and difficult to manage. If a case covers more than one category of problem, they should usually be combined under capability. There may, however, be occasions where it is necessary to pursue a conduct issue separately. For issues related to conduct these will be dealt with in line with the Trust's Disciplinary Policy. In the event of a dispute the relevant procedures will be followed. The practitioner is also entitled to use the Trust's grievance procedure. Alternatively or in addition he or she may make representations to the designated appeal panel.
- 5.15. Advice from NHS Resolution will help LCH to come to a decision on whether the matter raises questions about the practitioner's capability as an individual (health problems, behavioural difficulties or lack of clinical competence) or whether there are other matters that need to be addressed. If the concerns about capability cannot be resolved routinely by management, the matter must be referred to NHS Resolution before the matter can be considered by a capability panel (unless the practitioner refuses to have his or her case referred) if this recommendation is the outcome of the investigation. The Trust will also involve NHS Resolution in any potential disciplinary cases.
- 5.16. Wherever possible, LCH will aim to resolve issues of capability (including clinical competence and health) through ongoing assessment and support. Early identification of problems is essential to reduce the risk of serious harm to patients.
- 5.17. NHS Resolution will be consulted for advice to support the remediation of a doctor or dentist. LCH will use the National Patient Safety Agency document 'Back on Track'3 as the framework for their remediation strategy.
- 5.18. The Trust will ensure that managers and case investigators receive appropriate and effective training in the operation of this policy. Those undertaking investigations or sitting on capability or appeals panels must have had formal equal opportunities training before undertaking such duties. The LCH Board will agree what training staff and Board members must have completed before they can take a part in these proceedings.
- 5.19. Remediation, reskilling or rehabilitation may also result from the above processes.

6. Return to work programme

6.1. This section sets out a summary of the 4 key stages in considering, developing, implementing and reviewing a return to work programme for practitioners.



7. Approval and Ratification Process

7.1. This Policy will be ratified by the SMT on behalf of the LCH Board

8. Dissemination and Implementation

8.1. Dissemination of this policy will be via the RO Quarterly Newsletter, emailed to all medical and dental staff and held on the Trust's intranet site under the Medical and Dental Leadership department.

9. Review arrangements

9.1. This policy will be reviewed annually.

10. Associated Policies

[Appraisal policy and guidance for Consultants, SAS Doctors and Dentists in LCH \(Sep 2020\)](#)

[Alcohol, Drugs and Substance Misuse Policy \(Dec 2017\)](#)

[Disciplinary Policy and Procedure \(Nov 2016\)](#)

[Grievance Policy and Procedure \(Dec 2016\)](#)

[Freedom to speak up Policy \(Jul 2018\)](#)

[Maintaining High Professional Standards in the Modern NHS \(April 2015\)](#)

[Managing Concerns with Performance Policy \(Dec 2016\)](#)

[Managing Personal Relationships in the Workplace \(Dec 2016, under review July 2019\)](#)

[Personal and Professional Development Policy \(under review Jun 2019\)](#)

[Professional Registration Policy \(Oct 2014, under review Sept 2019\)](#)

[Managing Attendance Policy \(Apr 2017\)](#)

[Information Governance Policy \(Nov 2018\)](#)