

# Blackpool Teaching Hospitals

NHS Foundation Trust

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## CONTENTS

1	PURPOSE.....	5
2	SCOPE.....	5
3	PROCEDURE .....	6
3.1	Part 1 - General Introduction.....	6
3.1.1	Introduction.....	6
3.1.2	Right to be Accompanied.....	6
3.1.3	Key personnel.....	6
3.2	Part 2 - Initial Steps when a Concern is Raised.....	7
3.2.1	Raising concerns about a Practitioner .....	7
3.2.2	Restrictions on practice or exclusions.....	7
3.2.3	Appointment of a Case Manager .....	7
3.2.4	The Case Manager's initial assessment .....	8
3.2.5	Appointment of a Case Investigator.....	8
3.2.6	Carrying out an investigation .....	9
3.2.7	The right of the Practitioner to comment on the factual parts of the report in capability cases .....	10
3.2.8	Decision of the Case Manager .....	10
3.3	Part 3 - Exclusions or Restrictions on Practice.....	11
3.3.1	Roles of Officers .....	11
3.3.1.1	Power to exclude or restrict a Practitioner .....	11
3.3.1.2	Responsibilities of individual officers in the event of a restriction or exclusion .....	11
3.3.1.2.1	The Case Manager.....	11
3.3.1.2.2	The Designated Board Member .....	11
3.3.1.2.3	The Case Investigator .....	11
3.3.2	The restrictions that can be imposed on the Practitioner .....	12
3.3.3	Where immediate exclusion may be justified .....	12
3.3.4	The process for deciding whether to exclude or restrict.....	12
3.3.5	Immediate exclusion .....	13
3.3.5.1	The right to exclude immediately .....	13
3.3.5.2	The initial period of immediate exclusion.....	13
3.3.5.3	Meeting with the Practitioner .....	13
3.3.6	Formal decisions to exclude or restrict practice .....	13
3.3.6.1	The right to exclude formally .....	13
3.3.6.2	Justification of the decision to exclude formally .....	13
3.3.6.3	Meeting with the Practitioner .....	14
3.3.6.4	Confirming formal exclusion in writing .....	14
3.3.7	Exclusion from Trust property/premises .....	14
3.3.8	Exclusion from Trust property/premises .....	14
3.3.9	Obligations on the Practitioner in the event exclusion is considered .....	14
3.3.9.1	Duty to co-operate.....	14
3.3.9.2	Duty on the Practitioner to provide information.....	15
3.3.10	Consequences of non-compliance with the Practitioner's duties .....	15
3.3.11	Informal exclusion.....	15
3.3.12	Reviewing exclusions and the role of the Trust Board .....	15
3.3.12.1	First Review.....	15
3.3.12.2	Second Review (and reviews after the Third Review) .....	15

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

3.3.12.3	Six Month Review .....	16
3.3.13	Role of the Board .....	16
3.3.14	Return to work .....	16
3.3.15	Breach of a restriction .....	16
3.3.16	Reporting to the GMC .....	16
3.4	Part 4 - Conduct and Disciplinary Matters .....	17
3.4.1	Introduction .....	17
3.4.2	Investigation of allegations .....	17
3.4.3	Classification of the concern .....	17
3.4.4	Criminal Proceedings.....	17
3.4.4.1	Action when investigations or a criminal investigation identifies possible criminal acts .....	17
3.4.4.2	Action by the Trust in the event that criminal charges are successful .....	18
3.4.4.3	Action in the event of acquittal or insufficient evidence .....	18
3.4.4.4	Cases where criminal charges are brought not connected with an investigation by the Trust.....	18
3.4.5	Preparation for Conduct Hearing .....	18
3.4.5.1	Invitation to meeting .....	18
3.4.5.2	Professional Conduct Panel arrangements .....	19
3.4.5.3	Documents and Witnesses .....	19
3.4.5.4	Postponement Requests .....	20
3.4.5.5	Failure to attend the hearing by the Practitioner .....	20
3.4.6	Appeals.....	20
3.5	Part 5 - Capability Procedure .....	21
3.5.1	Introduction .....	21
3.5.2	Issues of Capability .....	21
3.5.3	Pre-Capability Hearing Process.....	21
3.5.4	Preparation for Capability Hearings .....	22
3.5.4.1	Time Limits .....	22
3.5.4.2	Postponement Requests .....	22
3.5.4.3	Panel Members .....	23
3.5.5	The Capability Hearing .....	23
3.5.6	The Decision.....	24
3.5.7	Capability Appeals Procedure .....	25
3.5.7.1	Remit of the Appeal Panel.....	25
3.5.7.2	The Appeal Panel .....	25
3.5.7.3	Procedure and Time Limits in Preparation for the Appeal Hearing .....	26
3.5.7.4	Procedure at the Appeal Hearing .....	26
3.5.7.5	The Decision of the Appeal Panel .....	27
3.5.8	Other Issues .....	27
3.5.8.1	Termination of Employment Pre-completion of Process.....	27
3.5.8.2	Sickness Absence of the Practitioner .....	27
3.6	Part 6 - Handling Concerns about a Practitioner's Health .....	28
3.6.1	Introduction.....	28
3.6.2	Action in the event the Practitioner is absent purely due to ill health and no concerns exist as to conduct or capability .....	28
3.6.2.1	Procedure.....	28
3.6.2.2	Obligations of the Trust and the Practitioner .....	29
3.6.3	Action in the event that issues of capability or conduct arise as a result of ill health on the part of the Practitioner.....	29

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

3.6.4	Where issues of ill health arise during the application of the procedures for addressing capability or conduct.....	30
3.6.4.1	Practitioner arguing concerns are caused by ill health .....	30
3.6.4.2	Delaying a conduct or capability procedure due to a Practitioner's ill health .....	31
3.6.4.3	Practitioner request to terminate or modify conduct or capability proceedings.....	32
3.6.5	Practitioners in training grades where ill health issues arise.....	33
3.6.6	Reporting Practitioners with health concerns to Regulatory Bodies.....	33
3.7	Policy Communication Strategy .....	33
4	ATTACHMENTS .....	33
5	ELECTRONIC AND MANUAL RECORDING OF INFORMATION .....	33
6	LOCATIONS THIS DOCUMENT ISSUED TO.....	33
7	OTHER RELEVANT/ASSOCIATED DOCUMENTS .....	33
8	SUPPORTING REFERENCES/EVIDENCE BASED DOCUMENTS.....	34
9	CONSULTATION WITH STAFF AND PATIENTS.....	34
10	DEFINITIONS/GLOSSARY OF TERMS.....	34
11	AUTHOR/DIVISIONAL/DIRECTORATE MANAGER APPROVAL .....	34
	Appendix 1: Equality Impact Assessment Form.....	35

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

## 1 PURPOSE

This Trust procedure puts into practice the Department of Health 'Directions on Disciplinary Procedures 2005' (which superseded the Maintaining High Professional Standards in the NHS (HSC 2003/12) and assures compliance to these standards.

## 2 SCOPE

This procedure applies to all doctors and dentists (referred to as the "Practitioners") employed by the Trust.

This procedure deals with the various processes for dealing with concerns raised about a Practitioner and should be read in conjunction with the Maintaining High Professional Standards in the Modern NHS (MHPS) guidelines document (<http://blackpoolhr3.multi2.sitekit.net/hr-advice/disciplinary.htm>). These stand alone and independent processes are outlined below:

- Dealing with initial concerns about Practitioners.
- Exclusions or restrictions on practice.
- Conduct.
- Capability.
- Health.

Whilst the Trust's disciplinary procedure (CORP/PROC/636) may ultimately be used to resolve certain conduct related issues, it is imperative that this 'Handling Concerns' procedure is used initially to determine the appropriate course of action.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

### 3 PROCEDURE

#### 3.1 Part 1 - General Introduction

##### 3.1.1 Introduction

In order to comply with the Department of Health 'Directions on Disciplinary Procedures 2005' (which superseded the Maintaining High Professional Standards in the NHS (HSC 2003/12), the Trust has put in place this policy and procedure.

This is an agreement between Blackpool Hospitals NHS Foundation Trust and the Local Negotiating Committee outlining the employer's procedure for handling concerns about Doctors' and Dentists' conduct and capability. This agreement supersedes all previous disciplinary procedures for hospital medical and dental staff.

This procedure may be amended to reflect any future national advice or guidance but only by agreement with the JLNC. Where there is any conflict or lack of clarity 'Maintaining High Professional Standards in the Modern NHS' ("MHPS") and the existing national agreed guidance will take precedence.

##### 3.1.2 Right to be Accompanied

Any Practitioner covered by this procedure may be accompanied by a friend, partner or spouse, colleague or a representative from or retained by a trade union or defence organisation. The companion or representative may be legally qualified but they will not, however, be representing the practitioner formally in a legal capacity. The right to be accompanied extends to any of the meetings or hearings referred to throughout the policy. At hearings, the representative will be entitled to present a case on behalf of the Practitioner, address the panel and question the management case and any witness evidence.

##### 3.1.3 Key personnel

Under this procedure a number of key Trust individuals may need to be involved. They are:

- Chief Executive
- Case Manager
- Case Investigator
- Medical Director
- Director of Workforce and OD (HR)
- Clinical Adviser

See the definitions of these individuals' roles and responsibilities with the accompanying guidance document.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

## 3.2 Part 2 - Initial Steps when a Concern is Raised

### 3.2.1 Raising concerns about a Practitioner

If an employee, patient or relative has a concern about the conduct or capability of a Practitioner, he/she should immediately report it to the Practitioner's Line Manager. It is then for that Line Manager to urgently notify any serious concern to the Chief Executive or Medical Director.

It is expected that the Line Manager will have undertaken a preliminary investigation or fact-finding exercise before reporting the concern.

However, if a Line Manager is in any doubt, he/she should err on the side of caution and report to the Chief Executive or Medical Director. If necessary, the Line Manager may consult with the Medical Director prior to notifying the Chief Executive. All serious concerns must ultimately be registered with the Chief Executive, in line with the requirements of this procedure.

Concerns about the capability of doctors and dentists in training, including those employed under Lead Employer arrangements, should be considered initially as training issues. The Trust's Director of Medical Education and the postgraduate dean should be involved from the outset. Where concerns are to be pursued under the Trust procedures (or those relating to Lead Employer Trusts) the postgraduate dean should be informed and involved as appropriate at each stage.

The Trust's local guidance document should be used in conjunction with this policy to identify the next appropriate steps.

### 3.2.2 Restrictions on practice or exclusions

When a concern is raised, the possibility of restrictions on practice or exclusions must be considered. This decision will depend upon the nature and severity of the concern in question. A decision to excluded is the last resort, and in implementing any decision on restrictions or exclusions, the provisions of Part 3 will need to be followed.

### 3.2.3 Appointment of a Case Manager

Once a concern of substance has been raised with the Chief Executive, he/she must ensure that a Case Manager is appointed in accordance with the framework below;

- The Case Manager must be the Medical Director or Deputy Medical Director where the concern relates to a Divisional Director or Associate Medical Director, or Head of Department.
- The Case Manager may be an appropriate Divisional Director or Associate Medical Director if the concern relates to a consultant.
- Where the concern relates to a Practitioner who is not a consultant, the Medical Director may designate an appropriate Divisional Director as Case Manager.
- An appointed Case Manager must not have had any prior substantive involvement in the issue or issues of concern that have arisen.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

### 3.2.4 The Case Manager's initial assessment

The first task of the Case Manager is to identify the nature of the problem or concern and to assess the seriousness of the issue on the information available and the likelihood that it can be resolved without resort to formal procedures.

This is a difficult decision and should not be taken alone but in consultation with the Director of Workforce and Organisational Development (OD), the Director of Medical Education for training grade doctors (if appropriate) and the Medical Director and the National Clinical Assessment Service (NCAS). The NCAS asks that the first approach to them should be made by the Chief Executive or Medical Director.

The Case Manager should explore the potential problem with the NCAS to consider different ways of tackling it, possibly recognise the problem as being more to do with work systems than doctor performance, or see a wider problem needing the involvement of an outside body other than the NCAS. Having discussed the case with the NCAS, the Case Manager must decide whether an informal approach can be taken to address the problem, or whether a formal investigation will be needed. Where an informal route is chosen the NCAS should still be involved until the problem is resolved.

Where it is decided that a formal route needs to be followed, the Medical Director will notify the Chairman in order for a Designated Board Member to be assigned to oversee the process.

### 3.2.5 Appointment of a Case Investigator

Where it is decided that a formal route needs to be followed the Medical Director must, after discussion between the Chief Executive and Director of Workforce and OD, appoint an appropriately experienced and trained person as case investigator. The seniority of the Case Investigator will differ depending on the grade of Practitioner involved in the allegation. (Several Clinical Managers should be appropriately trained, to enable them to carry out this role when required).

When a Case Investigator is appointed, the terms of reference for the investigation should be determined by the Case Manager, usually in consultation with the Director of Workforce and Organisational Development.

As promptly as possible after the decision to carry out a formal investigation is taken, the Practitioner should be notified in writing of:

- The fact that an investigation is to be carried out;
- The specific allegations or concerns;
- The name of the Case Investigator and, where relevant any clinical adviser
- An initial list of people to be interviewed by the Case Investigator;
- The Practitioner's right to meet the Case Investigator to put their views;
- His/her right to be accompanied (see Part 1, para.4).

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		



### 3.2.6 Carrying out an investigation

The Case Investigator is responsible for leading the investigation into any allegations or concerns about a Practitioner, establishing the facts and reporting the findings. The Case Investigator should complete their investigation within **4 weeks** of his/her appointment and submit the report to the Case Manager within a further **5 working days**, unless an alternative timescale has been agreed with the Case Manager.

In circumstances where a Case Investigator cannot meet the four-week target, he/she should, as soon as possible, notify in writing **BOTH** the Case Manager and the Practitioner in question explaining the reasons why. A revised timetable should be provided in addition to an explanation.

The Chairman must appoint a designated board member to oversee the case and ensure that momentum is maintained. The Case Manager must keep the designated Board member informed and assist them in reviewing the progress of the case.

The Case Investigator has a wide discretion in how he/she carries out the investigation so long as he/she establishes the facts in an unbiased way and adheres to the terms of reference. The Case Investigator should seek assistance from a senior member of the Human Resources Department. The Case Investigator will approach the Practitioner concerned to seek views on the witnesses identified and the information that should be collected.

If the Case Investigator is a non-clinician, a Clinical Adviser should be involved where clinical issues arise. The Clinical Adviser should not have been previously involved in the issue being investigated.

If during the course of the investigation it transpires that the case involves more complex clinical issues than first anticipated, the Case Manager should arrange for a Practitioner in the same specialty and same grade from another NHS body to assist.

Where concerns about a Practitioner arise from the Trust's Serious Untoward Incidents Procedure ("SUI"), see Section 7, the Case Investigator should liaise with the SUI team to agree the approach to be taken to such investigations.

The Case Investigator does not make the decision on what action should be taken nor whether the employee should be excluded from work or restrictions to practice applied and may not be a member of any disciplinary or appeal panel relating to the case.

The report of the investigation should give the Case Manager sufficient information to make a decision whether:

- There is a case of misconduct that should be put to a conduct panel;
- There are concerns about the Practitioner's health that should be considered by the NHS body's occupational health service;
- There are concerns about the Practitioner's performance that should be further explored by the NCAS;
- Restrictions on practice or exclusion from work should be considered;
- There are serious concerns that should be referred to the GMC or GDC;
- No further action is needed.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

### **3.2.7 The right of the Practitioner to comment on the factual parts of the report in capability cases**

Before a final report into concerns is provided to the Case Manager, the Case Investigator must provide the factual parts of his/her report to the Practitioner for comment. The Practitioner has **10 working days** in which to comment in writing on the report unless an alternative timescale is agreed in writing with the Case Manager.

If the Practitioner (or his/her representative) fails to provide his or her comments within the 10 working day time limit or such other time limit as may be agreed with him/her, the Case Investigator will finalise his/her report, recording the fact that it has not been possible to obtain the Practitioner's comments.

The right to comment on the factual aspects of the Case Investigator's report shall be limited to cases concerning the capability of a Practitioner and shall not extend to other kinds of allegation.

### **3.2.8 Decision of the Case Manager**

Once the report is completed it must be provided to the Case Manager who will then decide the course of action that needs to be taken. The Case Manager should discuss the report with the Chief Executive and Director of Workforce and Organisational Development, as well as with the NCAS.

The Case Manager will write to the Practitioner enclosing a copy of the report together with the statements and other evidence gathered in the course of the investigation. The letter must set out the Case Manager's decision and the reasons for it.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

### **3.3 Part 3 - Exclusions or Restrictions on Practice**

Under this procedure the term “excluded from work” is used to replace the word “suspended”. The word “suspension should not be used when dealing with a Practitioner as it can be confused with suspension from the register by the GMC or GDC. Exclusion is a last resort and can only be justified on the grounds set out below. Before the decision is taken to exclude any Practitioner, all other options must have been thoroughly explored, for example restricting a Practitioner’s duties.

#### **3.3.1 Roles of Officers**

##### **3.3.1.1 Power to exclude or restrict a Practitioner**

The Chief Executive has overall responsibility for managing exclusions and restrictions.

A decision to exclude or restrict a Practitioner can only be made by:

- the Chief Executive (or anyone acting in that capacity);
- the Medical Director (or anyone acting in that capacity);
- the Director of Workforce and Organisational Development (or anyone acting in that capacity); or
- the Divisional Director (only for Practitioners below the grade of consultant).

##### **3.3.1.2 Responsibilities of individual officers in the event of a restriction or exclusion**

###### **3.3.1.2.1 The Case Manager**

It will usually be for the Case Manager to make the initial decision whether to exclude or restrict a Practitioner. However there may be circumstances where the Case Manager may not have the authority to exclude in which case the officers’ listed in paragraph 3.3.1.1 will make this decision. A decision to exclude a Practitioner will only be made once it has been decided that there are significant concerns about the Practitioner’s conduct or capability and the conditions set out in paragraph 3.3.2 have been satisfied.

The Case Manager will review the exclusion or restriction with the Designated Board Member and Chief Executive as set out below, taking into consideration any information that may be provided to him/her by the Case Investigator.

###### **3.3.1.2.2 The Designated Board Member**

The designated Board Member shall oversee the exclusion or restriction process. This role will include ensuring that the applicable time limits are complied with, as well as receiving representations on the process or procedure leading to the exclusion or restriction.

###### **3.3.1.2.3 The Case Investigator**

The Case Investigator shall, at 4 weekly intervals, provide such information to the Case Manager as may be relevant to the review of the decision to exclude or restrict the Practitioner.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<i>Do you have the up to date version? See the intranet for the latest version</i>		

### 3.3.2 The restrictions that can be imposed on the Practitioner

If a serious concern is raised about a Practitioner, the Case Manager must consider at the outset if temporary restrictions on the Practitioner's practice are necessary.

There are four alternative types of restriction:

- Obtaining voluntary undertakings from the Practitioner on what he/she will and will not do;
- Placing the Practitioner under the supervision of a Divisional or Medical Director or Head of Department;
- Amending or restricting clinical duties; and
- Restriction to non-medical duties.
- Absence due to ill health

If there is evidence that concerns are related to the Practitioner's health, the Occupational Health Department should become involved at an early stage to help with the investigation of specific health problems and to advise the Case Investigator accordingly (see Part 6).

### 3.3.3 Where immediate exclusion may be justified

Exclusion is a temporary measure reserved for specific circumstances. Alternatives to exclusion must always be considered in the first instance. The key factors in any decision to exclude are; the protection of staff or patient interests or potential impact on the investigation.

### 3.3.4 The process for deciding whether to exclude or restrict

There are two types of exclusion: immediate exclusion dealt with in paragraph 3.3.5 below, and formal exclusion which are dealt with under paragraph 3.3.6. As an alternative to exclusion, restrictions of practice may be imposed.

Before reaching the decision to exclude, it is important to seek the NCAS's assistance and, it may be necessary to discuss the matter with other interested parties, such as the Police. However, ultimately the decision on restriction(s) or exclusion rests with the Trust's authorised officers as set out in paragraph 3.3.1.1.

Where the officers of the Trust disagree with the NCAS, the reasons for this divergence in view should be carefully recorded in writing.

Any decision to exclude formally should be discussed by the Chief Executive, the Medical Director and the Director of Workforce and OD. The Designated Board Member should be informed of any such decision. A decision to exclude immediately should, where practicable, follow the same procedure, although, in the event that this is not practicable, the officer designated under paragraph 3.3.1.1 shall discuss the decision as soon as practicable with the Chief Executive and Director of Workforce and OD, and confirm that decision to the Designated Board Member.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

### 3.3.5 Immediate exclusion

#### 3.3.5.1 The right to exclude immediately

In a circumstance referred to in paragraph 3.3.2 above, where no alternative is deemed appropriate by the officers listed at paragraph 3.3.1.1, the Practitioner may be excluded immediately to allow preliminary consideration of the concern by the Case Manager and Case Investigator.

#### 3.3.5.2 The initial period of immediate exclusion

An immediate exclusion can be for a **maximum of two weeks** following which a decision whether to exclude formally must be made in accordance with the procedure set out in paragraph 3.3.6 below. If the decision is to restrict a Practitioner's practice, this should also be reviewed, though it is recommended this happens when the Case Investigator has completed his/her report.

#### 3.3.5.3 Meeting with the Practitioner

The Practitioner should be informed at a meeting that they are being excluded immediately together with the broad reasons for the exclusion. A date should be agreed to meet again within the two weeks following the date of the exclusion. The Case Manager must advise the Practitioner of their rights, including rights of representation. The meeting should be immediately followed by a letter confirming the outcome of that meeting.

### 3.3.6 Formal decisions to exclude or restrict practice

#### 3.3.6.1 The right to exclude formally

A formal exclusion can only take place after:

- The Case Manager assesses there is a case to answer at a case conference with the Director of Workforce and OD;
- A preliminary report has been prepared by the Case Investigator which indicates there is misconduct/capability concern or further investigation is warranted;
- A meeting has been held with the Practitioner in accordance with paragraph 3.3.5.3;
- NCAS has been consulted.

#### 3.3.6.2 Justification of the decision to exclude formally

Formal exclusion can only be justified where there is a need to protect patient or staff interests pending the full investigation of:

- Allegations of misconduct;
- Concerns about serious dysfunction in the operation of clinical services;
- Concerns about lack of capability or poor performance; or
- Where the Practitioner's presence is likely to hinder ongoing investigations.

Other options such as restrictions of practice must be considered. Exclusion is to be used only where it is strictly necessary for the reasons set out above.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

### 3.3.6.3 Meeting with the Practitioner

The Practitioner should be informed of the exclusion in a meeting with the Medical Director and/or the Case Manager. A senior member of Human Resources should be present at this meeting where possible. The reasons for the exclusion must be explained and the Practitioner shall have an opportunity to respond and suggest alternatives to exclusion.

### 3.3.6.4 Confirming formal exclusion in writing

Formal exclusion must be confirmed in writing to the Practitioner within **five** working days, where practicable, of the decision being taken. This letter must state:

- the duration of the exclusion and date;
- the nature of the allegations being made;
- the terms of the exclusion and the need to remain available for work;
- a full investigation or other action will follow; and
- that the designated Board Member may receive any representation on the exclusion;
- the Practitioner's commitment to the terms of the exclusion

A formal exclusion can last for a maximum of **four weeks** at which point the exclusion must be reviewed and a decision taken to renew it, terminate it or modify it.

### 3.3.7 Exclusion from Trust property/premises

A Case Manager must decide if exclusion from Trust property is necessary. An exclusion from Trust property is necessary where there is a risk the Practitioner will tamper with evidence or seek to influence colleagues. Patient safety must come first; if there is a risk of disruption to clinical services by the Practitioner's presence, he/she should not be allowed onto Trust property. Where possible, an excluded Practitioner should be allowed on Trust property for continuing professional development purposes. He/she should always be allowed on Trust property as a patient.

As an alternative to complete exclusion from Trust property, the Case Manager may consider a limited exclusion from certain parts of Trust property. In the event that such exclusion is put in place but then breached by the Practitioner, a full exclusion may be substituted.

### 3.3.8 Exclusion from Trust property/premises

An excluded Practitioner must be ready, willing and able to carry out some or all of his/her duties during contractual hours. He/she must be available to assist the Case Investigator during these hours. He/she must obtain permission, in writing, to take annual or study leave from the Case Manager, unless previously approved.

### 3.3.9 Obligations on the Practitioner in the event exclusion is considered

#### 3.3.9.1 Duty to co-operate

A Practitioner should co-operate with the Trust in finding alternatives to exclusion by:

- agreeing to restrictions on his/her practice, including a restriction to non-clinical duties;
- agreeing not to interfere with investigations involving him/her;
- agreeing to give undertakings not to carry out certain work. The NCAS may

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<i>Do you have the up to date version? See the intranet for the latest version</i>		

recommend such undertakings extend beyond the Trust to the public and private sector;

- agreeing to work under supervision.

### **3.3.9.2 Duty on the Practitioner to provide information**

An excluded Practitioner must notify the Case Manager of any other organisations for which they undertake voluntary or paid work during the period of exclusion. The Practitioner must seek prior consent from the Case Manager to undertake such work.

### **3.3.10 Consequences of non-compliance with the Practitioner's duties**

In the event the Practitioner fails to comply with his or her duties under paragraphs 3.3.9.1 and 3.3.9.2 above, (s)he may be subject to disciplinary action on the grounds of failure to comply with a reasonable management instruction.

### **3.3.11 Informal exclusion**

No Practitioner will be excluded from work other than through this procedure. The Trust will not use "garden leave" or other informal arrangements as a means of resolving a problem covered by this procedure.

### **3.3.12 Reviewing exclusions and the role of the Trust Board**

#### **3.3.12.1 First Review**

The Case Manager must review the Practitioner's formal exclusion within four weeks of the decision to exclude and:

- submit a written advisory report of the outcome of that review to the Chief Executive / the Trust Board;
- document the renewal;
- send written notification of the renewal to the Practitioner, if required

Any change of circumstances since the original decision to exclude must be addressed by the Case Manager in his/her written review report. This review report should be provided to the Practitioner under investigation, the Chief Executive and the Trust Board Member.

#### **3.3.12.2 Second Review (and reviews after the Third Review)**

Before expiry of a further four weeks from the date of the previous review, the Case Manager must review the exclusion and follow the steps detailed under the First Review above. The exclusion will lapse and the practitioner will be entitled to return to work at the end of the four-week period if the exclusion is not actively reviewed.

If exclusion continues for a further four weeks from the Second Review, a Third Review should be carried out and NCAS must be contacted to discuss the position.

If a Practitioner has been excluded for three periods and the investigation has not been completed, the Case Manager must submit a written report to the Chief Executive AND designated Board Member which includes the reasons for the continued exclusion, why restrictions on practice are not appropriate, the timetable for completing the investigation and reasons for delay.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<i>Do you have the up to date version? See the intranet for the latest version</i>		

### 3.3.12.3 Six Month Review

Exclusions should not normally last for more than **six months** unless a criminal investigation is ongoing.

### 3.3.13 Role of the Board

The Trust Board's responsibility, having been informed via the designated Board Member, is to ensure the procedures set out above are followed. The designated Board member may be required to sit on an Appeal panel, therefore should not be given information during the course of the exclusion which could potentially compromise their impartiality.

The Trust will add as a standing agenda item for the closed part (Part 2) of Trust Board meetings a review of excluded/restricted Practitioners. The Medical Director should have a monthly statistical report prepared for the Board showing all exclusions, their duration and the number of times they have been reviewed or renewed.

### 3.3.14 Return to work

If it is decided by the Case Manager that the exclusion should come to an end, there must be formal arrangements for the return to work of the Practitioner made with the involvement of the Divisional Director and Head of Department. It must be clear whether clinical and other responsibilities are to remain unchanged or what the duties and restrictions are to be as well as any monitoring arrangements to ensure patient safety.

### 3.3.15 Breach of a restriction

Where a restriction has been placed on the Practitioner's practice, they shall agree not to undertake any work in that area of practice with any other organisation whether on an employed basis or otherwise and whether in the private or public sectors. If a Practitioner breaches an undertaking he/she has given the case manager should consult with the GMC / GDC and NCAS on whether an alert letter should be issued. This breach of an undertaking may also give rise to separate disciplinary action against the Practitioner.

### 3.3.16 Reporting to the GMC

At the point where serious allegations affecting patient safety arise, the case manager has a duty to consider reporting the matter to the GMC/GDC. This could be at the stage of immediate exclusion or when the Case Investigator's report has been provided.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		



### 3.4 Part 4 - Conduct and Disciplinary Matters

#### 3.4.1 Introduction

At the initial stage set out in paragraph 3.2.3 (Part 2) the Case Manager should consider whether the concern may amount to an issue of conduct. This may not be a final decision, and the Case Manager should review this decision on receipt of the Case Investigator's report (paragraph 3.3.8, Part 2).

Any concerns relating to Practitioners in training grades must be discussed with the relevant educational supervisor and college or clinical tutor, together with the post graduate dean at the outset.

#### 3.4.2 Investigation of allegations

Every allegation must be fully investigated. The investigation process will be carried out in accordance with paragraph 3.2.6 (Part 2).

Where the alleged misconduct involves matters of a professional nature, the Case Investigator should obtain independent advice from a senior clinician in the same speciality as the Practitioner.

#### 3.4.3 Classification of the concern

The Case Manager will, on receipt of the Case Investigator's report and having consulted with the NCAS, the Director of Workforce and OD, and the Chief Executive, consider the classification of the concerns about the Practitioner.

If the Case Manager concludes that the concern is one of conduct the remainder of this Part of this policy section will be followed. If the concern is one of capability, Part 5 should be followed. If the concern is one of health, Part 6 should be followed.

The classification will be confirmed to the Practitioner in writing in the letter confirming the outcome of the investigation (see paragraph 3.2.8, Part 2) along with the Case Manager's conclusions.

#### 3.4.4 Criminal Proceedings

##### 3.4.4.1 Action when investigations or a criminal investigation identifies possible criminal acts

Where there are allegations of, or a Trust's investigation finds, a suspected fraud, this must be reported immediately, and prior to any action being taken, to the Counter Fraud and Security Management Service (CFSMS). CFSMS will ensure that their enquiries are conducted in line with their parallel sanctions policy. Where other criminal action is suspected, this must be reported to the police. Where the police are conducting the enquiry, the employer must consult the police to establish whether an investigation into any other matters would impede their investigation.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

#### **3.4.4.2 Action by the Trust in the event that criminal charges are successful**

In a circumstance where criminal charges have been successfully brought against the Practitioner, the Trust will need to carefully consider whether they render the Practitioner unsuitable for further employment. The Trust will need to consider the overall circumstances of the conviction and in particular the safety of patients, staff and members of the public and whether exclusion and further investigation is necessary.

#### **3.4.4.3 Action in the event of acquittal or insufficient evidence**

Where a criminal case is pursued but the Practitioner is acquitted or where there was insufficient evidence to take the matter to court, there is a presumption that the Practitioner will be re-instated. The Trust must, however, consider whether there are reasonable grounds to suggest that there is a threat to patients, staff or members of the public. If the Trust believes this to be the case, the alleged misconduct should be addressed under these procedures which may cause the presumption of reinstatement to be reversed.

#### **3.4.4.4 Cases where criminal charges are brought not connected with an investigation by the Trust**

There are some criminal offences that, if proven, could render a doctor or dentist unsuitable for employment. In all cases, the Trust, having considered the facts, will need to consider whether the employee poses a risk to patients or colleagues and whether their conduct warrants an investigation and the exclusion of the Practitioner. The Trust will have to give serious consideration to whether the employee can continue in their job once criminal charges have been made. Bearing in mind the presumption of innocence, the Trust will consider whether the offence, if proven, is one that makes the doctor or dentist unsuitable for their type of work and whether, pending the trial, the employee can continue in their present job, should be allocated to other duties or should be excluded from work. This will depend on the nature of the offence and advice will be sought from the Trust's legal adviser. The Trust will explain the reasons for taking any such action to the Practitioner concerned.

### **3.4.5 Preparation for Conduct Hearing**

#### **3.4.5.1 Invitation to meeting**

Where the Case Manager concludes that the alleged concern or issue is a conduct matter, this will be dealt with under the Trust's disciplinary procedure [CORP/PROC/636] (except for those doctors employed under the Lead Employer arrangements).

Where the Case Manager concludes that the alleged misconduct matter is of a professional nature, the process outlined below will be followed with reference to the Trust's disciplinary procedure.

The Case Manager should invite the Practitioner to a meeting informing him/her that the matter will be heard by a professional conduct panel. At the meeting, the Practitioner will be informed of the following;

- Clear and complete details of the allegations, including (if not already received) a copy of the investigatory report and any supporting evidence (including witness statements);
- Details of who is attending to present the management case;
- Details of members of the panel;

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

- Details of any witnesses to be called in support of the management case;
- Confirmation of the Practitioner's right to be accompanied (see Part 1 above);
- Confirmation that disciplinary action may be taken as a result of the meeting.

This will be confirmed in writing to the Practitioner at least 10 working days before the date of the hearing (unless there are exceptional circumstances) to allow sufficient time for him/her to consider their case.

### 3.4.5.2 Professional Conduct Panel arrangements

Where a case involving issues of professional conduct proceeds to hearing, the case should be heard by a panel consisting of;

- Trust Executive Director
- Designated Trust Board member (Non-Executive Director)
- Medically or dentally qualified member (at least at Consultant level)

### 3.4.5.3 Documents and Witnesses

Any documents to which the Practitioner and/or his /her representative intend to refer at the hearing (including any statement of case) should be circulated to the Case Manager no later than **5 working days** prior to the hearing, unless there are exceptional circumstances.

The Practitioner and/or his/her representative will also be provided with copies of all the documents on which the management case will rely at the hearing at least **5 working days** before the hearing including any statement of case if one is prepared).

The Practitioner or his/her representative and the individual presenting the management case must also confirm the names of any witnesses they intend to call at least **5 working days** before the hearing.

Any witness statements to be relied upon by the Practitioner must be provided to the Case Manager no less than **5 working days** before the hearing. If the Practitioner does not intend to rely upon witness evidence but does intend to call a witness in support of his or her case, the Practitioner must provide a written synopsis of the relevant evidence the witness will provide. This synopsis must be provided no later than **5 working days** before the hearing to the Case Manager.

It is the responsibility of the person(s) calling the witnesses to arrange for their attendance at the hearing. Witnesses will not be required to attend all of the hearing, only the period for which they are required to give evidence. Where witnesses are employees of the Trust, they will be remunerated as normal in accordance with their terms and conditions of employment for attendance at the hearing. Where a synopsis has been provided of a witness' evidence by the Practitioner, the Practitioner must ensure that witness attends the hearing to provide their evidence unless that evidence has been explicitly agreed by the Case Manager.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

#### 3.4.5.4 Postponement Requests

The Practitioner must take all reasonable steps to attend the hearing. Requests for postponements will be considered by the Chairman of the panel and will be dealt with reasonably taking into account all of the circumstances of the case, including:

- the reason for the request;
- the period that the allegations have been outstanding;
- in cases of sickness absence, the period it is anticipated that the Practitioner will remain off sick;
- the future availability of the panel and witnesses;

A Practitioner's ill health will be dealt with in accordance with the procedures at Part 6.

#### 3.4.5.5 Failure to attend the hearing by the Practitioner

A failure to attend a disciplinary hearing by the Practitioner without valid reason may result in the Chair of the panel deciding that the process is carried out in the Practitioner's absence.

#### 3.4.6 Appeals

Appeals against any disciplinary sanction administered under this disciplinary procedure will be heard as set out in the provisions of the Trust's normal disciplinary procedure for all staff, except in cases which involve matters of professional misconduct.

For such appeals, the case should be heard by a panel, whose members have had no previous involvement in the case, consisting of;

- Trust Executive Director
- Trust Board member
- Medically or dentally qualified member (at least at Consultant level)

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

## 3.5 Part 5 - Capability Procedure

### 3.5.1 Introduction

Initial consideration must be given as to whether any failure or concern in relation to a Practitioner was due to broader systems or organisational failure. If so, appropriate investigation and remedial action should be taken.

Wherever possible, issues of capability shall be resolved through on-going assessment, retraining and support. If the concerns cannot be resolved routinely by management, the NCAS must be contacted for support and guidance **before** the matter can be referred to a capability panel.

Any concerns relating to Practitioners in training grades must be discussed with the relevant educational supervisor and college or clinical tutor, plus with the postgraduate dean from the outset.

### 3.5.2 Issues of Capability

The following are examples of matters which the Trust may regard as being concerns about capability (this is a non-exhaustive list):

- Out of date or incompetent clinical practice (unless this is contrary to clear management requests made previously in which case the issue may be one of misconduct – see Part 4);
- Inappropriate clinical practice arising from a lack of knowledge or skills that puts patients at risk;
- Inability to communicate effectively;
- Inappropriate delegation of clinical responsibility;
- Inadequate supervision of delegated clinical tasks; and
- Ineffective clinical team working skills.

In the event that the capability issue has arisen due to the Practitioner's ill health, then the Ill Health Procedure in Part 6 must be considered.

In the event of an overlap between issues of conduct (see Part 4) and capability, then usually both matters will normally be heard under the capability procedure. In exceptional circumstances, it may be necessary for issues to be considered under separate procedures. The decision as to which procedure shall be initiated and shall be taken by the Case Manager in consultation with the Director of Workforce and Organisational Development, and the NCAS.

### 3.5.3 Pre-Capability Hearing Process

Once the Case Investigator has concluded his/her investigation (see Part 2, paragraphs 3.2.6) the report will be sent to the Case Manager. The Case Investigator will already have provided the Practitioner with the opportunity to comment on the factual sections of the report in accordance with Part 2, paragraph 3.2.7 above.

The Case Manager shall decide on the action that needs to be taken, shall consult with the NCAS and within 10 working days notify the Practitioner in writing on how the issue is to be dealt with.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

If it is decided to apply the capability process in this Part 5, the options available to the Case Manager for dealing with the matter are:

- No action is required;
- Retraining or counselling should be undertaken;
- The matter should be referred to the NCAS for their consideration; or
- Referral to a capability panel for a hearing should be made.

### 3.5.4 Preparation for Capability Hearings

#### 3.5.4.1 Time Limits

Where a Case Manager has decided to refer the matter to a capability panel, the following preparatory steps must take place:

- **20 working days** before the hearing the Case Manager will notify the Practitioner in writing of the decision to arrange a capability hearing.
- The Practitioner must at the same time be provided with details of the allegations and copy documents or evidence that will be put before the capability panel and confirmation of his/her right to be accompanied.
- At least **10 working days** before the hearing, both parties should exchange documents (including any written statements of case) and witness statements on which they intend to rely at the hearing. In the rare circumstance where either party intends to rely upon a witness but does not have a witness statement, they must provide a written synopsis of the evidence that witness will provide. This synopsis must contain the key elements of the witness evidence and be provided at least **10 working days** before the hearing.
- At least **2 working days** before the hearing, the parties must exchange final lists of witnesses they intend to call to the hearing. The Chairman of the panel can invite the witness to attend where a witness' evidence is in dispute. Witnesses may be accompanied to the hearing but the person accompanying them may not participate in the hearing. Where only a synopsis of the witness' evidence has been provided in advance, the witness must provide evidence in person at the hearing unless the synopsis of evidence has been explicitly agreed by the other party.

#### 3.5.4.2 Postponement Requests

In the event of a postponement request, the Case Manager shall deal with the response and may agree time extensions. If the Practitioner requires a postponement of over 30 working days, the Chairman of the capability panel should consider the grounds for the request and if reasonable to do so may refuse the request and decide to proceed with the hearing in the Practitioner's absence if they refuse to attend.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

### 3.5.4.3 Panel Members

The panel for the capability hearing shall consist of at least three people including:

- An Executive Director of the Trust;
- A medical or dental Practitioner not employed by the Trust (following discussions with the Local Negotiating Committee (LNC) / Medical Staff Committee);
- A Trust Board Member

The Executive Director will normally act as Chairman of the panel.

If the Practitioner is a clinical academic, a further panel member may be appointed in accordance with any agreed protocol between the Trust and the relevant University.

The panel must be advised by:

- A senior member of staff from HR.
- A senior clinician from the same speciality as the Practitioner from another NHS employer. In the event this clinician cannot advise on the appropriate level of competence then a Practitioner from another NHS employer of the same grade as the Practitioner in question should be asked to advise.

The Practitioner should be notified of the panel members in writing by the Case Manager, where possible at the same time as the notification of the hearing.

Within **5 working days** of their notification, the Practitioner should raise with the Case Manager any objections to the panel members. The Case Manager in consultation with the Trust's Director of Workforce and OD shall consider the objections and will respond in writing prior to the hearing, stating the reasons for any decision on the objections. Reasonable efforts will be made by the Trust to agree the composition of the panel and only in exceptional circumstances shall the hearing be postponed whilst the matter is resolved.

### 3.5.5 The Capability Hearing

The Chairman of the panel is responsible for ensuring the hearing is conducted properly and in accordance with the Trust's procedure.

The Practitioner has the right to be accompanied at the hearing (see Part 1). The Case Manager may be assisted by the Case Investigator(s) (where they are not appearing as a witness) or a senior member of HR.

At all times during the hearing the panel, its advisers, the Practitioner, his/her representative and the Case Manager must be present. Once a witness has given evidence he/she shall leave the hearing.

The procedure for the hearing will be as follows:

- The Case Manager presents the management case (which may be by reference to the Case Investigator's report or a separate statement of case);

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

- The management witnesses will be called in turn. Each will confirm their witness statement and provide any additional information. The Case Manager may ask additional questions. The Practitioner's representative may ask questions of the witnesses (if unrepresented the Practitioner may ask questions). The panel may question the witness. The Case Manager may then ask further questions to clarify any point but will not be able to raise new evidence;
- The Chairman may ask the Case Manager to clarify any issues arising from the management case;
- The Practitioner and/or their representative shall present their case and call any witnesses. The above procedure used for the management's witnesses shall be followed;
- The Chairman can request any points of clarification on the Practitioner's case;
- The Chairman shall invite the Case Manager to make a short closing statement summarising the key points of the management's case;
- The Chairman shall invite the Practitioner and/or his/her representative to make a short closing statement summarising the key points of their case. Where appropriate, this should include any grounds of mitigation;
- The panel shall retire to consider its decision.

### 3.5.6 The Decision

The panel has the discretion to make a range of decisions. A non-exhaustive list of possible decisions include:

- No action required;
- Verbal agreement by the Practitioner that there will be an improvement in clinical performance within a specified timescale confirmed in a written statement as to what is required and how it is to be achieved;
- Written warning to improve clinical performance within a specified timescale with a statement which is required and how this can be achieved;
- A final written warning that there must be improved clinical performance within a specified timescale and how this can be achieved;
- Termination of employment.

The decision must be confirmed in writing to the Practitioner within **5 working days** of the hearing and communicated to the Case Manager within the same timescale. The letter to the Practitioner must include reasons for the decision, confirmation of the right of appeal and notification of any intention to make a referral to the GMC/GDC or any other external professional body.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		



Any decision must be placed in the Practitioner's personal file. As general guidance a verbal agreement should remain 'live' for six months and written warnings for twelve months.

### 3.5.7 Capability Appeals Procedure

#### 3.5.7.1 Remit of the Appeal Panel

This appeal procedure shall relate to decisions of a capability panel. The remit of the appeal panel is to review the findings and procedure followed by the capability panel, and consider any new evidence. A full re-hearing of all evidence should not take place unless the Chairman of the appeal panel considers that proper procedures have not been followed at an earlier stage in the process and a full re-hearing is required in the interests of a fair process.

The appeal panel can hear any new evidence submitted by the Practitioner to consider whether this might have significantly altered the capability panel's decision. The Case Manager may call new evidence that is relevant to the new evidence called by the Practitioner and/or his or her representative.

#### 3.5.7.2 The Appeal Panel

The appeal panel should consist of:

- An independent person (trained in legal aspects of appeals) from an approved pool appointed by the NHS Appointments Commission. This person will act as the Chairman of the appeal panel;
- The Trust's Chairman or another Non-Executive Director (other than the Designated Board Member);
- A medically/dentally qualified member who is not employed by the Trust (following discussions with the LNC/Medical Staff Committee).

Where the Practitioner is a clinical academic, a further panel member may be appointed in accordance with any agreed protocol between the Trust and the relevant University.

The appeal panel may be advised by:

- A Consultant from the same speciality or sub-speciality of the Practitioner who is not employed by the Trust; and
- A senior Human Resource specialist.

The panel will be established by the Trust and advice should be sought from the Director of Workforce and Organisational Development.

The Practitioner shall be notified of the composition of the panel, where possible, **25 working days** prior to the hearing. If the Practitioner objects to a panel member, the Director of Workforce and Organisational Development shall liaise with him/her or their representative to seek to reach agreement. In the event agreement cannot be reached, the objections will be noted.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

### 3.5.7.3 Procedure and Time Limits in Preparation for the Appeal Hearing

The following steps shall be taken:

- Within **25 working days** of the Practitioner receiving the capability panel's decision he/she must send an appeal statement to the Trust's Human Resources Director giving full grounds for the appeal;
- Within **25 working days** of the appeal being lodged, the appeal hearing shall take place;
- At least **10 working days** before the appeal hearing, the appeal panel shall notify the parties if it considers it is necessary to hear evidence from any witness. In the event the panel requires a witness to be called, the Chairman Shall liaise with the Human Resources Department for the witness to supply a written statement to both parties **5 working days** in advance of the hearing;
- At least **10 working days** before the hearing the Practitioner shall confirm to the panel and the Case Manager whether he/she has any additional evidence on which he/she intends to rely. Copies of any documents or witness statements shall be provided with the notice of intention to call additional evidence.
- At least **5 working days** before the hearing, the Case Manager Shall confirm to the panel and the Practitioner whether he/she has any additional evidence on which he/she intends to rely. Copies of any documents shall be provided. If the Case Manager's response to the Practitioner's grounds of appeal is other than as set out in the written decision of the capability panel, the Case Manager must provide this response, in written form, to the Practitioner no later than **5 working days** before the appeal hearing.

### 3.5.7.4 Procedure at the Appeal Hearing

The procedure for the hearing will be as follows:

- The Practitioner or his/her representative shall present a full statement of their case to the appeal panel which shall include all the grounds of appeal;
- The Case Manager and the panel shall be entitled to question the Practitioner or his representative on the grounds of appeal;
- The Practitioner or his/her representative shall present any additional evidence/witnesses. If they do so, the Case Manager and panel may ask questions;
- The Case Manager shall present a statement of the management case to the appeal panel which shall include the response to the grounds of appeal;
- The Practitioner and the appeal panel Shall be entitled to question the Case Manager;
- The Case Manager shall present any additional evidence/witnesses in relation to any new evidence from the Practitioner or his/her representative and the panel may ask questions;
- The Case Manager shall sum up the management's case;
- The Practitioner or his/her representative shall sum up their case. At this stage a mitigation statement may be made.
- The appeal panel shall retire to make a decision.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

### 3.5.7.5 The Decision of the Appeal Panel

The appeal panel may:

- Confirm the original decision of the capability panel;
- Amend the decision of the capability panel; or
- Order the case to be reheard in its entirety.

The appeal panel's decision and the reasons for it must be confirmed in writing to the Practitioner within **5 working days** of the appeal hearing. A record of the decision shall be kept on the Practitioner's personnel file including a statement of the capability issues, the action taken and the reasons for those actions.

Where the appeal was about the Practitioner's dismissal, he/she will not be paid from the date of termination as decided by the original capability panel. However the Practitioner is reinstated following the appeal his/her pay shall be backdated to the date of termination of employment.

If the appeal panel decided that the whole case is to be reheard, the Practitioner shall be reinstated and be paid backdated salary to the date of termination. In this situation any conditions/restrictions on practice in place at the time of the original capability hearing shall be applied.

### 3.5.8 Other Issues

#### 3.5.8.1 Termination of Employment Pre-completion of Process

If a Practitioner leaves the Trust's employment prior to the conclusion of the above processes, the capability proceedings must be completed wherever possible. This applies whatever the personal circumstances of the Practitioner.

If the Practitioner cannot be contacted via their last known address/registered address, the Trust will need to make a decision on the capability issues raised based on the evidence it has and take appropriate action. This decision shall be made by the Chief Executive in conjunction with the Case Manager, Director of Workforce and Organisational Development and in consultation with the Designated Board Member. This action may include a referral to the GMC/GDC, the issue of an alert letter and/or referral to the police.

#### 3.5.8.2 Sickness Absence of the Practitioner

Where during the capability process a Practitioner becomes ill, they shall be dealt with under the Trust's sickness absence procedure and Part 6 of this policy.

Where a Practitioner's employment is terminated on ill health grounds the Trust shall take the capability procedure to a conclusion as set out in paragraph 3.5.6 above.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

## 3.6 Part 6 - Handling Concerns about a Practitioner's Health

### 3.6.1 Introduction

This part applies to the following circumstances:

- where the Practitioner is absent from work due to ill health and no concerns have arisen about conduct or capability;
- where the issues of capability or conduct are decided by the Case Manager to have arisen solely as a result of ill health on the part of the Practitioner;
- where issues of ill health arise during the application of the procedures for addressing capability or conduct.

Separate procedures are set out below in respect of each of these eventualities.

This procedure should be read in conjunction with the Trust's Sickness Absence policy and Remediation and Rehabilitation of Doctor's performance procedure.

### 3.6.2 Action in the event the Practitioner is absent purely due to ill health and no concerns exist as to conduct or capability

#### 3.6.2.1 Procedure

Where a Practitioner has been off sick for a continuous period of four weeks and there is no anticipated date for the Practitioner's return to work and no concerns about capability or conduct have arisen, the following procedure will be adopted:

- A Case Manager will be appointed in accordance with Part 2;
- The Case Manager will refer the Practitioner to Occupational Health for assessment;
- Occupational Health will provide an assessment to the Trust and make recommendations as regards future management of the Practitioner's ill health or proposals for re-integration of the Practitioner into work;
- The Case Manager will seek the advice of the NCAS about the report and management of the Practitioner's ill health;
- The Practitioner (together with his/her representative if the Practitioner so wishes) will meet the Case Manager (who will be accompanied by a member of Human Resources if (s)he wishes) to discuss the occupational health report and proposals for the Practitioner to return to work;
- If the Practitioner is unable to attend a meeting due to the state of his or her health, his/her ill health will continue to be monitored by the Case Manager in conjunction with Human Resources;
- The Case Manager, in conjunction with Human Resources and the NCAS, shall monitor the Practitioner's sickness and explore all of the options, including re-training, rehabilitation, variation of duties and/or working patterns, with the

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

Practitioner and his/her representative;

- In the event that the Practitioner will be unable to return to work within a reasonable time (as advised by Occupational Health) and no reasonable steps can be taken by the Trust to facilitate that return, as a last resort, a formal hearing will be held which may determine that the Practitioner's employment is terminated.

### **3.6.2.2 Obligations of the Trust and the Practitioner**

The Trust agrees that it will explore all options with the Practitioner and seek to make reasonable adjustments to facilitate his or her return to work. The Practitioner agrees that (s)he will make himself/herself reasonably available for meetings or appointments with Occupational Health or such other medical adviser as may be reasonably deemed necessary or appropriate by the Trust.

### **3.6.3 Action in the event that issues of capability or conduct arise as a result of ill health on the part of the Practitioner**

In the event that the Case Manager considers that the capability or conduct concerns may have arisen because of a Practitioner's ill health, he/she should refer the Practitioner to Occupational Health. Care must be taken with the letter to Occupational Health. It needs to set out:

- The Practitioner's role and duties within it.
- If the Practitioner has been signed off sick? If so, for how long and for what reason?
- Any evidence the Practitioner has put forward suggesting that the concerns are caused by health problems rather than misconduct or incapability.
- Enough of the background about the concerns so that the Occupational Health adviser understands the context in which he/she is asked to advise.
- Specific questions asking the Occupational Health adviser to assess whether the ill health in question could have caused the Practitioner to behave in a particular way and if that is likely in the particular case.
- Whether the Practitioner is currently fit to carry out his/her duties. If not, when might he/she be fit to do so? Does his/her ill health compromise or potentially compromise patient safety? If so, how long will that be the situation or when will the Occupational Health adviser need to review the position and give further advice? Will the Practitioner be able to return on a restricted basis without jeopardising patient safety and, if so, when?
- A request for a written report from Occupational Health addressing each of the questions raised.

If the Practitioner refuses to co-operate in such an Occupational Health assessment, that may well be a refusal to obey a reasonable management instruction to be dealt with under Part 4 of this procedure.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

Once the Case Manager has the report from Occupational Health, he/she should decide whether he/she is satisfied that any concerns arise from ill health rather than misconduct or incapability. In that situation the Case Manager must then consider whether the Practitioner should:

- Be removed from duties if the person is not on sickness absence.
- Have his/her practice restricted, for instance, by removing certain duties.
- Be excluded.
- Simply continue sickness absence, but on the strict basis that the situation will be reviewed in the event that the Practitioner indicates he/she is fit to return to work. At that point the Case Manager should seek further advice from Occupational Health on this issue. If the Practitioner is insisting on returning to work in circumstances where Occupational Health says he/she is not fit to do so and there could be a risk to patient safety, then the Case Manager is entitled to consider exclusion or a restriction of practice as appropriate.
- If sickness absence continues it will be dealt with under the Trust's sickness absence procedure and paragraph 3.5.6 with due regard to the Equality Act 2010, if applicable.

### **3.6.4 Where issues of ill health arise during the application of the procedures for addressing capability or conduct**

This section addresses circumstances where:

- Part way through a conduct or capability procedure the Practitioner argues any concerns were caused by his/her ill health.
- Where the Practitioner says a capability or conduct procedure should be delayed because of his/her ill health.
- Where a Practitioner says conduct or capability procedures should be halted and purely handled as a health issue.

#### **3.6.4.1 Practitioner arguing concerns are caused by ill health**

In this situation the first step for the Case Manager is to obtain an Occupational Health report as set out above. If there is a dispute as to whether or not the Practitioner's ill health caused the concerns or Occupational Health has been unable to offer a view on this, then the Case Manager may refer the Practitioner to a specialist for a further opinion. If Occupational Health advice is clear, the Case Manager is entitled to act on the basis of that advice. He/she is also entitled to act on the basis of the specialist's advice (if obtained) if that conflicts with the Practitioner's medical advice.

The Case Manager should seek advice from the NCAS on this issue. Where there is such dispute the Case Manager will write to the Practitioner within 5 working days of receiving the specialist's and Occupational Health's advice setting out his/her decision. The Case Manager should confirm whether the matter will be dealt with as an ill health issue or

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

under the capability or conduct procedure as appropriate. If the Case Manager determines that the issue is an ill health issue, he/she should follow the procedure set out at paragraph 3.5.3 above. If he decides the issue is a matter of conduct or capability, then that process will continue subject to what is set out below.

#### **3.6.4.2 Delaying a conduct or capability procedure due to a Practitioner's ill health**

Where a Practitioner seeks the delay of an investigation, conduct or capability hearing, he/she must, without delay, seek such delay in writing providing supporting medical evidence. If no such written reasons or medical evidence is provided, the Case Manager is entitled to take this into account in deciding whether to delay the process. Any decision whether to delay the process is the Case Manager's.

Where a Practitioner says that he/she is unfit to attend a conduct or capability hearing or take part in an investigation, the Case Manager should refer the Practitioner to Occupational Health promptly and in any event within 4 weeks of the sickness absence starting to consider:

- The Practitioner's general state of health at that point.
- The prognosis as to when the Practitioner's health might improve.
- The Practitioner's ability to give instructions to his trade or defence union representative to defend his/her position.
- The Practitioner's ability to participate in the conduct or capability hearing.
- If the assessment is that the Practitioner is unfit to give instructions or take part in the hearing, provide an opinion as to when he/she may be able to.
- Provide an opinion on the likely impact of the procedure remaining on hold in the long term. Is there any benefit to the Practitioner's health in moving forward with the procedure at a certain point?
- Asking for a written report addressing these issues.

The Case Manager should discuss any decisions as to whether to delay the proceedings with the NCAS. If, having taken all matters into account, the Case Manager is satisfied that circumstances require a delay to be lifted, he/she must write to the Practitioner explaining this fact and giving reasons for such decision. If notice is given of a conduct or capability hearing, the Case Manager should explain that the Practitioner is entitled to attend this hearing or ask a representative to attend in his/her absence and/or present written representations. Alternatively, the Case Manager may decide proceedings should restart at a specified date.

Once an Occupational Health report has been received, the Case Manager should convene a meeting with the Practitioner, his/her representative and the Director or Head of Human Resources to consider the way forward. The Case Manager shall take into account the Practitioner's views, but it remains the Case Manager's responsibility to ensure the process is effectively handled. The Case Manager may conclude that:

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

- A delay for a certain period of time is appropriate but the situation should then be reviewed at that point.
- A delay is appropriate for a certain period at which point the Practitioner should be referred to Occupational Health once more for a further assessment at which point the situation will be re-assessed.
- The Occupational Health advice is clear that it would actually be beneficial to continue the process at a certain point. In doing so, the Case Manager is entitled to take into account factors such as the effect of the delay on the Practitioner's health, the need to conclude the process within a reasonable timeframe and the risk of memories fading if there is a lengthy delay in the proceedings.

The Practitioner must reasonably co-operate with Occupational Health. If he/she does not do so, then he/she may be subject to separate disciplinary actions. The Case Manager will further be entitled to take such issue into account in deciding whether to delay a conduct or capability hearing or investigation.

#### **3.6.4.3 Practitioner request to terminate or modify conduct or capability proceedings**

In the event that a Practitioner requests that the scope of proceedings be modified or terminated, the Case Manager should refer the Practitioner to Occupational Health within 4 weeks of such request. Again, the Occupational Health adviser should be asked specific questions as to the Practitioner's state of health, ability to take part in the process, and the implications of the modification or termination sought on the Practitioner's health. When a report is received from Occupational Health, the Case Manager should consider this report alongside any representations that the Practitioner makes. The Case Manager should also take into account:

- Evidence suggesting there is a risk to patient safety.
- Evidence suggesting there is a risk to other staff.
- The seriousness of the concerns.
- Evidence of any serious dysfunction in the operation of the service in which the Practitioner works. The Case Manager is entitled to weigh these factors in the balance in determining whether to modify or terminate conduct or capability proceedings. The Case Manager should discuss this matter with the NCAS. Having done so, the Case Manager must write to the Practitioner setting out his decision as to whether to modify or terminate the procedure and giving reasons for it. If the Case Manager determines it is inappropriate to modify or terminate the procedure, he/she should outline what next steps will be taken in the process. These might include:
  - A further Occupational Health assessment.
  - A delay in the proceedings until a specified date.
  - Where the Case Manager considers the circumstances justify it, setting a date for a conduct or capability hearing.

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		



### 3.6.5 Practitioners in training grades where ill health issues arise

Where a concern involves a training grade Practitioner, the Trust shall seek advice from the Post Graduate Dean in each of the situations set out above.

### 3.6.6 Reporting Practitioners with health concerns to Regulatory Bodies

If a Practitioner's ill health makes them a danger to patients and he/she does not recognise this, or is not prepared to co-operate with measures to protect patients, then exclusion from work must be considered. Furthermore, the NCAS or GDC must be informed irrespective of whether or not the Practitioner has retired on ill health grounds.

### 3.7 Policy Communication Strategy

To communicate the policy effectively the following strategy will be implemented:

- A training session to be delivered every two years to Clinicians and Line Managers
- A copy will be available for ease of access on the oneHR website
- A copy will be emailed to all Clinicians
- Raising awareness through induction of clinical staff

4 ATTACHMENTS	
Appendix Number	Title
Appendix 1	Equality Impact Assessment

5 ELECTRONIC AND MANUAL RECORDING OF INFORMATION
Electronic Database for Procedural Documents
Held by Policy Co-ordinators/Archive Office

6 LOCATIONS THIS DOCUMENT ISSUED TO		
Copy No	Location	Date Issued
1	Intranet	
2	Wards, Departments and Service	

7 OTHER RELEVANT/ASSOCIATED DOCUMENTS	
Unique Identifier	Title and web links from the document library
	Policies relevant to Lead Employer Organisations
CORP/GUID/201	Disciplinary Guide for Managers <a href="http://fcsharepoint/trustdocuments/Documents/CORP-GUID-201.docx">http://fcsharepoint/trustdocuments/Documents/CORP-GUID-201.docx</a>
CORP/POL/011	Sickness and Absence Policy <a href="http://fcsharepoint/trustdocuments/Documents/CORP-POL-011.docx">http://fcsharepoint/trustdocuments/Documents/CORP-POL-011.docx</a>
CORP/PROC/101	Untoward Incident and Serious Incident Reporting <a href="http://fcsharepoint/trustdocuments/Documents/CORP-PROC-101.docx">http://fcsharepoint/trustdocuments/Documents/CORP-PROC-101.docx</a>

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<i>Do you have the up to date version? See the intranet for the latest version</i>		

<b>7 OTHER RELEVANT/ASSOCIATED DOCUMENTS</b>	
<b>Unique Identifier</b>	<b>Title and web links from the document library</b>
CORP/PROC/203	Disciplinary Procedure <a href="http://fcsharepoint/trustdocuments/Documents/CORP-PROC-203.doc">http://fcsharepoint/trustdocuments/Documents/CORP-PROC-203.doc</a>
CORP/PROC/208	Prevention of Bullying and Harassment <a href="http://fcsharepoint/trustdocuments/Documents/CORP-PROC-208.doc">http://fcsharepoint/trustdocuments/Documents/CORP-PROC-208.doc</a>
CORP/PROC/636	Disciplinary and Appeal Procedure <a href="http://fcsharepoint/trustdocuments/Documents/CORP-PROC-636.docx">http://fcsharepoint/trustdocuments/Documents/CORP-PROC-636.docx</a>

<b>8 SUPPORTING REFERENCES/EVIDENCE BASED DOCUMENTS</b>
<b>References In Full</b>
Crown. (1999). <i>Employment Relations Act 1999</i> . Available: <a href="http://www.legislation.gov.uk/ukpga/1999/26/contents">http://www.legislation.gov.uk/ukpga/1999/26/contents</a> . Last accessed 11/08/2014.
Department of Health. (17/02/2005). <i>Maintaining high professional standards in the modern NHS</i> . Available: <a href="http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4103586">http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4103586</a> . Last accessed 09/04/2015.

9 CONSULTATION WITH STAFF AND PATIENTS	
Name	Designation
	JNLC

10 DEFINITIONS/GLOSSARY OF TERMS	
CFSMS	Counter Fraud and Security Management Service
GMC	General Medical Council
GDC	General Dental Council
HR	Director of Workforce and OD
LNC	Local Negotiating Committee
MHPS	Maintaining High Professional Standards in the Modern NHS'
NCAS	National Clinical Assessment Service
NPSA	National Patient Safety Agency
OD	Organisational Development
SUI	Serious Untoward Incidents

11 AUTHOR/DIVISIONAL/DIRECTORATE MANAGER APPROVAL			
Issued By	Sonya Clarkson	Checked By	Paula Roles
Job Title	Head of Medical Workforce	Job Title	Deputy Director of HR and OD
Date		Date	

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
<b><i>Do you have the up to date version? See the intranet for the latest version</i></b>		

Appendix 1: Equality Impact Assessment Form					
Department	Medical Workforce	Service or Policy	Policy	Date Completed:	16/01/2015
<b>GROUPS TO BE CONSIDERED</b> Deprived communities, homeless, substance misusers, people who have a disability, learning disability, older people, children and families, young people, Lesbian Gay Bi-sexual or Transgender, minority ethnic communities, Gypsy/Roma/Travellers, women/men, parents, carers, staff, wider community, offenders.					
<b>EQUALITY PROTECTED CHARACTERISTICS TO BE CONSIDERED</b> Age, gender, disability, race, sexual orientation, gender identity (or reassignment), religion and belief, carers, Human Rights and social economic / deprivation.					
QUESTION	RESPONSE		IMPACT		
	Issue	Action	Positive	Negative	
What is the service, leaflet or policy development? What are its aims, who are the target audience?	Aimed at all medical and dental employees of the Trust	Policy in line with nationally agreed framework	Positive		
Does the service, leaflet or policy/ development impact on community safety • Crime • Community cohesion	No issue				
Is there any evidence that groups who should benefit do not? i.e. equal opportunity monitoring of service users and/or staff. If none/insufficient local or national data available consider what information you need.	No				
Does the service, leaflet or development/ policy have a negative impact on any geographical or sub group of the population?	No				
How does the service, leaflet or policy/ development promote equality and diversity?	Yes	Fair and consistent approach outlined			
Does the service, leaflet or policy/ development explicitly include a commitment to equality and diversity and meeting needs? How does it demonstrate its impact?	Yes				
Does the Organisation or service workforce reflect the local population? Do we employ people from disadvantaged groups	Yes				
Will the service, leaflet or policy/ development i. Improve economic social conditions in deprived areas ii. Use brown field sites iii. Improve public spaces including creation of green spaces?	N/A				
Does the service, leaflet or policy/ development promote equity of lifelong learning?	Yes				
Does the service, leaflet or policy/ development encourage healthy lifestyles and reduce risks to health?	Yes				
Does the service, leaflet or policy/ development impact on transport? What are the implications of this?	No				
Does the service, leaflet or policy/ development impact on housing, housing needs, homelessness, or a person's ability to remain at home?	N/A				
Are there any groups for whom this policy/ service/leaflet would have an impact? Is it an adverse/negative impact? Does it or could it (or is the perception that it could exclude disadvantaged or marginalised groups?	No				
Does the policy/development promote access to services and facilities for any group in particular?	Yes				
Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451			
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff			
Do you have the up to date version? See the intranet for the latest version					

Appendix 1: Equality Impact Assessment Form				
Does the service, leaflet or policy/development impact on the environment	No			
<ul style="list-style-type: none"> <li>During development</li> <li>At implementation?</li> </ul>				
<b>ACTION:</b>				
Please identify if you are now required to carry out a Full Equality Analysis		Yes	No	(Please delete as appropriate)
Name of Author: Signature of Author:	Sonya Clarkson		Date Signed:	16/01/2015
Name of Lead Person: Signature of Lead Person:			Date Signed:	
				Sonya Clarkson
Name of Manager: Signature of Manager	Sonya Clarkson		Date Signed:	16/01/2015

Blackpool Teaching Hospitals NHS Foundation Trust		ID No. CORP/PROC/451
Revision No: 4	Next Review Date: July 2015	Title: Handling Concerns Policy for Medical and Dental Staff
Do you have the up to date version? See the intranet for the latest version		