

MHPS: Guidance during the COVID-19 outbreak

This guidance has been produced in consultation with NHS Employers to provide some general interim guidance to NHS organisations regarding the managing of concerns in accordance with *Maintaining High Professional Standards in the NHS* (MHPS) during the COVID-19 outbreak. We are aware of the intense pressure that frontline and management staff will be under during this time and the significant constraints on their time.

In this context we are advising NHS organisations to consider how best they can manage concerns about practitioners during this difficult time. Our advice, which is set out below, is consistent with the advice issued on 19 March 2020 by Professor Stephen Powis, National Medical Director of NHS England. Specifically, it is crucial for NHS organisations to continue to have oversight of professional concerns, but as the situation evolves the priority will be those concerns assessed as high risk. Our advice is that NHS organisations will have to carefully consider what, if any, action on managing concerns can be undertaken during these difficult times and how ongoing investigations should be handled, always considering patient safety and public protection first. Robust and tailored support is essential for practitioners at this time, especially if restrictions or exclusion are in place or processes are prolonged.

We recommend adopting a pragmatic approach to the management of concerns under MHPS during this time and documenting in writing any steps taken (including the decision not to do anything). Practitioner Performance Advice remains available to support you at any stage with the resolution of concerns.

1. Urgent concerns

If a potentially serious urgent concern arises, including relating to any newly redeployed/returning practitioner, then it is likely to require immediate action. The organisation should consider what form of interim action is required to address the immediate problem. We recommend that serious consideration should be given at this time as to whether alternatives to exclusion or substantial restrictions on clinical practice can be considered, so that the practitioner is not removed from the workplace at a time when there is such immense pressure on clinical staff. However, patient safety remains the priority. Remember that there should be, in so far as possible, a preliminary analysis, which usually includes a discussion with the practitioner. This should also take account of the pressures of the current exceptional circumstances and the impact this will have on clinical decision making and practitioners in general to ensure there is a fair, proportionate and reasonable approach to any concerns. However, if the working circumstances of the practitioner are considered to be underlying factors for the concerning behaviour/actions, there should be serious consideration of deploying the practitioner to a less pressured environment.

Concerns regarding trainees that are sufficiently serious to extend beyond dealing with as a training matter should involve the relevant educational supervisor and postgraduate dean.

2. Investigation nearing completion

Where an investigation is almost completed, then we would recommend that, if possible, it is concluded as quickly as possible, so that clinical staff can continue to provide frontline services, if the findings of the investigation indicate this to be appropriate. An 'agreed sanction' or 'agreed outcome' process with a behavioural agreement can enable speedier resolution. This is usually practicable where the practitioner essentially accepts the findings of the investigation

3. Ongoing investigation

If there does need to be a formal investigation or an investigation is not near completion, then in most cases we are advising organisations to consider extending the time frame for the completion of an ongoing investigation and/or putting the investigation on hold for a number of months. It is our experience that the time frame for the completion of investigations within the 4 weeks prescribed under MHPS is rarely achieved. However, if an investigation was extended or put on hold in the current circumstances, it would significantly delay many investigations. We do not anticipate that a delay in these current circumstances is likely to be considered unreasonable or a procedural defect.

Nevertheless, there will still be an impact on the individual practitioner which needs to be considered. Our advice is that the practitioner should be informed of the delay and reasons for the delay. The practitioner should also be kept updated so far as possible at regular intervals. It is also important to offer support to the practitioner during this time.

4. Exclusion / Restriction

In cases where there is an ongoing investigation and the practitioner has been excluded and/or restrictions have been placed on his/her practice, the organisation should consider the impact of that exclusion and/or those restrictions on the practitioner over that extended period and weigh that against the organisation's own needs for medical staff on the frontline at this time of national crisis. Remember that exclusion is for exceptional circumstances only, such as alleged gross misconduct. Any capability concerns should be manageable by some form of restriction.

There may be cases where, due to the realignment of services to address the coronavirus pandemic, any restrictions imposed on a practitioner's practice have little impact, because those services are not being provided at this time. Clearly practitioners (including any newly redeployed / returning practitioners) should not carry out clinical activities where they pose a risk to patients, but there is likely to be considerable scope for redeployment. If an exclusion or restriction is to be lifted, bear in mind the reasons for those steps being taken in the first place, and if a practitioner is to be redeployed then adequate retraining or reskilling must be undertaken before the practitioner should be allowed to provide frontline services. The impact on the individual practitioner should still be considered and steps taken to address any adverse impact on the practitioner through ongoing support.

5. Panel hearings

On completion of an investigation a decision will need to be made about the categorisation of concerns and whether these fall within conduct, health or capability or a combination of these as this will determine the process that should be followed. In the event a panel hearing is considered necessary because of the serious nature of the concerns or because there is a dispute about the content of the investigation report this is likely to need to be postponed because of capacity issues until the outbreak is over. If the panel is to proceed and utilise appropriate panel members who are not required for COVID-19 activity, for example staff who are self-isolating, this must be held online and there should be discussion as to how this may be arranged and conducted without compromising perceived fairness.

If the matter is determined to be one of capability then Part IV of MHPS requires a referral to Practitioner Performance Advice for consideration of an assessment as part of the pre-hearing process before convening a capability panel. Due to the pandemic, whilst Advice are able to consider referrals for assessment, if a decision is made to offer an assessment we are unable to carry out any assessments at the present time. This is likely to delay proceedings for potentially several months and consideration should be given to what work a practitioner may usefully undertake during this period whilst

observing the need for any safeguards such as supervision and restrictions. Again, any delay in these circumstances is not likely to be viewed as unreasonable.

6. Criminal activity

Cases where there is alleged criminal activity outside work could prove more challenging. The key step is to carry out a preliminary analysis focussing on potential risks to patients or staff. This should enable the organisation to come to a suitable pragmatic decision about whether or not the practitioner should carry on working and, if so, whether any additional safeguards may be needed.

7. Healthcare Professional Alert Notices (HPAN)

Where any healthcare professional poses a significant risk of harm to patients or members of the public and is due to leave the NHS organisation, you should request an HPAN. Checking for an HPAN remains part of the necessary pre-employment checks. Information on how to apply for and check an HPAN is available here:

<https://resolution.nhs.uk/2020/02/19/healthcare-professional-alert-notices/>

8. Support for healthcare professionals

Discussing and signposting to support for healthcare professionals is essential when practitioners are aware of concerns about their performance or health. At this time it is even more important than organisations are protecting and preserving the health and wellbeing of practitioners. A list of organisations providing support for practitioners is available here: <https://resolution.nhs.uk/services/practitioner-performance-advice/support-for-practitioners/>

A number of resources specific to the COVID-19 response have been put in place including the NHS' Support Hotline for Healthcare Workers. The phone number is 0300 131 7000, or staff can text "FRONTLINE" to 85258) and the Practitioner Health Programme Covid-19 Workforce Wellbeing Resources:

<https://www.practitionerhealth.nhs.uk/covid-19-workforce-wellbeing>

Support from Practitioner Performance Advice

Our Advice line remains available on the usual number (020 7811 2600) and practitioners or NHS organisations may prefer to use this central line during this time to ensure a rapid response. We are working extended hours to make it more accessible for medical staff to contact us out of hours – from 07:30 to 09:00 and from 17:00 to 20:00 please contact 07759 333571.