

Remediation Policy for Medical Staff

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TARGET AUDIENCE:
All non-training grade Medical Staff (Consultants, SAS grades, Trust Doctors
and any other non-training grade posts)

POLICY NUMBER:
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STRATEGY CATEGORY:
Medical Personnel Policies (PPM)

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Appendix A - Equality Impact Assessment / Analysis Tool **Error! Bookmark not defined.**

1 Introduction

Southend University Hospital NHS Foundation Trust (SUH) is responsible for setting measurable, realistic and achievable standards of performance and behaviour for medical and dental staff (practitioners).

The Trust has a responsibility to ensure that employees understand what is required of them as part of their role. This includes identifying areas of poor performance and managing these issues in a supportive and consistent method.

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

This policy is based on the NCAS document 'Back on Track'¹ and is in line with the capability and remediation procedures for practitioners covered in the DoH documents 'Maintaining High Professional Standards in the Modern NHS'² and 'Tackling Concerns Locally'³.

2 Purpose

The purpose of this policy is to outline the arrangements for supporting and managing the performance of practitioners at Southend University Hospital NHS Foundation Trust ("The Trust"). The Trust recognises that the success of our service is dependent upon the effectiveness of our employees. Our aim throughout this policy is to resolve situations, which relate specifically to the lack of capability of a practitioner to perform the work which they are employed to do.

3 Scope of the policy

This policy applies to **all** non-training grade medical staff (Consultants, SAS doctors) including those with honorary contracts, whether employed on national or Trust terms and conditions of service, irrespective of their place of work. Trainee medical staff will follow the Deanery's procedures regarding remediation.

The policy provides a clear, formal framework to apply in order to address issues of remediation which arise in relation to an inability to perform to, and sustain the required standard for a post because of a shortfall in competency, skill, knowledge or understanding.

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

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

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

Correct training and supervision is essential to the achievement of satisfactory performance. As such, the Trust will ensure that its employees are supervised and trained adequately in order to fulfil the requirements of their role.

Managers may find it useful to also refer to the DoH documents 'Maintaining High Professional Standards in the Modern NHS' and 'Tackling Concerns Locally' along with NCAS document 'Back on Track' when managing employees under this policy.

4 Definitions

GMC – General Medical Council

NCAS – National Clinical Assessment Service

DoH – Department of Health

SAS Doctors – Specialty Doctor and Associate Specialists

RO – Responsible Officer for Revalidation

Remediation - the process of addressing performance concerns (knowledge, skills, and behaviours) that have been recognised, through assessment, investigation, review or appraisal, so that the practitioner has the opportunity to practice safely. It is an umbrella term for all activities which provide help; From the simplest advice, through formal mentoring, further training, reskilling and rehabilitation.

Appraisal - the process that gives doctors an opportunity to discuss their professional roles, clinical practice, and their contribution to service delivery

Revalidation - the process by which all doctors with a licence to practise in the UK will need to satisfy the GMC, at regular intervals that they are fit to practise and should retain that licence.

Reskilling - the process of addressing gaps in knowledge, skills and/or behaviours where a practitioner is performing below the required standard or as a result of an extended period of absence (usually over 6 months) so that the practitioner has the opportunity to return to safe practice. This may be, for example, following suspension, exclusion, maternity leave, career break or ill health (see below).

Rehabilitation - the process of supporting the practitioner, who is disadvantaged by chronic ill health or disability, and enabling them to access, maintain or return to practice safely.

Practitioner(s) - doctors and dentists and are referred to throughout this document as 'practitioners'.

5 Duties in Remediation

5.1 Duties within the Trust (Committees)

Once performance concerns are identified and it is agreed that remediation is appropriate, support from a range of individuals or external agencies will be necessary.

The roles and responsibilities of a range of stakeholders in relation to remediation and revalidation are set out below:

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

Medical Appraisal Board will monitor compliance with the policy as part of the quality assurance process of the Medical Revalidation process

5.2 Duties of Individuals within the Trust

Chief Executive: has overall responsibility for managing exclusion procedures and for ensuring that cases are properly managed. The decision to exclude a practitioner must be taken only by persons nominated within this policy. The case will be discussed fully with the Chief Executive, the Medical Director or his/her nominated representative, the HR Director, and the NCAS and other interested parties (such as the police where there are serious criminal allegations or the Counter Fraud & Security Management Service) prior to the decision to exclude a practitioner. In the rare cases where immediate exclusion is required, the above parties must discuss the case at the earliest opportunity following exclusion, preferably at a case conference.

Responsible Officer (RO): The role of RO is designated in legislation. Each doctor will be linked to an RO, who will make a recommendation to the GMC, usually every five years, about whether that doctor should be revalidated. The RO is also responsible for ensuring that systems of clinical governance and appraisal in their organisation are working and are appropriate for revalidation. At Southend University Hospital NHS Foundation Trust, the RO role is an extension of the current roles and responsibilities of the Medical Director.

The Responsible Officer will ensure that all practitioners have appropriate training and experience for their role and any issues with performance are addressed by a designated body, including remediation where appropriate. They will manage any conduct or performance procedures and have responsibility for actions arising out of these procedures.

Business Unit Directors: are responsible to the Executive team for ensuring policy implementation and compliance in their areas(s). They are also accountable through the Medical Director to the Chief Executive of the Trust for the safety of the service. The Business Unit Director has responsibility for enabling the early identification of performance issues. Where there are concerns about patient safety these will always be referred directly to the Medical Director.

Practitioners: are responsible for ensuring that they are able to demonstrate, through the appraisal process, that they are meeting the described standards and are making use of the measurements generated to identify their development needs. If remediation is necessary practitioners are responsible for demonstrating that the concern, deficit or issue has been resolved. The duties of a doctor is outlined in the GMC's guidance "Good

Medical Practice”⁴ and the broad areas which should be covered in medical appraisals for revalidation is details in the GMC’s Good Medical Practice Framework for Appraisal and Revalidation⁵.

Appraisers: will be adequately trained and supported to undertake their role. The Medical Appraisal Board will determine whether a doctor needs to undertake remediation and they will need to be clear about their recommendations, the objectives and the evidence they will expect to see and the timescales by which they expect to undertake a review.

Programme Supervisor: the individual with experience in postgraduate medical or dental education who will assist a practitioner in compiling a practitioner Improvement Plan (IP) and oversee the programme as a whole, reporting to the responsible officer on progress against objectives. While the role of programme supervisor is distinct from the clinical supervisor, in some cases it may be possible for the same individual to carry both the role of programme and clinical supervisor.

Clinical Supervisors: may be asked to work with a doctor whose clinical skills or knowledge is giving cause for concern. As part of remediation direct clinical supervision is unlikely to be necessary (it is more suitable following an extended period away from the clinical environment or when deficits have been identified through assessment) but may be occasional or ‘professional’. Professional supervision in this context is defined ‘as participation in regular and supported time out to reflect on the delivery of professional care to identify areas for further development and to sustain improved practice’.

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

Occupational Health Services: have a role when the doctor’s health is giving cause for concern. Onward referral to more specialist services may be necessary.

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

Deaneries: their assistance is statutory for trainees only but they may also offer assistance for medical practitioners in:

- Planning remedial clinical training.
- Arranging clinical supervision.
- Arranging a mentor.

⁴Guidance for doctors: Good Medical Practice (GMC, 2006)

⁵Ready for revalidation: The good medical practice framework for appraisal and revalidation (GMC, 2012)

- Offering access to supportive interventions such as coaching, counselling, career counselling

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

NCAS should be contacted:

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

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

6 Equality Impact Assessments

SUH is committed to ensuring that none of its policies, procedures, services, projects or functions discriminate unlawfully. In order to ensure this commitment all policies, procedures, services, projects or functions will undergo an Equality Impact Assessment.

This guidance document has been the subject of an Equality Impact Assessment using the template used for all Trust documents and policies. The result of the assessment can be found in Appendix A.

7 Environmental Impact Assessments

The environmental impact of this policy has been considered and no further action is required at this time.

8 How to Raise a Concern

For information on the process of raising a concern, please refer to the Trust's "Remediation Procedures for Medical Staff" which supports this policy.

9 Action When a Concern Arises

At SUH the management of performance is a continuous process, which is intended to identify any capability issues as they arise.

Numerous ways now exist in which concerns about a practitioners performance can be identified;

- Concerns expressed by other NHS professionals, health care manager, students and nonclinical staff;
- Review of performance against job plans, annual appraisal, revalidation
- Monitoring of data on performance and quality of care;
- Clinical governance, clinical audit and other quality improvement activities;
- Complaints about care by patients or relatives of patients;
- Information from the regulatory bodies;
- Litigation following allegations of negligence;
- Information from the police or coroner;
- Court judgements.

Unfounded and malicious allegations can cause lasting damage to a practitioner's reputation and career prospects. Therefore all allegations, or concerns raised by colleagues, must be properly investigated to verify the facts so that the allegations can be shown to be true or false.

The Trust will work with other organisations to ensure that jointly agreed procedures are in place for dealing with any concerns about practitioners with honorary contracts.

Concerns about the capability of doctors and dentists in training should be considered initially as training issues and the Postgraduate Dean should be involved from the outset.

The Medical Director will work with the Director of HR to decide the appropriate course of action in each case. All concerns should be dealt with quickly and appropriately. This will involve the categorisation of the investigation for the case. If the individual disagrees with the process being followed their concerns should be expressed to the Case Manager as early as practicable. The Medical Director will act as the Case Manager in cases involving Consultants and may delegate this role to a senior manager to oversee the case on his or her behalf in other cases. The Medical Director may delegate authority in cases to the Deputy Medical Director or Clinical Lead roles as considered appropriate taking into account the profile and details of a particular case.

The Chairman of the Board must designate a nonexecutive member "the designated member" to oversee the case and ensure that momentum is maintained. However the issue is raised, the Medical Director will need to work with the Director of Human Resources to decide the appropriate course of action in each case.

It is inevitable that some cases will cover conduct and capability issues. It is recognised that these cases can be complex and difficult to manage. If a case covers more than one category of problem, they should usually be combined under a capability hearing, there may, however, be occasions where it is necessary to pursue a conduct issue separately. For issues related to conduct these will be dealt with in line with the Trust's Disciplinary Policy and Guidance notes⁶. Although it is for the Trust to decide upon the most appropriate way forward having consulted NCAS and their own employment law specialist, the Trust will also consult with a representative of the Local Negotiating Committee to determine which procedure, if any, should be followed, in the event of a dispute. The practitioner is also entitled to use the Trust's grievance procedure if they consider that the case has been incorrectly classified.

⁶ *Disciplinary Policy and Procedures (Southend University Hospital NHS Foundation Trust / PP-06 / v3)*
Disciplinary Procedures Guidance Notes (Southend University Hospital NHS Foundation Trust / v6.1)

Alternatively or in addition he or she may make representations to the designated appeal panel.

Advice from NCAS will help the Trust to come to a decision on whether the matter raises questions about the practitioner's capability as an individual (health problems, behavioural difficulties or lack of clinical competence) or whether there are other matters that need to be addressed. If the concerns about capability cannot be resolved routinely by management, the matter must be referred to NCAS before the matter can be considered by a capability panel (unless the practitioner refuses to have his or her case referred).

The Trust will also involve NCAS in any potential disciplinary cases.

Wherever possible, the Trust will aim to resolve issues of capability (including clinical competence and health) through on-going assessment and support. Early identification of problems is essential to reduce the risk of serious harm to patients.

NCAS will be consulted for advice to support the remediation of a doctor or dentist. SUH will use the National Patient Safety Agency document 'Back on Track' as the framework for their remediation strategy.

The Trust will ensure that managers and case investigators receive appropriate and effective training in the operation of this procedure. Those undertaking investigations or sitting on capability or appeals panels must have had formal equal opportunities training before undertaking such duties. The Trust Board will agree what training staff and Board members must have completed before they can take a part in these proceedings.

10 Guiding Principles for Remediation

SUH will offer early intervention when concerns emerge over the capability, conduct or health of a practitioner, with the aim wherever possible of remediation, reskilling or rehabilitation.

The following principles of best practice build on the widespread experience of NCAS and its guidance document Back on Track.

Principle One: Clinical governance and patient safety

Patient safety should be the paramount consideration in any return to work programme. The following key elements must act as a touchstone for the policies, procedures and practical arrangements:

Remediation must ensure the safety of patients and the public while aiming to secure:

- The needs and care of patients;
- The governance and integrity of the clinical service;
- The needs and wellbeing of the practitioner.

Principle Two: A single framework guiding individual programmes

The framework governing individual return to work programmes should use common principles and approaches, and be applicable as far as possible across different organisational settings and types of case.

Principle Three: A comprehensive approach

This will involve:

- Clarifying and addressing the key stakeholders' expectations and aspirations, taking into account the need at all times to protect patient safety.
- Addressing fully the practitioner's training needs as well as all the factors that may be affecting performance, whether these focus on the individual, the immediate clinical team or the wider organisation.

Principle Four: Fairness, transparency, confidentiality and patient consent

As far as possible, the confidentiality of the practitioner and the immediate clinical team should be protected. However, this need for confidentiality should be balanced against the need to ensure that information is passed to colleagues where appropriate, and patients are properly informed before giving consent to care from a practitioner undertaking a return to work programme.

Principle Five: On-going and consistent support

Any return to work programme should include personal and professional support for the practitioner, for the team they are working in and for the organisation managing the programme.

Principle Six: Success and failure

Any framework must recognise and address the possibility of failure as well as success.

Principle Seven: Local resolution drawing on local and national expertise

Local structures, policies and programmes should support local resolution of a case and provide opportunity for local sharing of expertise with access to national expertise.

NCAS 'Back on Track' Framework

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

Stage 1 – Entry to return to work programme

- **Start:** Responsible Officer (RO) reviews the recommendation for return to work programme, including information from assessment, investigation or review.
- RO considers the practitioner's training and support needs arising from the relevant reports.
- RO agrees options for resuming work and success criteria to achieve these, including prospects for success.

- RO summarises the options for resuming work in an outline programme specification.
- **Finish:** Agreement in principle to proceed to Stage 2.

Stage 2 – Devise and agree return to work programme

- **Start:** RO Identifies individuals who will assist with the return to work programme, including a Programme Supervisor.
- The Programme Supervisor develops the overall return to work project plan based on the output of Stage 1 to include:
 - Practitioner's Improvement Plan, based on training needs;
 - Organisational action plan.
- Gain support from relevant authorities (e.g. Royal College, Deanery) to the aims, design, objectives, methods and resource requirements for the programme.
- **Finish:** Agreement of all parties to proceed with the programme.

Stage 3 – Implement plans and review progress

- **Start:** Implement plans.
- Review by programme supervisor of progress against objectives according to plans.
- Report by programme supervisor to RO on the extent to which the plans have been successfully completed.
- RO seeks view from relevant authority (e.g. Royal College, Deanery) on supervisor's report.
- **Finish:** Signoff by RO of extent of completion of individual and organisational action plans.

Stage 4 – Complete programme and arrange follow-up

Start: If programme has been successful, responsible officer agrees with responsible parties detailed arrangements for practitioner to resume employment under the terms agreed in Stage 1. If programme has been unsuccessful, RO takes alternative management action.

Finish: Following successful completion of the programme RO agrees follow-up arrangements with practitioner.

11 Advice

Advice on the application of this Policy is available from any Business Unit HR Manager, Assistant HR Manager or HR Officer.

12 Dissatisfaction with the application of this Policy

Any employee who is dissatisfied with the way this policy is applied will be able to use the Trust's Grievance Policy.⁷

⁷ *Grievance Procedures (Southend University Hospital NHS Foundation Trust / PP-29 / v3)*

13 Monitoring Compliance

In order to ensure quality assurance throughout the remediation process, the Trust will undertake the following monitoring.

Aspect of compliance or effectiveness being monitored	Monitoring method	Individual / department responsible for the monitoring	Frequency of the monitoring activity	Group / committee / forum which will receive the findings / monitoring report	Committee / individual responsible for ensuring that the actions are completed
Compliance with the policy will be monitored as part of the quality assurance process of the Medical Revalidation process	Audit of Remediation activity	Medical Appraisal Board	Annually	Responsible Officer / Medical Appraisal Board	Appraisal & Revalidation Manager / Medical Appraisal Board

14 Associated Documents

PPM-08 – Appraisal and Revalidation Policy & Guidance notes for Medical Staff
PP-06 – Disciplinary Policy & Procedures

15 Equality and Diversity

This policy has been the subject of an Equality Impact Assessment. The output of the assessment demonstrates that no one as a consequence of this policy is placed at a disadvantaged over others.

16 References

All trust policies and trust wide procedures must comply with the relevant legislation (non exhaustive list) where applicable:

- Equality Act (2010)
- Employment Relations Act (1999)
- Rehabilitation of Offenders Act (1974)
- Human Rights Act (1998)
- Trade Union and Labour Relations (Consolidation) Act (1999)
- Part Time Workers Prevention of Less Favourable Treatment Regulations (2000)
- Fixed Term Employees Prevention of Less Favourable Treatment Regulations (2001)
- Health & Safety at Work Act (1974)

Please see Remediation Procedures for Medical Staff for guidance on how to implement remediation in a non-discriminatory way.

1. NCAS “Back on Track” Framework for further training
<http://www.ncas.nhs.uk/resources/good-practice-guides/back-on-track/>
2. Department of Health- Maintaining High Professional Standards in the modern NHS
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4103586
3. Department of Health - Tackling Concerns Locally: Report of the working group
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_096492
4. General Medical Council “Good Medical Practice” http://www.gmc-uk.org/guidance/good_medical_practice.asp
5. General Medical Council “The Good Medical Practice Framework for Appraisal and Revalidation” http://www.gmc-uk.org/GMP_framework_for_appraisal_and_revalidation.pdf_41326960.pdf
6. Southend University Hospital NHS Foundation Trust Disciplinary Policy & Procedures <http://intranet/polguide/cp/pp/Documents/PP-06%20Disciplinary%20Policy%20and%20Procedure.pdf>
7. Southend University Hospital NHS Foundation Trust Disciplinary Policy Guidance notes <http://intranet/polguide/cp/pp/Documents/PP-06%20Disciplinary%20Guidance%20Notes.doc>
8. Southend University Hospital NHS Foundation Trust Appraisal and Revalidation policy and Guidance Notes <http://intranet/polguide/cp/mpp/Documents/PPM-08%20Appraisal%20and%20Revalidation%20Policy.pdf>
9. Terms and Conditions – Consultants/Consultants Contract 2003
<http://www.nhsemployers.org/payandcontracts/medicalanddentalcontracts/consultantsanddentalconsultants/pages/consultants-homepage.aspx>