

**WEST HERTFORDSHIRE PCT &
EAST & NORTH HERTFORDSHIRE PCT**

(Version 4 – October 2007)

Policy on

**INDEPENDENT CONTRACTORS WHOSE
PERFORMANCE GIVES CAUSE FOR
CONCERN**

Responsible Director:	Public Involvement & Corporate Services
Policy Lead Officer:	Asst. Director – Corporate Services & Communications
Policy Consultees:	Members of the Joint Performance Decision Making Committee
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Policy for Independent Contractors whose Performance Gives Cause for Concern

1 Introduction and Background

- 1.1 This document sets out the local arrangements and procedures in the Hertfordshire PCTs to address concerns about poor performance among Independent Contractors (general practitioners, dentists, pharmacists and optometrists); it also applies to doctors and dentists directly employed by the PCTs only to the extent that they are covered by the Performers List Regulations (2004) (See also 1.2 below). It is recognised that performance must be assessed in the context of work within the whole practice, including other primary care professionals and practitioners and the wider corporate influence of the PCTs.
- 1.2 Performance and Disciplinary issues affecting healthcare professionals on the Performers List who are also employees of the PCTs are also covered in respect of their employment through the Framework “ Maintaining High Professional Standards in the Modern NHS” (DoH 2003) and internal HR disciplinary procedures. This policy and the procedures outlined herein, only applies to their status on the Performers List. As there may be some overlap in investigations and impact on respective consequential outcomes, in the event of internal disciplinary or performance procedures being invoked against an employee who is also on the Performers List, the Director of HR shall refer the matter to the Executive Director Lead for Clinical Governance, with a view to referral to the Performance Decision Making Committee. Conversely, concerns about a healthcare professional on the Performers List who is also an employee which are brought to the attention of the Board Lead for Clinical Governance in the first instance, shall be referred to the Director of HR. The Executive Director Lead for Clinical Governance and the Director of HR shall agree a process of investigation and communication that will, as far as reasonably possible, avoid duplication of investigation.
- 1.3 The PCTs have a responsibility for corporate clinical governance, which includes a strong culture of risk reduction and enabling high quality care through appropriate support to practice teams. Individual professionals have an overriding professional responsibility for good care to their patients, as described in national publications, for example “Good Medical Practice” from the General Medical Council (GMC), and to support clinical governance within their PCTs. When an individual practitioner’s performance is below standard, there is a need to detect this as early as possible in order to protect patients and support the practitioner.
- 1.4 The PCTs’ policy draws on the former Bedfordshire & Hertfordshire Strategic Health Authority’s policy statement on this matter (December 2002) on behalf of a working Committee from existing Bedfordshire and Hertfordshire GP Support Panels), and on a similar document from the former Dacorum PCT. It incorporates the most recent advice from the National Clinical Assessment Service (NCAS) and “Primary Medical Performers Lists – Advice for Primary Care Trusts on List Management” (DoH. 2004)

- 1.5 The policy aims to ensure objective, consistent, fair and transparent treatment for all regardless of their gender, marital status, age, race, colour, nationality, disability, ethnic or national origin, social background, sexual orientation, creed, religious belief, political opinion or gender reassignment.
- 1.6 This policy applies to all independent contractors within Hertfordshire whether they work on a full-time or a part-time basis, and irrespective of their length of service; for general practitioners and dentists, it applies equally whether they work as a principal, are employed in a salaried post or work as a locum.
- 1.7 The PCTs (Joint) Performance Decision-Making Committee (PDMC) may recommend a period of leave if appropriate. This is a neutral measure and does not constitute disciplinary action nor does it imply guilt or blame. Professionals will be treated with courtesy and in a way that maintains their personal dignity.

2 Principles Underpinning Policy

The following principles will underpin the PCTs' policy:

- i. As Accountable Officer, the Chief Executive will be responsible for ensuring that appropriate action is taken in all cases where an independent practitioner's performance gives cause for concern. In practice, this responsibility is delegated to the PCTs' (Joint) Performance Decision Making Committee (PDMC)
- ii. the prime consideration is that patient care and safety are not jeopardised and continue to be of the highest quality;
- iii. recognition is given to the importance of addressing performance issues through training or other remedial work rather than solely through disciplinary action;
- iv. the PCTs' approach will therefore be to support practitioners by creating opportunities to correct any areas of poor performance and to enhance professional skills, thus ensuring a high quality service for patients;
- v. the policy will not weaken accountability or allow the PCTs to avoid disciplinary action where there is genuine service misconduct;
- vi. the Executive Director Lead for Clinical Governance will be responsible for ensuring that all potential problems identified are documented and investigated in a timely fashion, and promptly addressed – decisions on the way forward in each case will be taken jointly with the relevant PCT's PEC Chair and, if appropriate, consulting with senior clinical and management colleagues, Chief Executive (where urgent action may be required) and where necessary, the local (Joint) Performance Decision Making Committee (PDMC)
- vii. In any case where urgent action is taken without prior reference to the Performance Decision Making Committee, the Committee Chair(s) and the Chair of the relevant PCT will be notified.
- viii. The policy will be sensitive to individuals and offer access to experts, advice, support and choice as appropriate, through the local Performance Decision

Making Committee, the Bedfordshire and Hertfordshire Performance Advisory Group (PAG), and local professional committees (the Local Medical Committee for doctors, Local Dental Committee for dentists, Local Pharmaceutical Committee for pharmacists and Local Optometric Committee for optometrists: LMC, LDC, LPC & LOC);

- ix. The PCTs' processes will be compatible with those of the Bedfordshire and Hertfordshire Performance Advisory Committee (PAG) and the National Clinical Assessment Service (NCAS)
- x. the PCTs' processes will be open and fair to all parties.

3 Aims of the Local Procedure

- 3.1 The principles and aims of the local procedure are set out by The National Clinical Assessment Service (NCAS), previously the National Clinical Assessment Authority, which is a division of the National Patient Safety Agency. The NCAS handbook is available for download from <http://www.ncas.nhs.uk/publications/handbooks>

The main aims of the PCTs' local procedure are:

- i. To respond promptly to concerns about a practitioner's performance
- ii. To identify any health problems in the practitioner
- iii. To undertake an initial assessment of the practitioner's performance with a view to identifying areas for improvement
- iv. To devise a plan to address the areas that need to be addressed and provide support, including occupational health, and follow up as required
- v. To resolve concerns and provide support locally where possible and arrange onward referral if necessary (doctors and dentists may be referred on to the Beds and Herts Performance Advisory Group (PAG), the NCAS, or to the GMC or GDC; pharmacists to the Royal Pharmaceutical Society of Great Britain; and optometrists to the General Optical Council)
- vi. To address concerns about performance raised by other bodies (for example, PCTs and PAGs in other parts of the country, and national bodies such as the GMC)

4 The PCTs Performance Decision-Making Committee

- 4.1 PCTs are responsible for the clinical performance of the professionals in contract with them. To deal with issues relating to clinical under-performance the PCTs have established a Performance Decision-Making Committee (PDMC).

- 4.2 The first point of referral for any concerns, regardless of their source, will be to the PCTs' Executive Director Lead for Clinical Governance or delegated deputy in her absence. The Executive Director Lead for Clinical Governance will discuss the issues raised with the relevant PEC Chair and agree a course of action (or combination of actions if applicable) as follows:
- (a) No further action is required other than to note the referral
 - (b) Further investigation is required (including in the context of any claims, complaints or PALS issues that may be relevant)
 - (c) That onward referral be made to the PCTs Decision Making Committee
 - (d) Recommendation be made to the Chief Executive that immediate action be taken in order to protect the safety of the public, including granting of leave (as a neutral act pending investigation), interim suspension or onward referral to any other competent body (eg GMC, NCAS, police, etc.)
 - (e) In the case of a healthcare professional on the Performers List who is also an employee of the PCTs, referral to the Director of HR

The Executive Director Lead for Clinical Governance in conjunction with the relevant PEC Chair will be responsible for referring matters to the Performance Decision-Making Committee, but for those cases where issues are regarded as extremely serious and which may present a risk to patient safety, direct referral to the GMC or other body may be appropriate. In such cases, the Chair(s) of the (Joint) Performance Decision Making Committee and Chairs of the PCTs will be notified

- 4.3 Concerns may be raised by: PCT officers, clinical governance leads, colleagues, practice managers, practice nurses, any community health professionals, prescribing advisors, patients, GMC, disciplinary or complaints procedures, other PCTs, external organisations or self referral. They may also come to light from the appraisal process, from QoF visits, or as a result of other contacts with practices.
- 4.4 The PCTs' first action is to undertake screening measures to confirm that there is a genuine cause for concern over clinical performance and/or patient safety. The Executive Director Lead for Clinical Governance may appoint an "Investigating Officer" to assist with this process. This shall normally be a senior PCT Officer who is clinically qualified but may also be an independent practitioner if deemed appropriate. (More than one Investigating Officer may be commissioned in the event of particularly complex or potentially serious cases or where specialist clinical expertise is deemed necessary).
- 4.5 The Investigating Officer(s) shall be empowered to take such screening measures as may be necessary. This includes:
- (i) Making a preliminary visit to any practitioner concerned or to their practice
 - (ii) To interview any person who may be able to offer pertinent information
 - (iii) To request and consider any documents (or copies of documents) that may be relevant to the investigation

NB The law and principles of patient confidentiality shall be complied with by the Investigating Officer(s) but it should be noted that the "public interest"

- consideration shall apply whereby an investigation with a view to protect public safety may take priority over an individuals right to confidentiality.
- 4.6 The Investigating Officer(s) may obtain advice from the Bedfordshire and Hertfordshire Performance Advisory Group (PAG) if required.
- 4.7 A preliminary screening including as may be appropriate, a practice visit, the collection of relevant information and assessment of the facts draws on the expertise of the Investigating Officer(s) in assessing the situation. Their role includes collating papers into one record, preparing a brief report for the Executive Director Lead for Clinical Governance, and providing urgent advice to the CEO if suspension needs to be considered.
- 4.8 Many concerns relate to poor performance will require further assessment and an action plan for remedy and support. The full range of options available to the (Joint)PDMC/ Executive Director Lead for Clinical Governance include:
- Prescribing, Managerial or Nursing Support
 - Professional Assistance
 - IT/Audit Training and Support
 - Remedial Educational
 - Advice from Occupational Health
 - Mentoring
- 4.9 In cases where the preliminary screening reveals no cause for concern, or the issues are minor, the Chair(s) of the (Joint) Performance Decision-Making Committee (acting on advice from the Executive Director Lead for Clinical Governance having consulted the relevant PEC Chair) may take a decision that no further action is needed, in which case the file will be closed but a brief report will be taken to the next meeting of the Committee.
- 4.10 If the (Joint) Performance Decision-Making Committee becomes aware of corporate risk, or of wider clinical governance issues due to an actual or potential system failure in the health and social care economy, information will be passed promptly to the Integrated Governance Committee.
- 4.11 If the (Joint) Performance Decision-Making Committee becomes aware of any issue that may involve fraud, this will be referred promptly to the NHS Counter-Fraud service for further investigation.
- 4.12 Concerns raised by one or more GPs about another GP may also be investigated by the LMC under the provisions of the NHS (General Medical Services Constraints) Regulations 2004.

5 Procedures and Administration of the Performance Decision-Making Committee

- 5.1 Procedures and administration of the Committee will be covered by Terms of Reference for the Committee agreed by the PCT Boards. The Committee may also agree to adopt any supplementary operating procedures in support of its remit, without reference back to the Boards.

5.2 In general:

- The Decision-Making Committee will consider evidence presented and obtain a contractor's version of events, if appropriate
- A contractor will normally be informed at the outset that an investigation is to be carried out and the nature of the allegations and that the information gained may be presented at any subsequent hearing
- The contractor will also normally be informed in writing when the Committee is due to consider his or her case, and, at the Chair's discretion, may be invited to attend part of the meeting and/or to provide an oral or written submission. If attending in person, the contractor has the right to be accompanied by a friend or professional representative (but not to be legally represented) when being questioned
- If after screening there is no evidence to substantiate the need for further action the contractor will be informed in writing of this
- The minutes of meetings of the Decision-Making Committee will normally remain confidential, but may be subject to disclosure in certain cases (eg if the Chair(s) of the Committee consider that disclosure would be in the public interest).

5.3 Having made a full and fair investigation of the evidence presented, the (Joint) Decision-Making Committee may determine to take such course of action as appropriate and within the course of action specified in the Appendix to this Policy.

5.4 An identified officer of the PCT will act as secretary to the Committee, and will be responsible for the safekeeping of letters, reports and records pertaining to performance issues, and for providing general administrative support to the Committee.

5.5 The secretary will collate reports about Independent Contractors and ensure the efficient maintenance of records, alerting the Chair(s) of the (Joint) Performance Decision-Making Committee or the Executive Director Lead for Clinical Governance in cases where performance issues about an individual or practice arise from more than one source.

5.6 Both paper and electronic records will be kept secure, with access restricted to named individuals approved by the Chair(s) of the Performance Decision-Making Committee or the Executive Director Lead for Clinical Governance. These records will be separate from those relating to the process of practitioners' appraisal and revalidation.

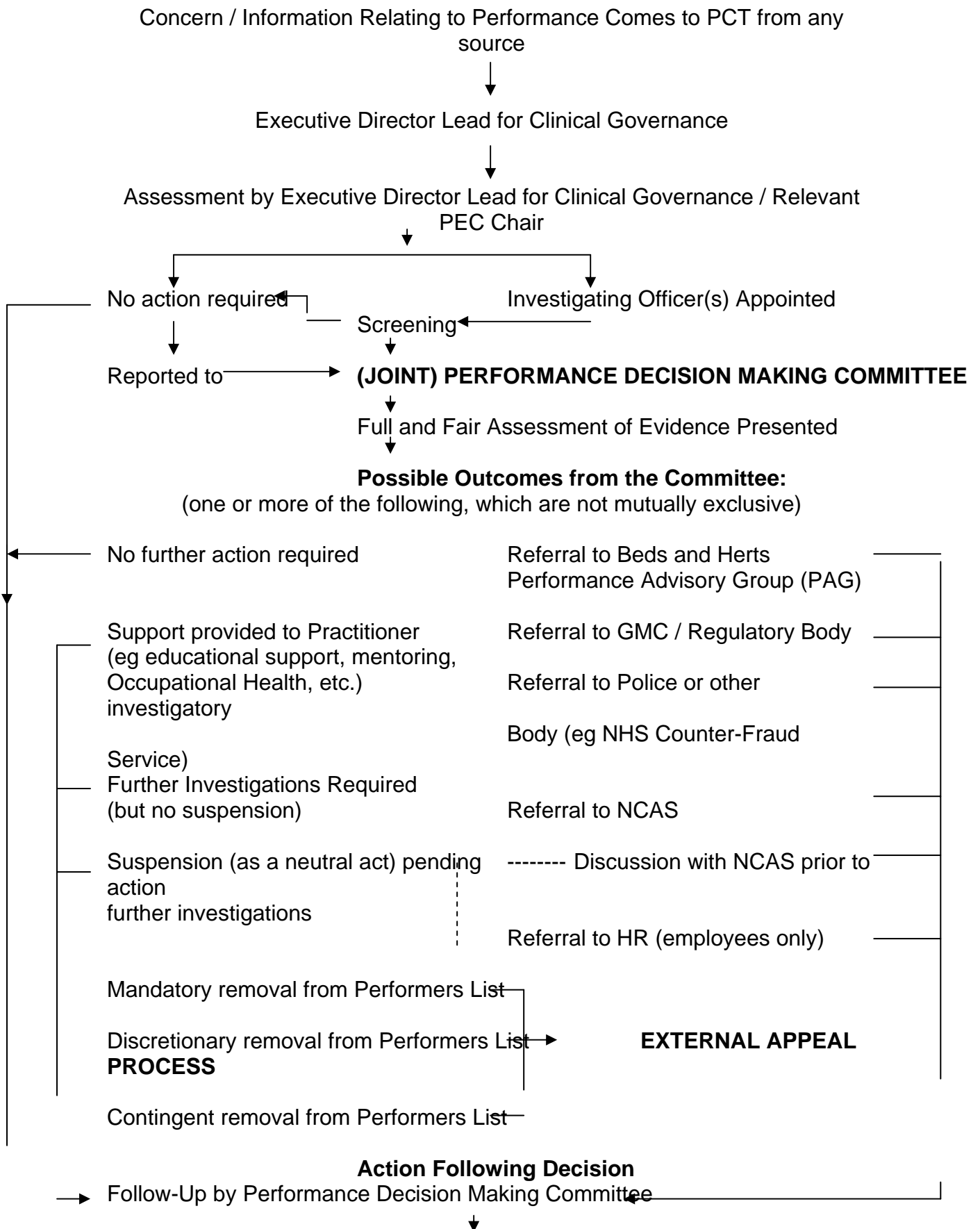
5.7 Comprehensive records will be kept of all communication with contractors, including invitations to attend meetings of the PDMC and other pertinent information.

6 Policy Monitoring and Review

6.1 This Policy will be reviewed by the (Joint) Performance-Decision Making Committee every two years (or earlier at the Chair(s) discretion)

6.2 The lead officer for this policy is the Asst. Director – Corporate Services and Communications

Appendix: Procedural Flow-Chart and Options Open to the Committee



→ **CASE CLOSED** ←

Notification to Contractor(s) concerned and Internal and External Parties as required (eg PSU, Locality Directors, Secretary of State, etc).



Statistical / (anonymised) case reports to PCT Boards (Part II) / Integrated Governance Committee