

Framework for managing performer concerns

NHS (Performers Lists)
(England) Regulations 2013



Information reader box

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Framework for managing performer concerns: NHS (Performers Lists) (England) Regulations 2013

Policy and Corporate Procedures

Draft for consultation

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Introduction

- 1 From 1 April 2013, the NHS Commissioning Board adopted the name NHS England, a name that gives people a greater sense of our role, scope and ambitions as the organisation responsible for allocating the NHS budget, working to improve outcomes for people in England and ensuring high quality care for all, now and for future generations.

Our legal name remains the NHS Commissioning Board as set out in our establishment orders. Whilst the NHS Commissioning Board will be known as NHS England in everything that we do, there are times when the statutory name is required for legal and contractual transactions. The following list provides some key examples of legal documentation which requires us to use our full legal name:

- Human resources (HR) contract of employment;
- Any documentation involving a court of law, e.g. litigation claims
- Contracts for directly commissioned services.

For ease of reference NHS England is the generic term used throughout this framework.

- 2 NHS England is responsible for planning, securing and monitoring services commissioned by them in respect of primary care, offender health, military health and specialised services.

It is also responsible for holding clinical commissioning groups (CCGs) to account for the services they plan, secure and monitor on behalf of local populations. NHS England will ensure services commissioned by them and others improve patient outcomes and meet the requirements of the Commissioning Framework.

This document is underpinned by the values of NHS England:

- A clear sense of purpose;
- A commitment to putting patients, clinicians and carers at the heart of decision-making;
- An energised and proactive organisation, offering leadership and direction;
- A focused and professional organisation, easy to do business with;
- An objective culture, using evidence to inform the full range of its activities;
- A flexible organisation;

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- An organisation committed to working in partnership to achieve its goals;
- An open and transparent approach; and
- An organisation with clear accountability arrangement.

This NHS England Framework for managing performer concerns: NHS (Performers Lists) (England) Regulations 2013, hereafter referred to as 'this framework', seeks to embody these values, as well as ensure that the handling of concerns is undertaken in a way that drives up quality and safety of healthcare and that NHS England discharges its statutory obligations in relation to its function as a designated body.

NHS England's central role is to ensure that the NHS delivers better outcomes for patients within its available resources. The performers lists system supports NHS England in the delivery of this central role to ensure:

- Consistency of primary care service delivery;
- Services are safe and effective; and
- Continuous improvement of quality is sought.

The legislative framework in England is set out in the National Health Service (Performers Lists) (England) Regulations 2013. The regulations provide a framework for managing, medical, dental and ophthalmic performers undertaking clinical services.

The 2013 regulations replace the National Health Service (Performers Lists) (England) Regulations 2004.

- 3 The National Health Service (Performers Lists) (England) Regulations 2013 entrusts the responsibility for managing the England performers lists (medical, dental and ophthalmic) to NHS England as the commissioner of primary care services. The England performers lists replace the previous system of individual PCT performers lists.

Each of the performers groups is also separately governed by their respective professional regulator and the Care Quality Commission (CQC).

The framework is also informed by the Medical Profession (Responsible Officer) Regulations 2010 and any subsequent amendments to these regulations.

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Policy statement

- 4 The scope of this framework reflects NHS England's powers as set out in the National Health Service (Performers Lists) (England) Regulations 2013. It also reflects NHS England's responsibility for the movement of performers between area teams and the maintenance of the England performers lists.

The term primary care performer is used throughout this document to mean the medical, dental or ophthalmic performers included on the performers lists for the provision of primary care services. This includes military health and offender health services.

The powers enable NHS England to ensure that performers are suitable to undertake NHS primary care services and to protect patients from any performers who are not suitable, or whose ability to perform those services may be impaired.

This framework encompasses:

- the process for considering applications and decision making for inclusion, inclusion with conditions and refusals to be made by the area team;
- the process by which area teams identify, manage and support primary care performers where concerns arise; and
- the application of NHS England's powers to manage suspension and removal from the performers lists.

Scope

- 5 Officers of the following NHS England areas are within the scope of this document:
- NHS England:
 - National Teams;
 - Regional Teams; and
 - Area teams
 - All Commissioning Support Units;
 - NHS Leadership Academy;
 - NHS Improving Quality;
 - NHS Sustainable Development Unit;
 - Strategic Clinical Networks; and

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- Clinical Senates.

- 6 For those medical staff who are directly employed by NHS England and who are not on the performers lists, the policy for responding to concerns in doctors with a prescribed connection to NHS England through employment is the applicable policy, not this framework.

This framework, and the processes it describes, should not be used as part of the process to consider pharmacy applications as pharmacy contractors are not included on performers lists. In addition, the regulations require that a medical contractor with an NHS contract cannot be a decision maker in pharmacy applications.

Roles and responsibilities

- 7 **Role and responsibilities of the decision making and support structures**

NHS England has established performers lists decision panels (PLDPs) and performance advisory groups (PAGs) within area teams in order to discharge its responsibility in managing performance of primary care performers. The PAG's role is investigative and advisory; the role of the PLDP is to make decisions under the performers lists regulations.

The PAG considers all complaints or concerns that are reported about a named performer and can carry out an initial investigation. If action is considered to be necessary under the performers lists regulations, the case is referred to a PLDP. In cases where there is a conflict of interest or a perception of bias, an alternative PLDP shall be convened to consider the case.

The PAG terms of reference are set out in Annex 2. The PLDP terms of reference are set out in Annex 3.

The process for inclusion onto England's performers lists is set out in NHS England's standard operating procedures.

The area team's responsible officer/medical director or nominated deputy will assess each application against the inclusion criteria. Where assessment reveals no information of note, applications for inclusion onto England's performers lists will be approved and authorised by the responsible officer/medical director or nominated deputy. Where

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assessment of the application reveals information of note or identifies concerns, the responsible officer/medical director or nominated deputy should refer the matter for consideration by the PAG.

Clinical governance arrangements have been established to identify issues relating to fitness for purpose. Where a concern arises as a result of these arrangements, the responsible officer/medical director or nominated deputy should refer the matter for consideration by PAG.

Any issues related to the delivery of the contract are considered under the contractual regulations.

8 **Role and responsibilities of management and staff**

The area team responsible officer/medical director will have overarching responsibility for the operation of this framework taking any steps necessary to protect patients. This will ensure that procedures are established to assess and investigate concerns, appropriate action is taken to address variation in individual performance and to ensure any necessary further monitoring of the performer is in place, liaising with regulators and external bodies as appropriate.

Area teams will require access to case investigators and case managers who meet the published national competency requirements. NHS England will ensure that there is a sufficient support of this nature and other identified managerial and administrative support to allow for an effective process for responding to concerns.

All members of staff involved in the process of responding to concerns must have time to perform their responsibilities efficiently and effectively to a high quality standard.

The process will require the capacity and skills for collecting and collating data relating to the concerns, production of periodic audits and reports and effective information governance.

Area teams will establish PAG and PLDP membership in accordance with the terms of reference (annexes 2 and 3). Members of PAG and PLDP must be able to demonstrate that they have the necessary skills, knowledge and experience to sit on the panel, as described in the PAG and PLDP terms of reference, and the job descriptions of panel members.

The role of the panel is to:

- Hear the evidence;

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- Make decisions about the case; and
- Give reasons for decisions.

- 9 A flowchart illustrating the process for managing issues of concern can be found in annex 4 [not available in this draft version]. Staff should also comply with NHS England corporate risk management policy.

Corporate level procedures

10 Governing principles

All those within NHS England who are involved with the assessment of applications for inclusion onto England's performers lists and/or involved with the handling of concerns about performance of performers included on England's performers lists will ensure that their working arrangements comply with the following governing principles:

- Protecting patients and public
- Enhancing public confidence in the NHS,
- Identifying the possible causes of underperformance,
- Ensuring equality and fairness of treatment and avoiding discrimination,
- Being supportive of all those involved
- Confidentiality
- Ensuring that action is appropriate and proportionate
- Being fair, open and transparent
- Decisions may be subject to appeal.

In particular, it is important that every case is dealt with according to individual circumstances. All decisions made by NHS England relating to the fitness for purpose and/or practice of a performer including any removal or suspension will be made in accordance with the relevant statutory regulations. Every effort is made to ensure that any decision taken by NHS England is procedurally robust. Any substantive action such as a decision to remove or terminate a performer is well founded and based on evidence that is credible, cogent, sufficient and reliable. It is the duty of NHS England as an NHS body to put in place and maintain arrangements for the purpose of monitoring and improving the quality of healthcare provided by and on behalf of itself. It is the responsibility of the performer to notify NHS England of any change in their personal circumstance that may affect their status on the performers lists.

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It is important that all parties have confidence in the process and accordingly NHS England will seek to raise awareness and understanding amongst all employed staff and others about this framework. All individuals involved in the delivery of this framework will have training, support and performance review relevant to their respective roles.

Ensuring equality and fairness of treatment and avoiding discrimination

Equality and diversity are at the heart of the NHS strategy. Due regard to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it, has been given throughout the development of the policies and processes cited in this document.

11 Procedure governing inclusion onto England's performers lists

This framework must be read in conjunction with NHS England's standard operating procedures (SOPs) for medical, dental and ophthalmic performers for primary care support. The SOPs are currently under review.

Area teams are responsible for ensuring that an application for inclusion onto England's performers lists shall be received, checked and processed by their directly employed staff or by their primary care support services.

The responsible officer/medical director, with appropriate clinical advice, will assess each application against the inclusion criteria taking into account the information and declarations provided by the performer along with any other information the area team has in its possession that it considers relevant.

Where assessment reveals information of note or a concern arises, the responsible officer/medical director should refer the matter for consideration by the PAG.

12 Movement of performers between area teams

Area teams should ensure there is a safe and effective process in place for the transfer a performer from one area team to another which takes account of this framework for managing concerns and seeks to act in a manner that is transparent, fair and reasonable at all times.

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Where a performer is under investigation, the process should normally be completed to the point where a decision can be made before the transfer is affected.

The transfer of responsibility for performers and their information is particularly important when a performer has a current remedial action plan including any conditions or voluntary undertakings.

Where a concern arises after the performer has transferred to a new area team the responsible officer/medical director of the receiving area team may delegate authority to the former area team to investigate. The outcome of the investigation must be provided to the receiving area team to allow a decision to be made.

13 Identifying and addressing concerns

NHS England has an overriding obligation to take account of all information provided to it. Where this information gives rise to concerns relating to an individual performer's conduct, performance or health the area team will take appropriate action to safeguard patients and the performer involved.

In this event the area team will assess against the NHS England risk matrix and, taking into account all other available clinical governance information, identify the nature of the concern and take a decision on immediate next steps.

The responsible officer/medical director is responsible for ensuring that the following key actions are taken:

1. Clarify what has happened and the nature of the problem or concern;
2. Seek appropriate advice from the regulator and external advisers, for example, the National Clinical Assessment Service (NCAS);
3. Consider if any immediate steps to protect patient safety such as restriction of practice or suspension are required;
4. Consider if the case can be progressed by mutual agreement with the performer;
5. If a formal approach is required, appoint a case investigator and agree terms of reference;
6. Convene a PAG/PLDP to consider the case and decide on next steps;
7. Ensure accurate actions and decisions are recorded contemporaneously in the performer's file.

Where the regulator notifies NHS England of any actions or conditions the

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PLDP will consider the implications in relation to the performer's fitness for purpose and consider if further action is required.

In line with the performers lists regulations 12 (6) where NHS England considers it necessary to do so for the protection of patients or members of the public or is otherwise in the public interest, it may determine that a suspension is to have immediate effect. NHS England has nominated responsible officers/ medical directors with the power to order an immediate suspension following discussion with one other director. This decision must be reviewed by two members of the PLDP who have not been previously involved in the decision to suspend, within 2 working days beginning on the day the decision was made. The case must then be considered by PLDP in accordance with the regulations.

All cases will be managed in line with the terms of reference of the PAG and PLDP (annexes 2 and 3).

Distribution and implementation

- 14 This document will be made available to all staff via the NHS England website.
- 15 Notification of this document will be included in the all staff email bulletins.
- 16 A training needs analysis will be undertaken with staff affected by this document.
- 17 Based on the findings of that analysis appropriate training will be provided to staff as required.
- 18 Guidance will be provided on the medical and operational directorates' intranet sites.

Monitoring

- 20 Compliance with this framework will be monitored via the medical directorate.
- 21 The director of commissioning in conjunction with the head of primary care

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commissioning for NHS England is responsible for monitoring, revision and updating of this document. The document will be reviewed 24 months after publication, unless guidance or legislation requires an earlier review.

Equality impact assessment

- 22 This document forms part of NHS England's commitment to create a positive culture of respect for all staff and service users. The intention is to identify, remove or minimize discriminatory practice in relation to the protected characteristics (race, disability, gender, sexual orientation, age, religious or other belief, marriage and civil partnership, gender reassignment and pregnancy and maternity) as well as to promote positive practice and value the diversity of individuals and communities.
- 23 An equality impact assessment will be carried out on the final draft of this framework, prior to publication.

Associated documents

- 24 Application form for inclusion in the performers lists, NPL1
www.performer.england.nhs.uk/Documents

Change of status form, NPL2
www.performer.england.nhs.uk/Documents

Movement between area teams form, NPL3
www.performer.england.nhs.uk/Documents

Standing operating procedures for primary care support (medical, dental and ophthalmic) [currently under review]

Prescribed connections to NHS England guidance:
<http://bit.ly/1gc1JbH>

Responding to concerns in doctors employed by and with prescribed connections to NHS England policy

Whistle blowing policy

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Complaints policy

Information governance policy

Assurance management frameworks for primary care contractors
Remediation policy

References

- 25 The National Health Service Act 2006 as amended by the Health and Social Care Act 2012: <http://bit.ly/1f6iZmf>

The National Health Service (Performers Lists) Regulations 2004: <http://bit.ly/1cQX908>

The National Health Service (Performers Lists) Amendment Regulations 2005: <http://bit.ly/1faASPm>

The National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008: <http://bit.ly/M6C374>

The National Health Service (Performers Lists) Direction 2010: <http://bit.ly/1e3kCuV>

The National Health Service (Performers Lists) (England) Regulations 2013: <http://bit.ly/1j4MvYF>

The National Health Service (General Medical Services Contracts) Regulations 2004: <http://bit.ly/1hpPo91>

The National Health Service (Personal Medical Services Agreements) Regulations 2004: <http://bit.ly/1gvSMwl>

The National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2004: <http://bit.ly/1gVMaFG>

The National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2005: <http://bit.ly/1m1glyu>

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The National Health Service (Primary Medical Services) (Miscellaneous Amendments) (No 2) Regulations 2005: <http://bit.ly/1eIJkAA>

The National Health Service (Primary Medical Services and Pharmaceutical Services) (Miscellaneous Amendments) Regulations 2006: <http://bit.ly/1oLnzci>

The National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2007: <http://bit.ly/1f6jo8b>

The National Health Service (General Dental Services Contracts) Regulations 2005: <http://bit.ly/1gvTeul>

The National Health Service (Personal Dental Services Agreements) Regulations 2005: <http://bit.ly/NZnQul>

The General Ophthalmic Services Contracts Regulations 2008: <http://bit.ly/1bejx8G>

The Medical Profession (Responsible Officer) Regulations 2010: <http://bit.ly/MsGPMP>

NCAS www.ncas.nhs.uk

Disclosure and barring service: <http://bit.ly/1hpPRrU>

Statement of financial entitlement:

Medical: <http://bit.ly/1nJiUV1>

Dental (GDS and PDS): <http://bit.ly/1dGyuzu>

Secretary of State's determination for suspension payments:

<http://bit.ly/1j78P3Y>

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Annex 1

Abbreviations and acronyms

Annex 2

Terms of reference for the performance advisory group (PAG)

Annex 3

Terms of reference for the performers lists decision panel (PLDP)

Annex 4

Flow chart illustrating the process for managing issues of concern

Annex 5

Elements of the framework specifically applicable to medical performers

Annex 6

Elements of the framework specifically applicable to dental performers

Annex 7

Elements of the framework specifically applicable to optometry performers

Annex 8

Elements of the framework specifically applicable to pharmacy contractors

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