NHS Resolution

Principles and Framework for Fairness and Proportionality

Case studies

Advise / Resolve / Learn

Our Fairness and Proportionality resources

Practitioner Performance Advice has published a revised Fairness and Proportionality Framework as well as new case studies and an Insight publication, to support the local management of performance concerns.


1. Revised Fairness and Proportionality Framework


2. Case studies


3. Insight publication: implementation examples and evaluation findings

These case studies have been developed to help healthcare organisations:

- See how the Principles and Framework can be applied for consistent, fair and proportionate management of performance concerns.
- Reflect on how using the Principles and Framework can support your rationale and decision making where concerns are raised.
- Reflect on whether your approach to managing a concern would align with the Principles.

We present three case studies:


Case study 1: Where health and capability concerns coincide


Case study 2: Progressing to formal investigation


Case study 3: A stakeholder's perspective

The first two case studies are fictional.

They reflect the types of cases on which NHS Resolution's Practitioner Performance Advice Service may be asked to advise. We recognise that they relate to medical practitioners however this is a means of illustrating the application of the Principles and Framework, which we suggest can equally apply to any staff group. They show how the resources can support case management at different stages, including where timely decisions are needed to protect patients, staff and the practitioner. The aim is to show how the resources help decision-makers act promptly while taking an informed, fair and proportionate approach, leading to better resolution of concerns and safer ongoing practice. The examples refer to cases managed by the Medical Director, although where local policy allows, the Case Manager role may be delegated to a suitably trained individual.

Case study 1: Where health and capability concerns

The concern

Dr Sorrel is a General Practitioner who qualified in 2018 and has been on the performers list since 2020. She has worked on a salaried basis without concerns since that time. In January 2026 she joined an out of hours service (OOH) where GPs were provided with triage information electronically and would then speak to patients by telephone or undertake an in-person assessment to determine whether treatment/urgent transfer to an Emergency Department was required.

Monthly record audits in OOH identified significant omissions from Dr Sorrel's records including the full presenting complaint, medical history and advice given. Concerns arose in relation to record keeping but the organisation could not be assured, based on the records, that patients had been managed appropriately.

The service needed to determine how to proceed.

Applying the Principles

Applying the Principles of **understanding the issue** and **ensuring the individual is heard**, a service manager discusses the audit results with Dr Sorrel to seek her comments. They are able to explore the context, including in relation to Dr Sorrel's induction into the service, any introductory training on the records system, Dr Sorrel's usual practice in relation to documentation (how and when this was completed). The discussion also allows for the exploration of factors which may be impacting on Dr Sorrel's work. She discloses organisational and focus difficulties which impact on her ability to review triage notes on one screen, whilst talking to a patient and also trying to keep an accurate record. She explains that she keeps some handwritten notes but does not always have the time to input these onto the system.

The discussion allows a decision to be taken that Occupational Health input is appropriate to explore whether there are health concerns which may be impacting on Dr Sorrel's performance. An Occupational Health report will assist in informing decisions around any connection between the difficulties that Dr Sorrel has been open in discussing and the record keeping concerns. The report, which includes a specialist neurodiversity assessment suggests diagnoses of dyslexia and adult ADHD for which further investigations are required. The report confirms that these diagnoses would impact on Dr Sorrel's ability to focus and the speed with which she is able to work.

Applying the Principles of **ensuring welfare and support** and **equity and proportionality** recommendations are made for reasonable adjustments to support Dr Sorrel in her work and for future monitoring of records to provide assurance as to the effectiveness of the adjustments.

Case study 2: Progressing to formal investigation

The concern

Dr Basil is a Consultant in Anaesthetics employed by an NHS Foundation Trust for over 10 years. During this time, there have been documented discussions about his communications with staff and patients. These have previously been described as inappropriate including references to sexual preferences and inuendo. On each occasion, communications skills training was recommended and he was asked to reflect as part of his annual appraisal. He also offered an apology to those who had complained.

After each discussion there have been periods with no complaints. A member of theatre staff has now indicated that Dr Basil has been sending her sexually inappropriate messages via WhatsApp and social media.

Dr Basil has raised concerns on a number of occasions over the past six months with his Clinical Director relating to service provision, stating that he believes that patient safety is being compromised through staffing changes in theatres. He aggressively challenges the Clinical Director in front of other team members and patients, seeking information on how his concerns are to be managed.

The Clinical Director is concerned about Dr Basil's behaviour and wishes for the Medical Director to commission a formal investigation into the issues. He offers to act as Case Investigator.

Applying the Principles

Applying the Principles of **understanding the issues, ensuring the practitioner is heard** and **adhering to a fair and appropriate process** the Medical Director decides to separate the patient safety concerns raised by Dr Basil from the issues that have been raised regarding his behaviour. The Medical Director commissions an investigation into the patient safety concerns under the Trust's Freedom to Speak Up policy. This ensures that an appropriate policy and process is followed to consider Dr Basil's patient safety concerns, without this being linked to the management of concerns about Dr Basil's performance. The Medical Director is concerned about the way that Dr Basil communicated with his Clinical Director and decides that this should be included in an initial fact find alongside the concerns that have been raised by the member of theatre staff.

The Medical Director speaks to Dr Basil as part of the initial fact find, having considered that there is a conflict of interest in the Clinical Director managing the case or undertaking any initial fact find.

Dr Basil denies sending any WhatsApp messages to the member of theatre staff and states that he has always engaged in friendly banter in the department which he believed his colleagues find funny. He explains that he has been frustrated with the lack of progress in responding to the patient safety concerns that he has raised and sought to challenge the Clinical Director on this. He believes that his communication in the meeting was appropriate in the circumstances and says that he responded in this way as the Clinical Director was acting "like an idiot". Applying the Principle of **ensuring welfare and support**, the Medical Director explains the process that applies to the review of the patient safety concerns raised by Dr Basil and that an update will be provided separately. She explains the performance management process, which is being used to consider the concerns regarding Dr Basil's conduct, provides a copy of the local policy to Dr Basil and summarises the next steps.

Following the conclusion of the fact find, the Medical Director decides that a formal investigation is warranted, due to the nature of the concerns, the discrepancies in account offered by the parties involved and Dr Basil's previous history. She undertakes a risk assessment applying the Principle of **equity and proportionality** and is satisfied that no exclusion or restriction is necessary at this point, although explains to Dr Basil what behaviours are expected whilst the investigation is undertaken.

She explains that the patient safety concerns are to be managed as a separate process under the Trust's Freedom to Speak Up policy but that Dr Basil's communications with the staff member and Clinical Director required further investigation in view of their content, manner and tone. In line with **ensuring welfare and support**, a 'buddy' Consultant is identified who can provide Dr Basil with support during the process and Dr Basil is encouraged to seek independent professional advice. Support is also identified for the witnesses who will be interviewed as part of the investigation and all are advised that their evidence should not be discussed outside of the investigation process (unless with their nominated support).

Applying the Principle of **adhering to a fair and appropriate process**, terms of reference are prepared which are shared with Dr Basil and an independent Case Investigator is appointed. He is notified of the Non-Executive Director who has been appointed to oversee the investigation if he wishes to raise any concerns regarding the process.

The investigation report produced by the Case Investigator includes documentary evidence, CCTV footage in the department and third party witness testimony, to support each of the allegations in the terms of reference. Prior to his interview copies of the documentation that the Case Investigator considers relevant to the terms of reference are shared with Dr Basil which include screenshots of the WhatsApp messages. In interview Dr Basil comments that he does not recall sending the WhatsApp messages and states that his communication with the Clinical Director was appropriate in view of the significance of the concerns that he had raised.

He says that the whole investigation has commenced because he raised a patient safety concern.

A decision making group convenes with the Medical Director in accordance with the Trust's policy and reviews the case, taking account of all aspects of the Principles and Framework and determines that there having been previous attempts at remediation and in view of Dr Basil's explanations a fair and proportionate approach is to refer the case to a conduct hearing in line with the Trust's policy. They provide a written reasoned decision to Dr Basil and make clear that they have taken account of Dr Basil's response. They clearly explain that they are separating the concerns that are being dealt with under the Freedom to Speak Up policy from concerns regarding Dr Basil's communications. Dr Basil is reminded of the support that is available to him locally and encouraged to seek independent professional advice and representation.

Applying the Principle of **adhering to a fair and appropriate process** Dr Basil is provided with a copy of the investigation report and appendices, notice of the hearing (including details of Panel members) and confirmation of the specific allegations of misconduct that the Panel will be considering.

Applying the Principle of **equity and proportionality** at the hearing the Panel ask questions of Dr Basil who demonstrates that he has reflected on the information in the report. Dr Basil says that the explanation from the Medical Director as to how his patient safety concerns would be managed have given him clarity and that had he known this avenue existed previously he would not have challenged the Clinical Director at the meeting in the way that he did. He says that he had forgotten about the messages that he sent to the staff member but that he recognises that these were inappropriate.

The Panel considers that insight is developing but that to mark the seriousness of the issues raised and to support Dr Basil in addressing his behaviours and improving his communications, a final written warning is appropriate alongside a behavioural contract and referral for a Practitioner Performance Advice Behavioural Assessment.

The Freedom to Speak Up investigation continues separately. The Medical Director continues to provide Dr Basil with updates and commits to confirming the outcome once the investigation into his concerns has concluded.

Case study 3: A stakeholder's perspective

This case study is an example provided to us which has been written by an organisation to demonstrate how the Fairness and Proportionality resources, which they have incorporated into their own local processes, informed their management of a performance concern. We are grateful for their thoughtful contribution.

Please note the practitioner's name is fictitious and key details have been amended to ensure confidentiality.

The concern

During a routine caseload audit it emerged that Dr Valerian, a consultant, had assessed and prescribed (a controlled drug) for a more junior medical colleague in the team. The colleague would not have met criteria for referral nor were they in the appropriate catchment area for the team, and no notes were shared with their GP. It emerged that other members of the team leadership were aware of this.

Applying the Principles

Dr Valerian was contacted very promptly by their medical line manager who undertook a preliminary fact find. Dr Valerian was encouraged to give their opinion on the matter and to seek advice from their representative. A brief audit of other records showed no similar issues. The process of managing concerns about doctors was shared, as was the preliminary fact find, so that the doctor could provide a written reflection. NHS Resolution's Practitioner Performance Advice Service's advice was sought in order to ensure the process being followed was correct and to get some checking of the level of concern this would elicit in other Trusts. Information obtained in a recent Higher Level Responsible Officer presentation on prescribing for a 'close relationship' was also considered to be relevant to the assessment of the concern. A meeting was held with the line manager, HR, Dr Valerian and representative and Deputy Chief Medical Officer to outline the next steps and potential outcomes. Specific circumstances involving the health and personal circumstances of the doctor were considered and taken into account.

The Responsible Officer Advisory Group (ROAG) considered the matter, with the clear admission by the doctor that they had breached a 'must not' statement in guidance in prescribing, and considering the leadership position of the consultant, the Responsible Officer decided that it did meet the threshold for moving to formal disciplinary processes. The ROAG were concerned not to add to the considerable stress this process was causing the doctor, what value a formal investigation would add and the impact of the disciplinary panel process. Expedited sanctions were not within current Trust policies but after taking senior HR/Chief People Officer advice, the doctor was asked whether they would consider a first written warning alongside other remediation measures (including supportive mentoring), which they accepted after taking appropriate advice. Broader opportunities were identified for remediation

involving the wider team leadership to facilitate their thinking about their leadership roles and responsibilities.

Using the resources made it clear it was important to be open and clear about the concern, how it would be managed and possible outcomes, and that contextual matters would be taken into account, including the particular stresses that the doctor was experiencing alongside this matter. He was regularly encouraged to take professional advice, to reflect and to engage in a dialogue on the way forward.