East London
NHS Foundation Trust

# Remediation and Rehabilitation of Doctor's Performance Policy

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| **Version No:** | 2.0 |
| **Consultation Groups** | Medical Staff & Local Negotiation Committee Members |
| **Approved by (Sponsor Group)** | Local Negotiation Committee Members |
| **Ratified by:** | Joint Staff Committee |
| **Date ratified** | 1st August 2018 |
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| **Executive Director Lead:** | Tanya Carter, HR Director |
| **Implementation Date:** | August 2018 |
| **Last Review Date:** | July 2018 |
| **Next Review Date** | August 2021 |

| **Services** | **Applicable** |
|---|---|
| Trust wide | All M&D permanent staff |
| Mental Health and LD | All M&D permanent staff |
| Community Health Services | All M&D permanent staff |

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## Version Control Summary

| Version | Date | Author | Status | Comment |
|---|---|---|---|---|
| 2 | 19 July 2013 | Shamima Chowdhury, Senior Medical HR Advisor<br>Sue Esser, Deputy HR Director | Final | Update to Trainee & GP Revalidation Process |
| 3 | 1st August 2018 | Colin Lovett, Revalidation Manager<br>Tanya Carter,<br>HR Director | Final | Reviewed |

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## Appendices

## 1. Background

All doctors have a responsibility to keep their knowledge, skills and competencies up to date. Continuing Professional Development (CPD), which feeds into annual appraisals and personal development planning, are now mandatory for all doctors and a key part of keeping up-to-date and fit-for-practice. However a doctor's performance is subject to a range of influences including their health, the systems they are working in, support available and the expectations placed upon them. All these factors need to be considered in situations where remediation and rehabilitation are required.

Revalidation, launched in December 2012 is designed to provide positive affirmation that licensed doctors remain up to date and fit to practise throughout their career. It involves strengthened appraisal processes and a closer link between other clinical governance systems and appraisal. As part of the annual medical appraisal process doctors will need to demonstrate how they are meeting the principles and values set out in Good Medical Practice (GMP), the General Medical Council's (GMC) core guidance for doctors.

Revalidation will demand consistent processes for appraisal, including feedback from patients and colleagues. As such, it is expected that the new system will, over time, help to raise the quality of the medical workforce, by supporting doctors in continually updating their professional skills to deliver a service to patients. However, the new processes will inevitably identify some doctors whose competence gives cause for concern and for whom, if they are to revalidate, some form of remediation will be needed.

Where concerns are raised through any route about a doctor's performance, these should be handled using the Remediation & Rehabilitation of Doctor's Performance Policy in conjunction with Maintaining High Professional Standards (MHPS) and where applicable relevant trust policies including the trust's Capability Policy & Procedure and Disciplinary Policy & Procedure.

## 2. Introduction

This new policy, 'Rehabilitation and Remediation of Doctors' Performance', is designed to provide guidance to medical staff, management and the Responsible Officer (RO) about how to respond when they become aware of concerns about the performance of a doctor acting individually or as part of a team.

The purpose of this policy is to provide a framework:

- To support management and the RO in their provision of remediation, reskilling / retraining and rehabilitation programmes.

- To confirm end points to such programmes such that performance can be signed off as satisfactory or improved.

- Reassure the trust's medical staff that the organisation has fair and consistent processes for addressing performance concerns in doctors in their employment.

The key principles underpinning this policy are:

- Patient safety

- The trust's responsibilities as the employer to support clinicians in remaining up-to-date and fit-to-practise.

- Enabling individual doctors to address any areas of deficiency in their professional performance early, systematically and proactively.

Remediation should not be a punitive process. It should be structured, consistent and fair. Wherever possible the doctor's perceived needs, priorities and learning preferences should be factored into negotiations and planning. However, refusal to engage in the process or failure to accept the opportunities offered for further development or training will be dealt with under MHPS and where applicable the trust's Disciplinary Policy & Procedure.

This policy applies to any situation where concerns are raised about a doctor's performance or specific aspects of their performance including:

a. Doctors who have been absent from their work for more than six months for whatever reason (N.B: those who have had shorter absences may also have specific needs as part of their re-introduction to work)

b. Self-declaration of a remedial need. Needs which highlight risks to patient and colleague safety should be prioritised over other CPD needs and the trust will work with the doctors concerned to ensure the needs are met in a timely fashion.

c. Doctors for whom a specific deficiency in performance has been identified through patient or colleague feedback or risk management systems

d. Doctors for whom such a need has been identified at appraisal

e. Doctors for whom the need for remediation has been identified through a formal disciplinary or fitness to practise procedure.

Wherever possible concerns should be managed locally. However where concerns relate to performance and / or behaviour that falls outside of the standards set out in Good Medical Practice a referral to the GMC may be considered by the RO in liaison with the Chief Medical Officer.

**3. Equality Statement**

This policy applies to all trust substantially employed / trainee and contracted doctors irrespective of age, race, religion, disability, nationality, ethnic origin, gender, sexual orientation, marital status or trade union membership.

All employees / trainees and contractors will be treated in a fair and equitable manner and

reasonable adjustments will be made where appropriate.

The policy will be reviewed every 3 years or earlier following a change in legislation, codes of practice or as a result of the outcome of national pilots.

**4. Scope**

This policy applies to all Medical staff in non-training grades - Consultants, Associate Specialists, Salaried GPs, Staff Grades and Specialty doctors contracted directly by the trust on a substantive or locum basis.

This policy has specific internal linkages to a number of existing organisational strategies, policies and procedures to ensure that remediation and rehabilitation processes are integrated fully and appropriately. These are listed in Appendix 1.

For doctors in formal training grades, the process of remediation and rehabilitation of performance is undertaken by the Local Education Training Board for East London – this is the Health Education North Central & East London Training Board. However, where action is taken by the Training Board in liaison with the trust, the Remediation & Rehabilitation of Doctor's Performance Policy in conjunction with MHPS and where applicable the trust's Capability Policy & Procedure will be used.

The trust will endeavour to follow appropriate guidance on the standards for quality assessment.

**5. Terms used in this guidance**

- **Remediation**: the overall process agreed with a practitioner to redress identified aspects of underperformance. Remediation is a broad concept varying from informal agreements to carry out some reskilling, to more formal supervised programmes of remediation or rehabilitation.

- **Reskilling:** provision of training and education to address identified lack of knowledge, skills and application so that the practitioner can demonstrate their competence in those

specific areas.

- **Supervised remediation programme:** a formal programme of remediation activities, usually including both reskilling and supervised clinical placement, with specific learning objectives and outcomes agreed with the practitioner and monitored by an identified individual on behalf of the responsible healthcare organisation.

- **Rehabilitation:** the supervised period and activities for restoring a practitioner to independent practice – by overcoming or accommodating physical or mental health problems.

**6. Prevention**

Clearly prevention and early intervention of performance issues is desirable for medical staff and patients. The Department of Health's Remediation Steering group ,made the following recommendations to employers and contracting bodies to reduce the risk of performance problems arising and where they do, to identify them at early stage:

- Strong medical leadership
- Strong human resource leadership
- Effective recruitment procedures and processes
- Robust annual appraisals and personal development planning
- Consideration should be given to six-monthly review in the first two years following appointment to a career grade

Mentorship for the first two years for doctors newly recruited to career grade posts

- Effective induction processes in place that include organisational ethos (including responsibility to raise concerns about colleagues' practice) and how performance issues are managed
- Promotion of self-referral schemes

Clinical Directors and line managers are expected to take appropriate action at the earliest opportunity where they believe there are issues with a doctor's performance. It is expected that performance issues are identified and managed prior to a doctor's appraisal process. This includes early intervention to ensure a supportive approach is taken.

**7. Responding to remedial / rehabilitation needs**

Once a concern is raised, the trust will:

- Tackle concerns promptly, ensuring the primacy of patient safety
- Where there are concerns, the line manager of the clinician involved should inform the RO and their Clinical Director of the concerns as soon as possible. Where the concern is raised outside of the trust, the RO will communicate with the RO of the clinician's designated body. For doctors in postgraduate training the Health Education North Central & East London Training Board is the designated body and therefore the Postgraduate Dean who is the RO, should be informed.
- Fully assess concerns so that appropriate action is taken in accordance with the MHPS and where applicable the trust's Capability Policy & Procedure..
- Advice should be sought from the Medical HR Team and the RO.
- Follow an appropriate competent investigation process in accordance with MHPS and where applicable the trust's investigation procedures, including investigation into whether there are organisational issues that need to be addressed
- Maintain good documentation and record keeping throughout the process
- Provide as much information as possible to patients about the processes that are undertaken to resolve concerns that they have raised, whilst respecting the confidentiality of the employee, in order that the patient is not lost in the process of investigating and remediating concerns
- Ensure the RO and Medical HR work together to oversee the processes including reviewing whether there are organisational problems that also need to be addressed

- Make it clear to a doctor who requires remediation what they must achieve before they commit to a programme. This should include clear boundaries, the method to be used for remediation, how they will be able to demonstrate that they have been remediated, how and who will assess whether they have successfully completed the programme, and the proposed timescale
- Ensure that where a doctor causing concern has been recently appointed and / or promoted, the trust's RO will liaise with their previous RO to establish whether the concern is a new manifestation or part of an on-going pattern of behaviour / performance
- For doctors recently in postgraduate training programmes the trust's RO will liaise with their Postgraduate Dean to seek any relevant information from the doctor's postgraduate training
- Ensure there is a clear exit strategy for any remediation case. There should be agreement between the doctor and their RO about the goals set. Consideration should be given to what success looks like from both the perspective of the trust and the doctor
- Ensure the remediation process remains as confidential as possible and practicable

**8. Principles of remediation / rehabilitation**

This guidance follows the principles laid out in the NCAS document, 'Back on Track.

The aim of remediation / rehabilitation is to restore a doctor to their full range of practice, where appropriate. Where not appropriate, the doctor and their line manager may agree a specific restriction on the range of practice. The decision to implement such a restriction must be made in liaison with the trust's RO and Chief Medical Officer, and with the advice of Medical HR.

Rehabilitation or remediation action plans should be agreed in writing between the doctor and their line manager and, for doctors in postgraduate training, the postgraduate dean. They should include specific goals, objectives and time scales, and be subjected to confirmation at the start and periodic review by the RO or their nominated deputy.

All aspects of performance including clinical knowledge, skills, health, behaviour and practice context should be addressed within a single action plan. Where applicable this in turn should relate back to the doctors personal development plan as drawn up at their last medical appraisal.

Occupational health services should be involved in any situation where the doctor's health is or has contributed to the need for a remediation / rehabilitation programme. Advice should be sought in the first instance from Medical HR.

HR advice and input should be sought for any concerns relating to the conduct or behaviour of the doctor.

Processes should be fair and open to scrutiny, taking into account all relevant evidence and information.

It should be recognised that having to undertake rehabilitation or remediation is potentially stressful for a doctor; doctors in this situation should be offered appropriate support by their line manager via Occupational Health and/or the trust's Employee Assistance Programme provided by CiC, their contact number is 0800 085 1376.

Doctors undertaking a programme of rehabilitation or remediation should also be offered a mentor to provide an alternative source of support during the programme.

When a doctor returns to work in these circumstances, the needs of the wider team will also need to be handled with sensitivity.

Doctors who work for more than one organisation including those in the private sector, must inform the trust's RO of the name of both the organisation and its RO. The trust's RO will communicate information about their rehabilitation or remediation needs to the RO of this organisation/s.

Where remediation or rehabilitation happens outside of the trust the trust RO must be kept fully

informed of progress and any issues arising in the first instance by the doctor concerned. The trust's RO will contact the RO of the organisation responsible for the remediation and rehabilitation process for further information. There should be clear transparent lines of communication and reporting supported by detailed documentation.

## 9. Responsibilities

### 9.1 Doctor's Responsibility:

It is the doctor's responsibility to actively engage with the processes of design and delivery of any further rehabilitation or remediation programme.

The practitioner should make their defence organisation and any other employer aware of the rehabilitation or remediation programme.

The doctor should clearly understand the remediation / rehabilitation process that they are engaging with including who they are accountable to and who they should report to if they become aware that they are not making progress according to their agreed action / rehabilitation programme.

Progress in this programme should be explicitly discussed in annual appraisal, as well as at intervals during the programme. The programme should be referenced in their Personal Development Plan.

### 9.2 Responsible Officer Role

The trust's RO is responsible for:

- Ensuring that the trust's medical appraisal systems meet revalidation requirements

- There are systems in place to enable communication flows between ROs in other designated bodies where clinicians employed by this trust may also be providing service

- The RO communicates with the Postgraduate Dean for doctors in postgraduate training,

- To investigate any fitness to practise concern raised about a doctor for whom they are the RO

- To ensure that appropriate measures are taken to address and remediate any concerns raised.

- To make referrals to the GMC where concerns relate to performance and / or behaviour that falls outside of the standards set out in Good Medical Practice. This decision should be made in liaison with the Chief Medical Officer .

An RO can delegate function but not responsibility. Therefore, it is beholden on the trust's RO to ensure there is sufficient appropriately trained staff able to support him / her in his functions including setting up and supervising remediation / rehabilitation programmes.

The trust will ensure that there are robust communication channels internally to enable these processes to function efficiently and reliably. This includes sufficient staff to ensure patient safety and that service delivery is maintained alongside the provision of remediation and rehabilitation support.

Where a concern has been raised about a doctor's performance, the RO will use MHPS and where applicable the trust's Capability Policy & Procedure. If the concern is low-level and does not affect patient safety, the RO may decide to handle it informally by discussion with the doctor, followed by written confirmation to the doctor of what they have agreed. Doctors are expected to reflect on such agreements in their annual appraisal.

If the concern is high-level, if it potentially involves patient safety, or if there have been repeated low-level concerns, the RO will liaise with the doctor's Clinical Director in order to implement an investigation in accordance with MHPS and where applicable trust's investigation procedure as outlined in the trust's Disciplinary Policy & Procedure

The RO should also review information available from quality and performance dashboards, audits, adverse incidents and Serious Incidents (SIs), patient feedback, complaints and

litigation. This breadth of information will help to inform the decision on further action.

Options include:

- Informal handling with reference in annual appraisal (as above)
- Formal handling with remediation action plan
- Restriction of practice pending completion of action plan
- Temporary exclusion from work (with NCAS advice)
- Local disciplinary action
- Referral to the GMC

The RO or their nominated deputy should inform the doctor and where appropriate the Chief Medical Officer and/or the RO in writing of this decision. If the RO has decided it can be handled in annual appraisal, they are responsible for sharing information about the area of concern with the doctor's appraiser. This should be handled in confidence and with sensitivity.

Where an action plan for rehabilitation or remediation has been agreed, there should be clear systems in place to monitor progress with regular reporting to the RO on progress.

**9.3 The Trust's Responsibility As Employer:**

It is the trust's responsibility to actively engage and support their RO in all aspects of medical revalidation including with the processes of design and delivery of a rehabilitation or remediation programme that is intended to improve or confirm an employee's performance.

The trust will ensure that at all times the patient's safety is put first. They will ensure appropriate supervision and checking of progress against the plan by an appropriate line manager.

When the doctor concerned is a doctor in postgraduate training the trust via the RO must ensure that the Postgraduate Dean is alerted promptly when there are any concerns including when a trainee is implicated in a serious incident or complaint.

Where the practitioner fails to achieve satisfactory progress, the trust will deal with this under

MHPS and where applicable the trust's Capability Policy & Procedure. They will also seek external expert advice from their GMC Employer Liaison Adviser and NCAS. Contact with external organisations for help should normally be made via the Medical Director or RO.

The trust will ensure that other organisations that employ the practitioner are kept informed of progress against the rehabilitation or remediation programme action plan.

## 10. Action Planning

### 10.1 Rehabilitation after a prolonged absence from work

All staff sickness absence should be dealt with by the line manager in accordance with the trust's Managing Sickness & Absence Policy.

Before returning to work, the doctor should meet with their line manager and as appropriate their RO / nominated deputy to agree the range of practice to which they will return and an action plan to support their reintegration into the workplace.

Where return follows a period of ill-health or injury, consideration should be given to a phased return to work and any necessary reasonable adjustments. The line manager should make referral to the Occupational Health Department for advice as soon as possible.

Professional Support Unit provided by the Shared Services, Health Education North Central & East London Training Board is available to provide additional resources to support doctors through the transition of a return to work programme. It may be advisable to do an early appraisal to review progress and development planning.

### 10.2 Remediation Action Planning

In many cases, remediation will only apply to a part of a doctor's practice. The RO / their representative and the doctor should agree whether it is appropriate for the doctor to continue their whole range of practice during the period of remediation or whether it would be more appropriate to focus on the area of remediation. This will differ on a case-by-case basis. For example, if it is agreed that the doctor will visit another site for a period of time to develop a

specific skill, it may be impractical for them to perform their normal duties at their usual place of work at the same time.

**10.3 Formulating the Action Plan**

The RO or their representative (with specialist clinical / educational input where necessary) should identify in writing the areas of remedial need, and the doctor should confirm that they recognise these and agree to work with the trust to address these. The learning needs highlighted in the action plan should be integrated into the doctor's personal development plan as agreed through annual appraisal and prioritised against other needs.

The RO or their representative should appoint a Clinical / Educational Supervisor for the doctor and share the remedial needs with them.

The Clinical / Educational Supervisor should support the doctor in developing an action plan to meet the identified needs that includes specific objectives that are measurable with timelines for achievement. Examples are given in Appendix A. The action plan should be discussed with the RO or their representative and the relevant service manager to ensure its practicality, and then agreed in writing with the doctor.

The RO or their representative should meet the Clinical / Educational Supervisor and the doctor at the start of implementation of the action plan, and then at regular intervals to ensure satisfactory progress.

The Clinical / Educational Supervisor is responsible for checking on a regular basis that the doctor is adhering to the action plan and to report progress and/or concerns to the RO.

If it is not possible to agree an action plan, the RO will consider seeking advice from the GMC or NCAS. Ultimately, the trust reserves the right to insist on a doctor undertaking remedial education or training which is considered essential as part of the conditions for continued employment. If a doctor fails to comply with this request, this will be dealt with through MHPS and where applicable the trust Disciplinary Policy & Procedure.

Once the action plan has been agreed and signed, failure to evidence sufficient progress as agreed and/or lack of compliance will be handled through MHPS and where applicable the trust Disciplinary Policy & Procedure.

**10.4 Progress and Completion**

The RO or their nominated deputy should receive written evidence of progress against the action plan from the Clinical / Educational Supervisor on a regular basis. The doctor should be encouraged to keep a reflective log of their progress with the action plan and to submit this as part of the evidence.

It may be necessary and advisable to defer annual medical appraisal until measurable progress is being made. However the value of annual appraisal and the opportunity it creates for a reflective conversation with a colleague should be valued by all parties in any rehabilitation and remediation process.

At the end of the action plan, the doctor and the Clinical / Educational Supervisor should sign a report confirming that the objectives have been met. This report should be sent to the RO. for review and agreement that objectives have been met.

**10.5 After Rehabilitation/Remediation**

On satisfactory completion of the action plan, the doctor will revert to their normal work plan. Completion of the action plan should be referenced in his/her appraisal. A copy of the action plan and written evidence of its completion will be kept in the doctor's personnel file.

**10.6 Confidentiality**

All action plan documentation and activity will be dealt with in confidence and evidence of progress or otherwise will be shared on a strict need-to-know basis.

**11. Quality Assurance of Refreshment and Remediation Programmes**

The RO has responsibility for ensuring that any proposed rehabilitation or remediation action plan maintains patient safety as its first objective, and is appropriate to the needs of the doctor.

He/she should seek advice from the relevant specialty advisor to confirm this.

The action plan must have a named supervisor of appropriate grade and speciality and include regular monitoring in terms of both impact on patient experience and care, and progress against the objectives for the doctor.

The RO will ensure there is a system of anonymised reporting of the number of doctors taking part in a rehabilitation or remediation action plan, and information to provide assurance regarding patient safety, in their regular reports to the Trust Board. The RO should monitor the progress of rehabilitation or remediation action plans. Where satisfactory progress is not made; the Chief Medical Officer should consider whether alternative action may be required under MHPS and where applicable the trust's Capability Policy & Procedure and MHPS.

**12. Funding for Remediation & Rehabilitation Programmes**

The trust will fund any reasonable remediation programme to be agreed with the doctor as a part of the action plan. The decision regarding what is considered reasonable is at the discretion of the trust.

**13. Resources to support remediation and rehabilitation for doctors**

Further advice and support can be obtained from:

- NCAS: advice line 020 7972 2999; general switchboard 020 7972 2988
- Employee Assistance Programme provided by PPC, their contact number is 0800 282193
- Doctors in Training can also contact their Postgraduate Dean or their Training Programme Director or the Professional Support Unit provided by the Shared Services, Health Education North Central & East London Training Board for further advice
- Advice can also be obtained from the Medical HR Team via the trust switchboard on 020 7655 4000.
- Practitioner Health Programme – see php.nhs.uk – tel 0203 049 4505

## Associated Policies

The following policies, guidance and procedures should be used in conjunction with this policy:

**Trust (Available via the Trust intranet.)**

- Medical Appraisal & Revalidation Policy
- Capability Policy & Procedure
- Disciplinary Policy & Procedure
- Managing Sickness & Absence Policy
- Dignity at Work Policy & Procedure
- Grievance Policy & Procedure
- Statutory & Mandatory Training Policy
- Equal Opportunity Policy
- Clinical Governance Policies & Procedures
- Complaints Policies & Procedures

**External**

- Maintaining High Professional Standards in the Modern NHS - www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4103586

**Action Plan Examples**

1. A doctor who has poor communication with colleagues, in that colleagues perceive him/her as aggressive and uncooperative.

**Objective 1:** To have weekly sessions with an expert in communication for six weeks to develop their communication style.

**Metrics:**

a. Confirmation from the communication expert that the doctor attended all the sessions;
b. Reflective note by the doctor on what they learned from this development activity.

**Objective 2:** to put into practice what they learned from the development activity over the succeeding six months.

**Metrics:**

a. Number of complaints to manager about doctor's communication (aim for zero)
b. 360 appraisal with colleagues with satisfactory outcome.