

Practitioner Performance Advice Consideration of Assessment:

Policy Statement

Background

1. All services provided by Practitioner Performance Advice, including our assessment services, are directed towards supporting the early identification, and fair and effective management and resolution of concerns in relation to the performance of doctors, dentists and pharmacists. In all cases, patient safety and public protection are our paramount considerations.
2. We are committed to ensuring that our decision making is fair and based upon the individual circumstances of each case.
3. The purpose of this policy is to explain the procedure which Practitioner Performance Advice adopts when considering, in cases referred to us, whether to recommend that an assessment should be carried out. The policy does not apply to any of our other services.
4. This policy is supported by additional guidance as identified in the policy. We are unable to decide whether an assessment should be carried out unless this policy and the procedures set out in the allied guidance entitled 'Intervention Consideration Group decision making guidance' have been followed.
5. Our Consideration of Assessment function arises from The National Health Service Litigation Authority Directions 2013 ("Directions"). In relation to the consideration of assessment, these Directions require us to determine who may refer practitioners to the Authority, or other bodies acting on its behalf, for the purpose of an assessment and to determine the criteria for the making of such referrals and for their acceptance by the Authority (Direction 2.(1)(f)).
6. As an NHS function, we are required to manage our Consideration of Assessment function in accordance with the resources available to us. The referrals we receive for consideration of whether to recommend that an assessment should be carried out, may or may not be submitted pursuant to the provisions set out in *Maintaining High Professional Standards in the Modern NHS* (the procedure for dealing with issues of capability) as described at paragraph 7 below.
7. Part IV of *Maintaining High Professional Standards in the Modern NHS* includes a requirement for employers and case managers to seek advice from us and in some instances to refer cases to us in order for consideration to be given to whether an assessment should be carried out.
8. When considering whether an assessment should be offered we need to ensure that we apply our expertise in a manner which is consistent with our Directions.

9. Our assessment services are not a specific investigation into the concerns which gave rise to the referral to us. It is also not part of our function to make decisions regarding a practitioner's employment or contractual status, which are matters for the employing/contracting organisation. We are not empowered to adjudicate upon any dispute about the resolution of concerns which are matters to be resolved by the employing/contracting organisation, although we are able to give advice at each stage regarding the procedural requirements to which the employing/contracting organisation and/or practitioner should have regard.
10. We are an advisory organisation and as such are unable to require an employing/contracting organisation or a practitioner to undertake or agree to an assessment. Any recommendation referred to in this policy should be construed in accordance with our advisory role.
11. In any circumstances where an assessment is being considered we are committed to understanding and seeking to address queries raised by any of the parties. This is regardless of the stage at which the process has reached (that is, prior to the referral form being completed, once the form is submitted or once it has been formally considered).

Consideration of assessment

12. The Intervention Consideration Group ("the Group") is solely responsible for deciding whether to recommend that an assessment should be carried out and for deciding the type of assessment to be recommended.
13. The Group consists of the Lead Assessment and Remediation Adviser (LARA) and additional members drawn from Assessment and Remediation Advisers (ARA) and Case Advisers. No Group member may take part in the decision-making process of a case where they have had active prior involvement or have a conflict of interest. It is for the Group's Chair to make any decision about the composition of the Group, ensuring that members have the necessary expertise and independence to make fair and objective decisions.
14. A referral to Practitioner Performance Advice for it to consider whether to recommend that an assessment should be carried out may be made by a doctor, dentist or pharmacist's employing/contracting organisation or any other organisation which falls within our Directions ("the referring organisation") by the submission of a completed *Referral for consideration of assessment form* ("the referral form"). The referral form must not include any patient identifiable information in the form. If other third parties are named in the form and/or in any supporting documentation, the referring organisation must ensure that they have given their consent to disclosure of their personal data for the purpose of supporting this request and that they have been provided with/directed to a copy of Practitioner Performance Advice's privacy statement.
15. The referring organisation is required to seek the practitioner's views on the referral in writing prior to its submission and (if received) to include these with the referral form. We require that both the referring organisation and the practitioner complete and sign the declarations at the end of the referral form. If these are not completed, then we are unable to consider the referral.
16. If the referral form does not provide sufficient information to enable the matter to be considered for an assessment, we may request any outstanding information prior to the referral being considered. The referring organisation should share any request for further

information (including the rationale for requesting it) with the practitioner, along with any additional information being provided, and the practitioner must be given an opportunity to comment on it. The referral will only be considered once the additional information has been provided.

17. The referral form and supporting documentation will be considered by the Group. It does not, unless in exceptional circumstances as decided by a member of our Core Operational Group or the Group's Chair, consider any information other than that submitted to us by the referring organisation and practitioner as part of the referral for consideration as to whether an assessment should be carried out. Any decision made in exceptional circumstances will be documented, with a clear rationale.
18. The Group will consider the information provided in the referral form which should include:
 - The nature of, and evidence in relation to, the concerns. This should include, for example, details of any complaints, investigations or reviews that have been received or completed to explore the concerns. A chronology of events must also be provided. The details provided should include the type, scope, outcome and findings of any investigation or review, as well as any comments from the practitioner (where provided) on the investigation or review findings. Specific details should also be provided of any steps taken to try and resolve the concerns. These should include the nature, scope and outcome of the steps taken to resolve concerns and reasons why they have been unsuccessful (if known). The referring organisation should enclose copies of any relevant documents which may include investigation reports, reviews, action plans and copies of complaints and any comments from the practitioner or response to complaints (where provided). These documents must be relevant to the time period of the concerns as opposed to historical documents which do not relate to the concerns in the referral. The referral form gives further guidance on what should and should not be included.
 - The practitioner's current circumstances including, for example, the practitioner's work status, any continuing investigations or reviews, any practice restrictions, exclusions or suspensions that are in place and why they have been considered necessary, as well as their nature, duration and the systems in place for their review.
 - Details of how the referring organisation believes an assessment may help to resolve the concerns.
 - Confirmation that the practitioner has been given the opportunity to comment upon the referral and that any comments have been set out in the form or attached as a separate document.
 - A complete and up to date job plan and/or work timetable for the practitioner.
 - Any relevant information from the referring organisation and practitioner, which will impact on when and how we may undertake an assessment, which may include details of their availability for an assessment.
 - Confirmation from the referring organisation that the practitioner is fit to participate in an assessment. The Group may recommend that an occupational health assessment is undertaken as part of the assessment to provide assurance of the practitioner's fitness to be assessed and to advise on any reasonable adjustments that need to be made. This will be considered according to the individual circumstances of the case.

(Note: if this confirmation has not been provided then the Group may still reach a decision to offer an assessment, subject to this being received.)

Potentially relevant factors

19. In reaching a recommendation as to whether an assessment should be carried out, the Group will carefully review the information contained in and provided with the referral form (including that provided by the practitioner).
20. In reaching its recommendation, the Group will consider the individual circumstances of each case, informed by factors relevant to the case. The factors set out below are for guidance purposes only and are presented in no particular order. They are not intended to comprise an exhaustive list of the factors which may be considered by the Group.
 - The nature of the reported concerns, the available evidence for those concerns and any steps that have been taken to resolve the concerns.
 - Whether an assessment would appreciably add to what is already known from earlier investigation or other review. In this regard, the Group will consider the nature and extent of any investigations or other enquiries that have already been undertaken (whether internally or externally) into the substance of the concerns. It will also consider when these were undertaken and the practitioner's response to the findings (where provided).
 - Whether there are likely to be significant constraints on the nature and scope of any assessment or the feasibility of undertaking assessment. Relevant considerations in this context may include the practitioner's state of health and whether he or she is subject to suspension/exclusion or restricted practice (including voluntary arrangements) as a consequence of local or regulatory interventions. This may have implications for the nature of any assessment that can be offered or for arrangements that may need to be put in place to enable the assessment to proceed.
 - The duration of the practitioner's contract and/or their expectations or plans for future practice. This information may assist the Group in assessing the feasibility and potential utility of any assessment being provided.
 - The parties' submissions as to whether they wish for an assessment to be undertaken and the benefit they perceive it would bring in terms of managing the concerns.
 - The nature and scope of our assessments, including their ability to provide robust evidence to help identify any concerns and what might be causing them.

Patient safety or public protection concerns

21. Where the reported concerns about a practitioner appear to raise an immediate issue of patient safety or public protection indicating a referral to the relevant professional regulator, we will advise the parties accordingly and may revisit the matter as to whether or not an assessment should be carried out. The Chair will also consider whether the circumstances may warrant any further consideration through NHS Resolution's significant concerns framework.

Possible outcomes of the Group's consideration

22. The Group will make a recommendation, which may be any of the following:
- That an assessment should be carried out, and the type of assessment;
 - That an assessment should not be carried out.

Before making a recommendation the Group may also adjourn consideration of the case pending our receipt of further information from the referring organisation, practitioner or as otherwise directed by the Group.

23. If the Group considers that another intervention would be helpful in the case, they may inform the parties of this. However, in response to a request for assessment, they are only able to recommend an assessment. Therefore, a separate request would need to be made for another type of intervention and this would be considered in line with the relevant policies.

Recommendation

24. The referring organisation and the practitioner will be notified in writing of the Group's recommendation as to whether an assessment should be carried out. We will confirm the rationale for our recommendation. In circumstances where the Group has decided to recommend that an assessment should be carried out, the notification should include the rationale for the specific type of assessment recommended together with a note of any likely constraints or restrictions. Where the Group recommends that an assessment should be carried out, this may be one of a range of options for consideration by the parties, depending on the circumstances of the case.
25. Following notification of the decision of the Group, the referring organisation and/or the practitioner may submit a request for it to be reviewed if they disagree with the recommendation, whether this is to offer or not offer an assessment. Any such request must be made within 10 working days of the date of the Group's recommendation and must contain the reasons for seeking the review; such reasons should be limited to the factual content of the Group's recommendation.

Steps to be taken following a recommendation that an assessment should be carried out

26. The referring organisation and the practitioner will be asked to sign and return a form confirming their agreement to an assessment being carried out in line with the Group's recommendation within a reasonable timeframe, i.e. usually within 10 working days, unless in exceptional circumstances. We cannot carry out an assessment without the express agreement of all parties. If the signed agreement is not returned within the given timeframe, the offer to assess may no longer be valid. The Group's Chair will make the decision, based on the circumstances of the case.
27. Where necessary, we will arrange a meeting with the referring organisation and/or the practitioner (and their representative, if required) to discuss any aspect of the assessment, including practical arrangements for its completion and the likely timeframe for its delivery. This meeting will normally take place virtually but, if required as a reasonable adjustment, a face-to-face meeting can be arranged.
28. We will commit to confirming the arrangements for and completion of an assessment as soon as reasonably practicable.

29. If the assessment has not taken place within 12 months of the recommendation, for any reason not attributable to us, the referral will need to be resubmitted and/or reconsidered, unless in exceptional circumstances. The Group's Chair will decision whether a resubmission of the referral is required.

Practitioner support

30. As part of our advisory service, we shall endeavour to ensure that a referring organisation has advised a practitioner to seek appropriate support throughout the time when they are the subject of concerns and inform them of their option to speak to an Adviser if they wish. This includes when a practitioner is being invited to provide comments on a referral to us as to whether an assessment should be carried out. This support may be provided by a practitioner's defence organisation, trade union, professional association or other relevant body or person. It may also be provided by other professional support services including the practitioner's GP and the referring organisation's occupational health service.

Miscellaneous

31. As set out in this policy, both the referring organisation and practitioner must ensure that any information provided to us in order for a decision to be made whether to recommend that an assessment should be undertaken is shared with the other party. We are not responsible for ensuring this has been done. Instead, responsibility for this rests with the parties.
32. The application of the policy may be amended in exceptional circumstances. The nature and extent of such amendment must be authorised by the Group's Chair or a member of the Core Operational Group.
33. The procedures identified in this document will be followed by us in all cases including those where we are being asked by a referring organisation to consider whether an assessment should be carried out in accordance with Part IV of *Maintaining High Professional Standards in the Modern NHS*. We recognise that in these cases we may be asked to consider whether an assessment should be carried out in circumstances where the referring organisation and/or the practitioner consider that an assessment should not be carried out.

Publication Date	24/02/2025
Review Date	24/02/2026
Document Purpose	Practitioner Performance Advice Policy Statement regarding its Consideration of Assessment Function
Target Audience	All staff and service users