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# Doctors in Difficulty – Current Hot Spots

National Association of Medical Personnel Specialists

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- Informal Resolution
  - Exclusion and restrictions
  - Conduct or capability?
  - Proceeding to a hearing
  - Some other substantial reason

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- Nothing wrong with making a record of informal discussions
  - When does a case cross the threshold into formal process?
  - Why not use a letter of expectations or a behavioural contract?
  - Mediation where team dysfunction involved

# Exclusion and Restrictions – Key Principles



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- Reserve for only the most exceptional cases
  - Interim measure only for minimum period necessary
  - Extensions reported to CEO/Board and report, when requested, to Designated Board Member
  - Seek advice from PPA
  - Authorised officers?

# Basis for Exclusion: Immediate (Two Weeks)



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- Serious concerns
  - Protect the interests of other staff, for example after a critical incident or breakdown in relationships between a doctor and the rest of the team; or
  - There is a clear risk that the presence of doctor likely to impede gathering evidence or otherwise hinder the investigation

# Basis for Exclusion: Formal (Four-Week Renewable)



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- Need to protect interests of patients or other staff pending the outcome of a full investigation of:
    - allegations of misconduct
    - concerns about serious dysfunction in clinical service
    - concerns about lack of capability or poor performance of sufficient seriousness that it is warranted to protect patients

*OR*

  - The presence of the doctor in the workplace is likely to hinder the investigation

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- *Jahangiri v St George's University Healthcare NHSFT*
    - exclusion must be necessary not merely appropriate
    - consider other restrictions, especially where clinical ability not in question
  
  - *Al-Obaidi v Frimley Health NHSFT*
    - excluded pending investigation as Trust concerned would interfere with witnesses
    - 3 months later exclusion lifted and restrictions on practice imposed: limited to working at one site
    - injunction granted: decision irrational

# Conduct or capability? (1)



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- Conduct (Part 3): “*wilful, careless, inappropriate or unethical behaviour likely to compromise standards of care...or create serious dysfunction*”
  - Capability (Part 4): “*Inappropriate clinical practice*”; “*ineffective clinical team working skills*”; “*inappropriate delegation*”



## Conduct or capability? (2)



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- If mixed conduct and capability concerns, “*they should usually be combined under a capability hearing although there may be occasions where it is necessary to pursue a conduct issue separately*” (Hussain, Chhabra)
  - Where doctor alleges incorrect classification: grievance, representations to Designated Board Member and/or injunction... (Fynes)

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- Critical issue: take care when drafting terms of reference as they form the basis of the whole investigation
    - if generic “headlines”, give examples where possible
  
  - Upon completion of the investigation, what are the allegations to take to a hearing?
    - can differ from terms of reference
    - ensure conduct/capability matters can be distinguished
    - must give doctor sufficient detail on allegations
    - which allegations should you pursue and which should you deal with informally?

# Framing Allegations (1)



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- You managed an emergency patient inappropriately on 1 April 2014

OR...

# Framing Allegations (2)



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- *The panel is asked to consider whether, in relation to any of the incidents set out below, Dr A was guilty of wilful, careless, inappropriate or unethical behaviour:*
    - you deliberately removed the patient from the emergency list without good reason on 1 June 2019, in circumstances where the patient was suffering significant blood loss and required urgent surgery
    - you refused to come in from on-call on 5 June 2019 in circumstances where it was clear that immediate surgery was necessary.

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- Are the allegations serious enough to go to a hearing at all?
    - *Al-Obaidi v Frimley Health NHSFT*
  
  - Are the allegations sufficiently serious that dismissal for gross misconduct should be on the table?
    - *Ardron v Sussex Partnership NHSFT*
  
  - What is the impact of procedural irregularities?
    - *Al-Obaidi v Frimley Health NHSFT*
    - *Idu v East Suffolk and North Essex NHSFT*

# Some Other Substantial Reason



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- Expiry of a fixed-term contract
  - Breakdown in working relationships
    - *Kerslake v North West London Hospitals NHST* (2012)
    - *Ezsias v North Glamorgan NHS Trust* (2011)

# Dido Harding Letter



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- Independence and impartiality throughout
  - Rigorous decision-making methodology at every stage
  - Trained and competent, properly resourced
  - Safeguard health and well-being: OH, communication plan, compassionate
  - Board oversight

# Discussion and questions

