Table of Contents

Guiding principles of a good local investigation into concerns about someone's practice 2
Have clear policies and procedures and follow best practice guidance 4
Have a clear plan and terms of reference 5
During your investigation 6
Concluding your investigation 7

Guiding principles of a good local investigation into concerns about someone's practice

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With the help of our professionals, regulatory partners and patient representatives, we've identified 10 guiding principles of a good investigation into concerns about a professional's practice. You might find these useful if you have determined that a formal investigation is necessary.

These principles aren't meant to tell you how to do an investigation. They're high-level principles for you to consider alongside your own local processes and polices (including any relevant requirements under employment or data protection laws).

Our guiding principles:

- Promote a culture of openness and learning
- Have clear policies and procedures and follow best practice guidance
- Have a clear plan and terms of reference
- Start as early as possible
- Be objective
- Listen to people who use services and families, keep them informed, and take their information and views into account
- Support staff and encourage openness without blame
- Take equality, diversity and inclusion into account
- Keep records of all evidence and decisions
- Avoid delays and stick to a reasonable timeframe

If you need to refer a concern to us, following these principles will help to make sure that your investigation will give us the information we need to reach a decision more quickly.

It's important to note that not all concerns about someone's practice will need to be investigated formally. Your organisation's processes should determine when to start an investigation. Clear and transparent processes will help make sure that any decision to investigate is fair, proportionate and justified.

Managing concerns involving agency staff

Some organisations use staff retained through agencies (or a third-party provider of bank staff).

If there's a concern about the practice of an agency professional, the organisation in which the incident occurred or where the concerns were identified should work closely with the agency to decide:

- how to investigate the concern (if necessary)
- how to minimise risks to people who use services
- whether the professional needs health and wellbeing support and whether it can be offered or signposted.

Sharing information with the agency

Normally the organisation in which an incident happened, or where concerns were raised, will have relevant information about:

- what happened or what concerns were raised about the professional's behaviour
- any systems issues or workplace pressures at the time
- any witnesses to the incident or the concerns.

Sharing information (while complying with relevant data protection legislation) means you can work together to respond to the concerns effectively (see next section).

Employers and agencies working together

When an organisation has concerns about an agency member of staff, they might be inclined not to offer them any more shifts. While this approach might address the immediate risks for the organisation, it doesn't help the agency understand these risks, nor does it give the professional the chance to address the concerns.

It's better to work together if there's a patient safety incident and/or concerns about the professional's practice. Working together can include:

- clearly identifying who'll lead an investigation into the concerns, and which process will apply
- identifying who'll be a point of contact and make sure that the member of the public and/or family is involved in any investigation where relevant
- keeping in close contact during an investigation, to share updates and information, and manage any risks related to someone's practice
- the agency checking records of any history of concerns, or information about other agencies or employers that the professional works for – this should inform any decision about how to respond
- agreeing next steps after an investigation ends, which might include supporting the professional to address any concerns, or the organisation or the agency making a regulatory referral.

There are other opportunities for organisations and agencies to work together. For example, an agency might decide to make a referral to us based on concerns across different organisations. They may need the organisations to collaborate on supporting information for the referral.

Sometimes we ask for information from both the organisation and agency involved when we respond to referrals from people using services or members of the public.

Have clear policies and procedures and follow best practice guidance

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Your organisation's own policies and procedures should outline how to carry out a good local investigation into concerns about a professional's fitness to practise. You may want to review them to make sure there's a consistent approach that applies to everyone, whenever concerns are raised.

Here's some best practice guidance that you might want to take into account:

- Acas guidance
- NHS England, A Just Culture Guide
- NHS Resolution, Being Fair.

We recognise that both trade unions and professional associations play a vital role in offering local support, representation and guidance to staff.

When concerns arise in relation to a professional, we would encourage you to work with any elected representatives to ensure that staff are fully supported.

Have a clear plan and terms of reference

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It's best practice to have a carefully considered plan for an investigation, with clear terms of reference.

A good plan would include all relevant information needed to ensure a fair and thorough investigation, including clearly defined and framed allegations or descriptions of the concerns.

The plan will help the investigator know what is expected of them. It will help to make sure steps are taken to communicate openly, sensivitely, and compassionately with the person who is the subject of the investigation, people who use services and their family members, and any staff members involved.

A clear plan and terms of reference also will help to avoid delays.

During your investigation

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Reviewing information throughout

New information may come to light while you're examining concerns about someone's practice. So we'd advise that managers regularly review the investigation's progress against local policies, relevant guidance, and the principles in this resource.

Serious concerns might emerge as your investigation progresses. These might need referring to an external organisation, even before your investigation is complete. This may include a referral to a local safeguarding team, the police or a systems or professional regulator.

Reviewing information throughout the process will help to make sure that nothing is missed and concerns are referred as soon as possible, if necessary.

Managing risks

At the outset, you as the employer are best placed to assess any risks that a professional may present if they keep practising, without restriction or supervision, during your investigation.

It's your responsibility to take immediate steps that may be needed to address any risks to people who use services.

In many cases, you'll be able to manage these risks during the investigation, while supporting the professional and keeping them in work. Measures might include moving a professional out of a public-facing role, restricting some duties, or providing supervision.

If your employee leaves or may be working elsewhere

If the professional leaves your employment before an investigation is complete, or you believe that they may be working elsewhere as a professional, for example for an agency, consider whether they might present a risk to people using services at a new organisation.

If you think they'll pose a risk, consider making a referral to us or call our advice line.
Wherever possible, you should continue with and complete your investigation. That way it will be available to us in the event of a referral.

We encourage employers to work together to manage risks associated with someone's practice. For example, where it's consistent with their policies about references, former employers can work with prospective employers to share information about concerns, including how to address them. This approach can also help when employers are aware of concerns about someone's practice, and know the person works for an agency/bank or another employer as well.

Employers should seek their own HR and independent legal advice, to inform a decision about what information to share when asked to provide a reference, or a decision about what information to proactively share with other organisations when a person has left their employment.

Concluding your investigation

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In this guide

- Concluding your investigation

Concluding your investigation

A good investigation ends with a report giving clearly stated findings of fact.

As far as possible, the report should show that all relevant evidence has been considered thoroughly and fairly. The actual findings are the basis for an action plan.

Making sure your response is fair and proportionate

In some cases, your investigation may lead to a disciplinary process, possibly with formal actions. We know that disciplinary actions can take a toll on a person's mental health, particularly if they're not fair and proportionate.

You'll want to reflect on whether the proposed disciplinary action is a proportionate and justifiable response. Sanctions shouldn't be decided by one person alone, or by anyone who may have an actual or perceived conflict of interest.

Developing an action plan

The factual findings of your investigation are the basis for an action plan.
In developing an action plan, consider if:

- you can manage any concerns locally
- you need to make a referral to us (or other regulatory body)