

September 2013

MPS's response to Maintaining High Professional Standards in the Modern NHS

About MPS

The Medical Protection Society is the leading provider of comprehensive professional indemnity and expert advice to doctors, dentists and health professionals around the world.

We are a mutual, not-for-profit organisation offering more than 280,000 members help with legal and ethical problems that arise from their professional practice. This includes clinical negligence claims, complaints, medical council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal-accident inquiries.

Fairness is at the heart of how we conduct our business. We actively protect and promote the interests of members and the wider profession. Equally, we believe that patients who have suffered harm from negligent treatment should receive fair compensation. We promote safer practice by running risk management and education programmes to reduce avoidable harm.

MPS is not an insurance company. The benefits of membership are discretionary - this allows us the flexibility to provide help and support even in unusual circumstances.

Comments

1. Is a national framework still necessary to determine the way in which employers manage concerns about capability?

Yes, we believe a national framework is essential for employers to manage concerns about conduct and capability. Maintaining High Professional Standards (MHPS) provides a framework which is meant to ensure a level of consistency and fairness however, a significant concern relates to Foundation Trusts, which are not currently required to adhere to the framework and a number have introduced their own variant of MHPS. This has meant that managing concerns about doctors has varied across Foundation Trusts resulting in inconsistent practice which is wholly at odds with the stated aim of the framework. We are aware that even when MHPS is adopted by HR departments in Foundation Trusts, they may apply their own variant of the framework which can be inaccurate and in our experience has led to unfair and inconsistent disciplinary procedures.

2. If so, should such a framework be mandatory or issued as good practice guidance?

Monitor issued MHPS to NHS Foundation Trusts as advice; this has led to inconsistent and unfair practices being adopted.

See our response to question one; yes the framework should definitely be mandatory.

3. Are there any particular elements within MHPS that should remain mandatory or where local discretion should apply?

We believe that there are elements within MHPS where local discretion could be applied without compromising fairness, as long as this is by mutual agreement. An example would be in the case of timescales. We emphasise that the starting position should be that timescales are mandatory and adhered to, except in circumstances where it is appropriate and agreed by all parties that there be an extension.

4. Are there any particular elements of MHPS that you would see to (a) retain (b) remove or (c) amend?

We would seek to amend paragraph 22 of part IV of MHPS which presently prevents a practitioner from having legal representation – this is inconsistent with precedent set by case law - *Kulkarni v Milton Keynes Hospital NHS Foundation Trust*.

In our view MHPS should be amended to allow for formal legal representation in serious and complex cases, and in any case which could give rise to dismissal or referral to the regulator.

We also believe the requirement for the Trust to always consult NCAS before exclusions must be retained as they can provide effective support to organisations as well as practitioners about the correct procedure to follow as well as keeping a national overview of patterns/trends in concerns. Ideally we would like to see NCAS given powers to do more than provide advice but should actively work with all parties when concerns are raised.

General Comments

We believe the NHS restructure and the introduction of revalidation provides an opportunity to ensure that identifying and responding to concerns about doctors and supporting and retraining those who will benefit from remediation is efficient and effective. We also believe that NCAS has an important role in promoting consistency and good practice across the NHS.

CONTACT

Should you require further information about any aspects of our response to this consultation, please do not hesitate to contact me.

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