

What to expect in a Disciplinary hearing

Purpose



- If a formal disciplinary investigation recommends considering the issue of a sanction such as a formal warning, then a Disciplinary hearing (or 'Panel Meeting') will be convened to hear the details of the case.
- This will be if either a) the senior manager receiving the summary report of your case felt that the matter was too serious (e.g. gross misconduct) or too complex for them to offer you a sanction of Improvement Note or First Written Warning, or b) if a sanction has been offered to you and you did not accept it.
- The Disciplinary hearing is an opportunity for your case to be heard in detail, so that a fully informed decision can be taken on what action is required, including any sanction or follow-up recommendations.
- Final Written Warnings and Dismissals can only ever be issued by the panel at a formal Disciplinary hearing.

Arrangements



- The Chair of the panel will write to all parties to advise of the date, time and location/video link for the Disciplinary Hearing. All parties will then receive a copy of documents and information which will be referred to by the investigators in the hearing – this is called the Management Statement of Case. It contains the background of the alleged incident, details of the investigation and the reason for the decision to hold a disciplinary hearing.
- The date, time and location/method for the hearing will have been arranged in discussion with you and your representative in order to ensure the availability of all parties.
- If you require any special arrangements or adjustments for the hearing, or if you wish to present your case by other means than attending yourself in person, you can raise these.
- As a respondent, you will be asked to submit details of any written evidence you wish to present (and names of witnesses if you wish to call any) in advance of the hearing. If you have information supporting your case in response to the Management Statement of Case, it should be sent to the Chair of the panel to send to all parties in good time before the hearing to enable everyone to have chance to read and understand the information sent.

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Attendees



- The Chair of the panel will be a senior manager of the level required for the seriousness of the allegations, bearing in mind the highest level sanction that could potentially be applied in the case being considered.
- Panel Members are impartial, with no previous knowledge of the detail of the case to be presented, as they are the decision makers. The Chair will be an operational manager, who may be from within the Departmental Management Line or from another Directorate. They are supported by a member of the HR team and, if the case has technical, clinical or diversity and inclusion considerations which need specialist insight, the panel may include a representative with relevant knowledge.
- The Investigation Team will present their findings to all parties at the hearing and be available for questions from the panel, yourself, your representative and, if appropriate, witnesses.
- You will attend to present your response to the management case, supported by your trade union representative or NHSBT colleague. You may also respond to questions from the panel, the investigators and witnesses, if appropriate.
- It may sometimes be appropriate for witnesses to attend the hearing, although this is not necessary in many cases as their written statement and/or interview notes will already be included in documentation. The Chair will consider requests for witnesses and their willingness to attend and then confirm who will be in attendance. We need to consider the potential impact of a face to face meeting in these circumstances.
- We will normally arrange for a note taker to be in attendance – their role will be to capture the key points of the discussion, rather than verbatim notes. A copy of the notes will be shared with the investigators, yourself and your representative following the hearing, if requested.

Preparation



- All parties need to set aside some time to prepare for the hearing. It's important to read and review the information shared and consider areas of clarification for you and questions you may wish to raise. Think about the key points you want to ensure are covered and have a summary of the case from your perspective prepared to help you present the key information you need to get across. Ask for help with this from your representative or colleague.

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The hearing



- The investigators present their case first as they are bringing the allegation(s) against you. They may read through the prepared report previously circulated or more usually will summarise the key points. The panel may seek clarification of points raised during the case presentation if necessary, as it is vital they understand the information presented. There is an opportunity at the end of the presentation for the panel to ask any questions they may have and to seek any clarification. You and your representative will also have the opportunity to ask questions of the investigators.
- You will then be asked to present your response (you could do this verbally or read from a prepared statement). As with the investigators' case, it's vital everyone understands the information you present, and so there is again an opportunity at the end of your presentation for the panel and the investigators to ask any questions they may have and to seek any clarification.
- Either party may have witnesses to support their case. The witnesses will be called as part of the relevant presentation and again there will be questions from the panel, yourself and the investigators, as appropriate.
- The panel will ask firstly the investigators to summarise their key points and their conclusions for consideration – this is the final opportunity to bring out the pertinent points, including referencing points arising from discussions during the hearing. You will then be asked to do the same.
- The panel will advise if they expect to make a decision on the day and will confirm arrangements for reconvening later. Alternatively, they will confirm when and how they expect to confirm the outcome.
- The hearing will then be adjourned for the panel to deliberate.

Other



- All parties can ask for a short adjournment or comfort break at any time. A location should be made available for you and your representative or colleague as a 'break-out' space.
- The hearing itself would generally take around 1-3 hours in total. With time in addition for the panel to deliberate and deliver an outcome, the whole process could take all day to complete.

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Decision



- The panel will take into consideration information presented and discussed at the hearing when reaching a decision.
- The panel will need to be reassured that a *"fair and reasonable investigation"* has taken place and that it has been procedurally correct. The impact of any concerns around process and policy are considered and the HR panel member will be there in an advisory capacity supporting this.
- The panel will also need to decide, in their *"reasonable belief"* based on *"the balance of probabilities"*, what happened in respect of the allegation being made. They will need to balance the information presented and take into consideration factors such as the working environment, mitigation presented, the circumstances at the time of the issue/incident, any history of previous concerns/issues and what has been done to address them, as well as impact on the people involved at the time and since.
- Once the decision is reached, the Chair will communicate this to all parties – clearly, and confirmed in writing.

Outcomes



- **Formal Disciplinary Sanction:** If the panel consider the alleged misconduct has taken place, the next consideration will be the level of sanction they give. The Disciplinary Policy provides the detail on the levels of sanction, how long they remain in place and some examples of when the level may be applied.
- Sanctions include: Improvement Note (effective for 6 months), First Written Warning (12 months) and Final Written Warning (18 months).
- **Dismissal or Summary Dismissal:** If the misconduct is serious enough, a possible outcome of the hearing is Dismissal (for example, in cases of Gross Misconduct).
- **No case to answer:** If the Panel consider there is insufficient information to support the alleged misconduct, they will conclude there is "no case to answer", though in many cases this outcome will be accompanied by recommendations.

What to expect in a Disciplinary hearing

Recommendations



- The panel may have recommendations for future improvements either for the individual or their team/leadership.
- Recommendations may include, for example, remedial training, follow-up support, addressing of other concerns identified during the investigation or restorative measures to improve future relationships on the team
- Where recommendations are made, the Chair of the panel will discuss these with the Commissioning Manager and HR for hand over and decisions on implementation.

Appeal



- If you are not satisfied with the outcome, you have the right of appeal against the decision.
- Details of how to submit an appeal will be provided in the outcome letter. The full details on how the appeal process is undertaken are in the Disciplinary Policy.
- An Appeal Panel will hear the management case presented by the Disciplinary panel members who made the decision and also the case provided by you and your representative in support of your appeal.
- The decision of an appeal panel will be final and binding, as this is the last stage in the process.

Confidentiality



- It's important that we respect the confidential nature of the issues for all involved and so we ask that you do not discuss your complaint with colleagues at work outside of the recognised individual(s) you have supporting you during the process. We recognise that you may want to discuss your concerns with your immediate family member(s), but please respect the sensitivities of the discussion and ensure that no details are shared further or posted on social media, either internal or external to the organisation, by anyone.