Medical
Protection

Improving NHS disciplinary processes

Efficient, fair, compassionate and accountable

November 2024

Introduction

Disciplinary investigations can be one of the most challenging professional experiences a doctor can have in their career. At Medical Protection, we support over 400 members a year in England who are involved in a disciplinary and we witness first-hand the range of pressures they experience, particularly when due process is not followed. We share our members' frustration when investigations are protracted and hard-won careers are damaged. Many members require professional support for their mental wellbeing and for some the consequences can be devastating.

Failure to conduct disciplinary processes swiftly and fairly can also perpetuate a culture of fear amongst doctors in the NHS which works against improving patient safety. Openness and learning in the NHS relies on doctors having confidence in senior management and their commitment to due process, which further underlines why it is so important to get this right.

Patient care can also be impacted when doctors are excluded from practice unnecessarily while their investigation is ongoing, or for longer than necessary.

There has until now been limited scrutiny into how NHS Trusts initiate disciplinary action against doctors when they have concerns about health, capability or conduct. This is in contrast to the significant attention and scrutiny that has been paid to the negative impact that a GMC investigation can have on doctors' wellbeing.

This paper aims to set out the case for change by raising awareness of the problems and pitfalls associated with NHS disciplinary processes and the impact they can have on the individual doctors involved.

We set out areas of focus to help ensure disciplinaries are handled better as well as the actions we think a range of stakeholders should take.

This is an underexplored policy area that is overdue significant scrutiny, and we hope this report will act as a call to action and kickstart the debate that is needed to drive improvements.

About Maintaining High Professional Standards

The *Maintaining High Professional Standards* (MHPS) framework[1], which came into effect in 2005, stipulates how concerns about doctors within the NHS must be handled and within what timeframes.

There is, however, significant variation in how it is implemented. As a result, every NHS Trust, under MHPS, has discretion as to the precise protocols and procedures it has in place to conduct a disciplinary involving a doctor. This variability means each Trust has individual policies with their own nuances. Each has its own redeeming features, but many have shortcomings.

[1] Maintaining high professional standards in the modern NHS, February 2005

The scale of the problem

The lack of robust data on the number, outcome and impact of disciplinary processes is perhaps part of the reason why the impact of NHS disciplinaries remains an under explored area.

Any information that is held about disciplinaries, is held locally by NHS organisations, and is rarely published. This is again in contrast to GMC investigations where a significant amount of data is published and scrutinised, and where significant research has been conducted.

To develop a firmer evidence base on disciplinary investigations, the processes used, and how they impact on doctors, we conducted a survey of a group of Medical Protection members who have experienced a disciplinary during the past seven years.

We also conducted a Freedom of Information request to 145 NHS Trusts in England, asking questions about the number of doctors that have undergone disciplinaries in the last seven years, the duration of these investigations, how information related to disciplinaries is reported to the Trust Board, and what training Case Managers receive. 86 Trusts (59%) responded to our data request.

What doctors told us about their experience of a disciplinary

- **53% said that the disciplinary investigation against them lasted over 1 year. 22% said the process was over 2 years.**
- **80% said the disciplinary investigation had a detrimental impact on their mental health**
- **44% said that they experienced suicidal thoughts during the investigation**
- **72% said it affected their personal lives**
- **75% said the length of the investigation affected their mental health**
- **81% said feeling 'guilty until proven innocent' affected their mental health**
- **85% said the malicious nature of the allegation significantly impacted their mental health**
- **18% either chose to retire early or had no choice but to retire early**
- **24% either left the Trust, or had no choice but to leave the Trust**
- **13% considered leaving the medical profession due to their experience.**

(Survey of 61 doctors about their experience of a disciplinary investigation – January 2024)

Members also provided anonymous commentary about their experience, how it impacted on them, and how they feel the process could've been better. These are documented throughout this report.

What NHS Trusts told us about their disciplinary processes

- **Disciplinary processes took an average 222 days.**
- **The duration of disciplinary processes varied significantly: the quickest was 1 day, several took over two years, and the longest took 2,437 days. Nearly 1 in 5 (19%) of processes took over 1 year, and slightly less than 1 in 20 (4.4%) took over 2 years.**
- **Nearly a quarter (23%) of Trusts told us that their approach to reporting data and information on disciplinary processes to Boards is non-standardised; some opt for ad-hoc reporting, others never make submissions to Board, and others declined to share their processes.**
- **Just under two-thirds (65%) of Trusts mandate training for staff conducting disciplinary processes, however there is no standardised approach to this. Some Trusts rely on ad-hoc support from HR teams or personal experience.**

(Based on results from 86 NHS Trusts that responded to an FOI request)

Concerns

Conduct of disciplinary proceedings

An inquiry that followed the death of the nurse Amin Abdullah in 2015 placed the conduct of NHS investigations and disciplinaries under scrutiny. A protracted disciplinary process had culminated in Mr Abdullah's summary dismissal on the grounds of gross misconduct and tragically he took his own life just prior to an appeal hearing. The findings of the inquiry concluded that, in addition to serious procedural errors having been made throughout the investigation and disciplinary process, Mr Abdullah was treated very poorly, to the extent that his mental health was severely impacted.

The then Chair of NHS Improvement, Baroness Harding, wrote to all NHS Trust and Foundation Trust Chairs and Chief Executives in 2019 to share the learnings arising from the death of Mr Abdullah[2]. She made recommendations for best practice that go above and beyond MHPS, but these are not mandatory.

The letter from Baroness Harding set out seven recommendations which aim to minimise unfairness by encouraging adherence to a rigorous decision-making methodology, ensuring staff are fully trained and competent to carry out their role, assigning sufficient resources and safeguarding people's health and wellbeing, as well as board-level oversight. We agree with the recommendations made by Baroness Harding.

Significant concerns were also set out in the paper, *Hospital investigatory proceedings against doctors in England: A case for a change*[3], published in 2022. Authored by Professor Arun Baksi and including a foreword by the former NHS England Chair Sir Malcolm Grant, this report highlighted significant concerns about the prevalence of unfairness in disciplinary proceedings as well as bias and discrimination. The report proposed the establishment of independent and elected scrutiny panels to oversee disciplinary action against doctors in each NHS trust, in order to establish a perception of balance and fairness and allow for transparency and audit.

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[2] Letter from Baroness Harding NHS Trust Chairs and Chief Executives, May 2019.
[3] Hospital investigatory proceedings against doctors in England: A case for a change

Disproportionate use of disciplinaries against staff from an ethnic minority

There are long standing concerns about the extent to which healthcare professionals from ethnic minorities are disproportionately likely to enter formal disciplinary processes compared to their white colleagues. Data on this disciplinary gap has been published since 2015, with latest data showing that ethnic minority staff are 1.14 times more likely to enter formal disciplinary process compared to white staff. While this data, which is published as part of NHS Workforce Race Equality Standard metric three, shows this gap has narrowed since 2015 it remains a significant concern[4].

In our own survey of Medical Protection members who had been subject to a disciplinary, 53% of respondents felt that prejudice or discrimination were factors in the disciplinary investigation being initiated.

> ***““Racial discrimination and bullying attitude towards me and other foreign doctors was very clear”***

The *Closing the gap* report from 2023 concludes that there are a range of factors that are likely to contribute to the disciplinary gap. These include bias, lack of cultural awareness among managers, disparities in the application of HR processes, wider challenges around organisational culture and systemic patterns of discrimination.

The Medical Workforce Race and Equality Standard Action Plan sets out that it should be a key aim “to strengthen consistency of decision making and significantly reduce disproportionate entry of ethnic minority and IMG doctors into local disciplinary and regulatory processes. The Action plan proposed the establishment of a working group to improve support to doctors when responding to employers’ concerns and creating a checklist to support employers to take a proportionate and fair approach to the preliminary analysis of concerns[5].

Disciplinaries involving doctors who have raised patient safety concerns

One of the most difficult situations faced by any clinician can come when they are concerned that the environment they are working in or a colleague they are working alongside could be placing patients at risk. It is important that healthcare professionals in this position are properly supported in raising concerns in an appropriate and effective way. It is therefore particularly worrying when disciplinary action is reportedly used against those who do raise concerns about patient safety.

Our survey of Medical Protection members who had been subject to a disciplinary found that over half (57%) believed that their involvement in raising patient safety concerns had been a factor in the investigation been conducted. This is the second most common cited issue prompting a disciplinary in the survey, behind a difficult relationship with a colleague or manager (70%).

> ***“Whistleblew and underwent 18 months of 'investigation'***
>
> ***“Managers perceived me as a 'troublemaker' for repeatedly raising patient safety and quality of care concerns”***

[4] Closing the gap: a guide to addressing racial discrimination in disciplinaries
[5] Medical Workforce Race Equality Standard (MWRES): A commitment to collaborate The First Five

This was a particular focus of the *Freedom to Speak Up* independent review led by Sir Robert Francis[6]. The review reported that it had seen convincing evidence that clinicians who had raised serious concerns not only had their concerns rejected, but were met with disciplinary action against them, rather than any effective attempt to address the issue they raised.

The review recommended that investigation of the concern should be the priority, and any disciplinary action associated with it should not be considered until the facts have been established. It added that there should not need to be a delay to performance action that is already underway and unrelated to the concern, and that in such instances it is important that this is well documented to demonstrate that disciplinary processes are not being done in retaliation and to dispel any perception that an individual is being victimised.

Notably in the Medical Protection survey, 51% of respondents said they were fearful about raising patient safety concerns in the future, when asked how they felt once their disciplinary investigation concluded.

Examples of good practice

There are, of course, examples of good practice. Members who responded to our survey about their experience of a disciplinary highlighted aspects that they believed to be positive, and other Trusts could learn from these.

"As the investigation progressed the trust was very supportive and concluded the investigation very swiftly"

"The investigating officer was very kind in his approach. I accessed some coaching which helped me cope and stay in work"

"Having a Trust 'buddy'"

"The Trust remained neutral in its communications and clearly stated support available with empathy for the position that I was in"

"The medical director and the HR team at the trust were very supportive and sympathetic and the investigation was completed very swiftly and all restrictions removed from my practice by the Trust"

(Survey of 61 doctors about their experience of a disciplinary investigation – January 2024)

[6] Freedom to Speak Up: an independent review into creating an open and honest reporting culture in the NHS

Areas to focus on

Based on our experience of assisting doctors through disciplinaries, and from feedback from members, we have identified four themes for ensuring a 'good' disciplinary process. Within each of these themes we have identified specific areas where changes should be made.

Theme 1: Efficient

1. **Proportionate.** Trusts must consider whether a matter may be dealt with in a less formal manner before proceeding to an MHPS investigation. Any move to exclude the doctor from their duties must also be proportionate to the nature of the investigation.

2. **Timely.** When a doctor is put through a disciplinary process, it should begin and conclude in a timely manner.

Theme 2: Fair

1. **Fair treatment for all parties.** The doctor and their representatives should receive fair treatment during proceedings, with due process followed and all necessary disclosures made. NHS staff involved in carrying out the disciplinary processes should also receive adequate, specialised training; Trusts should not be relying on competence or experience. Dedicated time should be ring-fenced for those involved in an investigation to ensure that MHPS deadlines can be met.

2. **Free from bias and discrimination.** Steps must be taken to ensure discrimination and bias are not factors that can initiate a disciplinary investigation. Information about the importance of defence organisation and union membership should be highlighted at each induction to maximise the chances of a doctor being able to access appropriate support during an investigation.

Theme 3: Compassionate

1. **Considerate.** The wellbeing of the doctor subject to investigation should be considered at all times, and active steps taken to offer support and mentorship.

2. **Well communicated.** The disciplinary process should be communicated clearly and in plain language at the outset, and frequent communication should continue throughout, so doctors are aware of the status of the investigation and any delays.

Theme 4: Accountable

1. **Accountability of employers.** When a Trust or another employer is found to have behaved in a seriously wrong way during proceedings, a clear method needs to be established to hold them to account.

2. **Scrutiny:** Senior managers and Trust Boards should have greater knowledge and scrutiny of disciplinary processes. Standardised reporting and data collection, such as the inclusion of disciplinary processes in governance audits, should be rolled out.

Proportionate

Trusts must consider whether a matter may be dealt with in a less formal manner before proceeding to an MHPS investigation. Any move to exclude the doctor from their duties must also be proportionate to the nature of the investigation.

Our experience is that doctors are frequently subjected to disciplinary proceedings for concerns that could have been dealt with informally. Feedback from members backs this up.

> ***"Trust made accusations without checking facts, jumping straight into formal procedures, failing to communicate"***
>
> ***"It had a devastating impact on all aspects of my life even though I am at the tail end of my career. The initial steps taken by the trust were disproportionate"***

Where there are clear patient safety concerns attached to a doctor's continued practice – either in whole or in part – then exclusion or appropriate restrictions on their practice may well be required. Too often though we see doctors excluded from practice when, for the purposes of a disciplinary investigation, patient safety concerns could be addressed through appropriate restrictions being placed on the doctor's practice. The end result, following exclusion from practice, can be a demotivated and deskilled doctor who faces an uncertain future professionally, regardless of the outcome of the investigation.

We are concerned about the considerable lack of consistency between Trusts in respect of their approach to exclusion and restriction. Some appear to regularly move towards exclusions in the first instance, which after the promptest of representations on behalf of the doctor are often reduced to restrictions that are more than sufficient to satisfy all parties that patient safety is being maintained.

50% of respondents to our survey said being excluded from practice during the investigation affected their mental health most. Of those, 79% felt the decision to exclude them was disproportionate to the allegation against them, 67% were concerned about losing their skills during this time, and 92% said they felt isolated from colleagues during this time.

> ***"I was not allowed to do major operations […] there was a major toll on my confidence and mental health. It has been hard to regain my previous position as the 'go to' surgeon for difficult cases in the hospital"***
>
> ***"It became not only remediation, but it took so long I needed reskilling. How can you show your skills when you haven't been on ward for 16 months"***
>
> ***"Prolonged period of restricted practice for an investigation which took over a year to complete. I am currently awaiting a period of retraining"***

Recommendations

- NHS Trusts must consider whether a matter may be dealt with in a less formal manner before proceeding to an MHPS investigation.
- NHS Trusts must ensure that any move to exclude or restrict the doctor from their duties is proportionate to the nature of the investigation. It should also not be an indefinite move whereby the length of the exclusion or restrictions determines the ultimate outcome – irrespective of the findings of the investigation and the disciplinary process.
- NHS Trusts should consider ways in which clinical skills can be maintained during necessary exclusion from duties.

Timely

Disciplinary proceedings should move forward and conclude in a timely manner, with delays kept to a minimum.

MHPS sets out deadlines for each stage of the disciplinary process. For example, it states that the Case Investigator must complete the initial investigation within 4 weeks and submit a report within a further 5 days. Our Freedom of Information request showed an average length of disciplinary proceedings in NHS Trusts in England of 222 days: just over 7 months. Nearly 1 in 5 (19%) of processes took over 1 year, and slightly less than 1 in 20 (4.4%) took over 2 years. The duration of disciplinaries varied significantly, the quickest being 1 day, several took over two years, and the longest took 2,437 days.

Our members have told us that delays were a significant issue. Interestingly, members that responded to our survey had a different experience of how long the disciplinaries process against them lasted; over half (53%) said the process lasted over 1 year, and just over 1 in 4 (22%) said it lasted for over 2 years. There is evidently a disconnect between the result provided to us. Miscommunication around timelines and the commencing of formal disciplinary processes between doctors and Trusts should be addressed.

Still, 75% of respondents to our survey said the length of the investigation impacted on their mental health most, with 65% saying the published timeframes for the investigation were not adhered to.

"A four-week investigation with a report in 5 working days, said the letter from the medical director. It took 16 months"

"I was initially promised by the Medical Director that all will be investigated within a fortnight. It took five months instead""

Patient care is best served when a doctor is in the consultation room; on the ward; in theatre. Where a doctor is excluded from their duties while subject to a disciplinary investigation, it is in everyone's interest for the matter to be settled in a timely manner. Too often, disciplinary proceedings are unnecessarily prolonged, and marked by repeated delays. Doctors can de-skill quickly, and an extended absence may require a supported return to work. When a case is not managed properly, slow case management exacerbates the problem it was ultimately trying to address.

Recommendations

- NHS Trusts should ensure that Case Investigators and Case Managers are aware of the need to constantly drive disciplinary proceedings forward and understand that avoidable delays are unacceptable.
- NHS Trusts should ensure that the terms of reference of investigations are specific and go to the central issues of concerns rather than broad, unspecified headings which can lead to protracted and unfocused investigations. Doctors should be provided with all relevant information as soon as possible to allow full and fair participation in the process.
- Case Managers and Case Investigators should undergo Practitioner Performance Advice service approved training before beginning their roles in disciplinary proceedings – to ensure that they are aware of the nature of their role, as well as their responsibilities. There should also be compulsory 'refresher' courses.
- Case Managers and Case Investigator should have ringfenced, protected time to prioritise carrying out MHPS processes and ensure they run to appropriate timeframes.
- HR advisers in Trusts should have an in-depth understanding of the principles and processes of MHPS.

Fair treatment to all parties

Proceedings should be conducted in a fair and transparent way so the process has credibility and supports a culture of openness and learning.

When disciplinary proceedings reach the stage of the Case Manager formally notifying the doctor of the terms of the investigation (and the details of who has been appointed as the Case Investigator and which Non-Executive Director is to sit on the panel), the doctor and their representative will be invited to an initial meeting. Often only then will the doctor be informed of the allegations and the information gathered so far to support or discredit them.

It is well established that issues under dispute in a case should be known to both parties before one is asked to provide testimony. Appropriate disclosure allows the doctor and their representative to consider their response and present their side of the story.

60% of respondents to our survey said there were not informed of the allegations in plenty of time before the disciplinary process began. 55% said they did not have sufficient opportunity to provide their version of events. 81% felt they were 'guilty until proven innocent' and this impacted on their mental health. 88% of respondents went on to say they felt angry and frustrated about how they were treated.

"I was informed of the allegations only when I faced a panel of trust management personnel, having just finished operating. There was no warning, a secretary called my mobile and asked me to attend the Medical Director's office with no further explanation. Nobody should be treated like this."

"Inability to access IT systems and not being given access to patient records disadvantaged my ability to respond to allegations."

It is important that procedures are consistent and fair to both parties, to ensure that doctors are receiving an appropriate and thorough investigation. Staff conducting disciplinary processes must have appropriate training and guidance. In response to our Freedom of Information requests, 65% of Trusts told us that training was mandatory for Case Managers and Investigating Officers, but there seems to be little consistency in how that training was provided. Some Trusts train staff through Practitioner Performance Advice via NHS Resolution, and others rely on Trust solicitors or external HR professionals. Some Trusts told us that training is not mandatory, nor is it always possible for those undertaking disciplinaries processes to have received training. Several also told us they relied on 'competence or experience'.

Recommendations

- The Government should amend MHPS so that individual Trusts are under an obligation to disclose in advance the full list and nature of the allegations they will put to the doctor at the initial meeting. In the meantime, NHS Trusts should look to replicate this obligation in their local policies and ensure this happens consistently.
- NHS Trusts should enable doctors under investigation to access to patient records so they can prepare their defence adequately.
- Standardised training for NHS staff conducting disciplinaries should be introduced, and this should be mandatory for Case Managers and Investigating Officers. NHS England, NHS Resolution and Practitioners Performance Advice would be best placed to be responsible for this.
- If the Terms of Reference relate to clinical concerns, those conducting the investigation should have the necessary training and experience to ensure that these are fairly considered.

Free from bias and discrimination

Steps must be taken to ensure discrimination and bias are not factors that initiate a disciplinary investigation.

As stated on page 4, the disproportionate use of disciplinary processes for ethnic minority and overseas qualified doctors is such a concern that the Medical Workforce Race Equality Standard set this out as the first of five domains where action is needed[7]. Latest data shows that ethnic minority staff are 1.14 times more likely to enter a formal disciplinary process compared to white staff.

The results of our own survey show that 53% believed that prejudice or discrimination were factors in the disciplinary investigation against them being initiated.

Achieving equity in the NHS workforce's disciplinary processes will require a comprehensive and sustained effort involving leadership commitment, training, data analysis, and fostering an inclusive culture.

We support the continuation of the work needed as set out by the Medical Workforce Race Equality Standard to address this.

Recommendations

- NHS Trusts should provide assurances that all staff who enter into formal processes will be treated with compassion, equity and fairness, irrespective of any protected characteristics. Such action would be in line with High Impact Six of the NHS EDI improvement plan.
- NHS Trusts should review their disciplinary processes, including by obtaining insights on themes and trends from their solicitors. Where the data shows inconsistency in approach, immediate steps must be taken to improve this. Again, such action would be in line with High Impact Six of the NHS EDI improvement plan.
- NHS Trust Boards should engage with programmes aimed at supporting Boards to identify and challenge structural race inequality as a core part of their Board's business, such as NHS Providers' Race Equality Programme and training by NHS Resolution on inclusive management and practice.
- A checklist for NHS Trusts should be developed to support them in taking a proportionate and fair approach to the preliminary analysis of concerns, as recommended by the Medical Workforce Race Equality Standard.
- Progress against the MWRES action plan should be continued to monitor whether the work being carried out is resulting in change in the data.

Considerate

Those with oversight of disciplinary proceedings must be mindful at all times of the potential impact on the wellbeing of the doctor involved.

For many, going through a disciplinary investigation will be the most stressful times of their career. In our survey, 80% of doctors told us that the disciplinary process had a detrimental impact on their mental health.

[7] MWRES: A commitment to collaborate The First Five

"The worst kind of experience ever in my life it was harrowing and left me traumatised. I don't think I'll ever recover"

"I got so depressed, that made me think of leaving England to work abroad, and it also had stressful effect on my family"

"I went through 3 months of utter hell, suffering from anxiety, disturbed sleep and depression. I have never fully recovered from this, I am always fearful when I go to work"

"Horrible - treated like a criminal, my office space given to someone else, my belongings confiscated"

It is particularly worrying that nearly half (44%) told us that they experienced suicidal thoughts during the investigation. Others considered leaving or left the profession due to their experience.

"I had a suicidal attempt after being left with little to no information for six months, repeated threats of GMC referral and immediate dismissal, and the prospect of losing my career"

"I was signed off by my GP. It made me question whether I wanted to be a doctor at all, or even what's the point in living"

Appropriate health and wellbeing support must be offered, and readily available, at all stages of the process. Trusts should also ensure that they flag up what support is available.

"Access or signposting to anonymous support (other than Samaritans) that is not limited to six sessions was asked for and not able to be provided"

Only a third (33%) of respondents to our survey who had a pre-existing health condition told us that they felt they received adequate support or reasonable adjustments during the process from their line manager, and 40% told us that they did not feel they received this from Occupational Health either.

An experienced mentor can be an invaluable source of support when things go wrong. 92% of doctors told us that they felt isolated from colleagues during the disciplinary process, and 91% said they felt a dedicated person to support those facing a disciplinary would be helpful. Trusts may wish to consider proactively arranging sessions with a mentor from the outset of any disciplinary process.

"I was stopped from going to work for 48 hours while the issue was investigated. This caused me great distress and anxiety, as during the investigation I was instructed not to contact anybody at work"

Recommendations

- The Government should amend MHPS so that current rules regarding confidentiality allow the doctor under investigation to discuss matters with a chosen mentor who understands the clinical

aspects of the specialty as well as the demands of the role. Current restrictions can lead to doctors feeling isolated and can add to the shame they feel.

- NHS Trusts should be required to ensure each doctor facing a disciplinary has dedicated person to support them.
- NHS Trusts should clearly signpost doctors to the support services available at all stages of a disciplinary process.
- NHS managers should make appropriate adjustments for individual needs (with Occupational Health input as appropriate), including those relating to hidden disabilities, including neurodiversity, and menopause symptoms.

Well communicated

The disciplinary process should be communicated clearly and in plain language at the outset, and frequent communication should continue throughout, so doctors are aware of the status of the investigation and any delays.

Good communication with the doctor is vital throughout the process.

Communication was however a key issue in our member survey, with 58% stating that lack of communication from the Trust during the investigation affected their mental health most.

Over half of respondents (51%) said they had a limited understanding of the process. 41% said more frequent updates on the status of the investigation would've made the process less stressful for them. 31% said more support with understanding the process and terminology would have made it less stressful, and nearly a quarter (24%) cited clearer language in communications from the Trust as something that would have made it less stressful.

"No communication. Emails sent on a Friday afternoon with no warning or support"

"The Trust wrote to NHS England and to my patients and my private hospitals behind my back (without doing any proper investigation) to tell them that my practice is restricted and they never wrote back to them to tell them that the investigation cleared me"

Recommendations

- NHS Trusts should review the wording of correspondence to ensure that it is clear to all doctors and the tone appropriate. Support should be offered to doctors if they do not understand the process or terminology used.
- NHS Trusts should provide regular follow up communications over the course of the investigation which provide clarity on how it is progressing, the next steps, and notify doctors of any delays.
- NHS Trusts should always consider the timing of communications to ensure that correspondence is sent at a time when the doctor can access professional and wellbeing support. For example, communications should not be sent on a Friday or over the weekend.
- In cases where an NHS Trust has informed other parties of restrictions on a doctor's practice and where later these restrictions are removed, the Trust should with the consent of the doctor update the other parties once the investigation has been completed.

Accountability of employers

When a Trust or another employer is found to have contravened MHPS or conducted disciplinary proceedings inappropriately, a clear method needs to be established to hold them to account.

In our member survey, 64% of respondents said that knowing the Trust would be held accountable if due process was not followed would've made the process less stressful.

Accountability of employers and scrutinisation of the process should be treated as a priority. 70% of our respondents felt it would be helpful for Trusts to share data on disciplinary outcomes with other Trusts and Boards; this would promote learning from best practice and transparency in processes. Similarly, greater clinical involvement and expertise in disciplinary panels and processes would be beneficial – 89% of our respondents said they felt this would go some way in making improvements.

"There was no opportunity during the entire process to challenge the Trust's approach, legally or otherwise"

"There is no independent oversight so trusts can do as they please"

"There needs to be a system of stronger accountability and independent intervention. Trust boards should be directly involved from start with a non-executive board member as contact who can hold the executive to account"

"There needs to be independent scrutiny where people undergoing a disciplinary can go when things go wrong"

"Information on disciplinaries must be published on the Trust website, and made comparable to other organisations to create an incentive to reduce the number of formal procedures"

"There has to be a combination of cultural change and establishing strong accountability of managers for these processes. The trauma of staff wrongly accused or treated unfairly has to be at the centre"

Recommendations

- The GMC should, in the next revision of *Leadership and Management for all doctors,* give serious consideration to making explicit reference to a Medical Director's (and others) responsibility to ensuring disciplinary proceedings are conducted appropriately and compliant with the letter and spirit of the governing framework.
- The GMC should commit resources to work with Responsible Officers to promote best practice for those conducting disciplinary proceedings.
- The Government should amend regulations to require Responsible Officers to ensure fair and efficient disciplinary processes are in place.

NHS Trust Board scrutiny

Greater knowledge and scrutiny of disciplinary processes must be embedded at Board level, as well as more standardised reporting and data collection to ensure there is oversight of procedures.

NHS Trust Boards have a vital role to play in ensuring that disciplinary processes are conducted in a way that is measured, fair and considerate.

MHPS recommends that a member of the Board becomes the 'designated member' in order to oversee the case and 'ensure that momentum is maintained'[8]. Similarly, the guidance states that any extension of exclusions, as well as detailed reporting of the process, should go via Board in order for appropriate monitoring to be upheld[9]. Perhaps most poignantly, MHPS explicitly calls out that 'under the framework key officers and the Board have responsibilities for ensuring that the process is carried out quickly and fairly, kept under review and that the total period of exclusion is not prolonged'[10].

We believe that Trust Boards also have a very important role in scrutinising data and trends on how disciplinary processes are conducted locally. We also believe they could be better supported to do this if NHS Trusts were required to report standardised data that is published and enables comparison.

In our Freedom of Information requests, nearly a quarter (23%) of Trusts told us that their approach to reporting data and information on disciplinary processes to Boards was non-standardised. Some told us that they reported to Board on an ad-hoc basis (9%), however, some reported that they never made submissions to their Board about processes (9%) and other declined to share this information (4%).

84% of respondents to our survey stated that they believe disciplinary processes/outcomes should form part of a Trust governance audit.

Recommendations

- NHS England should require NHS Trusts to gather and submit data on the use of disciplinaries which is then published, with the aim of enabling greater transparency and scrutiny of the use of disciplinaries and promotion of best practice.
- NHS Trusts disciplinary data should be reviewed by Practitioners Performance Advice who should hold responsibility for monitoring outlier Trusts, particularly not those complying with MHPS guidelines.
- NHS Trusts should have their disciplinary proceedings independently audited to ensure the letter and spirit of MHPS is being complied with.
- NHS Boards should employ standardised reporting on disciplinary processes and data such as timelines and progress, should be shared with on at least a biannual basis.
- NHS Trust Non-Executive Directors should assure themselves that they are fully aware of their roles and responsibilities in holding the Trust officers to account and more regularly scrutinise the use and application of disciplinaries within their Trust.

[8] Maintaining high professional standards in the modern NHS (MHPS), page 9
[9] Maintaining high professional standards in the modern NHS (MHPS), page 16
[10] Maintaining high professional standards in the modern NHS (MHPS), page 19

About MPS

Medical Protection is a registered trademark and a trading name of The Medical Protection Society Limited ("MPS"). MPS is the world's leading protection organisation for doctors, dentists and healthcare professionals. We protect and support the professional interests of more than 300,000 members around the world. Membership provides access to expert advice and support and can also provide, depending on the type of membership required, the right to request indemnity for any complaints or claims arising from professional practice.

Our in-house experts assist with the wide range of legal and ethical problems that arise from professional practice. This can include clinical negligence claims, complaints, medical and dental council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries.

Our philosophy is to support safe practice in medicine and dentistry by helping to avert problems in the first place. We do this by promoting risk management through our workshops, E-learning, clinical risk assessments, publications, conferences, lectures and presentations.

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