

PSYCHIATRISTS'
**SUPPORT
SERVICE**

Information guide
for psychiatrists

On being
excluded
from work

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Introduction

This information guide is intended for a psychiatrist who faces exclusion from work. The information should be used as a guide only and is not a substitute for professional advice. If you need further advice and support, please contact the Psychiatrists' Support Service or one of the organisations listed at the end of this information guide.

Being excluded from work can be a distressing and unpleasant time for any doctor. Exclusion from work is used as an interim measure while action is being considered to resolve a problem at work.

It is essential to seek advice immediately the moment that you are, or consider yourself likely to be, subject to exclusion or restriction of practice. It is important to be aware of the medico-legal and personal conduct representation available to you in the National Health Service (NHS), from professional bodies and from medical defence organisations.

This leaflet provides guidance and information on best practice as defined in *Maintaining High Professional Standards in the Modern NHS* (Department of Health, 2005; www.doh.gov.uk). It will act as guidance on what to expect from your employer throughout the process. However, it is not a substitute for obtaining professional and legal advice.

The process of exclusion from work

KEY OFFICERS

Key NHS trust officers and the trust board have overall responsibility for ensuring the exclusion process is carried out quickly and fairly, is kept under review and that the total period of the exclusion is not unduly prolonged.

- The chief executive of the employing organisation has overall responsibility for ensuring the exclusion process is properly managed.
- The medical director is usually the case manager but this role may be delegated to a senior manager to oversee the case.
- The investigating officer/case investigator will provide factual information to assist the case manager in reviewing the need for exclusion and will provide progress reports to the chief executive and the trust board.

IMMEDIATE EXCLUSION

An immediate time-limited exclusion may be necessary for the following:

- a critical incident when serious allegations have been made
- a breakdown in relationships between a colleague and the rest of the team

- the presence of the practitioner is likely to hinder the investigation.

The manager making the exclusion must explain why the exclusion is being made in broad terms (there may be no formal allegation at this stage) and agree a date, up to a maximum of 2 weeks away, at which the practitioner should return to the workplace for a further meeting. The case manager must advise the practitioner of their rights, including their rights of representation.

FORMAL EXCLUSION

Formal exclusion may only take place after the case manager has first considered whether there is a case to answer and after a case conference has been held to consider if there is reasonable and proper cause to exclude. If a case investigator has been appointed, a preliminary report must be prepared as soon as possible for a case conference. This report will enable the case manager to decide on the next steps and should contain sufficient information for a decision to be made as to whether:

- the allegation appears unfounded, or
- there is a misconduct issue, or
- there is a concern about the practitioner's capability, or
- the complexity of the case warrants further detailed investigation before advice can be given on the way forward.

Formal exclusion will only be used where:

- there is a need to protect the interests of patients or staff, pending the outcome of a full investigation of:
 - allegations of misconduct,
 - concerns about serious dysfunctions in the operation of a clinical service,
 - concerns about the lack of capability or poor performance of sufficient seriousness to warrant protecting patients, or
- the presence of the practitioner in the workplace is likely to hinder the investigation.

Review procedures for exclusion

REGULAR REVIEW

The case manager must review the exclusion before the end of each 4-week period and report the outcome to the chief executive and the trust board. This report is advisory and the case manager will decide on the next steps. The NHS body must take review action before the end of each 4-week period. After three periods of exclusion, the National Clinical Assessment Service (NCAS) must be called in.

FIRST AND SECOND REVIEWS (AND REVIEWS AFTER THE THIRD REVIEW)

Before the end of each exclusion period, the case manager should review the position and will decide on the next steps as deemed appropriate. Further renewal may be up to 4 weeks at a time.

THE ROLE OF THE STRATEGIC HEALTH AUTHORITY (SHA)

The SHA will inform NCAS about the exclusion, after it has been notified. When an exclusion period has been extended twice, the chief executive of the employing organisation must inform the SHA of any actions which are proposed to resolve the situation. Where re-training or other rehabilitation action is proposed, the reason for continued exclusion must be given.

THE ROLE OF THE TRUST BOARD AND DESIGNATED MEMBERS

The trust board has overall responsibility for ensuring the correct procedures are established and followed. Board members may be required to sit as members of a disciplinary or appeal panel. Information given to the board must be sufficient for the board to satisfy itself that the correct procedures are being followed.

The board will designate one of its non-executive members as a 'designated board member' under these procedures. This individual will oversee the case manager and the investigating manager during the investigation process and ensure that the momentum of the case is maintained.

RETURN TO WORK

If it has been decided that the period of exclusion should end, formal arrangements must be made for the practitioner's return to work. It must be clear whether clinical and other responsibilities are to remain unchanged or what duties and restrictions are to be imposed or if any monitoring arrangements are needed.

RIGHTS OF AN EMPLOYEE DURING THE EXCLUSION PROCESS

- If you wish, you can be represented by colleagues, and/or union officials and you may call witnesses.
- A solicitor can accompany you, but he or she should not act in a legal capacity.
- Those excluded from work should be informed of their right to appeal.
- If you are dismissed or have exhausted local procedures, you have the right to take your case to an employment tribunal.

RIGHTS OF AN EMPLOYER DURING THE EXCLUSION PROCESS

Your employer has a right to expect:

- compliance with the contract of employment
- requisite standards of performance
- concerns to be investigated
- practitioners to cooperate with the process
- information to be shared with other organisations, if there are concerns about patient/staff safety
- the practitioner to be dismissed as necessary.

Checklist for psychiatrists excluded from work

WHAT TO CONSIDER

- Have you read a copy of *Maintaining High Professional Standards in the Modern NHS*?
- How does this document apply to you?
- Is your treatment consistent with *Maintaining High Professional Standards in the Modern NHS*?
- Is there a local policy within your organisation setting out how practitioners undergoing performance or other investigations will be supported?
- Is your treatment consistent with this document?
- Have the issues for which you are being excluded been raised with you previously?
- Have you been offered a reasonable opportunity for remediation?
- Has the trust sent you a copy of their disciplinary rules and other relevant procedures?

ABOUT YOUR CASE

- Have you been informed in writing about the nature of the complaint or allegation?
- Have you received copies of all relevant documentation about the case?
- Does the letter confirming your exclusion contain:
 - effective date and time of exclusion
 - duration (up to 4 weeks) of exclusion
 - content of the allegations
 - terms of the exclusion, such as not returning to the premises, avoiding contact with colleagues and the need to remain available for work
 - that an investigation or other action will follow?
- Have you been given the opportunity to state your case and propose alternatives to exclusion?

MANAGEMENT AND INVESTIGATION OF THE CASE

Do you know?

- Who is managing the case?
- Who is leading the investigation?
- Who will be called as witnesses?

- Have any of the parties involved in the investigation/disciplinary process been involved in making the complaint or allegation?
- If so, do you think this could affect their ability to deal with this matter?

OTHER INFORMATION AND RIGHTS

Have you been informed?

- That your case should be reviewed every 4 weeks?
- Of your right to receive pay throughout the exclusion period?
- That you must be available for meetings during your normal contracted hours, within 24 hours of being asked to attend?
- That you cannot be put on 'trial' for the same issue twice, but account can be taken of previous concerns about your conduct or performance if you are already receiving support or monitoring of these issues?
- You should still be able to have access to occupational health?
- That the Trust should outline arrangements for your continuing professional development, if it is expected that your exclusion will last for some time?

Frequently asked questions

Q: I am on an 'old' employment contract, does this procedure apply to me?

A: Yes, *Maintaining High Professional Standards in the Modern NHS* applies to everyone in England. At the time of printing, Northern Ireland have agreed a similar version but with some crucial differences. Scotland is using its own version of *Health Circular HC(90)9*, as is Wales which is also in the process of agreeing something close to *Maintaining High Professional Standards in the Modern NHS*.

Q: Do I still have the right to appeal to the Secretary of State?

A: The new policy (*Maintaining High Professional Standards in the Modern NHS*) supersedes the right of appeal to the Secretary of State. There may be some exceptional circumstances to this, which can only be assessed by your legal advisers.

Q: What do I do if I have been excluded from work as a result of malicious or vexatious complaints?

A: Speak to your professional advisers about following the disciplinary or grievance procedures in your organisation to seek redress.

Q: I am likely to be excluded from work; is it lawful to be excluded without a face-to-face meeting?

A: The chief executive/medical director must call a meeting with the person threatened with exclusion to

discuss the situation first before a decision is made about excluding the doctor from work. It is not unlawful to exclude without a face-to-face meeting. You do not have to attend the meeting where it is decided to exclude, but where possible you should be informed about the decision face to face.

Q: What happens if my employer fails to follow the MHPS procedure?

A: You and your professional representative will be able to make formal representation to the non-executive director of the board charged with ensuring the procedures for exclusion from work have been properly applied.

Q: What happens if I do not follow the procedure as specified in *Maintaining High Professional Standards in the Modern NHS*?

A: You are required to comply with the obligations imposed on you. If you do not, this could render you subject to further disciplinary action.

Q: Is there a distinction between professional conduct and personal conduct?

A: The principles of *Maintaining High Professional Standards in the Modern NHS* apply to both categories of conduct.

Q: What sources are available for further help and support?

A: The human resources department should be involved in the exclusion process to ensure fairness. Have you been reminded or informed about occupational health services and counselling services available to you?

Q: Should I seek support from others?

A: Look for someone who is not involved in the investigation who can be 'a friendly set of ears' to listen to your concerns, provide advice and support you through your difficulties, for example a mentor. Look after your physical and mental well-being by paying attention to your health, your diet and take exercise that you enjoy.

Sources of further help and support

British Medical Association

BMA House, Tavistock Square
London WC1H 9JP
Tel: 020 7387 4499, Fax: 020 7387 4499
www.bma.org.uk

Society of Clinical Psychiatrists

The Suspended Doctors Group
Honorary Secretary Dr Peter J Tomlin
Tel: 01725 513367

Hospital Consultants and Specialists Association

1 Kingsclere Road, Overton, Basingstoke
Hants RG25 3JA
Tel: 01256 771777, Fax: 01256 770999
Email: conspec@hcsa.com
www.hcsa.com

Medical Defence Union

MDU Services Limited, 230 Blackfriars Road
London SE1 8PJ
Tel: 020 7202 1500
Email: mdu@the-mdu.com
www.the-mdu.com

Medical Defence and Dental Union of Scotland

Mackintosh House, 120 Blythswood Street
Glasgow G2 4EA
Tel: 0141 221 5858, Email: info@mddus.com
www.mddus.com

Medical Protection Society

33 Cavendish Square, London W1G 0PS
Tel: 020 7399 1300, Fax: 020 7399 1301
Email: info@mps.org.uk
www.medicalprotection.org.uk

National Clinical Assessment Service

1st Floor, Market Towers, 1 Nine Elms Lane
London SW8 5NQ
Tel: England and Northern Ireland 020 7062 1655,
Wales 029 2044 7540, Scotland 0131 220 8060; 24-hour
emergency contact 020 7062 1655
Email: advice.service@ncas.npsa.nhs.uk
www.ncas.npsa.nhs.uk

Psychiatrists' Support Service

Royal College of Psychiatrists
17 Belgrave Square, London SW1X 8PG
Tel: 020 7245 0412
Email: psychiatristsupportservice@rcpsych.ac.uk

Reference

DEPARTMENT OF HEALTH (2005) *Maintaining High Professional Standards in the Modern NHS*. Department of Health (http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4103586).

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