

- Being excluded from work is a temporary measure put in place while the employers decide how to resolve a problem.

Being excluded from work can be distressing. It is essential to seek advice the moment you are, or think you are likely to be, excluded or restricted from practice. Find out about the medico-legal and personal conduct representation available from the NHS, professional bodies and medical defence organisations (the PSS website (www.rcpsych.ac.uk/pss) contains a useful list of such organisations under 'Resources').

The process for excluding a doctor from work

NHS trust officers and the trust board have overall responsibility for ensuring the process is quick and fair, kept under review and that the total exclusion period is not prolonged.

- The chief executive ensures the exclusion process is managed fairly.
- The medical director or a senior manager is usually the case manager.
- The investigating officer/case investigator gives factual information to the case manager to weigh up the need for exclusion and provides progress reports to the chief executive and the trust board.

Although it is uncommon, you could be dismissed as a result of exclusion if the allegation is found to be serious.

Immediate exclusion

Immediate time-limited exclusions might be necessary when:

- serious allegations have been made
- relationships between a colleague and the rest of the team have broken down
- the doctor's presence is likely to hinder the investigation.

The manager making the exclusion must:

- explain why the exclusion is happening (there may be no formal allegation at this stage)

- agree a date, up to 2 weeks' maximum, when the doctor should return to work for a further meeting
- advise the doctor of their rights, including representation.

Formal exclusion

Formal exclusion will only be used where:

- there is a need to protect patients or staff awaiting the outcome of a full investigation into allegations of misconduct
- concerns about serious dysfunctions in the operation of a clinical service or the practitioner's capability are serious enough to warrant protecting patients
- the presence of the practitioner in the workplace is likely to hinder the investigation.

Formal exclusion can only happen if the case manager and a case conference decide there is a proper cause to exclude.

If a case investigator is appointed, a preliminary report is prepared for a case conference. This report gives the case manager enough information to decide whether:

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

Review procedures for exclusion

Regular review

Before the end of each 4-week period, the case manager reviews the exclusion and gives an advisory report to the chief executive and the trust board. The case manager decides on next steps. The NHS body must also act before the end of each 4-week period. After three periods of exclusion, the National Clinical Assessment Service (NCAS) must be notified.

The role of the SHA

The Strategic Health Authority (SHA) notifies NCAS about the exclusion. If an exclusion period is extended twice, the chief executive of the employing organisation must let the SHA know any suggested actions to resolve the situation. Where re-training or other rehabilitation action is proposed, the continued exclusion must be explained.

The role of the trust board and designated members

The trust board makes sure procedures are established and followed. Board members might sit as members of a disciplinary or appeal panel. Information given to the board must show correct procedures are being followed.

The board designates one of its non-executive members to oversee the case manager and investigating manager during the investigation process and ensures the momentum of the case is maintained.

Return to work

If it is decided that the exclusion should end, formal arrangements will be made for doctor to return to work. It has to be clearly set out whether clinical and other responsibilities will remain unchanged, what restrictions might be imposed or if any monitoring arrangements are needed.

Rights during the exclusion process

Your rights

- ◇ You can be represented by colleagues and/or union officials and you may call witnesses.
- ◇ A solicitor can accompany you but they should not act in a legal capacity. For more information on whether this is appropriate, contact your Medical Defence Union.
- ◇ You should be informed of your right to appeal.

If you're dismissed or have exhausted local procedures, you have the right to take your case to an employment tribunal.

Your employer's rights

- ◇ Your employer has a right to expect you to comply with your contract.
- ◇ They can expect basic standards of performance from you.
- ◇ They can expect you to cooperate with the process.
- ◇ They have a right to share information with other organisations if there are concerns about patient/staff safety.

Management and investigation of the case

- ◇ Who is managing the case?
- ◇ Who is leading the investigation?
- ◇ Who will be called as witnesses?
- ◇ Are any of the parties involved in the investigation/disciplinary process part of the complaint/allegation? Could this affect their ability to deal with this matter?

Other information and rights

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

FAQs

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

Yes, MHPS applies to everyone in England. Northern Ireland, Scotland and Wales have agreed similar versions but with some crucial differences. Scotland is using its own version of *Health Circular HC(90)9*, as is Wales.

- **Do I still have the right to appeal to the Secretary of State?**

No – MHPS replaces this right of appeal. There may be some exceptional circumstances which can only be assessed by your legal advisers.

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

Speak to your organisation's professional advisers following the disciplinary/grievance procedures to seek redress.

- **Is it lawful to be excluded without a face-to-face meeting?**

There should be a meeting to discuss the situation before a decision is made about exclusion, but it is not unlawful to exclude without a face-to-face meeting.

- **What happens if my employer fails to follow the MHPS procedure?**

You and your professional representative can make a formal appeal to the non-executive director of the board who ensures proper procedures are being followed.

- **What happens if I don't follow the procedure as specified in MPHS?**

If you don't comply with MPHS, you could face further disciplinary action.

- **Is there a distinction between professional conduct and personal conduct?**

No – the principles of MHPS apply to both.

- **What sources are available for further help and support?**

HR should be involved in the exclusion process to ensure fairness. They can inform you about available occupational health and counselling services.

- **Should I seek support from others?**

Someone who is not involved in the investigation, for example a mentor, can listen to your concerns, provide advice and support you in difficulty. Eat well and exercise to help your own physical and mental well-being.

Resources

England

Department of Health (2005) *Maintaining High Professional Standards in the Modern NHS*. Department of Health.

Scotland

Department of Health (1990) *HC(90)16: Consultants' Contracts and Job Plans*. Department of Health.

Wales

Welsh Health Circular, available at: <http://gov.wales/docs/dhss/publications/150417whc017en.pdf>

Health and Care Standards, available at: <http://www.wales.nhs.uk/governance-emanual/health-and-care-standards>

Health and Care Standards Framework, available at: http://www.wales.nhs.uk/sitesplus/documents/1064/24729_Health%20Standards%20Framework_2015_E1.pdf

Checklist for psychiatrists excluded from work

In general

- Have you read a copy of *Maintaining High Professional Standards in the Modern NHS* (MHPS) and determined how it applies to you?
- Is your treatment consistent with the MHPS?
- Is there a policy in your organisation explaining how doctors undergoing investigations will be supported?
- Have the issues you are being excluded for 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 procedures?

About your case

- Have you been informed in writing about the complaint or allegation?
- Have you been given the opportunity to state your case and propose alternatives to exclusion?
- Have you received copies of all relevant documentation about the case?
- Does the letter confirming your exclusion contain:
 - date and time of exclusion?
 - duration of exclusion (up to 4 weeks)?
 - 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?
 - information about what will follow, e.g. an investigation?

Notes

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Produced by the Psychiatrists' Support Service in partnership with Stephen Campion, Chief Executive of the Hospital Consultants and Specialists Association, and Karen Wadman, Senior Human Resources Adviser at the National Clinical Assessment Service.

This leaflet provides guidance and information on best practice as defined in *Maintaining High Professional Standards in the Modern NHS* (Department of Health, 2005). 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 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.