

You're fired! What next?

Plenty of advice exists on work performance, but little guidance is available about how to cope when things go wrong. **Narinder Kapur** outlines his experiences of being sacked and offers advice on dealing with the process

I am a consultant neuropsychologist and was dismissed by Cambridge University Hospitals NHS Foundation Trust in December 2010. My dismissal was “for some other substantial reason,” a catch-all clause that in my case related to an alleged breakdown in relationships with my line manager. My case went to an employment tribunal in March 2012 and I won my claim for unfair dismissal.

Reasons for dismissal

Reasons for dismissal (box) are generally categorised as gross incompetence, gross misconduct, or “some other substantial reason.” Gross incompetence is about your capability and could entail a situation where your action or inaction had the potential to cause serious harm or did lead to serious harm. Gross misconduct could involve a sexual relationship with a current patient or defrauding your employer.

If you have a “reasonable belief” that you have been dismissed because you raised concerns about patient care or safety, your dismissal would be considered to be whistleblowing and there are legal safeguards to prevent your dismissal.

Who will represent you?

At a dismissal and appeal hearing you can usually be accompanied by a representative. This may be a union official, a lawyer, or a colleague and should be someone experienced in handling cases like yours. Ideally, the same person should represent you throughout your case. If a medical defence organisation supports you, it will take care of legal representation.

How do you handle a dismissal hearing?

Every dismissed NHS employee undergoes a formal dismissal hearing, but each NHS employer has its own disciplinary procedures. You and your representative should scrutinise the procedures relating to your situation. You will be asked to submit documentation in advance and to list witnesses who will be called. You will probably call colleagues to the dismissal hearing to support your points. If your witnesses cannot give oral evidence, they can send written submissions. At the hearing, the main thrust will be cross examination of your case, the management case, and any witnesses. Your representative may question witnesses and you should also have an opportunity to do so.

The Department of Health has guidelines on the constitution of the dismissal hearing panel

when the dismissal issue is deemed to be one of a doctor's capability.¹ Guidelines for conduct dismissal hearing panels rely on local procedures so, if you are being heard under conduct procedures, try to ensure that the dismissal hearing panel includes independent members and receives independent advice.

The dismissal hearing itself will usually last a day. If you think it should last longer, for instance because of the number of witnesses you plan to call, submit a request before the hearing. It may prove beneficial to obtain agreement for the hearing to be recorded, and for a transcript to be made.

You may be given a choice as to whether you wish to learn about the outcome of the dismissal hearing in writing only or in person and later in writing. Hearing the outcome in person gives you an opportunity to raise any minor concerns, although you cannot argue about the decision of the dismissal hearing itself.

Should you fight your dismissal?

In deciding whether to appeal a dismissal decision, at either an internal appeal hearing or an external hearing in a legal setting such as an employment tribunal, it is worth considering the time and preparation involved and whether you are paying

REASONS FOR DISMISSAL

Examples of fair dismissal

- Repeated clinical errors over an extended period of time that caused harm to patients
- Stealing equipment from your employer
- Improper sexual behaviour
- Embezzling your employer out of large sums of money
- Repeatedly refusing to carry out parts of your agreed job description, with detriment to patient care

Examples of unfair dismissal

- Making a one-off minor clinical error that did not result in harm to a patient
- One occasion of losing your temper and swearing in a confrontation with a difficult colleague
- Not getting on with your line manager over points of principle relating to patient care
- Raising concerns about patient safety and being dismissed under the pretext of “bringing your employer into disrepute”
- Where you suffered stress and discrimination on the grounds of your sex, race, or religious views and felt obliged to resign



for legal representation. You may wish to consult with colleagues and consider whether you can continue working in a setting where you have suffered the stress and stigma of dismissal.

How do you handle an appeal hearing?

An appeal hearing will usually focus on whether the dismissal hearing was fair. Try to obtain any relevant documentation and clarification on whether the appeal hearing is a re-hearing or just a review of the procedures adopted at the dismissal hearing.

Many of the procedures in an appeal hearing will overlap with those at the dismissal hearing, such as preparation of statements, calling witnesses, and cross examination. There will be some new preparation involved because you may wish to submit evidence and statements addressing the reasons given for dismissal. Also, some witnesses who could not previously give oral evidence may now be available.

It is worth thinking about whether members of the appeal hearing panel have close links with any members of the dismissal panel. If they do, you should think about whether you want to raise this as an issue before the appeal hearing takes place.

How do you handle an employment tribunal hearing?

If you lose at the dismissal and appeal hearings, you may decide to take your case to an employment tribunal. Going to an employment tribunal is not a decision to take lightly as it will be stressful and cost you time and money. If you decide to do so, you should have clear grounds that the dismissal and appeal hearings were



Compromise agreements are a common way of ending a difficult relationship, but you should not accept a gagging clause that stops you raising concerns about patient safety

biased, that evidence presented was forensically flawed, or that witnesses who gave key evidence against you were not trustworthy. You will have a strong case if you can show that your employer broke the law, especially in respect of race or sex discrimination, or penalised you unfairly because you were a whistleblower.

You must have worked for your employer for at least two years to have the right to go to an employment tribunal for unfair dismissal. Except in cases of whistleblowing, discrimination, or pregnancy, you must lodge documents with the employment tribunal within three months of dismissal, so do not wait until you hear the outcome of an internal appeal hearing.

An employment tribunal cannot force your employer to reinstate you, and for unfair dismissals that do not involve discrimination or whistleblowing the amount of compensation is capped, so your lawyer may suggest other avenues, such as judicial review in the High Court.

If you do not have a lawyer, ask as many knowledgeable people as possible before you choose one. A solicitor can run the employment tribunal case so you may not need to employ a barrister, although the “other side” is likely to have employed a senior barrister to make its case. Hiring a clerk to transcribe what is said at the hearing will add to your costs, but is useful, especially when it comes to your closing submission.

Employment tribunal hearings generally last from several days to several weeks. You will need to decide well before the hearing which witnesses you are going to call. Only call witnesses who will say something solid and important to support your case. Tell your witnesses what to expect at the hearing, what questions they might be asked, and how to address the judge and remain calm during cross-examination. Your witnesses are doing you a favour, so offer to pay any travel or accommodation expenses they incur.

Tribunals usually deliver a written judgment within 28 days, but for complex cases it may be several months before you learn the outcome of your employment tribunal hearing. The written judgment will be sent to your lawyer and you have 14 days from the time your lawyer receives the judgment to ask for a review. A review will only be agreed in exceptional circumstances, for instance if a decisive piece of evidence emerges after the employment tribunal hearing.

How do you deal with the outcome of an employment tribunal hearing?

If you win your case and are seeking compensation you have 28 days to ask the tribunal to hold a remedy hearing. Compensation can involve a request to return to the same post or to move to another post. Within this time window both sides may come to an agreement, but the option of a remedy hearing is available if they do not.

You can lodge an appeal to an employment appeal tribunal up to 42 days after the judgment. This will generally only be allowed in special circumstances, for example if you consider that the law was not appropriately applied at the original

hearing or that the decision was perverse. Such appeal hearings can take one or two years to occur and, if the side seeking an appeal loses, there may be financial costs to consider. You can also appeal a decision of the employment appeal tribunal by going to the Court of Appeal.

Do you accept an exit package, compromise agreement, or gagging clause?

An exit package or compromise agreement usually involves you leaving the employer or giving up legal action in return for a financial settlement or funded retraining package. Compromise agreements are a common way of ending a difficult relationship, but you should not accept a gagging clause that stops you raising concerns about patient safety. It is useful to obtain expert legal advice on compromise agreements and gagging clauses.

In the case of a compromise agreement, the financial settlement offered by your employer will generally be modest and will usually not exceed one year's salary. An important consideration when deciding whether to accept such a settlement is the likelihood of winning at an employment tribunal. In any agreement with a past employer, it is fair to insist that they say nothing orally or in writing to other employers that could harm your job prospects and you may want to include penalty clauses to this effect in any agreement.

My key piece of advice to someone going through a dismissal process is to occasionally stand back and put things in context. Try to remind yourself that there are worse ordeals than dismissal from a professional position in a Western healthcare setting. Engage the support and advice of friends and colleagues, and focus on the light at the end of the tunnel.

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1 Department of Health. Maintaining high professional standards. DH, 2006.

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FURTHER INFORMATION

A Better NHS—www.abetternhs.com
Doctors Support Group—www.doctorsupportgroup.com
Patients First—www.patientsfirst.org.uk
Ministry of Justice—www.justice.gov.uk
Employment tribunal claims—www.etclaims.co.uk
ACAS—www.acas.org.uk
Citizens Advice Bureau—www.adviceguide.org.uk
Campaign against Unnecessary Suspensions and Exclusions in the UK—www.suspension-nhs.org
Doctors Defence Service UK—www.doctorsdefenceservice.com