

Advisory Group Recommendations

Recommendation 1

NHS trusts should take measures to review and improve their processes and decision-making in respect of investigations and disciplinary hearings, as follows:

1(a) Adhering to best practice guidance

- i. The development and application of local investigation and disciplinary procedures should be informed and underpinned by the provisions of current best practice guidance, principally the Acas 'code of practice on disciplinary and grievance procedures' and other non-statutory Acas guidance; the GMC's 'principles of a good investigation'; and the NMC's 'best practice guidance on local investigations' (when published).
- ii. Employers should take every measure to ensure complete independence and objectivity is maintained at each stage of an investigation and disciplinary procedure, and that identified or perceived conflicts of interest are recognised and appropriately mitigated. This may require the sourcing of independent external advice and expertise to ensure the quality and integrity of procedures and appropriate measures are taken to mitigate the risks associated with either conscious or unconscious bias.

1(b) Applying a rigorous decision-making methodology

- i. Consistent with the application of 'just culture' principles, which recognise that it is not always appropriate or necessary to invoke formal management action in response to a concern or incident, employers should apply a decision-making methodology that provides for full and careful consideration of context and prevailing factors when determining next steps (a recommended or prescribed decision-making methodology could be included within the common management framework proposed below).
- ii. Where significant decisions need to be taken, for example those which relate to suspensions (beyond immediate short-term suspensions) and potential dismissals, the principle of plurality in safe decision-making should always be applied, in order that such actions are not determined by one person alone.

1(c) Implementing a common management framework

The procedures established by 'Maintaining High Professional Standards in the Modern NHS (a framework for the initial handling of concerns about doctors and dentists)' should inform the development and implementation of a common management framework for handling concerns relating to all NHS Staff, regardless of profession, role or the type of NHS organisation they work for. Once implemented, CQC should consider including the application of the common management framework by employers, together with scrutiny of the quality and outcomes of local investigation and disciplinary procedures, within the 'Well-led' assessment domain.

Recommendation 2

People are fully supported, and resources appropriately committed, to ensure the professional conduct of investigation and disciplinary processes, as follows:

2(a) Ensuring people are appropriately trained and competent

Employers should only appoint individuals as case managers, case investigators and panel members who have received up to date comprehensive training and who, through such training, are able to demonstrate the aptitude and competencies (in areas such as objective critical thinking and assessment of information, awareness of relevant aspects of employment law and best practice, and appreciation of race and cultural factors) required to undertake these roles.

2(b) Allocating sufficient time and resources

Before commencing investigation procedures, organisations should ensure that appointed case managers, case investigators and other individuals charged with specific responsibilities are allocated sufficient time and resources that will fully support the timely completion of investigation and disciplinary processes. Within the overall context of 'resourcing', full consideration should also be given to the extent to which individuals involved in these processes (especially panels) are truly independent.

2(c) Protecting the health and wellbeing of staff involved in disciplinary processes

- i. Concern for the health and welfare of individuals involved in investigation and disciplinary procedures should be paramount and continually assessed, and appropriate professional occupational health assessments and interventions (together with signposting to employee assistance programmes, where available) are provided to any member of staff who either requests or is identified as requiring such support. In this respect, an understanding and appreciation of the relevance of cultural and individual backgrounds should always be a consideration.
- ii. A communication plan should be established with individuals who are the subject of an investigation or disciplinary procedure and this plan should form part of the associated terms of reference. The underlying principle should be that all communication, in whatever form, is timely; comprehensive and unambiguous; sensitive; and compassionate. Wherever possible, contact with individuals should be undertaken in person, or otherwise verbally, and supported in writing.
- iii. Where a member of staff who is the subject of an investigation or disciplinary procedure suffers any form of serious harm, whether physical or mental, this should be treated as a 'never event' which therefore is the subject of an immediate independent investigation commissioned and received by the board. Further, the board should take prompt action to address the identified harm and its causes.

iv. In cases where legal proceedings conclude that an individual has been wrongfully treated as a consequence of a poorly or inappropriately applied investigation and/or disciplinary process, NHS England and NHS Improvement should obtain assurance that the employer has taken/is taking appropriate measures to: understand how the situation arose; mitigate the same mistakes being replicated; hold responsible persons to account for any wrongful actions; and provide support to the wronged individual. In this latter respect, consideration should be given to extending participation in the 'whistleblower employment support scheme' to include such individuals.

Recommendation 3

Investigation and disciplinary processes should be open to improved scrutiny through sharing of appropriate information and proactive reporting of progress, as follows:

3(a) Using latest research; sharing relevant information with other NHS organisations via appropriate communications routes; and collating and reporting data for board scrutiny

i. Culture-change and leadership development interventions associated with the NHS People Plan should be informed by contemporary research and insight relating to the impact of investigation and disciplinary procedures on the welfare of staff and the workplace environment (there is a requirement for further research and insight in this area, which could be commissioned from independent expert organisations such as the Health Foundation).

ii. Via the appropriate People Plan workstream(s), NHS England and NHS Improvement should capture and promulgate initiatives, interventions and improvements relating to the conduct of investigation and disciplinary procedures that either have been implemented, or are being progressed, at local employer level. In doing so, there should be an emphasis on highlighting practices which aim to resolve issues and concerns without recourse to formal procedures.

iii. Employers should establish mechanisms by which comprehensive data relating to investigation and disciplinary procedures is collated, recorded, and regularly and openly reported at board level. Data collation and reporting should include: numbers of procedures; reasons for those procedures; adherence to process; justification for any suspensions; decision-making relating to outcomes; impact on patient care and staff; and lessons learnt, all of which the CQC should consider including in its assessment of the 'Well-led' domain.

Recommendation 4

Guidance relating to investigation and disciplinary processes is up to date and fit for purpose, as follows:

Healthcare regulatory and professional bodies should consider reviewing their respective guidance and standards issued to their registrants, which relate to the

management and conduct of local investigations and disciplinary procedures, to ensure fairness, consistency and alignment.

Recommendation 5

Pending the acceptance and implementation of these recommendations, the following action should be taken:

Interim guidance is developed in partnership with trades union bodies, through the Social Partnership Forum, that sets out NHS England's and NHS Improvement's expectations of employers regarding their conduct in applying and managing local investigation and disciplinary procedures. NHS England and NHS Improvement should further consider how it might provide oversight of adherence to the interim guidance.