

Advice Sheet 14: Advice for Stewards and Safety Reps

Virtual investigations and hearings during Covid-19

NB. This guidance is only relevant during the Covid-19 situation. At all other times we would expect the trust/health board/employer policies to be adhered to.

Starting Point – Should the Meeting or Hearing Proceed?

NHS

Partnership groups in all four countries have made statements about the pausing of disciplinary and all other employment procedures while the crisis lasts. As we start to come out of the crisis trusts and health boards will want to enter into discussion on how to restart these processes. If discussions on this start in your area, please check any country specific guidance and raise it with your SNO.

Outside the NHS

Because many CSP members are key workers and so are still present in the workplace, it is tempting for employers to assume that it will be business as usual for investigations and hearings.

Some employers are taking the decision to postpone all meetings – if this is the decision then all staff with an open case should be written to, and anticipated timescales given. It should also mention that they may appeal the decision to postpone the meeting, or ask that the decision be revisited at any time.

General Considerations as to whether to proceed

With grievances, we feel it is important that the facts be heard as near to the event as possible. However, it is important to consider does the member have access to all the information they require to support their grievance, if for example they are not at their normal place of work or if patient notes or e-mails or minutes of a meeting are not able to be accessed

It is also important to consider if delaying a hearing could have an adverse impact on a member's health and wellbeing.

With sickness absence meetings it is important to be clear on when members may suffer financial difficulties, (e.g. in the NHS would delaying a meeting result in a member going on to half pay or nil pay and if so, will the employer extend this deadline - they have the discretion to do so under paragraph 14.13 of Agenda for Change).

Alternatively, a member may not have the mental or emotional ability to deal with a hearing or investigation during the Covid crisis so it may be considered preferable to postpone.

If you are unsure, please discuss with your SNO.

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Remember that as a rep, your job is to guide the member through policy and procedure. All decisions will remain the member's. However, if you have to attend a meeting in person, then you need to make a risk assessment on the ability to maintain social distancing and on any risk from travelling.

Current CSP advice to their staff, including SNOs, (as at October 2020) is that they should only attend face to face meetings in exceptional circumstances, and only after a full risk assessment has been carried out. However, if you are at work anyway, and providing social distancing guidelines can be met, it is preferable for any meeting to take place in person rather than virtually.

If the Hearing is to Proceed Virtually

All relevant UK legislation, and the ACAS Codes of Practice on Disciplinary and Grievance (LRA guidance in Northern Ireland), still apply during the pandemic. That means that employers have to treat staff fairly, giving them all reasonable opportunities to defend themselves, state their case, and must safeguard their health and wellbeing.

ACAS has some useful guidance here: <https://www.acas.org.uk/disciplinary-grievance-procedures-during-coronavirus>

Remote hearings are a new thing for many of us so there are some key things to consider before agreeing to it.

- Has everyone involved got access to the technology needed for video meetings, for example the necessary equipment and an adequate internet connection? If the member does not have this at home can they safely attend the workplace and have secure private access there.
- Does anyone involved have any disability or other accessibility issues that might affect their ability to use video technology, and are any reasonable adjustments needed? It is worth asking for an equality impact assessment to take place to ensure that virtual representation is suitable.
- Can any witness statements or other evidence be seen clearly by everyone involved during the hearing? Paperwork should be shared in advance in reasonable timescales – extended from the normal procedure if necessary - if there is no way of sharing things on the day. It also should not be expected that the member has to incur costs in printing of materials the employer should provide this if it will be required.
- Will it be possible to fairly assess and question evidence given by people interviewed in a video meeting?
- Will it be possible to get hold of all the evidence needed for the investigation or hearing, for example records or files that are kept in the office?
- All parties should have a test run of the technology in advance of the hearing to ensure there are no issues on the day.

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- All parties must ensure confidentiality can be maintained – this is especially important if someone is at home.
- Ensure that the system used is secure and no-one else can enter the meeting.

If there are issues with any of these points, then the meeting should be postponed.

If the meeting is going ahead, please consider these issues:

- With a remote meeting as with a meeting in person preparation is vital
- All remote meetings must have video conferencing and cameras must be turned on. Non-verbal cues are important. If the management side refuse to use the cameras, ask for the meeting to be postponed as it is not a fair way for a member to represent themselves. If they will not postpone, then ask for your objection to this to be formally recorded.
- Remind your member this is a formal process and so to dress appropriately. Remind them that on VC your face might take up the whole screen so try hard not to eye roll or make other unhelpful facial responses.
- Establish how adjournments will be dealt with and ensure you have a means of communicating with the member privately in any adjournment – we do not advise using the private chat function in any of the video conferencing facilities as it is too easy to accidentally send your comment to all not just to your member.
- Because you are not in the same space as your member, you may require more adjournments than usual. Do not be afraid to ask for an adjournment
- If it is an investigatory meeting and the questions, go in a direction you and the member had not anticipated then adjourn to discuss the questions and does the member have the information at hand to answer them.
- If you have any concerns, ask for the meeting to stop and be reconvened
- Have a clear and agreed way for you and the member to talk after the meeting – will they phone you will you phone them. You would not leave a meeting in person without talking to the member so it is important to debrief afterwards.

If you have any questions, please contact your SNO in the first instance.