

NHS Wales

COVID – 19 (Coronavirus)

Additional guidance on the FAQ relating to the management of disciplinary matters, grievances, and other formal processes during the Covid-19 response.

Coronavirus (COVID-19) remains an unprecedented challenge for the country and the health and care sector and the changes in our services and ways of working will last longer than was initially anticipated, re-starting services safely while maintaining capacity to treat COVID-19 is a new and more complex challenge for us all.

The Welsh Partnership Forum recognises that the situation remains uncertain and the FAQs regarding our response to the crisis will continue to evolve. One such area relates to the management of disciplinary matters, grievances, and other formal processes and this additional guidance outlines how arrangements will be supported and managed so as to ensure that all parties interests are appropriately taken into account in progressing these matters allowing for each case to be assessed on its own merits..

The COVID – 19 (Coronavirus) Frequently Asked Questions for NHS Managers and Employers includes the following question and answer:

Q: Will formal processes and timescales in workforce policies and procedures be suspended during the crisis?

A: There is no single position on this, and all organisations are looking at the circumstances and context of individual matters. The overriding message is that the matter should be resolved/concluded in a speedy and pragmatic way or “parked”, in both instances with the consent of all the parties. Matters may be progressed through the use of a virtual hearing and in these circumstances, the impact on the individual will need to be given due consideration, e.g. practicalities of adjourning and discussing matters with their representative, support available. In instances, where the hearing has potential for a dismissal, i.e. Serious or Gross Misconduct, the arrangements should be discussed in advance and where possible, and with the agreement of all parties, a face to face hearing held with social distancing measures put in place. In respect of disciplinary matters there are further considerations which need to be considered where individuals are suspended or have their clinical practice restricted and these will be looked at on a case by case basis.

The following guidance provides further detail on the practical application of the detail of this FAQ.

Reviewing cases: Where these matters were paused because of the emergency, employers should review resultant caseloads using principles agreed with their local staff side to manage the impact on all parties of any backlog fairly and thoroughly. Factors to consider include whether a formal process is needed taking account of our NHS Wales Core Principles, the seriousness of the case, getting staff back in work and the health and wellbeing of all employees involved in the matter.

Pragmatic outcomes without the need for formal processes, with agreement of the employee, and after consultation with trade union representatives, should always be considered first. This is consistent with our shared approach to the development of a healthy working environment and for managers to make proportionate decisions based on the knowledge of their own staff and teams.

NHS organisations should also take the opportunity to review their caseloads to identify where there are cases with allegations of serious or gross misconduct which upon review it is determined that any action would in all likelihood result in a sanction short of dismissal. The review of individual cases should be led by the case commissioning manager and should involve a discussion with trade union colleagues. The final decision will remain with the case commissioning manager. If, following deliberation, the commissioning manager determines that in progressing the matter, dismissal will not be one of the

sanctions that will be under consideration then a meeting in accordance with the appropriate procedure, which may be virtual, should be held with the individual and their representative.

Lower level casework (for example, sickness and capability triggers) can continue to be paused during this period, particularly where there are capacity shortages. Casework should be progressed where the union representative/employee requests to proceed e.g. to end uncertainty or anxiety.

Hearings and procedures: The principles of natural justice and adherence to employment policies should continue to apply where hearings and procedures do go ahead, especially the right to union representation. All parties will actively work together to enable and facilitate the effective holding of a hearing where this is required and in this regard the WPF partners recognise the following adjustments may need to be considered:

- **Timescales:** These may need to be extended beyond those set out in policies, by agreement and on the basis of no detriment. Extra preparation time may also be needed. Urgent grievances or concerns, for example, around health and safety, should be a priority and every effort made for these to meet the normal timeframes in local policies.
- **Virtual meetings:** Given physical distancing rules and restrictions on travel, virtual meetings can be used with the agreement of all parties following a joint assessment of all the relevant factors for the employee, their representative and the employer. Consideration of factors such as the equalities impact or whether the hearing is likely to result in dismissal are important to ensure that the process is fair for all parties. Also relevant are meeting platforms so as to allow employees to confer privately with their representative, protocols and training on equipment use, ensuring the full visibility and audibility of participants and limits on screen time with regular breaks. ACAS has produced [guidance](#) which you may want to use as a resource.
- **Physical meetings:** It may be necessary to hold a meeting physically e.g. where a matter may potentially result in dismissal. In these situations, strict physical distancing arrangements must be observed. The parties should agree in advance how the arrangements are to put in place to the satisfaction of all parties and the arrangements must be proportionate and reasonable and follow the provisions set out in the Welsh Government guidance "[Taking all reasonable measures to maintain physical distancing in the workplace](#)" and appropriate risk assessment. If these arrangements are not in place on the day, parties have the right to withdraw.