

Adjudicating panels in healthcare need reform

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Employers in the NHS use adjudicating panels for recruitment and disciplinary procedures; the panels are also used by regulatory bodies to pass judgments on healthcare professionals. Mistakes by panels are costly to patients, staff and to the public purse.

I would like to propose two sets of principles to ensure justice, efficiency and compassion in the way panels work: one is aimed directly at panels and the second applies to the outcomes of disciplinary hearings. The first set is called PIPE and is derived from **p**lurality, **i**ndependence, **p**anel training and **e**xpertise. The second is PRIME, which is derived from **p**roportionality, **r**emediation, **i**mpact assessment, **m**ediation and, finally, **e**xternal expertise to advise on the preceding four principles.

Adjudicating panels abound in healthcare, but they are predominantly used in recruitment and disciplinary procedures. When panels make mistakes, the consequences can result in harm to patients, provoke feelings of injustice, have a detrimental effect on staff wellbeing and lead to substantive waste of precious public resources.

The tragic suicide of award-winning nurse Amin Abdullah in February 2016 brought into sharp focus the need for action and a change in the status quo (Royles and Kapur, 2016). Flaws in the current systems include:

- Double standards in the NHS, with one set of disciplinary policies and procedures for doctors and dentists,

and another for other NHS staff.

This divide clearly sows the seeds for justifiable complaints of unfairness

- Antiquated disciplinary procedures that are not fit for purpose. Employment arbitration service ACAS guidelines were never drawn up with health staff in mind. Even when the guidelines are not ignored, they are vague enough to be abused
- A disproportionate impact on black and minority ethnic (BME) staff in terms of recruitment and disciplinary settings, as the recent NHS Workforce Race Equality Standards report found (NHS Equality and Diversity Council, 2017)
- Procedures that are damaging to morale and motivation, and have a negative effect on employer-employee trust and confidence
- Whistleblowers being undermined when it comes to recruitment and disciplinary processes.

There has so far been little attempt to rigorously examine what can be done to improve a situation that is regarded as unsatisfactory (Times Legal Brief, 2016; 2017). My proposals would result in improvements in staff recruitment and disciplinary procedures.

PIPE principles

Both recruitment and disciplinary panels should adhere to the four key principles outlined above: plurality, independence, panel training to prevent bias, and expertise. Aside from training to prevent bias, which is crucial, it

is rare for these principles not to be respected in recruitment, so I will mainly discuss their application in disciplinary settings.

Plurality

This means simply having more than one person on an investigatory or dismissal panel, since at present Trusts are allowed to have a single dismissing officer deciding the fate and livelihood of a non-medical member of staff.

Independence

An investigatory or disciplinary panel should have members who are independent of the employer, including an independent panel chair, to help prevent conscious and unconscious bias and prevent kangaroo courts and witch hunts.

Panel training

To prevent bias panels would need to undergo formal and regular training in bias prevention. There is no requirement for any staff involved in dealing with a dispute to undergo training in conscious or unconscious bias, even though there is ample evidence, including from employment tribunal judgments, that bias is likely to occur in such settings. Unconscious bias is now widely recognised as a major issue in healthcare (Kapur, 2015).

Expertise

Relevant expertise should be brought in whether it be an individual from



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the speciality of the staff member under investigation, or someone with expertise in wider issues. This could involve including a panel member/adviser with experience in whistleblowing or BME issues if this were pertinent to the case.

PRIME principles

These principles apply mainly to the outcomes of disciplinary hearings run by employers or regulatory bodies.

Proportionality

This would ensure that the past record of the staff member is taken into account, whether patients were harmed in their care, whether any wrongdoing was deliberate, whether the person showed insight and remorse if he/she has done wrong, and the likelihood of a future similar offence being committed, etc.

At present, NHS employers are in a difficult position, because they often only have the choice between retaining and sacking someone. A system that respected proportionality might involve, for example, staff losing between one and three months' salary for offences categorised in a reformed

framework as serious at graduated levels, but not classed as dismissible. Such a system could also involve having a 'two written warnings' rule for some cases that would be currently classed as 'gross misconduct'.

Remediation

There would be a requirement for a formal assessment to determine how likely remediation, which might include retraining, attending relevant courses and so on, would be to improve the alleged deficiencies either in the individual or other key players.

Impact assessment

An evaluation of the planned punishment on the individual, their family, finances, wellbeing, etc. would be undertaken. This would include recommendations on ways to mitigate any negative effects, and would examine how relevant psychological or other support could be provided, including redeployment.

Mediation

This would be used to resolve conflict scenarios, which are common in healthcare (Kim, 2017). They would

involve not only ensuring that, where appropriate, formal mediation was undertaken, but also that both sides made genuine attempts to engage with the mediation.

External

External, expert assessment of these four principles would ensure they were explored in a fair and thorough manner.

Conclusion

In statement in the House of Commons just over a year ago, health secretary Jeremy Hunt stated that a 'culture change must also extend to Trust disciplinary procedures', presaging a call for action.

And the time for action is now. As part of its 'well-led' remit, the Care Quality Commission should be tasked with ensuring that principles such as those I have outlined are enacted by NHS employers, both for recruitment and disciplinary procedures. The Professional Standards Authority should provide similar oversight to regulatory bodies for their use of disciplinary procedures. [BJHCM](#)

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