



Workforce

Formal hearing guide

The following guide forms part of the standard for workforce policies that apply to all staff within NHSScotland regardless of which Board they are employed by.

Formal hearing process

When does this apply?

- formal appeal hearings
- formal attendance hearings
- formal capability hearing
- formal conduct hearings
- formal grievance hearings
- formal review hearings

Who should be present?

The following parties will be present throughout the hearing:

- Manager(s) hearing the case
- Member of the human resources (HR) team
- Investigating manager, or in grievance / appeal / review cases, the manager who took the decision and HR support
- Employee(s) and their representative

In the case of appeals against dismissal the panel will consist of:

- non-executive director
- executive director
- HR representative not previously involved

Witnesses

Witnesses will attend only for the period of time when they are being asked to present their evidence and respond to questions.

Professional / technical / educational advice

In certain cases it may be appropriate for the hearing panel chair to obtain professional advice relating to the case. This person would sit on the panel.

Representation

Employees have the right to be represented by a trade union representative or accompanied by a work colleague at a formal hearing. The representative is allowed to address the hearing, but not answer questions on the employee's behalf.

Witnesses also have the right to be accompanied at the hearing.

Process

1. Introduction

The Chair will:

- introduce those present
- outline the procedure for hearing

The standard hearing process is as follows:

2. Management Representative / Investigating Manager presents case

- The management representative will outline the case by going through the evidence.
- The management representative will call any witnesses to support the case as appropriate.
- All parties will question the witnesses.
- The employee and / or representative will be given the opportunity to question the Management Representative about the case.
- The hearing Chair and adviser will have the opportunity to question the management representative about the case.

3. Employee or representative presents case

- The employee / their representative will present their case, including any explanation and / or mitigating circumstances to be taken into account.

- The employee and / or representative will call any witnesses in support of their case, as appropriate.
- All parties will question the witnesses.
- The decision-making manager and HR support will have the opportunity to question the employee about their case.
- The hearing Chair and advisers will have the opportunity to question the employee about their case.

In cases of grievance and appeals the process is as follows:

2. Employee or representative presents case

- The employee / their representative will present their case, including any explanation and / or mitigating circumstances to be taken into account.
- The employee and / or representative will call any witnesses in support of their case, as appropriate.
- All parties will question the witnesses.
- The decision-making manager and HR support will have the opportunity to question the employee about their case.
- The hearing Chair and advisers will have the opportunity to question the employee about their case.

3. Management representative presents case

- The management representative will outline the case by going through the evidence.
- The management representative will call any witnesses to support the case as appropriate.
- All parties will question the witnesses.
- The employee and / or representative will be given the opportunity to question the management representative about the case.
- The hearing Chair and adviser will have the opportunity to question the management representative about the case.

4. Consideration of investigation evidence in grievance cases

Where an investigation of the grievance concerns was undertaken the evidence will be considered as follows:

- The investigating manager will present the findings of the investigation.
- The employee and / or representative will be given the opportunity to question the investigating manager.
- The decision-making manager and HR support will be given the opportunity to question the investigating manager.
- The hearing Chair and adviser will have the opportunity to question the investigating manager.

5. Summing up

- The management representative or investigating manager will summarise their case.
- The employee and / or representative will summarise their case.
- No new information may be brought in at this stage.

6. Adjournment for hearing manager to consider case m

The hearing Manager will inform the employee and representative, whether they will be able to give an outcome on the day.

If they are unable to confirm an outcome on the day, they will confirm to the employee whether they will reconvene or notify the employee in writing of the outcome within 7 calendar days following the hearing.

A formal note of the hearing should be prepared and shared with all parties.