**Doctors’ and dentists’ contractual disciplinary and capability process under the NHS Circular No 1990 (PCS) 8 Circular – detailed guidance for Chiefs of Medicine and other medical managers.**

Concerns come to light

Step 1. Defining the allegation: the Preliminary Enquiry

The purpose of the PE is to establish if there is substance to the allegation and to categorise the allegation (and therefore which process to follow) on the basis of what the allegation actually says. If categorised as personal misconduct, this can be challenged on appeal, and so, in order to assist in making a decision which is defensible, it is helpful to have an allegation which:

* is specific rather than vague;
* gives an indication of the seriousness of the conduct or capability issue, including whether, if established as true, could justify dismissal; and
* is described sufficiently clearly to allow a decision to made on whether the allegation as stated appears to amount to a conduct issue or a capability issue.

The CoM or equivalent makes preliminary enquiries to determine

a) whether the concerns appear to have any substance (as opposed to having no substance at all), and

b) what category the allegations, if well founded, would fall into. The choice of category includes within it a choice of process.

Definitions of conduct or capability within Board policies should be used for reference.

The preliminary enquiry will involve discussing the allegations with the practitioner. See [Guidance on conducting a Preliminary Enquiry - NHSGGC](https://www.nhsggc.scot/downloads/guidance-on-conducting-a-preliminary-enquiry/)

The preliminary enquiry does not mean carrying out a full investigation. The CoM is only trying to establish if there is substance to the allegations, what kind of issue this is and how it might be best dealt with. This is done on the basis of what is alleged about the practitioner, and their initial response. It involves a relatively superficial initial assessment. The deeper assessment comes later, once a procedure is chosen.

The COM should be able to justify the decision on categorisation, including explaining why other process options (sick doctors, informal handling) were not chosen. A note should be made of the reasons, for possible later reference, or the reasons should be set out in correspondence.

The CoM informs the practitioner of the classification decision (including whether it is conduct or competence), what this means in terms of process, and if classified as personal misconduct, of the right of appeal (within 7 days) against that decision.

Appeal against classification[[1]](#footnote-1)

If classification (as personal misconduct only, there is no right of appeal against a classification as professional misconduct) is appealed, an independent appeal committee is convened, and the appeal hearing is held. You will need to seek advice from medical staffing on this.

Applying the correct procedure

If the allegation has been classified as personal conduct, then you should proceed to investigation using the [Workforce Policies Investigation Process Overview | NHS Scotland Careers](https://workforce.nhs.scot/policies/workforce-policies-investigation-process-overview/).

If professional conduct or competence then consider Annex B or C. (Annex A will only usually be considered where there has been a repeated failure to meet contractual obligations). **Discuss with relevant DMD and Medical staffing**.

For Annex B (if allegation is of a less serious nature and will not ordinarily lead to consideration of dismissal) then the necessary steps are:

1. Inform the doctor of the outcome of the PE and send the Annex B template letter, copy of the PE and relevant guidance.
2. Convene the Annex B panel. **Discuss with Medical Staffing**
3. Prepare management case – this is not an investigation simply the evidence gathered for the PE that sets out the details of the allegations and a summary of the relevant facts. This should be completed within 4 weeks and should be shared with the panel and the employee.
4. Await the outcome of the Annex B investigation and consider any disciplinary action thereafter.

For Annex C (for more serious allegations that could lead to action up to and including dismissal).

1. Inform the employee of the outcome of the PE and send the Annex C template letter, copy of the PE and relevant guidance. Consider if any suspension or other restrictions are necessary and ensure necessary guidance on suspension and actions thereafter are followed. Ensure that there is a Designated Contact Person who will make contact with the employee on at least a monthly basis.
2. Initiate further preliminary investigations to establish if there is a prima facie case. For this purpose use the [Workforce Policies Investigation Process Overview | NHS Scotland Careers](https://workforce.nhs.scot/policies/workforce-policies-investigation-process-overview/) which has statement templates and other guidance but the scope of these investigations is simply to establish if there is sufficient evidence to justify an inquiry under Annex C.
3. On completion of the investigation if the COM and DMD decide there is no prima facie case then the investigation is concluded and any suspension lifted.
4. Otherwise the practitioner should be informed in writing that the question of an Annex C is under consideration. All documents and statements will be shared with the employee and the employee will be given 4 weeks to respond.
5. The CoM and DMD will then consider the investigation report and the responses of the employee. Where they believe that a prima facie exists and there is no substantial dispute of facts a disciplinary hearing is convened without the need for further investigation by the Annex C panel.
6. If the facts are disputed by the employee the COM and DMD will discuss the case with the CLO before convening the Annex C panel to investigate in detail.
7. Following completion of the Annex C inquiry the CoM/DMD will consider the findings and take the necessary next steps, convening a disciplinary hearing if appropriate.

1. Circular PCS DD 2001/9 [Discipline Procedures - Classification of Conduct - NHSGGC](https://www.nhsggc.scot/downloads/discipline-procedures-classification-of-conduct/). The right of appeal should be exercised within 7 days of receipt [↑](#footnote-ref-1)