Documents panels use when deciding cases

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Overview

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In order to help panels of the Investigating and Fitness to Practise Committees consider allegations and make fair decisions, we provide them with the information we’ve obtained throughout the investigation. This is a group of documents called the document bundle.

This helps the smooth running of the decision-making process at a hearing or meeting.

In order to comply with our duties under information law, we sometimes need to remove information from documents which are going before a panel. We do this in line with our information handling guidance.

The ‘fair and relevant’ test

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Once a case has been referred to the Fitness to Practise Committee, one of our lawyers will review the evidence and decide which documents, or parts of documents, should be included in the document bundle.

The test as to whether information should be used in a meeting or hearing is that it is ‘fair and relevant’.[1]

We’ll only put material in the document bundle that we consider relevant to the charges being considered by the panel, and fair to include.

At a hearing, if there’s a disagreement about if evidence can be admitted, the panel will be provided with independent advice from the legal assessor. However, the panel will make the final decision about if the evidence, including all or part of the document bundle, can be admitted.This may also include refusing to admit evidence which, without good reason, has not been served in accordance with case management directions.[2]

Findings of other organisations or bodies

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Often another body or organisation[3] will have carried out some form of investigation into the matters being considered by the panel.

The underlying evidence relied on by another body or organisation are admissible and can be presented to a panel and may form part of the bundle) if they’re relevant to the issues being considered or the wider background.[4]

The weight that a panel will give to this evidence, which can include statements of fact and expressions of expert opinion, is a matter for the Fitness to Practise Committee to decide using its expertise and experience as an independent panel.

The findings of other bodies or organisations may be admissible as evidence before a panel.[5] However, before seeking to rely on them, we’ll carefully consider their relevance and the fairness of doing so.

Nurses, midwives, or nursing associates can contest charges before a panel. If there's a significant overlap between the findings of another body and the issues before the panel, we won't usually include the other body's findings as evidence when we ask the panel to consider the charges.

The panel must not use the findings of another body as a substitute for reaching its own decision on the issues before it. The judgment or findings of another decision-maker on the issues before the panel are not relevant to the panel's decision-making. It may also be unfair for the judgments to be a significant influence on the mind of the tribunal on the crucial issues before it for the same reasons.[6]

In these circumstances, it will be sufficient to include the underlying evidence relied on by the other body in the bundle, rather than the findings themselves.

Witness statements

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Where we have obtained witness statements, and we want to use those statements in evidence, we will provide the panel with a copy of the witness statement.

The nurse, midwife or nursing associate's documents and evidence

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The document bundle we give the panel contains the documents we are relying on to prove the allegations. It does not usually contain the nurse, midwife or nursing associate's evidence or documents.

The nurse, midwife or nursing associate, or their representative, will often provide their own bundle of documents to present their side of the case.

We leave it to them to decide which documents to provide to the panel because we do not always know what documents the nurse, midwife or nursing associate might choose to use for their final hearing. They may have sent us information at earlier stages which they no longer wish to rely on, and it's unfair for us to decide for them whether or not they should rely on any particular piece of evidence. We ask them to share as much as possible with us in advance. We may hold a case conference and a preliminary meeting in advance of the hearing; at the preliminary meeting the professional or the NMC may be directed to share evidence within a specific timeframe.[7]

However, as set out in the notice of hearing, if the professional has sent in admissions or responses to the allegations, we'll provide these to the panel.

The panel can then consider whether the nurse, midwife or nursing associate admits or denies any factual allegations, and may find allegations proven on the basis of the admissions which the nurse, midwife or nursing associate has made.

Documents not originally in the hearing bundle

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Sometimes, documents that are not originally included in the document bundle become relevant during the course of the hearing. This could be as a result of evidence given by a witness or the nurse, midwife or nursing associate. In these circumstances we try to provide the document to the panel.

If the nurse, midwife or nursing associate, or their representative, does not agree on the addition of the document, the panel, after hearing the advice of the legal assessor at the hearing, will consider whether it is fair and relevant for it to be considered as evidence.

Informing the nurse, midwife or nursing associate

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Before the case begins, we'll inform the nurse, midwife or nursing associate, or their representative, what we propose to provide to the panel as the document bundle.

We do this either by sending a copy of the bundle, or an index, listing the documents. The nurse, midwife or nursing

ssociate can use the index because we'll already have given them copies of the documents earlier on in our nvestigation.

This allows the nurse, midwife or nursing associate the opportunity to object to any documents or request further material be added to the bundle with the result being the content of the hearing bundle may change through the preparation of the case.

Where a nurse, midwife or nursing associate objects to us using a document, and we can't agree the issue between us, we may ask for a case management direction ahead of the hearing or meeting.[8]

n other cases, we won't ask for case management directions, but instead we will apply to the panel to decide whether we can include the document as part of our evidence. The panel will be provided with the document so that they can decide whether it is fair for them to consider it as part of the evidence. If the panel agrees that the evidence is admissible it will accept the document into evidence. If the panel considers that the evidence isn't admissible, the professional panel will put the document out of its mind and will not rely on it in any way when making its decision.

Sending documents to the panel in advance

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n some circumstances we may also send the document bundle to the panel in advance of the case.

We do this if the panel is deciding the case at a meeting.

f we do this for a substantive hearing, we will inform the nurse, midwife or nursing associate that we intend to give the hearing bundle to the panel in advance of the hearing.

f the panel does not see the hearing bundle in advance, the panel will be provided with it during the course of the hearing. Our case presenter, and the nurse, midwife or nursing associate or their representative, will guide the panel as to the best way to go through the hearing bundle as they hear the evidence in the case. The legal assessor can also give advice about this.

1. Rule 31 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ("the Rules")

2. Rule 31(8) of the Rules

3. Possibilities include criminal proceedings, civil proceedings, family court proceedings, inquests, internal investigations by employers, and external investigations or inquiries such as those conducted by ombudsmen or commissioned by local authorities or other public bodies.

4. Enemuwe v NMC [2016] EWHC 1881 (Admin)

5. Squier v General Medical Council [2016] EWHC 2793 (Admin) and Towuaghanste v GMC [2021] EWHC 681 (Admin)

6. Hoyle v Rogers [2014] EWCA Civ 257

7. Rule 17A of the FtP Rules

8. Rule 17A of the FtP Rules