

NHS Tayside has now considered your request dated 15 February 2019.

### **Extract from Request**

“John Finnie MSP has tabled legislation to remove the defence of reasonable chastisement from law, which currently allows parents to administer minor physical punishment, such as smacking. In the first five years of introducing a ban in New Zealand, which has a similar legal system, police investigated nearly 600 allegations.

Please can you provide me with a copy of, or details of the assessment that your organisation has carried out on these plans, in particular I am keen to see how this will impact the following:

- a) The need for additional staff.
- b) The need for additional financial resources.
- c) How current guidance to members/staff will need to change especially those relating to reporting on parents?
- d) Should your organisation receive a complaint about a member/staff member what the procedures would be for dealing with this and what support for the member/staff member would be available if they are suspended during the investigation?”

### **Response**

- a) This request highlights that in the first five years of introducing a ban in New Zealand, which has a similar legal system, police investigated nearly 600 allegations. This would suggest that if there were to be similar numbers of allegations across the whole of Scotland, then each Health Board would expect to receive approximately 10 allegations a year. These numbers would not suggest a requirement for additional staff.
- b) Not applicable.
- c) No change to Child Protection guidance which already provides clear instructions for staff on recognising and responding to all types of child abuse including physical abuse.



d) If an employee is charged with an offence, the guidelines published by NHS Scotland on the Management of Employee Conduct would apply as follows:-

“5.8 Criminal Offences/Police Involvement

2.5.8.1 In all cases where criminal offences are suspected, the manager should consult their local HR department. In such cases, it may be that there is a need to refer to other organisations (such as the police, UK Border Agency, statutory regulatory bodies, Disclosure Scotland or NHSScotland Counter Fraud Services (CFS)).

2.5.8.2 Disciplinary action should not be taken automatically against an employee because they have been charged with or convicted of a criminal offence. Consideration needs to be given to what affect the charge or conviction has on the employee's suitability to do their job and on their relationship with the Board, as their employer, work colleagues and others, such as patients.

2.5.8.3 In situations where it is considered that the conduct warrants investigation under the local policy developed in line with this PIN policy, the following should be considered:

An investigation into the facts of the case should be undertaken, including a meeting with the employee where possible.

It is not necessary to await the outcome of any prosecution before taking action. This should be discussed in advance with the relevant police authority or CFS. However, the Board must have sufficient evidence to form a reasonable belief that the employee is guilty of misconduct. If the charge relates to something entirely outwith employment, the Boards may have to await the outcome.

If the employee refuses to co-operate with the internal disciplinary investigation, this does not stop the Board from following due process. In these situations, the employee should be advised in writing that, unless further information is provided, a decision may be taken, up to and including dismissal, on the basis of the information available. Boards need to recognise, however, that an employee may not be able to cooperate for fear of incrimination and, without the employee's input; there may not be sufficient evidence on which to base a decision.

2.5.8.4 Where an employee has been charged with or convicted of a criminal offence, or where they have been barred from undertaking regulated work (or are being considered for barring), and where any associated misconduct issues have not resulted in dismissal from the Board, this may mean that the employee is unable to fulfil the terms of their contract of employment.”

In the case of suspension, a risk assessment would be made to establish if there is a risk to patients, other colleagues or the individual themselves. It may be that there is an alternative to suspension, and the employee can work from another area if they are



employed in jobs which require a PVG check (Protecting Vulnerable Groups). If an employee requires to be suspended from work completely, they are provided with a contact officer who will be available to answer queries or provide information around the process. The employee would also be offered the services of the Well-being Centre or Occupational Health.

**Exemptions Section** – application of Freedom of Information (Scotland) Act 2002 exemptions and Data Protection Act 2018 Principles.

Document Ref.	FOISA Exemption Applied	Justification
[REDACTED]	None	None



**Freedom of Information (Scotland) Act 2002**  
**Response to correspondence dated 15 February 2019**  
**Request: Reasonable Chastisement**  
**Applicant:** [REDACTED]  
**Reference:** [REDACTED]



Under section 20 (1) of the Act, if you are dissatisfied with the way NHS Tayside has dealt with your request, you have a right to request a review of our actions and decisions in relation to your request, and you have a right to appeal to the Scottish Information Commission.

**A request for an internal review must be made in writing no later than forty working days from receipt of this response and addressed to:**

Tayside NHS Board Secretary  
Tayside NHS Board Headquarters  
Ninewells Hospital & Medical School  
Dundee  
DD1 9SY

**If you are not content with the outcome of the internal review, you have the right to apply directly to the Scottish Information Commissioner for a decision. The Scottish Information Commissioner can be contacted at:**

Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS

Or via the online appeal service: [www.itspublicknowledge.info/Appeal](http://www.itspublicknowledge.info/Appeal)

**If you have any queries about this correspondence, please contact:**

Information Governance Team

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Telephone - [REDACTED]  
E-mail: [REDACTED]

Information Governance  
NHS Tayside  
13 March 2019

