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Hearing fitness to practise allegations together

Reference: CMT-1 Last Updated: 01/08/2023

In this guide

Overview

After case examiners have decided that there is a case to answer and referred the case or cases to the Fitness to Practise Committee, there are some circumstances where it is appropriate to deal with more than one allegation at the same hearing.

This could be where more than one case about a nurse, midwife or nursing associate has been referred to us, or where two or more nurses, midwives or nursing associates are facing allegations about the same or a connected incident.

Allegations against more than one nurse, midwife or nursing associate

A panel of the Fitness to Practise Committee ('panel') may consider an allegation against two or more nurses, midwives or nursing associates at the same hearing where the allegations arise out of the same circumstances, or where it decides a joint hearing is necessary.

Before making a decision the panel must consider the advice of the legal assessor. The panel cannot hear allegations together if a joint hearing would make the proceedings unfair.[1]

Different allegations against the same nurse, midwife or nursing associate

If we receive more than one referral for a nurse, midwife or nursing associate at the same time, and the referrals relate to different allegations of impaired fitness to practise, we will investigate the allegations and manage the matter as one case.

If we do not receive the referrals at the same time, we may have opened two or more cases against the same nurse, midwife or nursing associate. In this instance we will consider whether it is better to deal with the cases together, which may depend on where in the process each case is.

If allegations relate to a criminal caution or conviction, this must be heard any allegation of misconduct has been decided[2], unless the matter requires the panel to hear evidence about the conviction/caution to understand the misconduct.

For instance, a misconduct allegation that the nurse, midwife or nursing associate failed to disclose a conviction to their employer. The panel may also hear evidence about a conviction where it is relevant and fair to include it

as evidence of fact or bad character.

New allegations

Sometimes a new allegation is made against a nurse, midwife or nursing associate that is similar to, or founded on the same facts, as an allegation we have already received. If this happens, both allegations can be considered at the same hearing if the original allegation has not yet been heard.[3]

In these cases, we will tell the nurse, midwife or nursing associate about the new allegation and our intention to deal with them at the same hearing. We will give them the opportunity to respond within 28 days, or a different timeframe we agree.[4]

How do we make the decision to join allegations?

Considering allegations together allows us to be a more effective regulator because it allows panels to consider the wider context of allegations.

Holding only one hearing or meeting reduces the time cases take and helps witnesses by not requiring them to attend multiple hearings. We therefore consider that, in the majority of circumstances, it will be better to hear allegations together.

However, in making the decision, we'll always consider any risk of unfairness that may arise from hearing allegations together or whether joining the cases will cause any unnecessary delay to either case as we recognise that delaying our cases can cause stress and anxiety to all those involved. If we decide not to link the cases, we recognise that some of the same evidence is likely to be considered in separate cases. Where this happens, we will ensure that this evidence is presented in a consistent way.

If we consider that allegations need to be dealt with together, we'll tell the nurses, midwives or nursing associates and give them the chance to object to the allegations being dealt with together.

Where we want to join together allegations against more than one nurse, midwife or nursing associate we will give them information about the other person's case, such as the charge and a list of witness statements or exhibits. This is to help them understand why we say the allegations should be heard together.

If nobody objects to us joining the cases, we'll join them, and arrange a joint hearing. If one of the nurses, midwives or nursing associates does tell us they don't want their case joined with another case we'll arrange for a preliminary meeting so that a Chair can make the final decision on whether the matters should be joined.

The joint hearing

In a case where allegations against two or more nurses, midwives or nursing associates are to be heard at the same hearing, we'll consider what material we've received from one nurse, midwife or nursing associate needs to be disclosed to the other, applying our test for disclosure of unused material.

Panels should manage cases in a way that is fair for everyone.[5] Bearing that in mind, panels should consider how any risk of unfairness can be managed in a hearing.

For example, joining cases may lead to a hearing becoming unduly long and complicated, which may affect the nurse, midwife or nursing associate's ability to attend, or be represented throughout the hearing.

Panels should consider the evidence against each nurse, midwife or nursing associate separately, even though the cases may be heard together. If a panel hears evidence about one nurse, midwife or nursing associate that is inadmissible and prejudicial against the other, it will exercise its judgment as a professional panel and disregard any irrelevant material.

It will decide the case fairly on the evidence before it, having been advised by the legal assessor of the proper legal approach.[6] In rare circumstances it may not be possible to disregard the irrelevant material, due to the exceptionally prejudicial nature of it, in which case the panel should consider whether it's appropriate to continue.[7]

New allegations about a nurse, midwife or nursing associate already subject to a

fitness to practise sanction

We may receive a referral of a new allegation while a nurse, midwife or nursing associate is subject to a substantive order (other than a striking off order). If this happens we'll use our guidance to decide whether a panel should be made aware of the new allegation, as part of the review of the substantive order, or whether we should treat the information as a new referral.

1 Rule 29(1) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules')
2 Rule 29(2) of the Rules
3 Rule 29(3) of the Rules
4 Rule 29(4) of the Rules
5 R (O'Brien) v General Medical Council [2006] EWHC 51 (Admin)
6 R (on the application of Mahfouz) v General Medical Council [2004] EWCA Civ 233, White and Turner v Nursing and Midwifery Council [2014] EWHC 520 (Admin)
7 See paragraph 28 of R (on the application of Mahfouz) v General Medical Council [2004] EWCA Civ 233

Telephone conferences

Reference: CMT-2 Last Updated: 28/07/2017

Where the nurse, midwife or nursing associate is represented we will consider whether to arrange a telephone conference with the representative to discuss the proposed hearing bundle and resolve any legal difficulties.

We will provide a copy of our hearing bundle to the representative and arrange a time for the conference approximately five to six weeks before the hearing. The telephone conference may cover the following areas:

- the content of hearing bundle
- which witnesses are required
- issues in dispute
- hearing length.

After the telephone conference and once a final version of the hearing bundle has been agreed with the representative, we will send it to the panel in advance of the hearing. This has the benefit of reducing the time during the hearing that the panel needs to read the papers.

We understand that long hearings can be difficult for parties to attend, so by narrowing down which issues are in dispute, reducing which witnesses are required and having the panel read the papers in advance, we can reduce the length of the hearing and avoid inconvenience to parties that are not required to attend.

If any issues cannot be resolved at the telephone conference, we may also consider whether to arrange for a preliminary meeting to assist with the smooth running of a hearing.

Preliminary meetings

Reference: CMT-3 Last Updated: 01/07/2022

In this guide

What are preliminary meetings?

Preliminary meetings are an important case management tool which allow both us, and the nurse, midwife or nursing associate to raise and resolve issues in advance of a full hearing.

This means we can try to avoid delays to the case being finally resolved. We also use preliminary meetings to apply to cancel a hearing.[1]

When do preliminary meetings take place?

We can arrange preliminary meetings, the nurse, midwife or nursing associate can also ask for them, but they can only happen after the case examiners have made a case to answer decision and referred the case to the Fitness to Practise Committee.

Preliminary meetings can't start if the Fitness to Practise Committee has already started its final hearing of the case, even if the hearing has adjourned without being finished in its allocated time.

If that happens, and a preliminary meeting would have been helpful, we'll arrange a case management meeting before the same panel instead.

Who can attend a preliminary meeting?

Preliminary meetings are held in private before a Chair of the Fitness to Practise Committee.

A legal assessor will be present to help with questions of law. The NMC will be represented by a case presenter and the nurse or midwife, along with their representative, will have the opportunity to attend in person, or by telephone.

We give the nurse, midwife or nursing associate at least 14 days' notice of a preliminary meeting.

What decisions can the Chair make?

The Chair can issue directions which we or the nurse, midwife, nursing associate need to follow.

These directions can include:[2]

- time limits for the service and disclosure of evidence
- the length of the hearing and any dates parties or their witnesses would not be able to attend the hearing
- how a witness can give evidence, for example via video or telephone link
- that the nurse, midwife or nursing associate must undertake a language test
- a requirement that the parties state whether the health of the nurse, midwife or nursing associate is to be raised as an issue in the proceedings, and if so, whether medical reports are needed
- an agreed statement of facts where the facts are not in dispute, or the issue of misconduct is admitted

- that a scheduled final hearing be postponed or cancelled
- that cases should be dealt with together at the final hearing.

Where support is required for a witness to give evidence at a hearing we'll deal with this in line with the guidance on supporting witnesses to give evidence in a hearing.

The Chair cannot make decisions involving the costs of attending a hearing or decide whether the hearing should be at a different venue.

In considering what directions to make, the Chair should think about how their decision will help the Committee to deal with the allegations of impaired fitness to practise proportionately and effectively. The Chair is not limited to only making directions about issues raised by us or the nurse, midwife or nursing associate.

We send all decisions in writing to the nurse, midwife or nursing associate after the preliminary meeting.

1 Rule 33 of The Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ("the Rules")
2 Rule 18(5) of the Rules and article 32(3) of the of the Nursing and Midwifery Order 2001

Considering cases at meetings and hearings

Reference: CMT-4 Last Updated: 13/01/2023

In this guide

Overview

This guidance applies to final decisions in fitness to practise and fraudulent or incorrect entry cases.

It explains the similarities and differences between hearings and meetings, and the factors that are relevant to deciding when a hearing is desirable.

We'll always hold a hearing to conclude a case if the nurse, midwife or nursing associate wants one.[1]

If the nurse, midwife or nursing associate asks for a meeting (explained below), or if they don't respond when we ask them how they'd prefer us to conclude their case, we'll usually hold a meeting rather than a hearing, unless the panel (or in a case about fraudulent or incorrect entry, the Registrar (or one of our Assistant Registrars who also make decisions on behalf of the Registrar)) decides that a hearing would be desirable.[2]

This guidance explains the similarities and differences between hearings and meetings, and the factors that are relevant to deciding when a hearing is desirable. We also discuss those factors that are likely to be less relevant to that decision.

This guidance also sets out the factors we take into account when deciding whether hearings should be held virtually (using video-conferencing or similar technology) or physically, with the parties present at one of our hearings centres.

Comparing meetings and hearings

Our Investigating Committee and Fitness to Practise Committee panels can reach decisions on cases at a meeting[3] or a hearing.

The panel's role in both a meeting and a hearing is to carefully consider all the evidence and decide if the concerns are proved.

Panels at all meetings and hearings are independent and have to make their own decision about whether the nurse, midwife or nursing associate's fitness to practise is impaired. Whether the case is considered at a hearing or meeting, the panel has the same range of sanctions available if they decide some action needs to be taken to address the concerns raised.

At both meetings and hearings, an independent legal assessor is present to give legal advice and help ensure the fairness of proceedings.

In all cases, the panel will produce a written determination that is sent to the registrant and their representative (if they have one), as well as the person who raised the concern with us and anyone who's helped us with our investigation (such as witnesses) or been affected by the case (such as patients, their families and loved ones).[4]

Meetings

At a meeting, the panel makes its decision based only on the documents that have been submitted to it. The nurse, midwife or nursing associate doesn't attend the meeting, and nor do any witnesses, although their written statements will be considered by the panel.[5] This means that meetings take less time to conclude than hearings and are less adversarial.

Although the nurse, midwife or nursing associate doesn't attend a meeting, they can still engage effectively with the process by sending in any information in advance that they want the panel to consider.[6]

Similarly, although the NMC case presenter doesn't attend a meeting, they provide the panel with any information in advance that they want the panel to consider. This will generally include a 'statement of case'. This is a document that sets out the relevant evidence, explains why we think the evidence suggests that the nurse, midwife or nursing associate's practice should be restricted and also sets out what sanction we propose the panel should impose. The nurse, midwife or nursing associate will have the opportunity to respond to our statement of case in writing before the meeting takes place.

Meetings are held in private, meaning that the public won't be there. However, where a nurse, midwife or nursing associate's fitness to practise is found impaired, and a sanction is given, we always publish the panel's decision following our FtP Publication guidance.

Meetings can take place either virtually or physically with the panel meeting in person at a hearings centre.

Hearings

Nurses, midwives or nursing associates will always be able to have a hearing if they want one.

They'll be able to attend a hearing with or without a representative and can also arrange for a representative to attend on their behalf.

A case presenter will attend to represent us.

A key difference between meetings and hearings is that people can give live evidence to the panel. Anyone who gives evidence can be asked questions about their evidence by the other party and by the panel.

Hearings are generally held in public whether they are being held virtually via video-conferencing or take place physically at a hearings centre. (However, any hearing may have some parts of its proceedings held in private, if necessary to protect the privacy of any party involved.) Further information is available here.

Factors that are relevant to whether a hearing, rather than a meeting, is desirable

When a nurse, midwife or nursing associate hasn't asked for a hearing, or where we haven't heard from them, we'll usually hold a meeting unless a panel or Registrar decides that a hearing is desirable. We'll keep the decision about how a case should be resolved under review and will ask the panel or Registrar to reconsider their decision if there has been a relevant change in circumstances (for example where the nurse, midwife or nursing associate decides to admit the charges against them).

In the sections below, we explain some of the considerations that will be relevant to deciding whether a hearing, rather than a meeting, is desirable.

Disputes that can only be resolved at a hearing

We encourage nurses, midwives and nursing associates to engage with us and give us their account of what happened. This includes any information about context, and any reflective work or learning they've carried out.

We sometimes find this information out as part of our investigation. For example, if a nurse, midwife or nursing associate has provided information to their employer as part of a local investigation.

If it is clear that the nurse, midwife or nursing associate materially disputes the allegations, or the facts relating to the allegations (such as the context in which the incident occurred), then a hearing might be necessary to explore this aspect of their case with relevant witnesses. This will include asking questions of the person who is the

subject of the concern, if they attend the hearing.

A material dispute in this context is where the nurse, midwife or nursing associate disputes factual matters that could affect the final outcome of the case. The 'outcome' of the case is whether the person's fitness to practise is found impaired by the independent panel, and the type of sanction that they decide to impose. If either of these could be affected by the areas in dispute, then the dispute is 'material'.

Factors that are less relevant to whether a hearing is desirable

The public interest and seriousness

The public interest doesn't require cases to be resolved at hearings just because the allegations in a case are serious. Serious cases can be decided at meetings. The adversarial nature of hearings can have a negative impact on people, as well as being slow and resource intensive, so in many cases a meeting may be preferable.

Where there's no dispute that could affect the outcome of the case or practical reason why a hearing may be desirable, the fitness to practise decision can be made swiftly at a meeting. It is in the public interest to be transparent about our decisions and we'll publish outcomes where impairment has been found and a sanction has been imposed. We'll also share our statement of case with anyone who has been affected by the case we've been investigating (such as patients, their families and loved ones) , where requested, and in line with our information handling guidance.

Complexity

The fact that a case is complex is unlikely to justify holding a hearing on its own. Complex cases can be decided at meetings.

When the case is referred to a meeting, we'll create a statement to help the panel understand our position on the case because there won't be a case presenter attending. This statement will explain why we say there's enough evidence for the panel to decide that the charges are proved, why we say the nurse, midwife or nursing associate's practice should be restricted, and what action we say the panel should take, and why.

We'll also prepare an 'evidence matrix' that sets out which sections of the paperwork for the case provide evidence in relation to each charge. (The paperwork for the case is often referred to as 'the bundle'.) This makes the bundle of documents easier to follow.

The nurse, midwife or nursing associate will have the opportunity to respond to our statement of case and the bundle of documents in writing before the meeting takes place.

Our independent panel members are all experienced professionals who are able to scrutinise documents, written evidence and written submissions carefully. This means they can deal with complex cases using all the paperwork provided, without needing to hear live evidence from the witnesses or the person who is the subject of the case, unless there's a material dispute that could affect the outcome of the case or another practical reason why a hearing would be useful.

If the independent panel at a meeting decides that it needs clarification or further information on an issue, it should consider postponing or adjourning the meeting with directions to the NMC setting out what further information it requires. This is so that the matter can be looked into, and if necessary further submissions, documents or evidence can be sent to the panel when the meeting can resume.[7]

If the independent panel will not all be available to resume the meeting within a short period of time (a few weeks), then they should allow a different independent panel to conclude the case when the further information is available.

Taking such a step is likely to be more proportionate than referring the case to a hearing when this may not be needed to resolve the issue.

Disputes about matters that aren't likely to have an impact on the outcome of the case, or where the basis for the dispute isn't clear

A hearing is unlikely to be useful if only a small number of allegations or factual matters are disputed that won't

have a material impact on the outcome. In these circumstances, a fair outcome can usually be achieved by the NMC asking the panel to consider the charges at a meeting.

If the nurse, midwife or nursing associate hasn't given us any details about why they dispute the allegations, a hearing is also less likely to be desirable.

By the time the independent panel is making the decision as to whether a case should be concluded at a meeting or a hearing, the person we're investigating will already have had several opportunities to explain to us why they dispute the allegations. If the basis for disputing the allegations isn't clear, it will be difficult for the panel to identify what issues need to be explored with witnesses at a hearing.

Disagreements about impairment or sanctions, rather than the underlying facts

If the nurse, midwife or nursing associate hasn't indicated that they wish to attend or call witnesses at a hearing and any disagreement relates only to the appropriate decision on impairment or sanction, rather than the underlying facts, then a hearing is unlikely to be desirable.[8] Our view is that any disagreement about impairment or sanction can usually be fairly dealt with at a meeting, based on a careful consideration of our statement of case, relevant evidence and any written statement received from the nurse, midwife or nursing associate.

The views of those who might have been affected by what happened

In situations where members of the public or others have been directly affected by what happened in a case, particularly if it resulted in serious consequences for themselves or a loved one, they may ask us to hold a hearing so that they can observe the proceedings, or give evidence as a witness. We will always consider requests of this type, but we're unlikely to decide to hold a hearing if the only reason for doing so is that someone affected by the case has asked us to. Our view is that hearings should normally be reserved for cases where there are significant disputes of fact that need to be explored with witnesses. In other cases, the panel will usually be able to reach a fair decision by considering all the relevant documents at a meeting, including any evidence we've obtained from those affected by what happened.

Deciding whether hearings should be held virtually or physically

Hearings can take place remotely with all parties attending virtually or physically at a hearings centre with the main parties attending the venue in person in most cases.[9] The NMC will decide whether to hold a hearing virtually or physically at a hearings centre on a case by case basis in discussion with the nurse, midwife or nursing associate and their representative (if they have one). We'll be guided by the principle of fairness and ensure that people can engage effectively in the hearing. We'll take into account the view of the nurse, midwife or nursing associate whose case is being considered and if anybody has a protected characteristic which makes one type of hearing more suitable than another. Before we list a case for virtual hearing we'll ask if participants have the right technology to participate effectively and are able to use it.[10]

Our overarching considerations will be:

- the need to act fairly towards all those taking part in the hearing;
- the need for the hearing to be run efficiently;
- the public interest in fitness to practice hearings being concluded in a timely manner.

If there is a dispute about whether a hearing should be held physically or virtually, a final decision will be made by a Panel Chair at a preliminary meeting usually held a few weeks in advance of the hearing itself.

1 Rules 5(1)(a) and 10(2)(a) Fitness to Practise Rules 2004

2 Rules 5(1)(b) and 10(2)(b) Fitness to Practise Rules 2004

3 Rules 5(5)(b) and 10(3) Fitness to Practise Rules 2004

4 Rules 5(6) and 13 Fitness to Practise Rules 2004

5 This applies to all meetings except preliminary meetings which are always held in private but where the parties can attend.

6 Registrants have a number of opportunities to provide us with representations before their case is considered by a panel. This includes prior to the case examiner consideration and once an allegation has been referred to the Fitness to Practise Committee [See Rules 6A(2)(b), 6B(4) 9(2)(b) and 11A(2)(e)].

7 At a meeting, the panel has the power to determine its own procedure under Rule 10(4) Fitness to Practise Rules 2004

8 Meetings are more likely to be appropriate when a panel is reviewing a substantive order and a nurse, midwife or nursing associate has not indicated they'd like to attend a hearing. This is because at this point the panel is usually only looking at whether the nurse, midwife or nursing associate is still impaired, and what action if any to take. The panel at the meeting makes a decision using this guidance whether to proceed with the meeting or not. The panel can decide that a hearing is in fact desirable, and refer the case to a hearing.

9 The approach of the higher courts to remote hearings and fairness was recently summarised by the Lord Chief Justice in Yilmaz v SSHD [2022] EWCA Civ 300: "The use of remote technology in legal proceedings, including hearing evidence by phone or computer link, became ubiquitous in all jurisdictions during the Covid pandemic. Many reservations about its use have been dispelled but there remains a central issue about fairness and the interests of justice that is best considered on a jurisdiction by jurisdiction basis with an eye to the different types of case and participation under consideration."

10 If a nurse, midwife or nursing associate objects to the way the NMC has listed a hearing (i.e. for virtual consideration or for attendance at a hearing centre) we will list the matter for a preliminary meeting and a chair of the practice committee will be asked to give directions on how the case should proceed.

Removal by agreement

Reference: CMT-5 Last Updated: 24/04/2023

If a nurse, midwife or nursing associate is subject to fitness to practise proceedings, they can apply to be removed from the register.[1] Removal while there are ongoing fitness to practise proceedings is only allowed if the Assistant Registrar agrees. We call this the agreed removal process. An agreed removal will conclude the proceedings without consideration by the Fitness to Practise Committee. Agreed removal can support our aim to 'reach the outcome that best protects the public at the earliest opportunity'.

The agreed removal process also applies if a nurse, midwife or nursing associate, who is not subject to fitness to practise proceedings, tells us about a potential regulatory concern when they apply to be removed from the register.

1 Rule 14 of the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004

How does the agreed removal process work?

Reference: CMT-5a Last Updated: 24/04/2023

In this guide

If a nurse, midwife or nursing associate applies for agreed removal they can be removed from the register without consideration by the Fitness to Practise Committee.

When a nurse, midwife or nursing associate makes an application for removal, we will usually ask whether they intend to reapply to join the register within the next five years. The answer to this question gives us a better understanding of the nurse, midwife or nursing associate's intentions for the future and their reasons for applying for removal and also helps us take into account their interests in deciding whether to grant or refuse the application.

A nurse, midwife, or nursing associate can submit a removal application to us at any time during the Fitness to Practise process, including during a substantive (final) hearing.

There's no limit on the number of times that a nurse, midwife or nursing associate can apply for removal, but, if refused, it's unlikely that a new application for removal will be granted unless there's been a relevant change in circumstances. People who submit new applications after being refused removal, will need to explain what has changed since they made their previous application and why that new information supports their application for removal.

If the application is successful, we'll amend our register so that 'removed by agreement – outstanding fitness to practise question' is displayed against the nurse, midwife, or nursing associate's name. We'll usually publish a brief summary of the regulatory concern, the professional's response and the reasons for our decision to agree removal for one year from the date of removal[1]. When removal is agreed during a hearing, we publish the removal decision as part of the panel's reasons. We won't publish information about the professional's health. We'll share a draft of what we're proposing to publish with the professional in advance, so that they can comment on it before it is finalised and placed on the website.

We may share the details of the regulatory concerns with potential employers or recruitment agencies on request, but only where it is in the public interest for us to do so. We will also let the professional know we have decided to do this and tell them what information we've shared. We won't share information relating solely to a nurse, midwife or nursing associate's health unless there is a public protection justification for doing so.

Removal applications received during a substantive hearing

Although most applications for agreed removal are received before a substantive fitness to practise panel hearing has commenced, sometimes applications are received during a hearing. This section sets out how applications received during a hearing are considered.

When a nurse, midwife, or nursing associate applies for agreed removal during a substantive hearing, the panel will decide when the application for agreed removal should be considered. The panel will consider how best to minimise the disruption caused to the hearing; this will usually mean waiting until the end of the finding of facts or impairment stage of the hearing, unless there is an urgent reason for the application to be considered earlier. In making this decision, panels should balance the need for the application to be considered against the public interest in the regulator being able to operate effective hearings. In particular, inconvenience to witnesses should

be avoided where possible.

When the panel considers that it is appropriate for the application for agreed removal to be considered, they will be invited to make a recommendation on whether or not the application for removal should be agreed. The application will then be considered by the Assistant Registrar, who will take any recommendation given by the panel into consideration as one of the factors relevant to their decision. If the Assistant Registrar agrees the application for removal, there will be no need for the panel hearing to resume (unless there is an interim order in place), and the professional will be removed from the register. If the Assistant Registrar does not agree the application, the panel hearing will resume at the point where it was adjourned.

Procedure for agreed removal applications where an interim order is already in place

If a nurse, midwife, or nursing associate is subject to an interim suspension order or interim conditions of practice order, this will need to be revoked by an interim order panel before an application for agreed removal can take effect.[2]

The Assistant Registrar will be aware of the interim order when they make the decision on whether or not to agree the removal application. If the Assistant Registrar agrees the removal application, we'll invite an interim order panel to revoke the interim order. Only then will the removal take effect.

If agreed removal is granted during a substantive hearing and an interim order is in place, we'll invite the fitness to practise panel to revoke the interim order so that the agreed removal decision can take effect.

1 Paragraph 41 of the NMC's guidance on publication of fitness to practise and registration appeal outcomes

2 Rule 14(4)(b) of the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004

How we consider removal applications

Reference: CMT-5b Last Updated: 24/04/2023

In this guide

When we receive applications for agreed removal, the Assistant Registrar will look at:

- The nurse, midwife or nursing associate's reasons for applying for removal, what they've said about their future intentions and their response to the concerns about their fitness to practise
- The concerns that have been raised and what our guidance says about seriousness and sanctions
- Any comments received from the maker of the allegation.

Making decisions on agreed removal applications

Agreed removal can be an effective and proportionate way of protecting the public and maintaining public confidence. In most cases the Assistant Registrar is likely to agree to removal from the register provided:

- they're satisfied that the regulatory concerns raised aren't so serious that they're fundamentally incompatible with being a registered professional (the kinds of concerns that are likely to result in the Fitness to Practise Committee making a striking-off order)
- where we haven't completed our investigation, they're satisfied that there's enough information to make a decision about the seriousness of the concerns and the public interest in removing the professional from our register without completing our investigation.

In all cases the Assistant Registrar will carefully weigh up any comments received from the maker of the allegation, the interests and circumstances of the nurse, midwife and nursing associate and the public interest, always bearing in mind our overarching objective of protecting the public. The Assistant Registrar will take this guidance into account when making their decision – for example the sections in this document on and .

The Assistant Registrar will also take into account the detailed guidance in Applying the agreed removal criteria to particular cases.

Fundamentally incompatible

When a nurse, midwife, or nursing associate is removed from the register, the public is immediately protected from the risk of future harm, and the reasons for this are published. In many cases allowing someone to leave the register quickly, without full consideration by a fitness to practise panel, will be the best way to meet the public interest.

However, more serious concerns where the nurse, midwife, or nursing associate's conduct is fundamentally incompatible with continued registration aren't usually suitable for agreed removal. This is because there's a public interest in these concerns being investigated and considered by the Fitness to Practise Committee. The Assistant Registrar is unlikely to agree removal where there is likely to be a finely balanced decision about whether the professional should receive a striking-off order. It's usually in the public interest for those kinds of

decisions to be made by the Fitness to Practise Committee, and for the full reasoning to be published.

One exceptional situation where it may be right to depart from this general principle is where there is clear medical evidence indicating that, if an application for removal was refused, and the matter proceeded to a Fitness to Practise Committee, this could risk causing serious harm to the health and wellbeing of the professional concerned. In this situation, the Assistant Registrar should consider whether the risk of harm to the professional's health and wellbeing outweighs the public interest in the matter being dealt with by the Fitness to Practise Committee.

Removal before we've completed an investigation

In cases where the nurse, midwife or nursing associate applies for removal before we've concluded our investigation, the Assistant Registrar should only agree the removal if they're satisfied that they have sufficient information:

- to understand the full extent of the regulatory concerns and make a fully informed decision about the removal application
- to be confident that immediate removal (without concluding an investigation) will protect the public
- to explain their removal decision to any interested third parties.

Comments received from the maker of the allegation

The Assistant Registrar should consider any comments received from the maker of the allegation.[1] The maker of the allegation is not necessarily the person who reported the matters to us. Where appropriate it may be the person affected by the circumstances leading to the referral, or, in a criminal case, it may be the person or organisation that initially reported matters to the police.

Comments from the maker of the allegation can be an important way of ensuring that the voice of patients, service-users or members of the public who raise concerns with us is heard, and can help us understand the impact a nurse, midwife, or nursing associate's actions have had on the people involved. Their comments may help us understand the seriousness of the concerns or may support a decision to agree removal, for example where an employer confirms they are supporting a nurse to continue working as a healthcare assistant.

We will request comments from the maker of the allegation before the Assistant Registrar considers the removal application. Although the Assistant Registrar will take any comments received from the maker of the allegation into account, they will make their final decision based on how we can best protect the public and maintain public confidence, having considered all the available information, including any information provided by the professional.

In cases where the allegation relates to health, we do not disclose the details of the nurse, midwife, or nursing associate's health condition to the maker of the allegation. Given that health details are regarded as confidential, it will not always be possible for the maker of an allegation to be fully informed of the reasons why removal was agreed.[2]

Interests of the nurse, midwife or nursing associate

The Assistant Registrar will also take into account the interests of the nurse, midwife, or nursing associate when deciding whether to allow removal from the register, weighing these alongside the public interest.

The Assistant Registrar should consider the following factors:

1. the nurse, midwife, or nursing associate's reasons for seeking removal
2. their plans for the future

If the nurse, midwife, or nursing associate demonstrates a committed intention to leave the profession then this will be a factor in favour of agreeing removal. For example, a nurse, midwife, or nursing associate may express their intention to follow an alternative career path, be suffering from long term ill health, or have taken steps to leave the profession before we raised concerns with them. They may wish to submit a statement and / or provide evidence of this in support of their application, and we will usually ask them whether they plan on reapplying to join the register within the next five years.

Sometimes a nurse, midwife, or nursing associate who is subject to fitness to practise proceedings may want to be removed from the register for a period of time with a view to returning in the future, once the issues with their ability to practise safely have been resolved. This will usually only apply in cases of lack of necessary knowledge of English, where the nurse, midwife, or nursing associate's skill may improve over time; or health, where their health might improve or be better managed in the future.

Public interest

The Assistant Registrar should make sure that any other public interest considerations are addressed in their decision to agree removal.

There is no requirement that the professional must accept the regulatory concern before an application for removal is granted. However, the fact that a professional hasn't accepted the concern could in some cases be relevant to the Assistant Registrar's assessment of whether there is an overriding public interest in those concerns being considered by a fitness to practise panel. This might be the case where the Assistant Registrar feels that there is a strong public interest in a fitness to practise panel considering the matter and publishing findings of fact about the events that led to the concern being raised.

1 This is a statutory requirement under Rule 14(2B)(b)(i) of the Registration Rules

2 Details of the fitness to practise information we publish can be found in the NMC's guidance on publication of fitness to practise and registration appeal outcomes

Circumstances where agreed removal will not be appropriate

Reference: CMT-5c Last Updated: 24/04/2023

Agreed removal only applies to nurses, midwives and nursing associates who are subject to an actual or potential fitness to practise allegation. Agreed removal does not apply to nurses, midwives or nursing associates who simply want to be removed from the register or to let their registration lapse. In these circumstances the nurse, midwife or nursing associate should follow the 'cease to practise' process.

Where a nurse, midwife or nursing associate is subject to a final conditions of practice or suspension order and no longer wants to be on the register, they can apply for the final order to be lifted by a fitness to practise panel so that they can be removed. For more information on this process, see our guidance on 'Allowing nurses, midwives or nursing associates to be removed from the register when there is a substantive order in place'.

Applying the agreed removal criteria to particular cases

Reference: CMT-5d Last Updated: 27/02/2024

In this guide

This section explains how we will consider removal applications in relation to different types of regulatory concerns.

Health

Removal is likely to be appropriate where there are concerns about a nurse, midwife, or nursing associate's health, where:

- The regulatory concerns relate to a nurse, midwife, or nursing associate's long-term physical or mental health, and there are no unrelated conduct issues that are likely to result in the Fitness to Practise Committee making a striking-off order; and

- The nurse, midwife, or nursing associate confirms that they don't intend to continue practising and want to be removed from the NMC register. The public interest may be best served by granting a removal application, even if the nurse, midwife, or nursing associate expresses a desire to seek readmission in the future should their health improve;

Or

- The regulatory concerns relate to a nurse, midwife, or nursing associate's conduct or competence, but they wish to remove themselves from the register due to serious ill health. In these circumstances removal may be appropriate before a hearing starts.
- Their serious ill health will be considered as a factor in favour of granting removal, even though it may not be the cause of the concern with their practice.

If a nurse, midwife, or nursing associate is terminally ill, they may be unable to participate in the process. These cases may be better dealt with under our cancellation of hearings process.

Lack of competence or not having the necessary knowledge of English

Agreed removal is likely to be appropriate when:

- The regulatory concern relates to or not having the .
- The nurse, midwife, or nursing associate has already stopped practising and doesn't intend to return to practice. Agreed removal is also likely to be appropriate in some circumstances where the nurse, midwife, or nursing associate intends to return to practise in another country where English language skills are not required, or at a time when they have improved their knowledge of English to the required standard.

Convictions or determinations from another regulatory body

Cases where the concerns relate to convictions or determinations from another regulatory body are less likely to be appropriate candidates for agreed removal if the seriousness of the conduct is fundamentally incompatible with

being a registered professional.

Misconduct

Where allegations of misconduct are the main concern, a decision to agree removal will need to take into account the overall seriousness of the misconduct.

Where the misconduct is so serious that it's fundamentally incompatible with being a registered professional, the Assistant Registrar is unlikely to agree removal. The Assistant Registrar will take into account our guidance on seriousness, (particularly our guidance on concerns that are more difficult to put right) as well as our guidance on sanctions, when making their decision.

Agreed removal is unlikely to be appropriate where the concerns involve:

- Deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to people receiving care;
- Dishonest conduct involving misuse of power, vulnerable victims, personal financial gain from a breach of trust, direct risk to people receiving care, premeditated, systematic or longstanding deception;
- Abusing their position as a registered nurse, midwife or nursing associate or other position of power to exploit, coerce or obtain a benefit;
- Serious discriminatory conduct such as racism, sexism, homophobia or any other types of discrimination;
- Sexual misconduct, violence or abuse;
- Serious criminal offences (including hate crimes, sexual offences and serious crimes against children or vulnerable people; - see guidance on specified offences) or crimes resulting in a sentence of imprisonment;
- Deliberately causing harm to people receiving care;
- Being directly responsible (such as through management of a service or setting) for exposing people receiving care to harm or neglect, especially where the evidence shows the nurse, midwife or nursing associate put their own priorities, or those of the organisation they work for, before their professional duty to ensure the safety and dignity of people receiving care;
- Widespread or sustained bullying (especially by senior leaders);
- Leading or fostering poor cultures that put people receiving care at risk of harm.

Where the misconduct is less serious, or could be addressed if the nurse, midwife, or nursing associate did not wish to stop practising, then the Assistant Registrar is more likely to agree to the removal.

More than one type of concern

If it's alleged that the nurse, midwife, or nursing associate's fitness to practise is impaired because of more than one type of concern, the Assistant Registrar will need to look at all of the concerns together and decide whether removal is appropriate.

An overall assessment of the seriousness of the concerns will be made, applying each of the relevant considerations above. If the case includes allegations which are likely to result in the Fitness to Practise Committee making a striking-off order, then the Assistant Registrar is unlikely to agree removal.

Readmission to the register

Reference: CMT-5e Last Updated: 24/04/2023

Agreed removal is not necessarily permanent, as the nurse, midwife or nursing associate may seek to be readmitted to the register at some point in the future. For readmission to the register, the nurse, midwife or nursing associate will need to make an application for readmission supported by appropriate evidence. The Assistant Registrar will consider the application alongside the details of any concern that was unresolved at the time removal was agreed and any new information the nurse, midwife or nursing associate provides about this.

The Assistant Registrar will exercise caution in allowing a professional to be readmitted following removal from the register in circumstances where there are outstanding fitness to practise concerns, particularly where the professional has previously expressed an intention to cease practising permanently. The nurse, midwife or nursing associate will be expected to explain why they are seeking readmission, having previously applied for removal.

Where the nurse, midwife or nursing associate's removal was agreed after concerns were raised about their health, they may be required to provide up-to-date medical evidence in order to satisfy the Assistant Registrar that they now meet our health requirements and are capable of safe and effective practice. In cases relating to lack of competence or poor clinical performance, the nurse, midwife or nursing associate may be expected to provide evidence of clinical competence, for example through completion of a return to practice course, with particular reference to the clinical concerns identified.

The applicant will need to satisfy the Assistant Registrar that they are capable of safe and effective practice, and meet the health and character requirements, in light of any concerns that were outstanding when they applied for removal. Where any outstanding concerns were not admitted or proved, the Assistant Registrar will consider the evidence available in relation to those concerns at the time of the application for readmission. The Assistant Registrar may also seek additional information about the concerns before reaching their decision. When considering those concerns, the applicant will need to satisfy the Assistant Registrar, in the light of all the available evidence, that they are now capable of safe and effective practice. The applicant will also need to meet all other relevant requirements for readmission.

Cancelling hearings

Reference: CMT-6 Last Updated: 04/01/2019

In this guide

A Chair of the Fitness to Practise Committee has the power to decide that a hearing should be cancelled and the matter closed.[1] We use this power only in very limited circumstances.

When we take the decision to cancel hearings

We will apply to cancel a hearing if we know that the nurse, midwife or nursing associate has a terminal illness. When this happens, we close the case because we recognise it wouldn't be right for us to continue to pursue a case about a regulatory concern in those circumstances.

We don't apply to cancel hearings just because there are difficulties with our evidence. Then, the right way forward is for us to apply the Fitness to Practise Committee to offer no evidence.

Nurses, midwives and nursing associates are also able to apply for agreed removal, which can bring their registration to an end without their case going to a final adjudication.

These powers are usually more appropriate than us using our power to cancel a hearing.

What happens when we apply to cancel a hearing?

Our case presenter will prepare a document, called a 'reasoned opinion' that sets the background to the case, and explains the nurse, midwife or nursing associate's health condition.

The Chair will then decide whether to direct that the case should be closed.

Our rules require the Chair to give the person who made the allegation, a reasonable opportunity to comment on what we propose to do, and to take any comments into account.

Our case presenter will always consider what a reasonable opportunity is in every case that they prepare a reasoned opinion.

Our general position, though, is that because information about a nurse, midwife or nursing associate's terminal illness is sensitive and confidential, it is generally not necessary to our statutory role for us to share this information.

This means that a reasonable opportunity to comment will usually not involve us sharing information about the nurse, midwife or nursing associate's health condition with the person who made the allegation.

After a hearing is cancelled

If the Chair directs that the case should be closed, this will mean that the nurse, midwife or nursing associate's registration will lapse if they haven't paid their fee or completed revalidation, and they won't still be subject to a fitness to practise allegation, which would otherwise have kept their registration active.[2]

A decision to close a case is not a 'final determination', because the panel has not made a fully reasoned decision about the substance of the case, the evidence, or the nurse, midwife or nursing associate's fitness to practise.

This means that any interim order in place will have to be removed by a panel before the nurse, midwife or nursing associate's registration can lapse. We will usually have arranged this before we consider an application to cancel a hearing. We always review the evidence relevant to interim orders, and if we become aware that a nurse, midwife or nursing associate has a terminal illness, it is extremely unlikely that an interim order to protect the public from any difficulties in their practice will still be needed.

1 Rule 33 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004

Constitution of panels

Reference: CMT-7 Last Updated: 14/10/2022

In this guide

Who sits on our practice committee panels?

The panels of our Fitness to Practise Committee or Investigating Committee are made up of three people.[1]

One of the three people must be a nurse, midwife or nursing associate, and one of them must be a member of the public who is not a registered nurse, midwife and nursing associate (that is, a lay person). The Chair of the panel can be a nurse, midwife or, nursing associate or a lay person.[2]

If the hearing is about a midwife, there will be a midwife on the panel. If the hearing is about a nurse, there will be a nurse on the panel. If the hearing is about a nursing associate, there will be a nursing associate on the panel.[3] There are two exceptions to this: interim orders, and some substantive order reviews.

Panels that decide on interim orders

If the panel has been asked to consider making or reviewing an interim order, one of the members of the panel must be a registered nurse, midwife or nursing associate.

However, the nurse, midwife or nursing associate on the panel doesn't necessarily have to be from the same part of the register as the person whose fitness to practise, or entry in the register, we are investigating.[4]

Panels that decide on particular substantive order reviews

At reviews of substantive orders, one of the members of the panel must be a registered nurse, midwife or nursing associate. However, we do not require the nurse or midwife to be from the same part of the register as the person whose sanction the panel is reviewing, so long as the following conditions are met:

- the panel decided that the nurse, midwife or nursing associate's fitness to practise was impaired because of their health or lack of competence at the initial substantive hearing
- the nurse, midwife or nursing associate has been continuously subject to a suspension order, a conditions of practice order, or a combination of periods of suspension and conditions, for at least two years, and
- the nurse, midwife or nursing associate has never engaged with our proceedings, has told us they no longer want to engage in our proceedings, or have stated that they wish to be removed from the register.[5]

What happens if a panel member cannot continue to sit?

Sometimes a panel member becomes unavailable or no longer eligible[6] to sit on our panel during the course of a hearing.

If this happens, rather than start the hearing again, we are able to substitute a new panel member for the person who is no longer able to sit.[7] The panel will still need to be made up of the same types of members identified above.

When we decide that substituting a new panel member is the best way to proceed, we will explain to the nurse, midwife or nursing associate, in advance of the hearing continuing with the new panel member, why we think it is in the interests of justice to do this.

We will give the nurse, midwife or nursing associate the chance to tell us whether they agree with a new panel member being substituted.

After we have substituted a new panel member the hearing can resume.

At this point, the panel members are able to decide for themselves whether:

- the substitution is for a proper purpose
- proper procedures have been followed
- it is in the interests of justice for the substituted panel member to participate.[8]

If the panel members decide to carry out this assessment, they should consider any previous correspondence between us and the nurse, midwife or nursing associate, and any representations the parties make.[9]

1 The Nursing and Midwifery Council (Practice Committees) (Constitution) Rules 2008 (as amended by SI 2020/821) gives us the power to hold hearings with two members rather than three. We will not use this power to hold a hearing without a nurse, midwife or nursing associate panellist being present outside of a national emergency. We will not use panels of two members rather than three members unless rare and exceptional circumstances apply

2 Rule 6(10) of the Nursing and Midwifery Council (Practice Committees) (Constitution) Rules 2008.
3 Our Council adopted this requirement to take effect from April 2011.
4 Our Council agreed the exception for interim orders in February 2013
5 The Director of Fitness to Practise issued this guidance on behalf of Council in December 2014.
6 This could include a panel member who is a lay person becoming registered as a nurse or midwife during the hearing, or the registration of a member who is a nurse, midwife or nursing associate lapsing during the hearing.
7 R (on the application of Michalak) v General Medical Council [2011] EWHC 2307 (Admin)
8 Michalak, cited above, paragraph 12.
9 Previous correspondence will be particularly relevant to the question of proper procedures, which are not set out in our legislation. A key consideration is whether the nurse, midwife or nursing associate has been given a fair chance to have their views taken into account.

Proceeding with hearings when the nurse, midwife or nursing associate is absent

Reference: CMT-8 Last Updated: 13/01/2023

In this guide

Overview

There is a difference between criminal proceedings and regulatory proceedings and, as a regulatory body, we do not have the power to enforce attendance at our hearings.

A nurse, midwife or nursing associate is still entitled to be represented, either by a legally qualified person or by someone else.[1]

If the nurse, midwife or nursing associate is unwilling or unable to attend, a panel can choose to proceed with the hearing and impose an interim order or final sanction in their absence.[2]

This underpins our aim to protect the public, by dealing with allegations of impaired fitness to practise at the earliest opportunity by making sure that decisions are not unduly delayed.

Starting final hearings when the nurse, midwife or nursing associate doesn't attend

When deciding whether to proceed with a final hearing in the nurse, midwife or nursing associate's absence, the panel must exercise care and caution.

Fairness to the nurse, midwife or nursing associate is a prime consideration.

However, fairness to the regulator and the interest of the public is another important consideration to be taken into account.

Because of this, the panel will first consider whether all reasonable efforts have been made to serve the notice of hearing on the nurse, midwife or nursing associate. This should be considered alongside the nurse, midwife or nursing associate's duty to cooperate with our investigation and provide us with an address for correspondence.

The panel should consider all of the known circumstances, and be guided by the following principles:[3]

- the public interest in the expeditious disposal of the case
- the inconvenience to any witnesses that have attended or due to attend
- whether the nurse, midwife or nursing associate has engaged with the proceedings and their reasons for non-attendance (this should include whether the reason for non-attendance is supported by independent evidence)
- the unfairness to the nurse, midwife or nursing associate if the proceedings were to continue, for example, they will not have the opportunity to question evidence or provide their own evidence to the panel in person
- whether it is fair, appropriate and proportionate to proceed in the nurse, midwife or nursing associate's absence.

If the panel decides not to proceed in the absence of a nurse, midwife or nursing associate, they will consider whether to postpone the hearing.

If the panel does proceed with the hearing, and the nurse, midwife or nursing associate remains absent throughout the hearing, there's no general obligation for the panel to consider adjourning or providing a further opportunity for the nurse, midwife or nursing associate to make submissions before progressing onto later stages such as impairment and sanction.[4]

Interim order hearings where the nurse or midwife or nursing associate doesn't attend

When it comes to interim order hearings, different issues will apply when deciding whether to proceed in the absence of a nurse, midwife or nursing associate.

This is because, in contrast with final hearings where a panel makes findings of fact based on the evidence, interim order hearings require panels to conduct an immediate risk assessment.

To proceed in the absence of a nurse, midwife or nursing associate, an interim order panel must be satisfied that all reasonable efforts have been made to serve the nurse, midwife or nursing associate with notice of the hearing.[5]

If the nurse, midwife or nursing associate has informed us that they do not wish to attend the hearing, the panel should proceed with the consideration of the interim order.[6]

When a nurse, midwife or nursing associate has told us that they are unable to attend the hearing for a particular reason, or they have asked for further time to secure representation or to prepare for the hearing, the panel should still go on to consider the merits of the application for the interim order.

This is because of the urgent nature of the application and the risks that have been identified. If the panel decides that one or more of the legal grounds for imposing an interim order have been satisfied, the panel should proceed to impose an interim order and direct that it is listed for a review hearing within the next 14 days to give the nurse, midwife or nursing associate a further opportunity to attend. The review hearing will reconsider the interim order in full.

If the nurse, midwife or nursing associate has not attended nor given us any representations, we will generally still ask a panel to consider imposing an interim order.

This is because we have identified risks that suggest that an order is necessary for the protection of members of the public, or may otherwise be in the public interest, or the nurse, midwife or nursing associate's own interests. Referring a case for interim order consideration as soon as possible makes sure that we are properly fulfilling our legal duty.

When considering whether to proceed in the absence of the nurse, midwife or nursing associate, the panel should consider the nature of the allegation and our primary function of protecting the public and balance this with whether reasonable efforts have been made to serve the notice on the nurse, midwife or nursing associate.

1 Article 31(16) of the Order
2 Rules 8(6) and 21(2)(b) Nursing and Midwifery Council (Fitness to Practise) Rules 2004
3 R. v Jones (No.2) [2002] UKHL 5 and more recently GMC v Adeogba; and GMC v Visvardis [2016] EWCA Civ 162
4 Sanusi v GMC [2019] EWCA Civ 1172
5 Rule 8(6)(a) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules')
6 Rule 8(6)(c) of the Rules

Case management during hearings

Reference: CMT-9 Last Updated: 01/07/2022

It is important that our hearings are conducted in a way that maintains the public confidence in us as a regulator.

How the panel manages the case

One of the roles of the panel is to manage the case, the people appearing before it, and to make sure the hearing runs smoothly, by managing when the hearing will be in session and deciding what time people need to attend each day.

The panel will also make the decision as to whether all, or part of the hearing should be held in public or private, and which part of their reasons should be published.

Members of the public, including the press, may attend the public parts of a hearing. The panel may need to maintain the anonymity of certain individuals, such as patients or people giving evidence who need this kind of support to effectively engage.

Sometimes people entitled to anonymity may prefer to be referred to by name, or a person may wish to refer to someone entitled to anonymity by name or their relationship to them (for example, saying “my sister”). The panel should facilitate people giving evidence to engage effectively with the hearing and consider whether directions are needed to avoid the identity of individuals entitled to anonymity from being revealed in public. Such directions may include:

- making an order[1] to prevent information that identifies an individual from being shared outside the hearing room
- hearing a person’s evidence in private; holding the hearing in private is usually only likely to be necessary in extreme cases such as where there is a serious risk of the identity of an individual being revealed when it shouldn’t be.

What the panel does as it hears the evidence

The panel can ask people giving evidence questions in order to clarify their evidence and help decide whether the charges are proved.

If a new issue comes up after someone has finished giving their evidence, the panel should think very carefully about whether the individual needs to be called back to give further evidence, or whether the panel can explore the issue with those who remain in session, other people who haven’t yet given evidence, or by considering the evidence they have already heard.

If the panel considers that we may need to carry out further investigation, it should consider carefully whether to adjourn the hearing to allow us to do this.

When making these decisions, the panel should always strike a balance between the nurse, midwife or nursing associate’s right to a fair hearing and our overarching objective of protecting the public in a fair and proportionate manner.

Managing behaviour in hearings

Part of the panel’s role in managing the people appearing before it includes managing behaviour in hearings.

It’s important that all parties to the hearing are treated fairly, with respect and dignity. Some people can find

hearings challenging or stressful. Part of the panel's role is to make sure people in the hearing behave appropriately, and ensure the hearing runs in such a way that allows all parties to engage effectively.

Where a person is behaving inappropriately - for example, being rude or hostile towards another person - the Chair of the panel should intervene and remind the person of the standards of behaviour expected during a hearing (see Our expectations of everyone involved in a hearing). We expect this will be sufficient in most cases to manage proceedings.

Where a person continues to behave inappropriately, the Chair should remind the person again of the standards of behaviour expected during a hearing.

Where a person continues to behave inappropriately despite repeated reminders, the Chair should warn the person that disruptive behaviour may result in their exclusion from all or part of the hearing.

Where the Chair has repeatedly reminded and warned a person about their behaviour, and they continue to behave in an inappropriate manner, the panel may exercise its power to exclude the person from all or part of the hearing.[2]

In cases of particularly serious poor behaviour - for example violent conduct, threatening behaviour and discriminatory or overtly offensive language – the panel may exclude a person from the hearing with immediate effect without reminders or a warning. This applies equally whether the behaviour has occurred, or if the panel considers such behaviour is likely to occur.

Our expectation is that the panel will intervene where a participant behaves inappropriately. In general, parties should recognise that the management of behaviour in a hearing is a matter for the panel. If, however, a party to proceedings considers that a participant is behaving inappropriately they may bring this to the panel's attention and invite it to intervene. The decision to intervene and to what extent will be a matter for the panel.

1 Under Rule 22(2) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 the panel can, upon the application of the party calling a witness, direct that any details which identify a witness should not be revealed in public.

2 Rule 20(5) Fitness to Practise Rules 2004

Hearings in private and in public

Reference: CMT-10 Last Updated: 08/08/2023

In this guide

Public hearings

If a case is being decided at a hearing because the Fitness to Practise committee needs to resolve a dispute between us and the nurse, midwife or nursing associate, it will usually be held in public.[1]

If a hearing isn't needed because there is no material dispute, or the nurse, midwife or nursing associate hasn't asked for one, the case will be decided at a meeting, which will take place in private without any representatives or the nurse, midwife or nursing associate present. However, all panel decisions from meetings are recorded in a written document, which is published on our website.

Patients, their families and loved ones, members of the public, and the press can observe hearings and watch the panel make its decisions. All panel decisions are recorded in a written decisions document. After the hearing, the document is published on our website.

Private hearings

In some cases, a panel will decide that some or all of the hearing should be in private.[2] In a private hearing, any members of the press or public will be asked to leave. The panel's published written decision will not contain any information that is considered private.

The decision to hear all or part of a hearing in private is a decision for a panel to make after hearing the advice of the legal assessor.

Deciding whether to hear matters in private

Hearings should generally be held in private where the allegation is only about a nurse, midwife or nursing associate's mental or physical health, or about things the nurse, midwife or nursing associate did because of their health condition, that could cause risks to patients.

An exception to this is when the panel decides that the public interest, or the interests of any third party, outweighs the need to protect the privacy or confidentiality of the nurse, midwife or nursing associate meaning that all or part of the hearing should be held in public.[3] The circumstances where it is appropriate to hear private health information in public session will be extremely rare.

A panel can hear matters in private when it is satisfied that it is reasonable and proportionate to do so, and it is justified in the interests of any party, third party, or the public.[4] Either we, or the nurse, midwife or nursing associate, can apply for part or all of the case to be heard in private. A panel can also raise the issue and then make a decision.

Before making a decision, the panel should give us, the nurse, midwife or nursing associate, and any person with an interest in the case the chance to make representations about sitting in private, and then consider the advice of the legal assessor.

A decision to sit in private may relate to all or part of a hearing. Given that transparency and open justice will

normally require that (non-health-related) hearings are held in public, panels should try to hold as much of a hearing in open session as practical, even if it's occasionally necessary to switch between public and private session.

In reaching this decision, a panel should also consider if it would be more appropriate and proportionate to take other steps such as editing documents, anonymising information or concealing the identity of a person referred to in the allegation.

The application to hear the case in private can itself be made in private session, if it is reasonable to do so. However, the panel should ask for representations from all interested parties before the full application is heard in private. Any decision on an application to hear matters in private is recorded in writing and given to the parties.

Written panel decisions

All panel decisions from hearings and meetings are recorded in writing and published on our website. Sometimes, private information, including information about people's health, or any details about children, will form an important part of the panel's decision making. However, it will be extremely rare that it would be right for us to include this information in the published decision.

For this reason, we sometimes need to produce two decision documents: one marked as public, which will be published, and one marked as private. Panel decisions are published on our website in accordance with our publication guidance[5], and it is the NMC's responsibility to decide which information should form part of the public document, and which information should remain private.

It will often be obvious that information needs to be removed from the public decision document, for example where the case is about the nurse, midwife, or nursing associate's health. At other times, other kinds of private information will need the panel to carry out a careful balancing exercise. The different factors are the need for transparent decision making, protecting the interests of the various people involved in the case, including patients, service users, their families and loved ones, the nurse, midwife or nursing associate, and witnesses. The panel may need to think carefully about whether people other than the nurse, midwife or nursing associate might be identified by us publishing particular details.

In very rare cases we may need to consider whether we should publish the decision at all. If the nurse, midwife or nursing associate makes representations about publishing the decision, we will consider the reasons for the request and then balance the public interest of matters being reported against the reasons for the application.

1 Rule 19(1) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (the Rules), and in accordance with the principle of open justice.
2 Rule 19(4) of the Rules
3 Rule 19(2) (a) and (b) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004
4 Rule 19(3) (a) and (b) of the Rules
5 See our Privacy notice at: www.nmc.org.uk/privacy/

When we postpone or adjourn hearings

Reference: CMT-11 Last Updated: 13/01/2023

In this guide

Overview

A postponement is when a Chair or a panel of the Investigating Committee or Fitness to Practise Committee decides that a hearing needs to be delayed and should not go ahead on the original date scheduled. If this happens, we will rearrange the hearing as soon as reasonably possible.

When the hearing is rearranged, it will be before a different panel of the same committee.

An adjournment is when a panel decides not to continue with the hearing at any point after the charges have been read. When the hearing resumes it will be before the same panel.

Who can ask for an adjournment or postponement?

We can apply for a postponement or adjournment, the nurse, midwife or nursing associate can apply, or a Chair or Committee can decide for themselves that a postponement or adjournment is needed.

If we haven't yet sent a formal notice of hearing to the nurse, midwife or nursing associate, the decision to postpone a hearing is made by a senior member of our staff.

If a notice of hearing has been sent, the decision to postpone a case is made by a Chair of the Committee.[1] Where it's needed, we'll arrange for a preliminary meeting to consider the application and any representations from the parties in support or opposition to the application.

The decision to adjourn proceedings is made by a panel of the Committee considering the allegations against the nurse, midwife or nursing associate and can be made at any stage during the hearing.[2]

Deciding whether to adjourn or postpone

In deciding whether or not to grant a postponement or adjournment, the decision maker should consider all relevant factors, including the following.

- There is a public interest in considering fitness to practise allegations swiftly, in order to protect the public, and maintain confidence in the professions and us as a regulator. Although delaying a hearing may mean that witnesses find it harder to remember their evidence, there may also be a public interest in delaying the hearing. For instance, if we need more time to get further evidence that will provide the Committee with a full understanding of the concerns when they make their decision.

- Postponing or adjourning a hearing may cause inconvenience to people who have made themselves available to attend and give evidence on the original hearing dates, and who may be unable to attend a

hearing at a later date.

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  Postponing a hearing may allow a nurse, midwife or nursing associate, who is unable to attend original hearing dates, to attend a future hearing and give their evidence in person. For example, due to short term ill health or other commitments that were arranged before they were informed of the hearing date.

If a nurse, midwife or nursing associate is unable to attend the hearing for medical reasons, they'll need to provide evidence that they're unfit to participate in the hearing. That evidence should[4]:

- be an independent opinion following a proper examination of the nurse, midwife or nursing associate
- identify what exactly is wrong with the nurse, midwife or nursing associate, and why their health condition prevents them from participating in a hearing
- identify the practitioner making this assessment, and how familiar they are with the nurse, midwife or nursing associate's health condition
- include a view on the outlook of the health condition

Where consideration is being given to granting an adjournment, the panel should only make the decision to adjourn if no injustice is caused to the parties, and after hearing representations from us and the nurse, midwife or nursing associate, or their representative (where present) and after taking advice from the legal assessor.[5]

Depending on the stage at which the hearing is adjourned, the panel and the parties should consider if any witnesses might need further support at the resumed hearing, such as being provided with the transcript of their evidence if they are partway through giving their evidence.[6]

If an adjournment is granted, the panel shall also consider whether to impose an interim order.

The panel will ask for representations from us and the nurse, midwife or nursing associate, or their representative (where present). The panel will deliberate in private and announce the decision, providing reasons. We will send a notification of the decision to the nurse, midwife or nursing associate.[7]

1 Rule 32(1) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules')
2 Rule 32(2) of the Rules
3 Rule 32(4) of the Rules
4 Levy v Ellis-Carr [2012] EWHC 64 (Ch) as affirmed in GMC V Hayat [2018] EWCA Civ 2796
5 Rule 32(2)(a) and (b) of the Rules
6 The starting point should be that a witness should be allowed to have a transcript of their evidence unless it would be unfair to do so. See Rule 27(2) of the Rules and BGC Brokers LP and others v Tradition (UK) Ltd and others [2019] EWHC 3588 (QB), in which Eady J refused an application to prohibit witnesses from accessing the daily transcripts until they had completed their testimony.
7 Article 31(14) Nursing and Midwifery Order 2001

Supporting people to give evidence in hearings

Reference: CMT-12 Last Updated: 01/08/2023

Overview

This guidance is intended to assist NMC staff responsible for preparing cases for hearings and sets out the NMC's approach to supporting people to give evidence in hearings.

When we refer to 'people giving evidence', this includes the nurse, midwife or nursing associate whose case is being considered and anyone giving evidence on their behalf.

Key principles

We know that giving evidence at a hearing can be a daunting experience for some people.
We don't want the nature of the experience to interfere with a person's ability to give their evidence effectively.

When preparing cases for hearings, we'll follow these principles as part of best practice:

1. We'll find out what support people feel they need to give evidence in a hearing and engage effectively.
2. We'll always try to provide people with the support they tell us they need as long as it is fair and practical to do so.[1] One way we'll do this is to work collaboratively with the parties in the case to get support measures agreed before the hearing.
3. Where we consider the support requested is not practical or a reasonable use of resources, we'll work with the person giving evidence to give them as much support as we can.
4. We make the initial decision about support measures, but the panel hearing the case has the final say over whether support can be provided. We'll be clear about this in our communications to people giving evidence. We'll also be clear that we may have to share information about why they need support measures with other people involved in the case.
5. If a concern is raised about support measures, we can arrange for the panel hearing the case to make a decision or arrange for a Chair to give directions at a preliminary meeting.
6. We'll communicate decisions about support measures in advance of the person giving their evidence. We'll give people sufficient time to understand the decision and prepare to give their evidence in the way that's been decided.[2]

Examples of support measures

The following is a non-exhaustive list of the kind of support we can offer:

1. Making adjustments to help support people with a disability.
2. Directing the nurse, midwife or nursing associate whose case is being considered to the NMC's Careline.
3. Agreed timetables for people giving evidence which all parties and the panel will aim to keep to.
4. Breaks as necessary/appropriate when giving evidence.
5. Giving evidence remotely.
6. Attending a hearing centre and giving evidence from another room.
7. Using screens or setting up the room or virtual hearing in a way that the person giving evidence feels most comfortable and can give evidence effectively.
8. Use of communication aids.
9. Use of an interpreter.
10. Use of an intermediary to assist with questioning.
11. Use of a support advocate.

12. Providing transcripts where a case is part heard/remitted.
13. Setting out ground rules for questioning.
14. In advance of the hearing, providing a list of the questions the parties wish to ask a person giving evidence to the panel which will hear the case for them to approve in line with previously agreed/directed ground rules.
15. Appointment of a lawyer to ask certain questions on behalf of a nurse, midwife or nursing associate who is not represented. A person instructed in this way is usually referred to as 'special' counsel.[3]
16. Explaining the nature of a nurse, midwife or nursing associate's defence before a person gives evidence.

Telling the nurse, midwife and nursing associate about support for people giving evidence for the NMC

Where a person giving evidence on behalf of the NMC tells us they would like support, we may ask for information to help us understand the person's needs.

We'll inform the nurse, midwife or nursing associate whose case is being considered (and their representative) in advance of the hearing of any support we're proposing to provide.

We'll give the nurse, midwife or nursing associate (and their representative) the information they need to understand what support has been requested and if it could impact the fairness of the hearing. Wherever possible we will try to agree the support measures with the nurse, midwife and nursing associate (or their representative) in advance of the witness giving evidence.

If the nurse, midwife or nursing associate (or their representative) has a concern about whether a fair hearing can take place, we'll convene the panel responsible for hearing the case (or a Chair at a preliminary meeting) to hear representations from the parties and make a decision (or give directions). Any information we share with a panel (or a Chair) about a person's request for support measures, we'll also share with the nurse, midwife or nursing associate (and their representative).

The panel's decision (or Chair's directions) will need to be made sufficiently far in advance of when the person is due to give their evidence so that we can communicate the outcome and discuss next steps.[4]

Issues arising after a person has started to give evidence

Sometimes unforeseen circumstances arise during hearings. The panel hearing the case is responsible for ensuring that the hearing is fair and that all parties can participate effectively.

If any party or the panel has concerns about the fairness of the hearing or the ability of a person to engage effectively, they should ask for a break so that support measures can be discussed.

The parties and the panel may need to consider whether more support needs to be given to a person giving evidence or whether a person would be assisted by giving evidence in a different way.

If the questioning of a person is inappropriate the panel should use their case management powers to address the situation in line with our case management during hearings guidance.

1 This is in line with our person-centred approach and our duties under the Equality Act 2010 to make reasonable adjustments.
2 This may mean that a hearing is not listed on consecutive working days. In the event that an objection is unavoidably raised shortly before a person is due to give evidence and the panel decides not to allow a support measure because it would be unfair, the panel may need to consider an adjournment to allow sufficient time for the decision to be communicated to the person and for the NMC to discuss next steps.
3 Our Rules (23(4)) require us to appoint special counsel to conduct cross-examination when a person giving evidence has made allegations of a sexual nature directed at them against a nurse, midwife or nursing associate who is representing themselves. We could also appoint special counsel in other circumstances where this would be a reasonable measure to support the person; for example for the cross-examination of a person who alleges the nurse midwife or nursing associate has physically or emotionally abused them where the nurse, midwife or nursing associate is representing themselves.
4 As above, this may mean that a hearing is not listed on consecutive working days.