Table of Contents

How case examiners decide there is a case to answer

Reference: CAS-1 Last Updated: 06/05/2025

In this guide

What cases examiners need to consider

Once our investigations team has completed their investigation into the concerns about a nurse, midwife or nursing associate, our case examiners decide whether or not a nurse, midwife or nursing associate has a case to answer. They also decide what happens to the case. For example, if they decide the nurse, midwife or nursing associate has no case to answer, case examiners can still issue a warning, or give advice.

They can recommend that we need to do further investigation before they can decide whether or not there is a case to answer. Our guidance on Our culture of curiosity may assist in deciding if this is necessary, appropriate and proportionate.

In deciding whether there's a case to answer or not, case examiners need to consider whether there's a realistic possibility that the Fitness to Practise Committee would decide, using the evidence we've gathered so far, that:

- the incidents in the case did happen, or that the issues (such as a health condition) are still present
- the nurse, midwife or nursing associate's fitness to practise is currently impaired.

Case examiners do not decide whether the case against the nurse, midwife or nursing associate is proved, whether or not the incidents in the case happened, or whether or not the nurse, midwife or nursing associate is fit to practise. These decisions should only be taken by the Fitness to Practise Committee.

Considering if facts are capable of being proved

Case examiners have to decide if there's enough evidence to make it a realistic possibility that the Fitness to Practise Committee would decide that the incidents or issues in the case did happen.

When making their decision, case examiners will carefully look at all of the relevant information and evidence collected so far, along with anything the nurse, midwife or nursing associate has told us about the facts of what happened, and any evidence they've given us.

At this stage, we'll usually have shared the nurse, midwife or nursing associate's comments about the issues with the people involved, and given them a chance to respond, so they'll also look at any comments from people receiving care, families or loved ones, or members of the public involved in the case.

If our concerns about a nurse, midwife or nursing associate's fitness to practise are about more than one area of practice, or more than one incident or issue, case examiners will consider the information and evidence about each incident or issue separately.

However, they won't always need to comment on each individual piece of evidence about each separate issue in

their decision, because the case to answer decision is about our concerns about the nurse, midwife and nursing associate's fitness to practise as a whole, rather than individual factual scenarios.

It isn't the case examiners' role to make final decisions about whether the incidents or issues in the case did or didn't happen. They can't test the evidence and they don't decide whose evidence they would choose if there is a disagreement between two witnesses. However, they look carefully at the overall weight, or impression, of the evidence as a whole.

Where a witness, who can provide relevant evidence, is reluctant to engage, case examiners should be slow to discount this evidence unless they're satisfied that there are no further reasonable steps we could take which might encourage the witness to engage.

There are a variety of reasons why a potential witness may be reluctant to engage, such as:

- concerns over being able to manage their personal responsibilities if required to attend a hearing
- concerns about the cost of attending a hearing, or
- concerns over their memory of the precise details of the incident.

We can support witnesses in a number of ways. We'll always seek to discuss any concerns the witness may have about engaging or attending a hearing and will explain our hearings process.

We'll also consider if there are any measures or adjustments we can offer which might support the witness in feeling able to participate. Our website has further information for witnesses and the support we can offer. There is also further detail on how we support witnesses to give evidence in a hearing.

Case examiners shouldn't find a case to answer based on a witness' evidence where the prospect of that witness engaging might be remote or fanciful. Case examiners must be satisfied that there have been reasonable proactive steps taken to encourage and support the witness to attend before concluding there is little prospect of a witness engaging. What is reasonable will vary according to the circumstances.

If they decide that there isn't enough evidence to make it a realistic possibility that the Fitness to Practise Committee would decide that the incidents or issues did happen, they won't find a case to answer.

Cases involving sexual misconduct

When considering cases about sexual misconduct, case examiners should be mindful of the common myths and stereotypes surrounding rape and other forms of sexual misconduct. Case examiners should take account of the CPS guidance in this area and should ensure that their reasoning is not influenced by these common myths and stereotypes.

Considering whether the nurse, midwife or nursing associate's fitness to practise may be currently impaired

Case examiners have to consider whether there's a realistic possibility that the Fitness to Practise Committee would decide that the nurse, midwife or nursing associate's fitness to practise is currently impaired.

This will include considering any relevant contextual factors. The circumstances that an incident(s) happened in may be relevant to the assessment of risk and whether there's a realistic possibility that the Fitness to Practise Committee may find the nurse, midwife or nursing associate currently impaired.

When making their decision, case examiners ask themselves two questions.

- Is the nurse, midwife or nursing associate currently a risk to the health, safety or wellbeing of the public, meaning their practice needs to be restricted in some way?
- If not, is it a realistic possibility that the Fitness to Practise Committee would need to take restrictive action to promote public confidence or professional standards for nurses, midwives and nursing associates?

How case examiners assess risk to patients or members of the public

Case examiners will look at how much risk of harm to patients was caused by the nurse, midwife or nursing associate in the past. They'll also ask how serious the possible harm was, and whether there would be similar risks if the incidents or issues happened again.

Case examiners will consider our guidance on insight and strengthened practice when deciding whether there's a realistic possibility of the issues or incidents happening again. Important questions to ask in this case include:

- will it be easy for the nurse, midwife or nursing associate to address the concerns that led to their fitness to practise concerns?
- how much insight have they shown?
- what steps have they taken to address the failings?
- what is the risk of the failings happening again?

We should try to avoid sending cases to the Fitness to Practise Committee if the nurse, midwife or nursing associate accepts our concerns, and they can be addressed.

Where there's no dispute about the facts, we think the best way of dealing with cases about clinical incidents, or areas of practice that cause risk, is usually for the nurse, midwife or nursing associate to accept the concerns in the case and look at how this can be addressed.

Case examiners can recommend undertakings for us to agree with the nurse, midwife or nursing associate which should address the problems raised in their practice.

How case examiners approach public confidence and professional standards

We need to make sure that only the most serious cases where the concerns haven't been addressed go through to the Fitness to Practise Committee at the end of an investigation. If a nurse, midwife or nursing associate poses no risk to the safe care of people, they will only have a case to answer if there may be a need for the Committee to take restrictive regulatory action to promote and maintain professional standards, or public confidence in nurses, midwives and nursing associates.

This means case examiners won't send cases where there's no risk to people receiving care to the Committee unless the nurse, midwife or nursing associate's right to practise may need to be restricted (including temporary or permanent removal from the register) because their past conduct raises fundamental concerns about their ability to uphold the standards and values set out in the Code.

What do cases that may need restrictive action look like?

It will be more difficult to address concerns about past clinical incidents and there may be a need for restrictive action, if the evidence about the incident shows there's an underlying concern about the nurse, midwife or nursing associate's attitude towards people in their care. We explain more about what this might look like in our screening and sanctions guidance.

Whether the concern relates to behaviour inside or outside professional practice, restrictive action may also be needed where concerns raise fundamental questions about the ability of a nurse, midwife or nursing associate to uphold the standards and values set out in the Code. This could include, among other things, concerns about dishonesty, bullying or harassment, sexual misconduct, violent behaviour (including within a domestic setting), abuse of children or vulnerable adults or conviction for a serious criminal offence.

The value of reflection and insight

When making decisions about whether there is a case to answer where the concerns may be difficult to address, case examiners pay close attention to our guidance on insight and strengthened practice.

They take into account the quality of the nurse, midwife or nursing associate's reflection, the steps they have taken to try and address the concerns, and what the evidence tells them about how likely they would be to repeat the conduct.

No case to answer and warnings

Case examiners may decide that the nurse, midwife or nursing associate does not have a case to answer where there is a serious concern that has the potential to impair their fitness to practise but there is no realistic prospect of such a finding because of the quality of their reflection and insight.

We explain when case examiners may issue a warning to the nurse, midwife or nursing associate after they've

decided there's no case to answer in our guidance on warnings.

Available outcomes

Reference: CAS-2 Last Updated: 12/10/2018

If case examiners decide there is , they can:

- give the nurse, midwife or nursing associate advice,
- issue the nurse, midwife or nursing associate with a warning, or
- simply close the case.

If case examiners decide there is a , they can:

- recommend undertakings to be agreed with the nurse, midwife or nursing associate
- refer the case to the Fitness to Practise Committee.

Advice

Reference: CAS-2a Last Updated: 12/10/2018

In this guide

The purpose of advice

Advice is given privately to the nurse, midwife or nursing associate to help them to avoid future incidents which could call into question their fitness to practise. This is different to warnings which are given publicly.

Case examiners can give advice if the nurse, midwife or nursing associate accepts the basis of our regulatory concern.

When we may give advice to resolve a case

We wouldn't investigate a case unless the concern about a nurse, midwife or nursing associate's practice appeared serious enough to call into question their fitness to practise.

Because of this, advice is most likely to be given in cases where a regulatory concern, which appeared serious enough to meet the test for investigation, has fallen away during the course of our investigation, leaving only minor breaches of the Code.

What advice we give

Case examiners will give advice to a nurse, midwife or nursing associate to remind them of their obligations under the Code. They may also signpost to relevant guidance or standards that may help the nurse, midwife or nursing associate keep their practice safe in the future, where appropriate.

Warnings

Reference: CAS-2b Last Updated: 06/05/2025

In this guide

What are warnings?

A warning is a public record on a nurse, midwife or nursing associate's registration, noting that some aspect of their past practice or conduct was unacceptable and that they should not repeat it. These records last for a year.

Their purpose is to maintain professional standards and help prevent future breaches of the trust the public places in all the professionals on our register.

When case examiners issue warnings this allows us to restate publicly what the Code requires of nurses, midwives or nursing associates in particular situations, which helps us to promote and maintain professional standards.

When warnings may be suitable

Before our case examiners will issue a warning, the nurse, midwife or nursing associate must have accepted our concerns about their practice.

Those concerns must be serious enough in principle to impair their fitness to practise but, on the evidence available, there will be no realistic prospect of the Fitness to Practise Committee deciding that the nurse, midwife or nursing associate's fitness to practise is currently impaired.

This is likely to occur in cases where the concerns raised issues about the nurse, midwife or nursing associate's attitudes, values or behaviours, but where the quality of their reflection and insight means they have no case to answer on their fitness to practise being currently impaired. Warnings are likely to be less suitable for cases about mistakes, or where the concerns are about a lack of clinical skill or judgement or someone's health.

Warnings can be suitable for concerns about incidents that happened when the nurse, midwife or nursing associate was providing care to people, if our underlying concerns about those incidents are based on issues about their professionalism, attitudes, values or behaviours.

Warnings are not there to punish people on our register for past mistakes, but to warn them that if they repeat conduct they now agree was unacceptable, this could raise fundamental questions about their practice as a registered professional.

Facts admitted

Case examiners will only issue a warning if the nurse, midwife or nursing associate accepts the concerns about their fitness to practise. This means that there would be a realistic prospect of the facts being found proved if the case went to the Fitness to Practise Committee.

Case examiners don't issue warnings to people who don't accept the concerns about their practice. If the nurse,

midwife or nursing associate disputes concerns that could be serious enough to affect their fitness to practise, the case will need to be resolved by the Fitness to Practise Committee. The Committee has powers to impose restrictions on nurses, midwives or nursing associates which may be needed if the concern is serious, and there's been no reflection, insight, or steps taken to address the concerns.

Not currently impaired but some action still needed

The kinds of concerns that are capable of impairing someone's fitness to practise are set out in our screening guidance. Warnings are generally more suitable for concerns about attitudes, values or behaviours, and in some cases, the examples we identify that could result in harm if not put right may actually raise underlying concerns about these kinds of issues.

Some examples of the kind of case where it's the nurse, midwife or nursing associate's attitude, values or behaviours that led to failures to provide safe and effective care might include:

- not following agreed clinical procedures, and adopting possibly unsafe 'workarounds' for tasks like drug administration, because of a choice to put their own interests, or those of their team or unit, ahead of those of people in their care
- record-keeping failings, like a practice of only recording abnormal observations to save time
- not challenging practices or processes that could put people at risk of harm

Examples of concerns about attitudes, values and behaviours relating less directly to providing care might include:

- isolated, low-level, spontaneous or short-lived dishonesty
- failures to respect privacy or confidentiality
- poor communication, including not following our guidance on using social media responsibly

Warnings are only appropriate where the concerns are serious enough to potentially impair fitness to practise but where the quality of the evidence the nurse, midwife or nursing associate has provided about their reflection and insight means there's now no realistic prospect of the Fitness to Practise Committee finding current impairment.

As we explain in the guidance on how case examiners decide there is a case to answer, our case examiners will look carefully at the guidance on insight and strengthened practice when making decisions about these issues.

Case examiners will issue a warning at the same time as deciding there's no case to answer if the seriousness of the initial concerns means there's a need to warn the nurse, midwife or nursing associate that similar conduct in the future could lead to more fundamental questions about their trustworthiness or professionalism. Such questions could mean a need for restrictive regulatory action to protect the public's trust in nurses, midwives or nursing associates.

By recording this warning publicly, we identify conduct that wasn't acceptable, highlight that the nurse, midwife or nursing associate recognises this, and restate our professional standards for all the professionals on our register.

When warnings are less likely to be suitable

As we explain above, case examiners are less likely to issue warnings if the nurse, midwife or nursing associates disputes the facts our concerns about their practice are based on.

If the concerns are serious enough to affect fitness to practise and the nurse, midwife or nursing associate hasn't participated in the process, then it may be that restrictive regulatory action may be needed to limit the risk of harm to people receiving care. If there are fundamental concerns about their ability to uphold the standards and values set out in the Code, restrictive regulatory action may be needed to promote and maintain public confidence or professional standards.

Case examiners generally won't issue warnings in cases about mistakes, or where the concerns are about a lack of clinical skill or judgement, and won't issue warnings in cases where the concern arose because of someone's ill health.

What we publish

We'll publish the decision to issue a warning on our website seven days after the decision has been made. The record of the warning sets out the:

- statement of regulatory concern,
- relevant standards of practice and behaviour under the Code, and
- reason for issuing the warning.

The fact that warnings are only issued in cases where the nurse, midwife and nursing associate's practice does not present a risk to patients is clearly explained as part of the definition of a warning. This is accessible from the online record of the warning itself.

Warnings stay on the nurse or midwife's register entry for 12 months.

Reviewing warnings

We can review decisions to issue warnings on the grounds that the decision may be materially flawed, or where there is new information which may have led to a different decision.

However, the Registrar (or one of our Assistant Registrars who also make decisions on behalf of the Registrar) must also decide that a review is in the public interest, or is necessary to prevent injustice to the nurse, midwife or nursing associate. Where these criteria are met, the public record of the warning will be amended to show that we're reviewing the decision.

Undertakings

Reference: CAS-2c Last Updated: 30/08/2024

In this guide

What are undertakings?

Undertakings are measures which can be put in place to address problems in the nurse, midwife or nursing associate's practice that pose a current risk to patients.

Case examiners agree these with the nurse, midwife or nursing associate to allow them to work on the areas of their clinical practice which cause concern.

This lets them demonstrate that there is no longer a need to restrict their practice, because they no longer present any risk to patients.

Undertakings are intended to be a pathway back to safe practice, so they need the nurse, midwife or nursing associate to take positive steps within clear time limits.

They're different to conditions of practice orders, which are ordered by the Fitness to Practise Committee, as they are agreed with the nurse, midwife or nursing associate first. Conditions of practice orders also run for fixed time periods, and there has to be a review hearing, usually towards the end of their duration. With undertakings, case examiners review the nurse, midwife or nursing associate's progress and there's no need for a hearing to do the review.

When we would recommend undertakings

Case examiners may recommend undertakings when they find a case to answer.

Undertakings may be recommended in cases which, if they were being considered at a hearing, would involve:

- lack of competence
- misconduct (particularly where the conduct related to clinical practice)
- not having the necessary knowledge of English
- health.

Undertakings are less likely to address the regulatory concern in cases involving:

- misconduct not involving clinical practice
- criminal convictions or cautions
- determinations of impaired fitness to practise by another health or social care regulator.

What we consider before recommending undertakings

Before case examiners recommend undertakings, they will have decided that:

- our investigation fully explored the regulatory concern
- the regulatory concern is not so serious that permanent removal from the register is likely to be necessary
- it's possible to identify a list of proportionate, measurable and workable requirements, and that these will be sufficient to protect patients, judged against the background of the particular case - if such measures cannot be identified then more restrictive outcomes are likely to be required, which means the case should be referred to the Fitness to Practise Committee.

Deciding which undertakings to recommend

When recommending undertakings, case examiners will consider which measures would be sufficient to protect the public and provide a structured approach towards the nurse, midwife or nursing associate returning to safe practice. They'll look at the undertakings bank to assist them with this.

Measures may need to be tailored to take account of particular features of the case, or of the setting in which the nurse, midwife or nursing associate practises.

Undertakings will normally include both:

- 'restrictive' measures, which prevent a nurse, midwife or nursing associate from undertaking a particular activity, and
- 'rehabilitative' steps, which require a nurse, midwife or nursing associate to do something in order to address the outstanding regulatory concern.

Standard requirements to inform employers, and other parties, that the nurse, midwife or nursing associate is subject to undertakings are a 'restrictive' measure.

The measures included in the undertakings should focus on addressing the specific concerns about the nurse, midwife or nursing associate's practice. Case examiners will consider the guidance on insight and strengthened practice in identifying what steps are required to address the particular concerns in the case they are considering.

Both the case examiners and the nurse, midwife or nursing associate's need to have a clear understanding of what the nurse, midwife or nursing associate needs to do in order to comply with the undertakings, and this must be clearly set out. The undertakings must set out how the nurse, midwife or nursing associate should demonstrate that they have observed any duties which the undertakings impose.

Because undertakings are a pathway back to safe practice, it is important that any 'rehabilitative' measures the nurse, midwife or nursing associate is required to complete have clear time limits so everyone knows when the nurse, midwife or nursing associate will be expected to have taken the steps.

'Restrictive' measures, such as those which prevent a nurse, midwife or nursing associate from carrying out particular tasks, will not have fixed dates by which they will automatically expire. This is because the purpose of them is to prevent risks from occurring, so they must be in place until case examiners are satisfied, once the nurse, midwife or nursing associate has provided relevant evidence, that they are no longer needed to protect members of the public.

Agreeing the undertakings

Case examiners will send the recommended undertakings to the nurse, midwife or nursing associate to consider. They'll have 28 days to tell us if they agree to follow the recommended undertakings. If the nurse, midwife or nursing associate does not confirm that they agree the undertakings by the date provided, then the concerns will be referred for a hearing.

Case examiners can use their discretion to decide if the 28 day period for agreeing undertakings needs to be extended.

When deciding if the period should be extended, they'll consider the nature of the reason why more time is needed, and whether the request for more time was made within the original time period.

We recognise that the nurse, midwife or nursing associate may need to suggest amendments to the recommended undertaking because they have concerns about whether the undertakings are workable. Case examiners will consider whether these amendments can be made if they're sure the undertakings are sufficient to address the concerns in the case and protect patients, while giving the nurse, midwife or nursing associate the opportunity to put the concerns right.

At the end of our investigation we send the nurse, midwife or nursing associate our statement of regulatory concern along with the material we gathered in our investigation. The nurse, midwife or nursing associate will be able to comment on that statement when they respond to the investigation material. It's only once the time period for a response has passed that the case examiners will consider whether there is a case to answer (and if there is, whether to recommend undertakings). We publish the statement of regulatory concern as part of the undertakings in most cases. If the concern is about the nurse, midwife or nursing associate's health, or is otherwise sensitive, we do not publish details of the concern and we do not publish the undertakings if they could identify a health condition or sensitive information.

We can use undertakings to resolve cases at any stage before the start of a Fitness to Practise Committee hearing. Case Examiners are encouraged to recommend undertakings where they consider that undertakings would provide an appropriate outcome consistent with our overarching objective of protecting the public.

Where Case Examiners initially decide not to recommend undertakings, but to refer the matter to the Fitness to Practise Committee, the power to recommend undertakings remains available. However, Case Examiners should only exercise this power where there is a clearly identified reason to depart from the Case Examiners' original decision and decide to recommend undertakings. This is most likely to arise:

a) where there is new relevant information that was not available at the time of the original decision; or

b) where there has been a change in the NMC's policy position on recommending undertakings.

How we monitor undertakings

We monitor the progress of nurses, midwives or nursing associate who have agreed undertakings with us. We keep in regular contact with the nurse, midwife or nursing associate and, where we need to, review their progress against the undertakings on an ongoing basis.

We'll refer the case to case examiners if we receive new information which shows that there's a possibility that:

- the undertakings can be lifted and the case closed
- the undertakings should be varied or restated, or
- there are serious concerns about compliance[1] with the undertakings which mean the case needs to be sent to the Fitness to Practise Committee

The case examiners will then assess the case and decide whether one of the above outcomes are necessary.

We'll tell the nurse, midwife or nursing associate that we are doing this, and we'll give them a short period to send in any representations for the case examiners to consider.

Lifting the undertakings

If the case examiners decide that the nurse, midwife or nursing associate has completed the steps identified in their undertakings and that no other steps are needed to deal with the risks that come from the original regulatory concerns, they'll direct that the undertakings should be lifted and the case will be closed.

Case examiners will only recommend further steps or variations if they're needed to deal with the underlying concerns about the nurse, midwife or nursing associate's fitness to practise. For example, this might be needed if a nurse, midwife or nursing associate has completed a period of practice under direct supervision and needs to show that they are safe to practise by operating under indirect supervision.

Varying the undertakings

Case examiners may need to vary the agreed undertakings for a number of reasons.

Variation may be necessary so the undertakings can remain workable. For example, if there are changes in the

setting in which the nurse, midwife or nursing associate practises, such as a change in management or supervision arrangements, this could mean that the current undertakings can no longer be complied with. In these circumstances a variation in the undertakings may be appropriate to reflect the nurse, midwife or nursing associate's new circumstances.

Variations may also be used where the nurse, midwife or nursing associate has completed the steps that were initially included in their undertakings, but the case examiners believe that some further progress is required before they are able to return to safe practice without restriction. An example of this might be where the nurse, midwife or nursing associate is required to carry out retraining, such as a preceptorship, and there are still concerns about an area of their clinical practice which is related to the original regulatory concern when this is completed.

Where the case examiners recommend variations to undertakings, but the nurse, midwife or nursing associate does not agree to these variations, the case may be reviewed by the Registrar (or one of our Assistant Registrars who also make decisions on behalf of the Registrar).

If the Registrar decides that a new case to answer decision is needed, they will have all of the available outcomes that were originally open to the case examiners.

Where the case examiners recommend variations to undertakings, but the nurse, midwife or nursing associate doesn't make any response at all, the case should be referred straight to the Fitness to Practise Committee for a hearing. This situation is similar to the nurse, midwife or nursing associate not agreeing to an initial recommendation of undertakings, and the same procedure will be used.

Addressing non-compliance with undertakings

Undertakings are intended to be a pathway back to safe practice, while making sure that patients and members of the public are protected. Where the case examiners receive information that suggests that the nurse, midwife or nursing associate has not complied with the agreed undertakings, they will need to look at whether undertakings remain suitable to help the practitioner return to safe practice, or whether further action is needed. Where there is evidence of non-compliance with undertakings, the case examiners can:

- restate the requirements of the undertakings to the nurse, midwife or nursing associate
- write to the nurse, midwife or nursing associate proposing varied undertakings
- revoke the undertakings and refer the original concerns to the Fitness to Practise Committee.

Restating or varying the undertakings to address non-compliance

Where there's evidence to suggest that undertakings have not been complied with, we'll consider the reasons for this and look at whether there are any risks to patient safety. We'll usually write to the nurse, midwife or nursing associate and ask them to send us information about the possible non-compliance and the reasons for it when carrying out this assessment.

Where non-compliance with undertakings is less serious, and a lower risk to patients, it's more likely that the case examiners will be able to restate or vary the undertakings to allow the practitioner to continue their return to safe practice. An example of this might be where there has been late compliance with one or more of the requirements, where the nurse, midwife or nursing associate has made genuine and substantial attempts to complete the requirements in time, and they have insight into the need for restrictions to be in place.

In cases where continued undertakings are an appropriate way to manage risk and support the nurse, midwife or nursing associate back to safe practice, the case examiners may write to the nurse, midwife or nursing associate restating the undertakings, confirming that they remain in effect and must be complied with.

Alternatively, the case examiners may propose variations to the undertakings which must be agreed by the nurse, midwife or nursing associate. If a nurse, midwife or nursing associate asks for a variation to the undertakings to allow further time to complete one or more of the steps identified, case examiners can approve the variation if this is a proportionate way of dealing with the case.

Revoking the undertakings and referring the case to the Fitness to Practise Committee

Where it appears that the nurse, midwife or nursing associate has not complied with the agreed undertakings, case examiners have the power to revoke them. Case examiners will normally only revoke the undertakings and refer the case to the Fitness to Practise Committee for a hearing where it appears that undertakings are no longer an appropriate way of managing risk and supporting the nurse, midwife or nursing associate back to safe practice.

This will usually be where the nurse, midwife or nursing associate hasn't been able to complete the steps necessary to show they've put the concerns right, having been given repeated chances or extensions of time to do this. If this happens, there will often be no realistic possibility that the nurse, midwife or nursing associate will be able to meet the requirements in the undertakings, even though they still have insight into the failings in their practice.

Where cases are referred to the Fitness to Practise Committee the charges will relate to the original regulatory concern. We'll put forward the evidence to show that the nurse, midwife or nursing associate had agreed the undertakings and we'll usually use evidence of their non-compliance with the undertakings to show the Committee that they are not currently fit to practise.

In rare cases, there may be evidence that an alleged failure to comply with undertakings was deliberate or particularly serious, for example if the nurse, midwife or nursing associate knowingly breaches a restriction placed on their practice putting patients at risk of harm. In such cases, we will notify the nurse, midwife or nursing associate that we will recommend referral to the Fitness to Practise committee to consider the original regulatory concern as well as the non-compliance with the undertakings and give them the chance to respond. Case examiners should make it clear whether or not there is a case to answer in respect of the non-compliance with undertakings concern so that an additional misconduct charge relating to the breach can be added and determined by the Fitness to Practise Committee. Our sanctions guidance explains how the Panel should approach such a concern.

Where a nurse, midwife or nursing associate is not complying with undertakings because they no longer wish to practise, agreed removal from the register will usually be the most appropriate way of dealing with case, where possible.

There would need to be exceptional circumstances for the case examiners to revoke the undertakings without sending the case onto the Fitness to Practise Committee. This is because the undertakings were there to address a current risk to patient safety, so patients would be put at risk if the undertakings were removed without further consideration at how best to address the concerns.

Considering interim orders in undertakings cases

If our monitoring and compliance team has information that shows that the nurse, midwife or nursing associate may not be complying with their undertakings, we'll always carry out a risk assessment to consider whether there's a need for an interim order, to put additional restrictions on their practice.

An interim order will not be necessary in all cases where there are concerns about a failure to comply with undertakings. It is more likely an interim order will be needed where the non-compliance has given rise to a risk to patients which isn't being effectively managed by an employer, or where there are concerns about the professional's willingness to comply with their undertakings.

When deciding whether to impose further restrictions on someone's practice, one of our practice committees will need to decide whether the case satisfies the test for interim orders to be made, taking into account the original regulatory concerns and the circumstances of the professional's failure to comply with their undertakings.

Where we think a panel needs to consider imposing an interim order, we will tell the nurse, midwife or nursing associate about this, by giving them a formal notice of interim order hearing at the same time as we inform them that our monitoring and compliance team has asked the case examiners to consider how to address the possible breach.

We'll usually give the nurse, midwife or nursing associate the opportunity to respond, in a short timeframe, to the case examiners.

In most cases we'll aim to have the panel consider an interim order immediately after the case examiners have

made their decision about how to address the possible breach. This will keep the period for which the public may not be fully protected by the undertakings to a minimum, but allows the nurse, midwife or nursing associate a short period to make representations to the case examiners before they make their decision, and allows the panel's consideration to be informed by how the case examiners dealt with the case.

In some rare cases, the possible risks to patients or the public from the undertakings not being followed may be so serious or immediate that the panel will need to consider making an interim order as soon as possible. We'll still give nurse, midwife or nursing associate reasonable notice of the interim order hearing, but the panel may need to make its decision before the case examiners have assessed the possible breach.

1 Failure to comply with or 'breach' of undertakings may be serious, or may be due to circumstances outside the nurse, midwife or nursing associate's control. The outcome will depend on the nature of the non-compliance ('breach').

Reconsidering closed cases

Reference: CAS-3 Last Updated: 29/11/2021

In this guide

If we receive new concerns about a nurse, midwife or nursing associate within three years of a previous decision that they had no case to answer, the case examiners can take the original concerns (which led to the closed case) into account when they consider the new case. The case examiners can also refer both the closed case, and the new case, to the Fitness to Practise Committee.[1]

Whether or not case examiners will consider the closed case as part of their case to answer decision, and whether they will refer it on to the Fitness to Practise Committee will depend on:

- whether the concerns in the new case are similar to the concerns in the closed case
- whether the facts of the closed case were capable of being proved, and
- why the case examiners originally decided there was no case to answer in the closed case.

Similar concerns

The case examiners are more likely to look at the concerns in a closed case if those concerns are similar to those raised in the new case. Similar concerns could indicate a pattern of conduct or practice that could cause harm to patients or undermine public confidence in the professions.

Was it possible to prove the facts of the closed case?

Generally, it will not be fair for case examiners to consider a closed case if it was closed because there was not enough evidence that the incidents we investigated actually happened. The fact that there is a new, similar concern about the nurse, midwife or nursing associate's conduct or practice will generally not have any effect on the strength of evidence in the closed case.

Cases closed because of current fitness to practise

The case examiners are more likely to take the closed case into account as part of their decision making in the new case if they previously found no case to answer because, at that time, there was no realistic prospect that the nurse, midwife or nursing associate's fitness to practise would be found to be currently impaired.

This is because as part of the case to answer decision, case examiners will look at the risk of concerns reoccurring. If it seems that similar concerns have reoccurred within a three years of a previously closed case, case examiners will be unlikely to decide that there is a low or acceptable risk of the concerns being repeated. This consideration will be particularly important if the closed case was based on what seemed, at the time, to have been an isolated incident.

Referring previously closed cases to the Fitness to Practise Committee

If case examiners decide to take the closed case into account when considering the new case, and decide that the nurse, midwife or nursing associate has a case to answer, they next decide whether to recommend undertakings, or refer the case to the Fitness to Practise Committee.

If the overall risk of harm the nurse, midwife or nursing associate presents can be addressed by undertakings in the new case, then this outcome is likely be appropriate.

If the risk of harm to patients, public confidence in the professions, or proper standards and conduct, means that the appropriate outcome is to refer the new case to the Fitness to Practise Committee, then case examiners can also refer the closed case to the Fitness to Practise Committee at the same time.

It will generally be reasonable to consider the concerns in the closed case together with the concerns in the new case if they raise similar issues. The Fitness to Practise Committee will be best able to assess the risk the nurse, midwife or nursing associate presents if they are given more information that is relevant to the concerns about the nurse, midwife or nursing associate's practice.

When case examiners are deciding whether or not to refer the previously closed case to the Fitness to Practise Committee, their decision relates only to whether or not they should refer it. They are not reassessing the evidence, or making a second case to answer decision.

There will sometimes be cases where it's clear to case examiners that although there was previously evidence in a closed case to prove the facts, there are now difficulties that would prevent us from presenting that evidence to the Fitness to Practise Committee.

For example, the nurse, midwife or nursing associate denies the concern and the only evidence to support the concern was provided by one witness. Since the case examiners initially considered the matter, the witness has contacted us to say that their statement was incorrect on a key issue, and the incident didn't happen. This means that there no longer appears to be a realistic possibility that the Fitness to Practise Committee would find the incident took place. In cases like this, the case examiners' can decide not to refer the closed case to the Fitness to Practise Committee.

1 Rule 7 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004

When we revisit case to answer decisions

Reference: CAS-4 Last Updated: 30/08/2024

Once a case has been referred by the Case Examiners to the Fitness to Practise Committee there's no power for us to review the case to answer decision.

However, we recognise that there are occasions when things go wrong in our process, and information we've been sent isn't given to the Case Examiners to consider.

This might happen because of a human or technical error, and could result in a case being referred to the Fitness to Practise committee when it otherwise might not have been.

An example of this might be where the nurse, midwife, or nursing associate has provided a response, but this wasn't given to the Case Examiners. This may contain evidence of insight, steps they've taken to strengthen practice and reflection which would have been directly relevant to the Case Examiners' decision.

Although these situations are rare, when issues like this are identified it is important we put them right.

We might be able to do this in a number of ways, including:

1. Referring the case back to the Case Examiners so they can revisit their decision in light of the information they should have seen;
2. Applying to a panel of the Fitness to Practise Committee to offer no evidence, where appropriate;
3. Allowing the case to continue to a final hearing, making sure the panel has all of the relevant information.

What we decide to do will depend on a number of factors, including how far the case has progressed before we identify the error, and what the fairest solution would be in all the circumstances.

Where the error has been identified quickly we may consider asking Case Examiners to consider the information they hadn't been given, and make a new decision. The Case Examiners could still decide to refer all or part of the case to the Fitness to Practise Committee, or they may decide that in light of the available information there is no case to answer, or that a warning or undertakings are now appropriate.

Where the error has been identified later in our process, and the information indicates there is no case to answer for the nurse, midwife, or nursing associate, we may consider whether offering no evidence is a more appropriate solution. This means we'll ask the panel of the Fitness to Practise Committee not to continue with the case.

In cases where the error is unlikely to have made a difference to the Case Examiners' decision we may choose to continue with the case to hearing, ensuring that all of the relevant information is given to the panel.

Where information wasn't seen by the Case Examiners because it was provided after the deadline for their consideration, this would be considered new information rather than an error.

In these circumstances it would not be appropriate for the Case Examiners to revisit their decision, but the Fitness to Practise Committee can take the information into account when it considers the case.