Engaging with your case

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We encourage nurses, midwives and nursing associates to engage with us as early as possible and at every stage of the process. This includes providing us with the following information:

- whether they're currently employed and any steps their employer may be taking to manage any risk
- information about the context in which the incident occurred
- evidence of any steps they've taken to address the concerns raised about their fitness to practise (such as completing courses or retraining)
- evidence of any insight they have or any reflection they've undertaken so far about the concerns raised (we recognise that insight and reflection can develop over time and may also depend on how any investigation progresses).

The nurse, midwife, or nursing associate doesn't have to provide us with this information, but having it helps us make more informed decisions about the case early. Some examples of why early engagement can be important are:

- It may be in a nurse, midwife or nursing associate's interest to engage early, as having this information may mean we do not need to take action in relation to the case.
- The nurse, midwife or nursing associate's early engagement may also help us to understand what we need to investigate. For example, it may help us understand which of the concerns raised they agree with, and which ones they dispute.
- If a nurse, midwife or nursing associate provides information early on to demonstrate that they've fully addressed the concerns raised, our decision makers may decide that they're currently fit to practise and no further regulatory action is required.
- Knowing about the context in which an incident happened may help our decision makers to better understand what went wrong.
- If the case is at a later stage, then providing us with the information we ask for may help us to better plan for the final meeting or hearing, for example by avoiding spending time on issues that are not actually in dispute.

How not engaging early can affect the progression of the case

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If a nurse, midwife or nursing associate doesn't provide the information we ask for early on, it can affect the case's progression. For example:

- It might mean that we proceeded with a case when we could have decided there wasn't a need for regulatory action if we'd had all the information. This is because our decision makers at the early stages might not have

known what the nurse, midwife or nursing associate has done to address the concerns raised or the context in which the incidents happened.
- If the nurse, midwife, or nursing associate has information about the context in which the incident occurred but didn't share it with us until later, it may delay the case whilst we make further inquiries.
- If the case is at a later stage, then not having the information we've asked for may mean we're less able to plan for the final meeting or hearing.
- If the nurse, midwife or nursing associate only engages with us at a late stage (for example, at the final meeting or hearing), it can cause delays to the case. For example, this can happen where an entirely new issue is raised at a hearing that then needs to be investigated.

What can happen if a nurse, midwife, or nursing associate doesn't engage, or engages at a late stage?

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In some instances, not providing information or providing it at a later stage may have a particular impact on the final meeting or hearing, such as making it more difficult to estimate how many days to list it for.

There may be instances where the nurse, midwife or nursing associate can't engage with us for reasons such as ill health. We'll always take factors like these into account when making decisions on the case.

Nurses, midwives and nursing associates are required to co-operate with any investigation about their conduct in line with the Code[1]. If we regard a nurse, midwife or nursing associate's failure to cooperate with our investigation as particularly serious, we may raise this as an additional regulatory concern. We may consider a failure to cooperate with an investigation particularly serious if it is repeated and there isn't a good reason for it, such as ill health.

Raising issues at a late stage in proceedings

Suppose a nurse, midwife or nursing associate raises an issue at a late stage (such as the final hearing) that could reasonably have been raised at an earlier stage. In this case, the panel may consider whether there's a reasonable explanation for this and whether to adjourn the matter for further investigation.

For example, a nurse, midwife or nursing associate could raise, for the first time at a final hearing, that they were overloaded at the time of the incident due to staffing shortages. This may be something they could have reasonably raised with us earlier on in the fitness to practise process (See our guidance on directing further investigation during a hearing).

If the panel considers that there's no reasonable explanation for the issue being raised late, it may, subject to it being fair, decide to take that into account when assessing the nurse, midwife or nursing associate's credibility in relation to the matter raised.

Providing materially different accounts

If a nurse, midwife or nursing associate provides a materially different version of events in relation to the concerns raised than the version of events they provided at an earlier point in time, the panel may take this into account when considering their credibility. We may invite the panel to consider the nurse, midwife or nursing associate's credibility in relation to that issue.

Not giving evidence at the final hearing

A panel may consider whether to draw an adverse inference when a nurse, midwife or nursing associate chooses not to give evidence at the facts stage of a hearing[2]. This means that the panel may reach a conclusion based on the nurse, midwife or nursing associate's decision not to give evidence, that they have no good explanation for their alleged conduct or reasonable response to the case against them.

This principle applies where a nurse, midwife or nursing associate does not give evidence at all and where a professional refuses to give evidence about a particular issue or question.

A panel may also draw an adverse inference at a meeting where the nurse, midwife or nursing associate hasn't provided any written evidence in response to the case against them.

A panel's decision on whether to draw an adverse inference will depend on the circumstances of the particular

case. Panels must always ensure that the nurse, midwife or nursing associate is treated fairly. The Courts have held that panels shouldn't draw an adverse inference based on the failure to give evidence unless:

1. We've put forward sufficient evidence that the nurse, midwife, or nursing associate has been involved in misconduct or that their fitness to practise is impaired for some other reason.[3]
2. The nurse, midwife or nursing associate has been given an appropriate warning that an adverse inference may be drawn if they do not give evidence. The nurse, midwife or nursing associate must be given an opportunity to explain why it wouldn't be reasonable for them to give evidence and, if it is found that there is no reasonable explanation, be given an opportunity to give evidence.
3. There is no reasonable explanation for the nurse, midwife, or nursing associate not giving evidence (for example, not giving evidence due to illness may be reasonable).
4. There are no other circumstances that would make it unfair to draw an adverse inference. (For example, if the professional becomes upset whilst giving evidence and is unable to continue, it would be unfair for the panel to consider drawing an adverse inference without offering them time to recover and an opportunity to continue to give evidence.)

If a witness provides written evidence but doesn't attend the hearing to provide oral evidence and be cross-examined, the panel can take this into account when considering whether to admit the written evidence and what weight to attach to it. You can read about the panel's approach to a witness not providing oral evidence at a hearing by looking at our general guidance on evidence.

Health cases

Where the nurse, midwife or nursing associate's fitness to practise is alleged to be impaired because of health, the panel may also take into account any refusal by them to submit to an assessment of their current health.[4]

We believe that it is more in line with our values of being fair and kind for the panel to consider the allegation of ill health and take the failure to cooperate into account, rather than include a separate misconduct allegation for failing to cooperate with the NMC. We would require some engagement from the nurse, midwife or nursing associate to explain why their health condition is preventing them from engaging with investigation.

English language cases

Where the nurse, midwife or nursing associate is alleged to be impaired because of not having the necessary knowledge of English, the panel may take into account the fact that they have failed to take or failed to provide evidence of an English language test that we've required them to undertake[5].

1 Standard 23, The Code – Professional standards of practice and behaviour for nurses, midwives and nursing associates (2018)
2 See e.g. R (Kuzmin) v General Medical Council (GMC) [2019] EWHC 2129 (Admin)
3 The legal term for this is that a 'prima facie' case to answer has been established
4 Rule 31(5)(a) NMC Fitness to Practise Rules 2004
5 Rule 31 (6A) NMC Fitness to Practise Rules 2004