Advice and information for employers of nurses and midwives

We are the nursing and midwifery regulator for England, Wales, Scotland, Northern Ireland and the Islands.

- We exist to safeguard the health and wellbeing of the public.
- We set standards of education, training, conduct and performance so that nurses and midwives can deliver high quality healthcare consistently throughout their careers.
- We ensure that nurses and midwives keep their skills and knowledge up to date and uphold our professional standards.
- We have clear and transparent processes to investigate nurses and midwives who fall short of our standards.
Introduction

This information is for all employers of nurses and midwives, introducing you to the NMC.

If you are an HR representative, director of nursing or a clinical lead, it will help you learn more about:

- your responsibilities as an employer
- how to use and check our register of nurses and midwives
- what steps you should take during the recruitment process
- what we mean by fitness to practise
- what procedures to go through if you are considering making a fitness to practise referral to us.

The role of the Nursing and Midwifery Council

The NMC exists to safeguard the health and wellbeing of people using or needing the services of nurses and midwives.

This advice and information focuses on two of our unique functions that help us ensure that people receive high quality and safe care from nurses and midwives throughout their lives: registration and fitness to practise.

Registration

We hold the register of every nurse and midwife who is eligible to practise in the UK. We set standards for pre-registration education and ongoing development, to ensure the nurses and midwives on our register can deliver safe and effective care. It is illegal to work as a nurse or midwife in the UK without being registered with us. You can find out more about registration on page 5.
Fitness to practise

We are also the only body with the powers to stop nurses and midwives practising if they present a risk to patient safety. We have clear and transparent processes to investigate nurses and midwives who fall short of our standards, and in 2010-2011 received over 4,000 referrals from employers, the police, the public and other sources. You can find out more about making a referral to us from page 10.

Being fit to practise means that a nurse or midwife has the skills, knowledge, good health and good character to do their job safely and effectively.

The Fitness to Practise directorate of the NMC investigates all allegations made against nurses and midwives questioning their fitness to practise, including allegations of:

- misconduct, for example physical abuse
- lack of competence, for example persistent failure to deliver appropriate care
- bad character, for example a serious legal conviction
- poor health, for example a neglected and untreated dependence on alcohol.

The overriding purpose of fitness to practise proceedings is to protect the public by assessing if a nurse or midwife’s fitness to practise is impaired.

In 2010-2011, around 0.6% of the 667,072 nurses and midwives on the register were investigated through fitness to practise proceedings. This means that the vast majority practise safely within The code: Standards of conduct, performance and ethics for nurses and midwives (the code) and consistently meet the high standards expected by the public.

How do we know if there is a problem?

We ask employers, colleagues and members of the public to let us know if they have any reason to be concerned about a nurse or midwife’s fitness to practise. We have memorandums of understanding with a range of other organisations for sharing information, and we will also initiate our own investigations in the most serious cases, even if a referral has not been made.

Who makes referrals

* This category includes, for example, self-referrals, referrals by solicitors, referrals by educational institutions or by colleagues.
Your responsibilities as an employer

To safeguard the health and wellbeing of the public, you should follow certain procedures during the recruitment process and throughout a nurse or midwife’s employment with you.

References

Always make sure that you receive at least two professional references from an applicant’s last place of work as a nurse or midwife. You should ensure one referee is the most recent line manager, and the second referee should be a suitably senior nurse or midwife, not a personal friend. If the nurse or midwife is newly registered, you should ask for a reference from a tutor and practice mentor. References should be sufficiently detailed to confirm that someone is competent to do the role you are asking them to undertake.

Be sure to follow up on references too – always contact referees yourself rather than relying on any written statements supplied to you by the job applicant.

You should verify any gaps in a nurse or midwife’s employment history. Periods of time out of the workplace may have come about because someone took maternity leave or went travelling, but you should assure yourself that the reason for the gap is not problematic.

Don’t let a person start work until you have verified their references – if you really cannot afford to wait for references to be confirmed in writing, at least obtain verbal assurances over the phone until the paperwork comes through.

The NMC register

The NMC register is a public record of all nurses and midwives who have fulfilled our registration requirements and who are therefore entitled to practise.

Nurses and midwives cannot legally practise in the UK unless they are registered with the NMC. You must ensure that the nurses and midwives you employ are registered before they begin work for you, and you must regularly check their registration status throughout the time you employ them. In addition, nurses and midwives may hold recordable qualifications, for example, allowing them to prescribe, and you should also check these on our register.

In 2010-2011, there were 667,072 nurses and midwives on the NMC register.

Employers confirmation service

We currently issue nurses and midwives with a unique identifying number called their Pin. You should not rely on a nurse or midwife providing a Pin, or any NMC paperwork bearing a Pin, as proof of registration, as it is only valid on the day it is issued. You should always check the registration status of nurses and midwives directly with us.

We offer a free registration confirmation service that allows employers to check a nurse or midwife’s qualifications and registration status.
The employers confirmation service holds more information than the public register, including a full registration history, and details of any cautions or suspensions we have issued as a result of fitness to practise proceedings. To find out more about this service or to register as an employer, visit www.nmc-uk.org/confirmations or call 020 7333 9333.

It is vital that you use the employers confirmation service to check the register before you employ a nurse or midwife, and that you continually check the status of their registration throughout their employment with you. You should report any discrepancies or fraudulent activity to us immediately.

Identity checks

You should assure yourself that the person you are employing is who they claim to be. As part of your background checks before employment, you should ask to see proofs of identity and address. Proof of identity should be photographic, for example a passport, photo driving licence, or European Union (EU) or European Economic Area (EEA) national identity card.

Proof of address might include a recent bank statement, utility bill or council tax bill. You should not employ someone if you are uncertain of their identity, and you should contact us immediately if you believe someone is fraudulently using a nurse or midwife’s identity or registration details.

New employees

New employees should have:

- a thorough induction into their area of work
- training and supervision where necessary
- preceptorship\(^1\) and mentoring (especially for newly qualified staff)
- ongoing access to professional development
- clinical supervision.

Performance appraisals

As an employer you have a responsibility to recognise and reinforce good performance, and to take steps to identify and deal with poor performance. All employees should receive regular performance appraisals (at least annually) during which their training needs should be identified.

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\(^1\) Preceptorship is a period of support for people who have joined the register, to assist in their transition from student to accountable nurse or midwife.
You are responsible for the skills and knowledge levels of your staff

If a nurse or midwife accepts responsibility for practice which is deemed to be beyond their capability and which has resulted in errors in practice, both the employee and employer are accountable: the employee for failing to acknowledge their limitations, and the employer for failing to ensure that the employee has the appropriate skills and knowledge.

Prep: Post-registration education and practice standards

Nurses and midwives must maintain their registration by meeting our post-registration education and practice (Prep) standards. Nurses and midwives who do not comply with the Prep requirements will cause their registration to lapse and can no longer work as a registered nurse or midwife. There are two separate Prep standards that affect registration: the Prep continuing professional development (CPD) standard and the Prep practice standard.

The Prep CPD standard

This standard is about the CPD of registered nurses and midwives. To meet it, they must undertake a set amount of learning activity.

The Prep practice standard

In order to meet the practice standard, your nurses and midwives must have undertaken a set amount of registered practice in their capacity as a nurse or midwife.

For more information about our prep standards and how you can support your nurses and midwives in achieving them, contact us or see our Employers and Prep advice sheet, available on www.nmc-uk.org/employers-and-prep. You can also view The Prep handbook which, although designed for nurses and midwives, will give you further insight as to what is expected of them.
Nurses and midwives trained abroad

Depending on their country of training, nurses and midwives are admitted to our register via different routes.

Nurses and midwives trained outside the EU or EEA

If nurses or midwives trained in countries outside the EU or EEA have been admitted to our register, you can be satisfied that we have been able to check the education and practice experience of the new applicants. We will also have been able to verify their good character and language competence. We require an IELTS 7 (which is the proficiency level of the International English Language Testing System) for all applicants to our register who trained overseas regardless of which country they are from or whether that country is majority English speaking.

Nurses and midwives from inside the EU or EEA

EEA countries include the 27 member states of the EU, as well as Iceland, Liechtenstein and Norway. The same rules also apply to Switzerland. The process of recognition of qualifications from the EU and EEA is governed by strict legislation based on the principle of freedom of movement. Therefore as a regulator, when it comes to nurses and midwives training in the EU and EEA, we are restricted by EU law in some of the functions that we would normally carry out.

What we can’t do as a regulator

By law we cannot:

- systematically test the language competence of nurses and midwives who trained within the EU or EEA
- request transcripts of training or test the knowledge of applicants trained within the EU or EEA, who meet EU requirements for direct entry to the register
- check whether a nurse or midwife who meets the EU requirements for direct entry to the register has undertaken any professional experience since they originally qualified, regardless of how long ago they qualified
- check whether a nurse or midwife, who trained before their country joined the EU or EEA, has met the standards of knowledge and competence expected of UK and overseas trained nurses and midwives.

We are currently discussing the implications of these limitations with other regulators, government authorities and European partners.

Registration with the NMC does not guarantee that an individual is fit for employment. As an employer you have a duty to ensure that the people you employ are fit for purpose. Always make sure the person you’re employing is competent and has the skills required for the specific job role.
What you can do as an employer

EU legislation does not prevent you as the employer from assuring yourself that the nurse or midwife you recruit is competent, safe to practise, has up to date and contemporary knowledge, and has the necessary language and communication skills. It is therefore your responsibility to make sure that your recruitment systems are robust and that only those applicants who are able to carry out the full duties of a nurse or midwife are employed.

Remember to:

- investigate and clarify any gaps in employment
- always request and follow up references, ensuring that they are from suitably senior clinical nurses and midwives
- assure yourself that the knowledge and skills of the nurse or midwife you are about to employ are up to date and in line with current developments in the professions
- satisfy yourself that the nurse or midwife can communicate effectively in English, both verbally and in writing, for example by requiring applicants to write a care plan against a viable clinical scenario and then discussing it with them
- carefully manage the induction and support of new employees
- regularly monitor and appraise your employees’ performance
- regularly check the registration status of your employees using our employers confirmation service
- support your staff in achieving their Prep standards and do all you can to help them be fit to practise.
Managing fitness to practise issues

Urgent referrals and interim orders

As an employer you have the power to suspend or dismiss a member of staff, but this may not prevent them from working elsewhere.

We are the only organisation with the legal powers to prevent nurses and midwives from practising if they present a risk to patient safety. In very serious cases it will therefore be appropriate to refer a nurse or midwife to us at an early stage, even before you conduct your own internal investigation. This allows for the possibility of issuing an interim suspension or restricting the practice of the nurse or midwife concerned until the case has been thoroughly investigated.

If you believe the public’s health and wellbeing is at immediate and serious risk, you should contact us straight away. You may not have a lot of information, but you should tell us as much you can.

Hearings to consider an interim order take place in public.

A panel will consider whether the interim order is:

- Necessary to safeguard the public
- In the public interest
- In the nurse or midwife’s interest.

If you have already involved the police or the safeguarding authorities, you should let us know.

If you need us to act urgently, call us on 020 7333 9333, say that you have an urgent referral and that you would like to speak to the screening team.
Misconduct

Misconduct is behaviour which falls short of that which can be reasonably expected of a nurse or midwife.

The code: Standards of conduct, performance and ethics for nurses and midwives (the code) is the foundation of good nursing and midwifery practice, and is a key tool in safeguarding the health and wellbeing of the public. If nurses and midwives don’t follow the code, they may be guilty of misconduct and therefore might not be fit to practise.

For more information, you can access the code on our website www.nmc-uk.org/code

Examples of misconduct

The most common examples of misconduct include:

- physical or verbal abuse of colleagues or members of the public
- theft
- significant failure to deliver adequate care
- significant failure to keep proper records.

For specific examples of cases that we investigate, take a look at the fitness to practise section of our website where you will find information on the latest cases, including details of allegations and the decisions made by the committees.

Visit www.nmc-org.uk/hearings

Case study: Misconduct

One of the most common cases of misconduct is physically or verbally abusing patients. A nurse was struck off the register for this behaviour when they were found to be treating residents in an aggressive and inappropriate manner while working at a care home. Charges included knowingly feeding two residents with dementia contrary to their requirements, pushing a resident forcefully, shouting aggressively at residents and colleagues, and grabbing residents’ hands hard enough to cause the skin to redden.

The Fitness to Practise panel ruled that this behaviour was unacceptable, falling far short of the behaviour expected from someone in the nursing profession. In order to maintain the good reputation of the profession and public confidence in the NMC, the panel agreed to strike them off the register.
Lack of competence

Lack of competence is a lack of knowledge, skill or judgment of such a nature that the nurse or midwife is unfit to practise safely and effectively in any field in which they claim to be qualified, or seek to practise.

Nurses or midwives who are competent and fit to practise should have the skills, experience and qualifications relevant to the part of the register they have joined. They should demonstrate a commitment to keeping those skills up to date, and should deliver a service that is capable, safe, knowledgeable, understanding and completely focused on the needs of the people in their care.

Examples of lack of competence

- Over a prolonged period of time a nurse or midwife makes continuing errors or demonstrates poor practice which involves, for example:
  - lack of skill or knowledge
  - poor judgment
  - inability to work as part of a team
  - difficulty in communicating with colleagues or people in their care.

- You identify a training need and set up a supervised support programme for the nurse or midwife, but their work may only show a temporary improvement which slips back when the programme is completed.

- The nurse or midwife shows no insight into their lack of competence.

- The nurse or midwife demonstrates a persistent lack of ability in correctly or appropriately calculating, administering and recording the administration or disposal of medicines.

- The nurse or midwife demonstrates a persistent lack of ability in identifying care needs and subsequently planning or delivering appropriate care.

Remember

It’s possible to deliver care that is clinically competent, but uncaring – attitude and character are just as important as competence.
Bad character

Cases concerning bad character nearly always involve some form of criminal behaviour that has resulted in a serious legal conviction or caution.

Only serious criminal convictions or cautions should be referred to the NMC. A minor fixed penalty traffic offence, for example a speeding fine or parking ticket, is unlikely to be a case for us.

On some occasions, you will need to consider whether to discipline or educate a nurse or midwife whose behaviour has brought the profession into disrepute, even if their actions have not resulted in legal proceedings. For example, a nurse or midwife’s behaviour outside work may cause you or a service user to question whether they are the right sort of person to be giving people care.

If you are ever unsure whether to make a referral, don’t hesitate to contact us for advice.

Examples of behaviour that indicate bad character

- A caution or conviction – for example, involving theft, fraud, violence, sexual offences, drug dealing, dishonesty.
- Accessing illegal material from the internet.

Case study: Bad character

In 2010-2011, around 35 percent of allegations that appeared before an NMC Conduct and Competence Committee hearing related to the person’s character.

One of those cases involved an adult nurse who was found guilty of making indecent photographs of a child by a Crown Court. The individual was sentenced by the court to two years’ community punishment and rehabilitation, and was disqualified from working with children.

The Nursing and Midwifery Order 2001 requires us to investigate allegations that an individual’s fitness to practise is impaired because of a criminal conviction. In this case, the Fitness to Practise panel recognised that the behaviour was fundamentally incompatible with being a nurse and was a very serious departure from the code.

The nurse broke the trust and confidence of the public, threatened the good reputation of the profession and broke UK laws. They were struck off the NMC register.
**Serious ill health**

Good health is necessary to undertake practice as a nurse or midwife. Good health means that a person must be capable of safe and effective practice without supervision. It does not mean the absence of any disability or health condition. Many disabled people and those with long-term health conditions are able to practise with or without adjustments to support their practice.

We are particularly concerned about long-term, untreated or unacknowledged physical or mental health conditions that impair someone’s ability to practise without supervision. To be considered fit to practise, nurses and midwives should also demonstrate suitable attention to their personal needs and should not, for example, abuse or be dependent on alcohol or drugs.

**Examples of serious ill health**

- Long-term, untreated alcohol or drug dependence.
- Unmanaged serious mental illness.
Issues to consider before referral

Our role is not to punish people for misdemeanours. We are here to protect the public from nurses and midwives whose fitness to practise is impaired and whose situation cannot be managed locally. We are the only body with the powers to stop nurses and midwives practising if they present a risk to the public.

Every day, employers, managers and supervisors deal with situations concerning the misconduct, lack of competence, bad character or serious ill health of nurses and midwives.

We recognise that many of these incidents can be managed at a local level through employment and disciplinary procedures and do not give rise to wider concerns about fitness to practise or patient safety. However, if you have any doubts about this, you must consider referral to us.

Deciding to involve the NMC

There are some cases that are better dealt with by employers. For example, there may be an instance of minor wrongdoing where no real harm has been caused. Here you might need to internally discipline a nurse or midwife or provide them with further training, but it may not be so serious that you require us to consider their eligibility for being on the NMC register. If there are no patient safety issues and if you know you can help them improve, take all steps to do so.

Cases of ill health can probably be managed locally, if

- the nurse or midwife acknowledges the condition
- necessary steps are taken to manage the condition following a doctor’s advice or your own requirements
- there is no risk to patient safety.

Local investigations

Local procedures can be used to solve many issues quickly and fairly without the need for referral to the NMC. If the matter does raise fitness to practise or patient safety issues, it must be referred to us. It is helpful if the referral includes any evidence and information collected for your investigation.

Always be prepared to back up your decisions

It is up to you as the employer to decide whether you refer a case to us. So, as well as recording evidence for making a referral, you should also record your evidence and reasoning in those incidents where you decide not to make a referral to the NMC.
Lack of competence procedures

Lack of competence cases are usually referred to the NMC after the employer has tried to address the problems with someone’s practice, and if they have not taken advantage of opportunities to improve.

If you are considering making a referral regarding lack of competence, we expect that you will have:

- gathered information to establish the facts about a nurse or midwife’s lack of competence and attempted to identify possible causes
- raised any serious problems formally with the nurse or midwife concerned, identified their training needs, and provided them with adequate supervision to help them improve
- involved the local supervising authority (LSA) responsible for the supervision of midwives, if it is a midwife you are concerned about.

If at any stage in managing lack of competence you consider patient safety may be at risk, you must refer the matter to us.

Shared responsibility

The responsibility for dealing with lack of competence is a shared one between employers, supervisors of midwives, the NMC, and individual nurses and midwives. We each have a duty to ensure that employees are competent and remain competent.

Be prepared to notify service users and the nurse or midwife concerned

We will always notify nurses and midwives of the allegations and evidence held against them. And, depending on the type of case being referred, we may need to see a service user’s records, which would require their approval first.

If you have any concerns about notifying the nurse or midwife about the allegations or gaining the consent of a service user to see their medical records, you should raise these concerns with us as soon as possible.

Personal lives

If a concern is raised with you about something that has happened outside work, and the incident suggests that someone’s fitness to practise may be impaired, you should make further enquiries.

When questioning whether behaviour outside the workplace brings the nursing or midwifery profession into disrepute, however, you should remember that it can be very subjective and people’s perceptions differ.

You can always contact us for confidential advice on 020 7333 9333 if you are unsure whether to make a referral.
Insubstantial enquiries

Sometimes members of the public and employers contact the NMC when they just want to make us aware of an issue and not take it any further. Please note that in these circumstances we don’t have the powers to hold such information outside our formal fitness to practise procedures. Where we are notified of issues in this way, we may however decide to launch our own investigation.

If you are unsure – ask us for help and advice

We always welcome informal enquiries and are on hand to provide you with free, confidential advice. You can contact us at any stage – whether you have just learnt about an incident and are about to embark on an internal investigation, or are at the point of considering an official referral to us.
Deciding whether to make a referral

This section outlines the circumstances in which you may need to refer a nurse or midwife to us, and what you should consider before making a referral. You must always report a case to us if you believe the conduct, practice or health of a nurse or midwife presents a risk to patient safety.

Referral decision tree

You can use this decision tree to help decide whether a referral to the NMC is necessary or whether the issues can be managed at a local level. You can make a referral to the NMC at any time, even if your local investigation is not complete. If in the course of a local investigation you become aware of any serious risks to patient safety you should refer to the NMC immediately. If you dismiss a member of staff, or suspend them because of patient safety concerns for anything more then a short period of investigation, you should also make a referral to the NMC. If you wish to discuss a potential referral you can call the fitness to practise directorate for advice.

Is there a serious risk to patient safety?

Yes → Refer to the NMC
See ‘Urgent referrals and interim orders’ p10

No

Are you considering dismissal or suspension?

Yes

Is the suspension only for a short investigation?

Yes → Use your local employment or disciplinary processes

No

Is the case serious or has real harm been caused?

Yes → Refer to the NMC
See ‘Misconduct’ p11

No

Are you investigating misconduct?

Yes

Have you tried to address problems with their practice?

Yes

Have significant improvements been made?

Yes → Refer to the NMC
See ‘Lack of competence’ p12

No

No

Are you investigating lack of competence?

Yes

Do they acknowledge their condition?

Yes

Are they taking agreed steps to manage the condition?

Yes → Refer to the NMC
See ‘Serious ill health’ p14

No

No

Are you investigating serious ill health?

Yes

Does the incident bring the profession into disrepute?

Yes → Refer to the NMC
See ‘Bad character’ p13

No

No

Refer to the NMC
See ‘Urgent referrals and interim orders’ p10

No
Making a referral to the NMC

Any referral of a nurse or midwife to the NMC must:

- identify the nurse or midwife concerned
- clearly explain the complaint against the nurse or midwife
- be supported by appropriate information and evidence.

What happens when you make a referral

All cases are different, but the following pages will give you some idea of what takes place when you make a referral to us.

Once we have received your referral, you'll be given a named contact who will deal with your initial enquiries. They'll check that the person you are enquiring about is on our register and that the nature of the complaint is something that we should be involved with.

When we have received your referral we will confirm receipt of it and keep you informed of your case’s progress. If for some reason the nature of your complaint falls outside the remit of the NMC, we will tell you.

We may also seek information about whether the incident forms part of a pattern of wider concerns, and we will confirm whether there are any immediate concerns that might call the nurse or midwife’s fitness to practise into question.

Once we are satisfied that the case is one for the NMC to deal with, we will let you know what information you need to supply us with, and work with you to collect all the relevant paperwork. The more information you can give us at these early stages, the quicker it will be to progress the case.

As far as possible, referrals should be supported by any documentary evidence that is available, for example any statements or reports you have collected during your internal investigation

Contacting nurses and midwives who have been referred

We will send the nurse or midwife a copy of the allegations and supporting information, and invite them to submit a written response.

Please don’t send us information or evidence that you are not prepared for us to share with the person being referred. We can’t forward any case to the Investigating Committee until we have contacted the nurse or midwife concerned.

Witnesses

You should always let witnesses know that you are passing their information to the NMC and that we may call upon them to give evidence.
Supplying us with sufficient information

Depending on the type of case you are referring, you should as far as possible provide this information. However, if information is unavailable, this should not prevent you making a referral if there is a patient safety concern. In urgent cases where you believe patient safety is at risk, you should make a referral immediately.

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<td>• The part of the register the person you are referring belongs to</td>
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<td>• The nurse or midwife’s job at the time of the allegations and key aspects of the post that are relevant when considering the complaint</td>
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<td>• the type of place where the nurse or midwife was employed at the time of any incident (for example, hospital, nursing home, GP practice)</td>
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<td>• who was there (including patients, colleagues, any other witnesses)</td>
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| Any witnesses | Details of any witnesses and copies of witness statements  
|              | Confirmation that you have told the witnesses that you have passed their information onto us and that they may be required to give evidence in person to a Fitness to Practise committee |
| Previous action | Details of any other agency you may have contacted in relation to this matter (for example, LSA, a systems regulator such as the Care Quality Commission, police)  
|              | Notes, reports and transcripts of any internal investigations  
|              | Clear details of any actions you have already taken regarding this case (for example, any disciplinary action or periods of supported practice) |
| Other supporting evidence | Depending on the nature of the referral, we may also need:  
|              | an internal investigation report  
|              | copies of relevant service users’ medical records and consent from patients or relatives to disclose their medical records  
|              | if reporting a conviction or caution, as much information as is available, such as a criminal records check or certificate of conviction  
|              | if reporting a case of serious ill health, details of the nurse or midwife’s sickness record and copies of any medical reports and notes of any meetings where the nurse or midwife’s health has been discussed. |

Be assured that we read and study all evidence and information submitted to us to ensure that outcomes to cases are fair, relevant and always based on fact.

**Confidential information and data protection**

Initially we will only need to see copies of any documentation supplied as evidence. However, if the case progresses to an adjudication committee then originals may be required.

We always lock up all paperwork securely. When sending information to the nurse or midwife concerned they are warned that the documentation they receive is to be used purely for the purposes of defending themselves against any allegations.
The Investigating Committee

We will send all the evidence you have provided to the nurse or midwife concerned, and they will be given the opportunity to respond in writing. The allegations will be considered by a panel of the Investigating Committee together with all the supporting information.

The Investigating Committee panel:

- Meets in private
- Is made up of nurses, midwives and lay people outside these professions
- Considers all the evidence, including evidence from the nurse or midwife who has been referred
- May ask for advice from experts
- May ask for further investigation to be undertaken, although we aim to conduct investigations prior to the Investigating Committee panel considering the case.
- Decides whether there is a case to answer and whether to refer the case to the Conduct and Competence Committee or the Health Committee
- Can, if warranted, refer cases to interim orders hearings.

**Fraudulent entries in the register**

The Investigating Committee also deals with alleged fraudulent or incorrect entries in the register.

**What action could the Investigating Committee take?**

In addition to asking for further investigation to be undertaken, the Committee may also invite employers to respond to any particular points the nurse or midwife may have raised in their defence, or initiate medical investigations (for example, drug or alcohol testing).

**Is there a case to answer?**

The panel of the Investigating Committee has to decide whether there is ‘a case to answer’. This means the panel must be reasonably satisfied both that the facts of an allegation are capable of being proved and that, if proved, those facts could lead to a finding that the nurse or midwife’s fitness to practise is impaired.

If the panel finds there is no case to answer, it will close the case. If it finds there is a case to answer, it will refer the case either to the Conduct and Competence Committee or to the Health Committee.
The Conduct and Competence Committee and the Health Committee

Depending on the type of case, the Investigating Committee will refer the case to the Conduct and Competence Committee or the Health Committee for a hearing and final adjudication. Like the Investigating Committee, these committees’ panels are made up of registered nurses, midwives and people outside these professions.

These committees adjudicate on many different allegations regarding fitness to practise, including:

- dishonesty
- patient abuse
- lack of competence
- failure to maintain adequate records
- incorrect administration of drugs
- neglect of basic care
- unsafe clinical practise
- failure to collaborate with colleagues
- colleague abuse
- failure to report incidents
- failure to act in an emergency
- accessing pornography
- violence.

Hearings

Panels of the Conduct and Competence Committee and Health Committee hold hearings to decide whether a nurse or midwife’s fitness to practise is impaired and, if so, to take appropriate action.

Conduct and competence cases are generally heard in public but health cases are generally heard in private. We do not publicly name nurses and midwives with a referral made against them until the case is scheduled for a public hearing. Cases considered and then closed by the Investigating Committee are never made public.

The relevant committee panel will review the information put before them, take expert advice and question employers making the referral, as well as questioning the nurse or midwife (or their representative).

Nurses and midwives are encouraged to be represented and to present evidence in their defence.
Witnesses

Witnesses are not always called to attend but they will be required if there is any dispute about the facts of the case. The anonymity of patients and clients is protected and special provisions exist for vulnerable witnesses whose evidence is needed to prove a case.
Reaching a decision

Committee panels make decisions on whether or not a nurse or midwife is fit to stay on the register.

The decisions they make are not intended to punish the individual but are made to safeguard the health and wellbeing of the public. Since 3 November 2008, new hearings have used the civil standard of proof.

There are three stages to the decision making process.

- Are the facts proven or not proven?
- Is the fitness to practise of the nurse or midwife in question impaired?
- What actions are required to safeguard the health and wellbeing of the public?

When our committees consider what action to take, they will take into account other factors, such as:

- previous disciplinary action taken, and how the nurse or midwife in question has responded to this
- the availability of training and support
- staffing issues which may have affected a nurse or midwife’s performance (such as bullying, victimisation or insufficient staffing levels)
- unreasonable role demands.

The nurse or midwife concerned has the right to appeal the decision of the panel in the courts. The Council for Healthcare Regulatory Excellence (CHRE) also has powers to review decisions it believes to be lenient and refer these to court.
### If a nurse or midwife is found to be unfit to practise

When a panel finds a nurse or midwife’s fitness to practise is impaired, it will either decide not to take further action or it will make one of the following orders.

<table>
<thead>
<tr>
<th>Order Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Striking-off order</strong></td>
<td>The nurse or midwife’s name is removed from the register and they are not allowed to work as a nurse or midwife in the UK.</td>
</tr>
<tr>
<td></td>
<td>The nurse or midwife can apply to be restored to the register five years after the striking-off order was made but this is not done automatically – they must make an application to us for the process to begin. An NMC committee will then decide at a hearing whether or not to allow the former nurse or midwife to be readmitted to the register. They will take into consideration the initial charge, the nurse or midwife’s understanding and insight into their past behaviour, and any action they may have taken with regard to the reasons for which they were struck off.</td>
</tr>
<tr>
<td><strong>Suspension order</strong></td>
<td>The nurse or midwife is suspended from duty for a set period of time. The suspension order will specify the period of suspension (which at first won’t exceed one year) and an NMC committee panel will review the suspension order before the expiry date. At this point they may replace, vary or revoke the order. Any information relating to a suspension order will be seen by an employer checking a nurse or midwife’s registration status.</td>
</tr>
<tr>
<td><strong>Conditions of practice order</strong></td>
<td>This order restricts a nurse or midwife’s practice for between one to three years, and is used when a nurse or midwife is considered capable of improvement. They must, however, comply with the restrictions in order to practise: for example, they may be restricted from working in a particular setting, or from carrying out some aspects of the job without supervision. The conditions of practice must be followed, or the nurse or midwife will not be allowed to practise at all. An NMC committee panel will review the order before the expiry date to check that it’s still appropriate given the facts of the case, and at that time it may replace, vary or revoke the order. Any information relating to a conditions of practice order will be seen by an employer checking a nurse or midwife’s registration status.</td>
</tr>
<tr>
<td><strong>Caution order</strong></td>
<td>The nurse or midwife is cautioned for their behaviour but is not prevented from practising. The order can last from between one and five years and, during this time, employers checking the nurse or midwife’s registration details will see why the caution order has been issued and how long for registration.</td>
</tr>
</tbody>
</table>
Further advice and information

Attend a hearing

You and your colleagues are welcome to observe fitness to practise hearings. This will give you valuable insight into the process. Contact us on 020 7462 5800 or on fitness.to.practise@nmc-uk.org, or visit www.nmc-uk.org for more information on how to attend.

Become a panellist

Our panels are made up of nurses, midwives and people outside the professions. We’re always looking for panellists, so if you would like to get involved, please contact us.

Sign up for our employers email newsletter

Sent once a month, our employers email newsletter contains all the information you need to keep up to date with the work of the NMC. It also includes details of the outcomes of all the fitness to practise cases we have heard in the previous month. To sign up, visit www.nmc-uk.org/newsletters

This publication is available to download from our website at www.nmc-uk.org

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This information and advice was originally published in March 2010. It replaced Reporting unfitness to practise: A guide for employers and managers (2004) and Reporting lack of competence: A guide for employers and managers (2004).

Contact us

Whether you require information about our register, are making an official referral, or want to make a confidential enquiry, don’t hesitate to contact us.

Nursing and Midwifery Council
23 Portland Place, London W1B 1PZ
020 7333 9333

For details of how to get in touch with us, please see www.nmc-uk.org/Contact-us/

This document is also available in large print, audio or Braille on request.