Criminal convictions and cautions

Reference: FTP-2c Last Updated: 27/02/2024

In this guide

Overview

Back to top

This page sets out when a nurse, midwife or nursing associate's criminal offending may be relevant to their registration or fitness to practise.

We also explain how we assess the seriousness of criminal convictions and what we do when possible criminal conduct does not end with a caution or conviction.

Considering criminal conviction or caution declarations

Back to top

Nurses, midwives or nursing associates must declare any cautions or convictions, unless these are for a protected caution or conviction, when they apply to join our register or renew their registration with us.

They also need to let us know if they are charged with a criminal offence, are convicted or receive a caution while they're on our register.

the Code

If there's evidence the nurse, midwife or nursing associate was dishonest about criminal offending when they applied to join our register or renew their registration, we'll have to carry out a full investigation into the circumstances to determine if this affects their registration.

If a nurse, midwife or nursing associate is involved in criminal offending after they joined the register, or renewed their registration, it won't affect their entry in the register, but it may affect their fitness to practise if they kept the fact they were charged, accepted a caution, or were convicted, from us.

This is because we have a clear expectation, as set out under the Code, that nurses, midwives or nursing associates should let us know if they are charged with a criminal offence or receive a caution, conditional discharge or criminal conviction as soon as they can.

In all these cases we'll consider the possible effect on the nurse, midwife or nursing associate's registration, or their fitness to practise, even if the offending itself was not serious.

Assessing the seriousness of convictions and cautions

Back to top

Specified offences and custodial sentences

We will almost always take concerns to a fitness to practise panel when a professional

- has been convicted of any of the serious crimes we classify as specified offences and/or
- has been given a custodial sentence (including suspended sentences).

That is because this offending is considered to be so serious that it is likely to undermine our professional standards and public confidence in the professions we regulate.

In all other cases we will look closely at the underlying circumstances of offending to determine whether there is a risk to the public that we need to act on, or whether it is likely to undermine our professional standards or public confidence in the professions we regulate.

Offending in professional practice

When offending has occurred in professional practice[1], it's very likely this would be serious enough to affect fitness to practise.

Offences which involve neglecting, exploiting, assaulting or otherwise harming people receiving care provide particularly strong evidence of risk to the public and are so serious that we are also likely to take regulatory action to maintain public confidence in nurses, midwives or nursing associates. Such concerns are more difficult to put right.

Offending outside professional practice

Whilst it is less likely that we will need to take action when offending occurs outside professional practice or isn't closely related to it, and it is neither a specified offence nor involves a custodial sentence, sometimes the underlying behaviour will be so serious as to:

- indicate deep-rooted attitudinal issues which could pose a risk to people in the professional's care or to the professional's colleagues, or
- be capable of undermining public trust and confidence in the profession or raise fundamental questions about the person's ability to uphold the standards and values set out in the Code.

We will always consider each case on its facts.

For example, depending on the particular facts and context, we might take action against professionals who receive non-custodial sentences for

- coercive control;
- serious and/or repeated violence against others;
- stalking or harassment offences.

When considering risk to the public, we will need to assess how likely the nurse, midwife or nursing associate is to repeat similar conduct or failings in the future and, if they do, if it is likely that people in their care or colleagues would come to harm, and in what way.

Outside specified offences[2], we are more likely to identify deep-rooted attitudinal issues which indicate a risk to the public, and/or consider that the conduct raises fundamental questions about the professional's ability to uphold the values and standards in the Code, where there is serious and/or repeated mistreatment, and/or the behaviour targets children or vulnerable people.

The sentence passed by a criminal court is likely to be a relevant consideration when deciding the seriousness of a professional's behaviour; however, it won't always be a reliable guide to how seriously the conviction affects a professional's fitness to practise. In the criminal courts, one of the purposes of sentencing is to punish people for offending. In contrast, our overarching objective is public protection and maintaining confidence in the professions we regulate.

Once we decide that the conviction, and any information we've gathered about the surrounding circumstances, would be serious enough to affect the nurse, midwife or nursing associate's fitness to practise, we'll seek police information to verify the details of the conviction or caution referred to us.

Find out more about how we determine seriousness.

Offences reported to the police that don’t result in a conviction

Back to top

As a professional regulator, we do not carry out criminal investigations or decide when a crime has been committed. The police investigate crime; our role is to protect the public from harm, promote professional standards and maintain public trust and confidence in the professions we regulate.

To fulfil these duties we sometimes need to investigate incidents that the police have investigated but have not resulted in a conviction, or conduct or circumstances that are closely related. We will only do so when it is necessary for us to take action as a regulator. For example, where the underlying conduct or wider behaviour raises fundamental questions about a person’s ability to uphold the values and standards set out in the Code.[3]

After police investigation, it may emerge that a crime has not been committed. For example, in an offence of theft the police or jury may not be satisfied that a professional wanted to permanently deprive a hospital of medication they took. That does not always mean that the conduct does not concern us as a regulator. The systematic misplacing or removal of medication itself could raise questions about the professional’s fitness to practise and require us to take regulatory action. Similarly, in an offence of racially aggravated common assault, the police or jury may not be satisfied that the professional assaulted someone. Nevertheless, there might be evidence that they did use racist language. Given their discriminatory behaviour we could well have concerns about the professional’s fitness to practise which could require us to take regulatory action.

Example 1

> While the police have investigated these concerns already and concluded that no criminal offence has been committed, we’re very likely to need to investigate this behaviour and take this matter forward. Sharing explicit messages with others about the sexual assault of women suggests a dangerous and potentially discriminatory view towards women and girls, which could pose a risk to the public in the course of
>
> professional practice
>
> . This conduct could also undermine public trust and confidence in the profession. We’re not responsible for carrying out criminal investigations and deciding whether a criminal offence has been committed, but we have a responsibility to keep people safe, to promote professional standards and maintain public trust and confidence in the professions we regulate.

Example 2

Sometimes we may also need to investigate, and even take to a panel, allegations that the police have decided not to pursue. For example, the police investigate an allegation that a professional has assaulted a person who was receiving care whilst they were recovering from an operation and decide there isn’t sufficient evidence to

bring criminal proceedings. As the nature of the allegation indicates a potential risk to people receiving care and could also undermine public confidence in the profession, we will apply our screening test and, depending on the circumstances, may decide we need to conduct a full investigation.

Our approach

We will consider such cases under our standard guidance on Misconduct.

However, we need to be kind and fair to everyone involved in our regulatory process and be clear about the nature and limitations of regulatory investigations from the outset.

We will exercise considerable caution when bringing cases of this kind. When deciding whether to investigate the alleged behaviour after police involvement, we will first carefully assess:

- why there wasn't a conviction, or why the police decided not to investigate;
- whether, and if so why, the courts or the police rejected the accounts of people who would give evidence in any fitness to practise case;
- whether the nature of the allegation or the underlying behaviour indicates a need for us as a regulator to take action to protect the public, uphold standards or maintain public confidence in the professions we regulate;
- the likelihood of us obtaining sufficient evidence to prove the allegations at a panel hearing. In deciding this we'll need to consider our obligation to act fairly towards all involved.

The standard of proof for regulatory action (the balance of probabilities or "more likely than not") is lower than the standard used for criminal proceedings, where decision-makers need to be "sure". This means that we may sometimes be able to prove relevant underlying facts even where the evidence wasn't considered sufficient to do so in criminal proceedings.

Nevertheless, it's not our role to fill any perceived gaps in the criminal justice system. We will only take action if it is necessary to do so to fulfil our statutory duties.

For example, if a nurse, midwife or nursing associate is investigated for an alleged domestic mortgage fraud against a bank, but the prosecution collapses, it wouldn't be our role to investigate whether they acted dishonestly as part of a possible misconduct case. This type of offence does not raise a risk to people receiving care and would not cross the threshold for damage to public confidence in the profession.

We also need to be realistic about the limits of our investigatory powers. We don't have the same extensive powers or specialist expertise as the police to investigate allegations. There are limits to the evidence we are able to obtain. For example, we do not have access to forensic testing and data regarding the geographic location of mobile phones, we do not have powers to search or seize evidence and we're not able to compel someone to be interviewed.

Where we decide it is necessary and realistic for us to investigate, we will be open with those who might be involved in the investigation about the possible outcomes, and the potential issues we're likely to face taking the case forward, so they can make an informed decision about whether they wish to continue assisting us. We will look at how we can support people through our processes which includes identifying and signposting to external agencies when needed. We'll consider discussing any previous criminal trial with those people and assess very carefully how willing or able they would be to attend to give evidence in any future fitness to practise case.

1 As defined in 'Misconduct: When does poor practice become serious professional misconduct?'

2 Which include hate crimes and sexual offences

3 Ashraf v General Dental Council [2014] EWHC 2618 (Admin); for a more recent example of a case where a police investigation did not result in a prosecution but the regulator brought proceedings see Roy v GMC [2023] EWHC 2659 (Admin)