

Reconsidering closed cases

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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.

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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.

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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.

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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.

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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 to 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