Dealing with cases at meetings and hearings

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Overview

This guidance applies to fitness to practise and fraudulent or incorrect entry cases.

We'll always hold a hearing if the nurse, midwife or nursing associate wants one.[1]

If the nurse, midwife or nursing associate asks for a meeting, or if they don't respond when we ask them how they'd prefer us to deal with their case, we'll usually hold a meeting, unless the panel (or in a case about **fraudulent or incorrect entry**, the Registrar) decides that a hearing is desirable.[2]

This guidance explains the similarities and differences between hearings and meetings, and the factors that are relevant to deciding when a hearing is desirable.

Comparing meetings and hearings

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Our Investigating Committee and Fitness to Practise Committee panels can reach decisions on cases at a meeting[3] or a hearing.

The panel's job in both a meeting and a hearing is to carefully consider all the evidence and decide if the concerns are proved.

Panels at meetings and hearings have to make their own decision about whether the nurse, midwife or nursing associate's fitness to practise is impaired. They have the same range of sanctions available if they decide some action needs to be taken to address these concerns.

At both meetings and hearings, an independent legal assessor is present to give legal advice and help ensure the fairness of proceedings.

In all cases, the panel will produce a written determination that is sent to the registrant and person who made the complaint.[4]

Meetings

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At a meeting, the panel makes its decision based only on the documents that have been submitted to it. There's no case presenter so anything we say will be on paper. The nurse, midwife or nursing associate doesn't attend the meeting, and there aren't any witnesses.[5] This means that meetings usually take less time to conclude than hearings and are less adversarial.

Although the nurse, midwife or nursing associate can't attend a meeting, they can still engage effectively with the process by sending in any information in advance that they want the panel to consider.[6]

Meetings are held in private, meaning the public won't be there. However, where a nurse, midwife or nursing associate's fitness to practise is found impaired, and a sanction is given, we always publish the panel's decision

following our **FtP Publication guidance.**

Hearings

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Nurses, midwives or nursing associates will always be able to have a hearing if they want one.

They'll be able to attend a hearing with or without a representative and can also send a representative to attend on their behalf.

A case presenter will attend to represent us.

A key difference between meetings and hearings is that the nurse, midwife, or nursing associate and witnesses can give live evidence to the panel. Anyone who gives evidence can be asked questions.

Hearings are usually held in public, which means that anyone can attend including members of the press.

Factors that are relevant to whether a hearing is desirable

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When a nurse, midwife or nursing associate hasn't asked for a hearing, or where we haven't heard from them, we'll usually hold a meeting unless a panel or Registrar decides that a hearing is desirable.We'll keep the decision about how a case should be resolved under review and will ask the panel or Registrar to reconsider their decision if there has been a relevant change in circumstances (for example where the nurse, midwife or nursing associate decides to admit the charges against them).

In the sections below, we explain some of the considerations that will be relevant to deciding whether a hearing is desirable.

Disputes that can only be resolved at a hearing

We encourage nurses, midwives and nursing associates to engage with us and give us their account of what happened. This includes any information about context, and any reflective work or learning they've carried out.

We sometimes find this information out as part of our investigation. For example, if a nurse, midwife or nursing associate has provided information to their employer as part of a local investigation.

If this information makes it clear that the nurse, midwife or nursing associate materially disputes the factual allegations, then a hearing might be necessary to explore this aspect of their case with relevant witnesses.

A material dispute in this context is where the nurse, midwife or nursing associate disputes factual matters that could affect the outcome of the case. Namely, if their fitness to practise is found impaired or the type of sanction imposed.

A hearing is unlikely to be useful if only a small number of allegations or factual matters are disputed that won't have a material impact on the outcome. In these circumstances, a fair outcome can be achieved by **offering no evidence** on those charges and asking the panel to consider the remaining charges at a meeting.

If the nurse, midwife or nursing associate hasn't given us any details about why they dispute the allegations, a hearing is less likely to be desirable.

By the time the panel is making this decision, the person we're investigating will already have had several opportunities to explain to us why they dispute the allegations. Unless they've told us when they might give us this detail, then it's unclear what meaningful issues there would be for a future panel to explore with the witnesses at a hearing.

Consensual panel determination and offering no evidence

Where we've agreed a provisional outcome with the nurse, midwife or nursing associate and we're using a **consensual panel determination** to resolve a case, we'll hold a hearing, unless the most serious sanction has been agreed.[7]

Hearings are more practical for these cases because the panel might want to vary the proposed sanction meaning we'll involve the different parties.

Where we're offering no evidence on an entire case (as opposed to some of the factual allegations), we may need

to fully open the case to make sure the panel is sufficiently informed of the facts so they can make a decision.[8]

Our approach to impairment and sanction

The impairment and sanction stages are a matter for the panel's judgement. In exercising its judgement, the panel will carefully consider any evidence provided by the nurse, midwife or nursing associate in relation to impairment and sanction. Our position on impairment and sanction may also be set out in our statement of case and may include our views on the adequacy of any evidence provided by the nurse, midwife or nursing associate. As the focus at these stages is usually on the nurse, midwife or nursing associate's evidence or the evidence of any witnesses they wish to call, if we do have a position on impairment and sanction we will inform the nurse, midwife or nursing associate in advance so that they can decide whether they want us to hold a hearing.

If the nurse, midwife or nursing associate hasn't indicated that they wish to attend or call witnesses at a hearing and the issue in dispute relates only to impairment or sanction, then a hearing is unlikely to be desirable.[9] Our view is that any disputes about impairment or sanction can usually be fairly dealt with at a meeting, based on a careful consideration of our statement of case, relevant evidence and any written statement received from the nurse, midwife or nursing associate.

Factors that are less relevant to whether a hearing is desirable

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The public interest and seriousness

The public interest doesn't require cases to be resolved at hearings just because the allegations in a case are serious. The adversarial nature of hearings can have a negative impact on people, as well as being slow and resource intensive.

Where there's no dispute that could affect the outcome of the case or practical reason why a hearing may be desirable, the fitness to practise decision can be made swiftly at a meeting. It is in the public interest to be transparent about our decisions and we'll publish outcomes where impairment has been found and a sanction has been imposed. We'll also share our statement of case with interested parties, where requested, and in line with our **information handling guidance**. The statement of case is a document that explains our position on what has gone wrong, explains why we think the nurse, midwife or nursing associate is not fit to practise and what sanction we think the panel should impose.

Complexity

The fact that a case is complex is unlikely to justify holding a hearing on its own.

When the case is referred to a meeting, we'll create a statement to help the panel understand our position on the case because there won't be a case presenter attending. This statement will explain why we say there's enough evidence for the panel to decide that the charges are proved, why we say the nurse, midwife or nursing associate is not currently fit to practise, and what action we say the panel should take, and why.

We'll also prepare an evidence matrix so that the bundle of documentary evidence is easier to follow.

Our panel members are all experienced professionals who are able to scrutinise documents, written evidence and written submissions carefully. This means they can deal with complex cases on the papers, without needing to hear live evidence unless there's a dispute that could affect the outcome of the case or a practical reason why a hearing may serve a useful purpose.

If the panel at a meeting decides it needs clarification or further information on an issue, it should consider postponing or adjourning the meeting with directions. This is so that the matter can be looked into, and if necessary further submissions, documents or evidence can be sent to the panel.[10]

Taking such a step is more proportionate than referring the case to a hearing when this may not be needed to the resolve the issue.

At that stage, it wouldn't necessarily be clear that a hearing would serve a useful purpose before there's been a chance to send the panel further information or clarification that might deal with the issue it's raised.

1 Rules 5(1)(a) and 10(2)(a) Fitness to Practise Rules 2004

2 Rules 5(1)(b) and 10(2)(b) Fitness to Practise Rules 2004
3 Rules 5(5)(b) and 10(3) Fitness to Practise Rules 2004
4 Rules 5(6) and 13 Fitness to Practise Rules 2004
5 This applies to all meetings except preliminary meetings which are always held in private but where the parties can attend.
6 Registrants have a number of opportunities to provide us with representations before their case is considered by a panel. This includes prior to the case examiner consideration and once an allegation has been referred to the Fitness to Practise Committee [See Rules 6A(2)(b), 6B(4) 9(2)(b) and 11A(2)(e)].
7 In these cases we'll usually hold a meeting if the nurse, midwife or nursing associate hasn't requested a hearing because no public protection risks can arise given the agreed outcome.
8 PSA v NMC and X [2018] EWHC 70 (Admin)
9 Meetings are more likely to be appropriate when a panel is reviewing a substantive order and a nurse, midwife or nursing associate has not indicated they'd like to attend a hearing. This is because at this point the panel is usually only looking at whether the nurse, midwife or nursing associate is still impaired, and what action if any to take. The panel at the meeting makes a decision using this guidance whether to proceed with the meeting or not. The panel can decide that a hearing is in fact desirable, and refer the case to a hearing.
10 At a meeting, the panel has the power to determine its own procedure under Rule 10(4) Fitness to Practise Rules 2004