

# Hearing fitness to practise allegations together

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## Overview

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After case examiners have decided that there is a [case to answer](#) and referred the case or cases to the Fitness to Practise Committee, there are some circumstances where it is appropriate to deal with more than one allegation at the same hearing.

This could be where more than one case about a nurse, midwife or nursing associate has been referred to us, or where two or more nurses, midwives or nursing associates are facing allegations about the same or a connected incident.

## Allegations against more than one nurse, midwife or nursing associate

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A panel of the Fitness to Practise Committee ('panel') may consider an allegation against two or more nurses, midwives or nursing associates at the same hearing where the allegations arise out of the same circumstances, or where it decides a joint hearing is necessary.

Before making a decision the panel must consider the advice of the legal assessor. The panel cannot hear allegations together if a joint hearing would make the proceedings unfair.<sup>1</sup>

## Different allegations against the same nurse, midwife or nursing associate

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If we receive more than one referral for a nurse, midwife or nursing associate at the same time, and the referrals relate to different allegations of impaired fitness to practise, we will investigate the allegations and manage the matter as one case.

If we do not receive the referrals at the same time, we may have opened two or more cases against the same nurse, midwife or nursing associate. In this instance we will consider whether it is better to deal with the cases together, which may depend on where in the process each case is.

If allegations relate to a criminal caution or conviction, this must be heard any allegation of misconduct has been decided<sup>2</sup>, unless the matter requires the panel to hear evidence about the conviction/caution to understand the misconduct.

For instance, a misconduct allegation that the nurse, midwife or nursing associate failed to disclose a conviction

to their employer. The panel may also hear evidence about a conviction where it is relevant and fair to include it as evidence of fact or bad character.

## New allegations

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Sometimes a new allegation is made against a nurse, midwife or nursing associate that is similar to, or founded on the same facts, as an allegation we have already received. If this happens, both allegations can be considered at the same hearing if the original allegation has not yet been heard.<sup>3</sup>

In these cases, we will tell the nurse, midwife or nursing associate about the new allegation and our intention to deal with them at the same hearing. We will give them the opportunity to respond within 28 days, or a different timeframe we agree.<sup>4</sup>

## How do we make the decision to join allegations?

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Considering allegations together allows us to be a more effective regulator because it allows panels to consider the wider context of allegations.

Holding only one hearing or meeting reduces the time cases take and helps witnesses by not requiring them to attend multiple hearings. We therefore consider that, in the majority of circumstances, it will be better to hear allegations together.

However, in making the decision, we'll always consider any risk of unfairness that may arise from hearing allegations together or whether joining the cases will cause any unnecessary delay to either case as we recognise that delaying our cases can cause stress and anxiety to all those involved. If we decide not to link the cases, we recognise that some of the same evidence is likely to be considered in separate cases. Where this happens, we will ensure that this evidence is presented in a consistent way.

If we consider that allegations need to be dealt with together, we'll tell the nurses, midwives or nursing associates and give them the chance to object to the allegations being dealt with together.

Where we want to join together allegations against more than one nurse, midwife or nursing associate we will give them information about the other person's case, such as the charge and a list of witness statements or exhibits. This is to help them understand why we say the allegations should be heard together.

If nobody objects to us joining the cases, we'll join them, and arrange a joint hearing. If one of the nurses, midwives or nursing associates does tell us they don't want their case joined with another case we'll arrange for a [preliminary meeting](#) so that a Chair can make the final decision on whether the matters should be joined.

## The joint hearing

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In a case where allegations against two or more nurses, midwives or nursing associates are to be heard at the same hearing, we'll consider what material we've received from one nurse, midwife or nursing associate needs to be disclosed to the other, applying our test for disclosure of unused material.

Panels should manage cases in a way that is fair for everyone.<sup>5</sup> Bearing that in mind, panels should consider how any risk of unfairness can be managed in a hearing.

For example, joining cases may lead to a hearing becoming unduly long and complicated, which may affect the nurse, midwife or nursing associate's ability to attend, or be represented throughout the hearing.

Panels should consider the evidence against each nurse, midwife or nursing associate separately, even though the cases may be heard together. If a panel hears evidence about one nurse, midwife or nursing associate that is inadmissible and prejudicial against the other, it will exercise its judgment as a professional panel and disregard any irrelevant material.

It will decide the case fairly on the evidence before it, having been advised by the legal assessor of the proper legal approach.<sup>6</sup> In rare circumstances it may not be possible to disregard the irrelevant material, due to the exceptionally prejudicial nature of it, in which case the panel should consider whether it's appropriate to

continue.<sup>7</sup>

## New allegations about a nurse, midwife or nursing associate already subject to a fitness to practise sanction

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We may receive a referral of a new allegation while a nurse, midwife or nursing associate is subject to a substantive order (other than a striking off order). If this happens we'll use [our guidance](#) to decide whether a panel should be made aware of the new allegation, as part of the review of the substantive order, or whether we should treat the information as a [new referral](#).

1 Rule 29(1) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules')

2 Rule 29(2) of the Rules

3 Rule 29(3) of the Rules

4 Rule 29(4) of the Rules

5 R (O'Brien) v General Medical Council [2006] EWHC 51 (Admin)

6 R (on the application of Mahfouz) v General Medical Council [2004] EWCA Civ 233, White and Turner v Nursing and Midwifery Council [2014] EWHC 520 (Admin)

7 See paragraph 28 of R (on the application of Mahfouz) v General Medical Council [2004] EWCA Civ 233