Hearings in private and in public

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In this guide

- Public hearings
- Private hearings
- Deciding whether to hear matters in private
- Written panel decisions

Public hearings

Back to top

If a case is being decided at a hearing because the Fitness to Practise committee needs to resolve a dispute between us and the nurse, midwife or nursing associate, it will usually be held in public.[1]

If a hearing isn't needed because there is no material dispute, or the nurse, midwife or nursing associate hasn't asked for one, the case will be decided at a meeting, which will take place in private without any representatives or the nurse, midwife or nursing associate present. However, all panel decisions from meetings are recorded in a written document, which is published on our website.

Patients, their families and loved ones, members of the public, and the press can observe hearings and watch the panel make its decisions. All panel decisions are recorded in a written decisions document. After the hearing, the document is published on our website.

Private hearings

Back to top

In some cases, a panel or Chair will decide that some or all of the hearing should be in private.[2] In a private hearing, any members of the press or public will be asked to leave.

The panel's published written decision will not contain any information that is considered private. The decision to hear all or part of a hearing in private is a decision for a panel or Chair to make after hearing the advice of the legal assessor.

Deciding whether to hear matters in private

Back to top

Hearings should generally be held in private where the allegation is only about a nurse, midwife or nursing associate's mental or physical health, or about things the nurse, midwife or nursing associate did because of their health condition, that could cause risks to patients.

An exception to this is when the panel or Chair decides that the public interest, or the interests of any third party, outweighs the need to protect the privacy or confidentiality of the nurse, midwife or nursing associate meaning that all or part of the hearing should be held in public.[3] The circumstances where it is appropriate to hear private health information in public session will be extremely rare.

A panel can hear matters in private when it is satisfied that it is reasonable and proportionate to do so, and it is justified in the interests of any party, third party, or the public.[4] Either we, or the nurse, midwife or nursing associate, can apply for part or all of the case to be heard in private. A panel can also raise the issue and then make a decision.

Before making a decision, the panel should give us, the nurse, midwife or nursing associate, and any person with an interest in the case the chance to make representations about sitting in private, and then consider the advice of the legal assessor.

A decision to sit in private may relate to all or part of a hearing. Given that transparency and open justice will normally

equire that (non-health-related) hearings are held in public, panels should try to hold as much of a hearing in open session as practical, even if it's occasionally necessary to switch between public and private session.

n reaching this decision, a panel should also consider if it would be more appropriate and proportionate to take other steps such as editing documents, anonymising information or concealing the identity of a person referred to in the allegation.

The application to hear the case in private can itself be made in private session, if it is reasonable to do so. However, he panel should ask for representations from all interested parties before the full application is heard in private. Any decision on an application to hear matters in private is recorded in writing and given to the parties.

A decision to sit in private may either be made at the hearing, or as a case management direction in advance of the hearing.

Written panel decisions

Back to top

All panel decisions from hearings and meetings are recorded in writing and published on our website. Sometimes, private information, including information about people's health, or any details about children, will form an important part of the panel's decision making. However, it will be extremely rare that it would be right for us to include this information n the published decision.

For this reason, we sometimes need to produce two decision documents: one marked as public, which will be published, and one marked as private. Panel decisions are published on our website in accordance with our publication guidance[5].

Where a case is decided at a hearing, information relating to any part of the hearing that took place in private will not be included in the public decision document. However, if an issue arises about the publication of matters that took place in the public part of the hearing, the decision whether or not to publish will rest with the NMC.

Where a case is decided at a meeting, it is the NMC's responsibility to decide which information should form part of the public document and which should remain private.

t will often be obvious that information needs to be removed from the public decision document, for example where the case is about the nurse, midwife, or nursing associate's health. In relation to other kinds of private information we will need to carry out a careful balancing exercise. The different factors are the need for transparent decision making, protecting the interests of the various people involved in the case, including patients, service users, their families and loved ones, the nurse, midwife or nursing associate, and witnesses. We may need to think carefully about whether people other than the nurse, midwife or nursing associate might be identified by us publishing particular details.

n very rare cases we may need to consider whether we should publish the decision at all. If the nurse, midwife or nursing associate makes representations about publishing the decision, we will consider the reasons for the request and then balance the public interest of matters being reported against the reasons for the application.

1. Rules 18(5) and 19(1) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (the Rules), and in accordance with the principle of open justice.

2. Rule 19(4) of the Rules

3. Rule 19(2) (a) and (b) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004

4. Rule 19(3) (a) and (b) of the Rules

5. See our Privacy notice at: www.nmc.org.uk/privacy/