

# Supporting people to give evidence in hearings

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## Overview

This guidance is intended to assist NMC staff responsible for preparing cases for hearings and sets out the NMC's approach to supporting people to give evidence in hearings. Staff may also find the [Equal Treatment Bench Book](#) to be helpful in providing additional guidance and advice on how to make hearings accessible and fair for all involved.

When we refer to 'people giving evidence', this includes the nurse, midwife or nursing associate whose case is being considered and anyone giving evidence on their behalf.

## Key principles

We know that giving evidence at a hearing can be a daunting experience for some people.

We don't want the nature of the experience to interfere with a person's ability to give their evidence effectively.

When preparing cases for hearings, we'll follow these principles as part of best practice:

1. We'll find out what support people feel they need to give evidence in a hearing and engage effectively.
2. We'll always try to provide people with the support they tell us they need as long as it is fair and practical to do so.<sup>1</sup> One way we'll do this is to work collaboratively with the parties in the case to get support measures agreed before the hearing.
3. Where we consider the support requested is not practical or a reasonable use of resources, we'll work with the person giving evidence to give them as much support as we can.
4. We make the initial decision about support measures, but the panel hearing the case has the final say over whether support can be provided. We'll be clear about this in our communications to people giving evidence. We'll also be clear that we may have to share information about why they need support measures with other people involved in the case.
5. If a concern is raised about support measures, we can arrange for the panel hearing the case to make a decision or arrange for a Chair to give directions at a preliminary meeting.
6. We'll communicate decisions about support measures in advance of the person giving their evidence. We'll give people sufficient time to understand the decision and prepare to give their evidence in the way that's been decided.<sup>2</sup>

## Examples of support measures

The following is a non-exhaustive list of the kind of support we can offer:

1. Making adjustments to help support people with a disability.
2. Directing the nurse, midwife or nursing associate whose case is being considered to the [NMC's Careline](#).
3. Agreed timetables for people giving evidence which all parties and the panel will aim to keep to.
4. Breaks as necessary/appropriate when giving evidence.
5. Giving evidence remotely.
6. Attending a hearing centre and giving evidence from another room.
7. Using screens or setting up the room or virtual hearing in a way that the person giving evidence feels most comfortable and can give evidence effectively.
8. Use of communication aids.
9. Use of an interpreter.

10. Use of an intermediary to assist with questioning.
11. Use of a support advocate.
12. Providing transcripts where a case is [part heard/remitted](#).
13. Setting out ground rules for questioning.
14. In advance of the hearing, providing a list of the questions the parties wish to ask a person giving evidence to the panel which will hear the case for them to approve in line with previously agreed/directed ground rules.
15. Appointment of a lawyer to ask certain questions on behalf of a nurse, midwife or nursing associate who is not represented. A person instructed in this way is usually referred to as 'special' counsel.<sup>3</sup>
16. Explaining the nature of a nurse, midwife or nursing associate's defence before a person gives evidence.

## Telling the nurse, midwife and nursing associate about support for people giving evidence for the NMC

Where a person giving evidence on behalf of the NMC tells us they would like support, we may ask for information to help us understand the person's needs.

We'll inform the nurse, midwife or nursing associate whose case is being considered (and their representative) in advance of the hearing of any support we're proposing to provide.

We'll give the nurse, midwife or nursing associate (and their representative) the information they need to understand what support has been requested and if it could impact the fairness of the hearing. Wherever possible we will try to agree the support measures with the nurse, midwife and nursing associate (or their representative) in advance of the witness giving evidence.

If the nurse, midwife or nursing associate (or their representative) has a concern about whether a fair hearing can take place, we'll convene the panel responsible for hearing the case (or a Chair at a preliminary meeting) to hear representations from the parties and make a decision (or give directions). Any information we share with a panel (or a Chair) about a person's request for support measures, we'll also share with the nurse, midwife or nursing associate (and their representative).

The panel's decision (or Chair's directions) will need to be made sufficiently far in advance of when the person is due to give their evidence so that we can communicate the outcome and discuss next steps.<sup>4</sup>

## Issues arising after a person has started to give evidence

Sometimes unforeseen circumstances arise during hearings. The panel hearing the case is responsible for ensuring that the hearing is fair and that all parties can participate effectively.

If any party or the panel has concerns about the fairness of the hearing or the ability of a person to engage effectively, they should ask for a break so that support measures can be discussed.

The parties and the panel may need to consider whether more support needs to be given to a person giving evidence or whether a person would be assisted by giving evidence in a different way.

If the questioning of a person is inappropriate the panel should use their case management powers to address the situation in line with our [case management during hearings guidance](#).

1 This is in line with our person-centred approach and our duties under the Equality Act 2010 to make reasonable adjustments.

2 This may mean that a hearing is not listed on consecutive working days. In the event that an objection is unavoidably raised shortly before a person is due to give evidence and the panel decides not to allow a support measure because it would be unfair, the panel may need to consider an adjournment to allow sufficient time for the decision to be communicated to the person and for the NMC to discuss next steps.

3 Our Rules (23(4)) require us to appoint special counsel to conduct cross-examination when a person giving evidence has made allegations of a sexual nature directed at them against a nurse, midwife or nursing associate who is representing themselves. We could also appoint special counsel in other circumstances where this would be a reasonable measure to support the person; for example for the cross-examination of a person who alleges the nurse midwife or nursing associate has physically or emotionally abused them where the nurse, midwife or nursing associate is representing themselves.

4 As above, this may mean that a hearing is not listed on consecutive working days.