

# Decision making

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If a nurse, midwife, or nursing associate applies for VR before a substantive hearing, we will carry out a review of their application and make a recommendation to the Registrar on whether it is an appropriate case for VR.

The criteria used in the review are the same criteria used by the Registrar when making their decision.

The application will not be considered until the case examiners have decided whether there is a [case to answer](#). This is so that we understand the full extent of the [regulatory concerns](#).

If an application for VR has been made at the investigation stage, the nurse, midwife, or nursing associate may be invited to re-submit their application once a case to answer has been found.

When a nurse, midwife, or nursing associate applies for VR during a substantive hearing, the panel won't be informed of the VR application unless they find that the nurse, midwife, or nursing associate's fitness to practise is impaired.

If it does make that finding, the panel will make a recommendation on whether or not to allow VR, which the Registrar will take into consideration as one of the factors relevant to their decision. If the VR application is rejected by the Registrar, the panel will go on to consider [whether to impose a sanction](#).

If a nurse, midwife, or nursing associate is subject to an [interim suspension order or interim conditions of practice order](#), this will need to be revoked by an interim order panel before an application for VR can be granted.<sup>1</sup>

The Registrar will be aware of the interim order when they make the decision on whether to grant VR or not. If the Registrar decides that VR is suitable, we'll invite a panel to revoke the order, as VR has been granted by a Registrar. Only then will the VR will take effect.

If VR is granted at a hearing, the panel will make a decision to take no further action.<sup>2</sup> This will revoke the interim order and the VR will come into effect immediately.

Once a recommendation has been made to the Registrar, they will decide whether to grant an application for VR, carefully considering the following:

1. Whether the regulatory concerns have been accepted by the nurse, midwife, or nursing associate
2. The public interest in the case being dealt with by the Fitness to Practise Committee
3. The interests of the nurse, midwife, or nursing associate
4. Any comments received from the maker of the allegation

## Acceptance of the regulatory concerns

For the Registrar to grant VR they must be satisfied that the nurse, midwife, or nursing associate accepts the regulatory concerns which have been raised.

This means that when making an application for VR the nurse, midwife, or nursing associate must confirm they accept the fitness to practise concerns.

The Registrar can take into account any relevant information, for example comments made during employer investigations, reflective statements, or responses submitted to the NMC during the fitness to practise proceedings and alongside the application for VR.

## Public interest

When deciding whether to grant VR, the Registrar must take into account the public interest. When a nurse, midwife, or nursing associate is removed from the register through voluntary removal, the public is immediately protected from the risk of future harm, and the reasons for this are published. In many cases allowing someone to leave the register quickly, without the need for a full fitness to practise hearing, will be the best way to meet the public interest. In other cases it may be in the public interest for the matter to be considered in full by a fitness to practise panel.

One of the key factors when weighing up the public interest of a case will be the seriousness of the concerns and whether they require us take regulatory action in the public interest, to promote public confidence or uphold standards.<sup>3</sup> In cases about clinical practice this is only likely to be needed where the concerns are so serious that they can't be put right. Types of concern that are **more difficult to put right** include causing deliberate harm to patients, or breaching the professional duty of candour to be open and honest. In cases not about clinical practice taking action to **maintain public confidence or uphold standards** is only likely to be needed if the concerns raise fundamental questions about the trustworthiness of a nurse, midwife, or nursing associate as a professional.

The Registrar should make sure that these public interest considerations are addressed in their decision to grant or refuse a VR application. These decisions will be published and the reasons for the decision will be available online for the public to view. That means it's important we provide reasons which fully explain our decision.

More serious concerns where the nurse, midwife, or nursing associate's conduct is fundamentally incompatible with continued registration are not suitable for voluntary removal as there is a public interest in these matters being dealt with by the Fitness to Practise Committee.

This is because these concerns are likely to result in the nurse, midwife, or nursing associate being permanently removed from the register by a Fitness to Practise Committee making a striking-off order. In these cases any application to return to the register should also be decided by a Fitness to Practise Committee at a public hearing and the reasons published. Where a nurse, midwife, or nursing associate has been removed by the Registrar, an application for readmission is made to the Registrar and the reasons will not be published. In cases serious enough to warrant permanent removal from the register, there is a public interest in applications for readmission being properly scrutinised in public by a panel of the Fitness to Practise committee.

When considering VR applications arising from a panel recommendation at a hearing, the Registrar will be assisted by:

1. the panel's determination on impairment, and
2. the panel's assessment of public interest concerns.

If VR is granted, details of the allegation will become public through the Registrar's decision. The allegation will also be considered if the nurse, midwife, or nursing associate subsequently applies for readmission to the register.

## Interests of the nurse, midwife, or nursing associate

The Registrar will also take into account the interests of the nurse, midwife, or nursing associate when deciding whether to allow removal from the register, weighing these alongside the public interest.

The Registrar should consider the following factors:

1. the nurse, midwife, or nursing associate's reasons for seeking VR
2. their plans for the future

If the nurse, midwife, or nursing associate demonstrates a committed intention to leave the profession then this will be a factor in favour of granting VR. For example, a nurse, midwife, or nursing associate may express their intention to follow an alternative career path, be suffering from long term ill health, or have taken steps to leave the profession before we raised concerns with them. They may wish to submit a statement and / or provide evidence of this in support of their application, and we will usually ask them to sign a declaration confirming their

intention to stop practising.

Alternatively a nurse, midwife, or nursing associate may want to be removed from the register for a period of time with a view to returning in the future, once the issues with their ability to practise safely have been resolved. This will usually only apply in cases of lack of necessary knowledge of English, where the nurse, midwife, or nursing associate's skill may improve over time, or health, where their health might improve or be better managed in the future.

## **Comments received from the maker of the allegation**

The Registrar should consider any comments received from the maker of the allegation.<sup>4</sup> The maker of the allegation is not necessarily the person who reported the matters to us. Where appropriate it may be the person affected by the misconduct, or, in a criminal case, it may be the person or organisation that initially reported matters to the police.

Comments from the maker of the allegation can be an important way of ensuring the patient voice is heard, and can help us understand the impact a nurse, midwife, or nursing associate's actions have had on the people involved. Their comments may help us understand the seriousness of the concerns, or may support a decision to grant removal, for example where an employer confirms they are supporting a nurse to continue working as a healthcare assistant.

We will request comments from the maker of the allegation before making a recommendation to the Registrar. If the VR application arises during a hearing we will seek comments from the maker of the allegation before the panel makes its VR recommendation to the Registrar.

The fitness to practise process is not about punishing people for mistakes, and although the Registrar will take these comments into account, they will make their final decision based on how we can best protect the public and maintain public confidence.

In cases where the allegation relates to health, we do not disclose the details of the nurse, midwife, or nursing associate's health condition to the maker of the allegation. Given that health details are regarded as confidential it will not always be possible for the maker of an allegation to be fully informed of the reasons why VR was appropriate in every case, nor for the extent of the details to be published in the Registrar's decision.<sup>5</sup>

1 Article 12(3)(b) of the Nursing and Midwifery Order 2001 ('the Order')

2 Article 29(4) (b) of the Order

3 When assessing the overall seriousness of concerns, the Registrar will take into account our [guidance on seriousness](#)

4 This is a statutory requirement under Rule 14(2B)(a) of the Registration Rules

5 Details of the fitness to practise information we publish can be found on [our website](#).