Bias and Recusal

Reference: DMA-10 Last Updated: 30/10/2026

If a nurse, midwife or nursing associate is facing Fitness to Practise proceedings, they are entitled to a fair and public hearing, within a reasonable time, by an independent and impartial Panel.[1]

The "independence" and "impartiality" of the Panel are concepts which are closely linked. They require that the Panel is truly independent and free from actual bias and, just as importantly, that the Panel objectively appears to be so.[2]

When a Panel makes a decision in respect of a fitness to practise concern, it is important that they do so objectively and that their decision is based on the evidence before them. There is no room in this decision-making for a Panel member's personal biases, beliefs or perspectives. The Panel members must be free of prejudice and partiality and should conduct themselves, both inside and outside the hearing, in such a manner as to not bring their ability to decide a case objectively into doubt.

From time to time a Panel will need to consider whether there is a possibility of bias in respect of one (or more) of their Panel members. If this issue is raised by one of the parties then the resolution of this issue lies with the Panel, and is not a matter for the parties to the proceedings to determine.[3]

When considering this issue, the question for the Panel is:

"Whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased"[4]

A key part of this test is that the notional observer is both "fair-minded" and "informed". When considering this Panels may find it helpful to consider the following attributes in respect of this notional observer being "fair-minded":

- They only make a decision when they have seen and fully understood both sides of the argument
- They are not unduly sensitive or suspicious
- They will consider whether the concern in respect of potential bias is "objectively justifiable", applying the "real possibility" test
- They know that fairness requires that a Panel member must be, and must be seen to be, unbiased
- They recognise that Panel members, like everyone else, have their weaknesses. If the conclusion is objectively justifiable that the things a Panel member has said, or done, or associations they have made may make it difficult for them to consider the case impartially, then the fair-minded observer will not avoid making that conclusion[5]

And in respect of the observer being "informed":

- They will inform themselves of all matters that are relevant to the concern of bias
- They will put whatever evidence they have into its overall context, appreciating that such context forms an important part of the material they are considering before making a decision on the *"real possibility"* of bias
- They are deemed to know the facts and evidence before the Panel[6]

Although it may be that the question of potential bias has been raised by one of the parties as a result of a perception they have developed in respect of a Panel member, it is the opinion of the hypothetical observer that is determinative for a Panel's considerations

Whether there is a *"real possibility"* that a Panel member could be biased is likely to be dependent on the facts of the specific concern of bias in a given situation. However, what is unlikely to be a sound basis for a concern in respect of bias is *"…the religion, ethnic or national origin, gender, age, class, means or sexual orientation…"* of the Panel member.[7]

If a party to the proceedings wants to allege bias in respect of a Panel member or members, the law makes it clear that these allegations of bias should be particularised (i.e. that it is made clear what exactly the concern is) and that they should be supported by evidence.[8]

If a Panel member is subject to "extraneous influences" such as a financial interest in the outcome of the case or a personal connection with one of the parties involved then as a general rule there would be no need to show that they

vere in fact influenced, as the concern that they may be is sufficient.[9] They must stand down from the Panel. This is ecause there would be concerns that the Panel member may be influenced, even if unconsciously, by those xtraneous factors.

n the event that a Panel member does recuse themselves we have separate guidance on how that impacts the onstitution of the Panel, which can be found here – *"What happens if a panel member cannot continue to sit?"*

1. see A.6(1) ECHR
2. see Porter v Magill [2002] 2 A.C. 357 at para.88
3. see R(on the application of Beale) v Special Case Panel [2018] EWHC 759 (Admin) at para.54
4. see Porter v Magill [2002] at para.103
5. see Helow v Secretary of State for the Home Department [2008] UKHL 62 at para. 2
6. see Helow [2008] at para.3 and also R(on the application of Beale) [2018] at para.51
7. see Locabail (UK) Ltd v Bayfield Properties Ltd 1999 WL 982518 para.25
8. see R(Johnson and Maggs) v PCC of the NMC [2008] EWHC 885 (Admin)
9. see Sengupta [2002] EWCA Civ 1104 para.30