Directing further investigation during a hearing

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In every case that goes to the Fitness to Practise Committee we need to make sure that we have given the panel all the relevant evidence. The panel needs to understand the background including the context in which the incident occurred, consider all the relevant facts and make a fair and fully informed decision that best protects the public.

If this hasn't happened, and there is important evidence available, that is missing, or that we haven't put before the panel, the panel can direct us to get that further evidence. The panel should not consider itself to be 'bound' by that lack of the evidence to find a charge not proved, it should take a more proactive role than a judge in a criminal trial, and where necessary intervene to make sure that cases are properly presented, and request the further evidence.

The panel can use its powers to require people to attend hearings or produce relevant documents[1], or its powers to adjourn the case, as it needs to.

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There are a number of reasons why a panel may direct us to carry out further investigations. These include:

- New information has come to light that neither we nor the nurse, midwife or nursing associate have seen, which could undermine our case, support our case, or support the case of the nurse, midwife or nursing associate.
- The information currently before a panel is obviously incomplete or does not cover all the areas of concern. One example of this could be missing pages from patient notes, or from some other important document.
- Further information is essential to clarify or expand on evidence already obtained
- The nurse, midwife or nursing associate has provided new information about the context in which the incident occurred which would have a material impact on the outcome of the case

If it's clear to the panel that evidence exists that it requires in order to make its decision, but we have not provided it with that evidence, it should consider whether to adjourn the hearing to allow us to gather that evidence. In making this decision the panel should consider the following:

- Whether the evidence is important to an issue it has to decide.
- Whether the evidence needs to be tested, perhaps through asking questions of witnesses.
- Whether the panel can consider its decisions and reach a satisfactory conclusion without this evidence.
- Our overarching duty to protect the public, and the panel's duty to make a decision that satisfies the overarching objective in a fair and proportionate way.
- The overall fairness of the proceedings. As well as the nurse, midwife or nursing associate's right to a fair hearing, this also includes fairness to the people involved in the events the case is about, and fairness to us in exercising our statutory function of protecting the public.
- The public interest in the expeditious disposal of the case and the potential inconvenience caused by any delay to the registrant and any witnesses.[2]

If after considering all of the above the panel considers that the further evidence is needed to help it decide an important issue in the case and will help it make a decision that best protects the public, it should order us to carry out the further investigation.

When further evidence is received during a hearing, panels may need to consider whether to amend the charge.[3] When considering whether to amend a charge, the panel will consider the fairness in doing so and the overarching objective to protect the public.

[1] Rule 22 (5) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules')

2 Rule 32 (4) Nursing and Midwifery Council (Fitness to Practise) Rules Order of the Council 2004
3 Rule 28 Nursing and Midwifery Council (Fitness to Practise) Rules Order of the Council 2004