

Making decisions on dishonesty charges

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When making decisions on charges involving dishonesty, panels of the Fitness to Practise Committee must decide whether or not the conduct took place, and if so, what was the nurse, midwife or nursing associate's state of mind at the time.¹

Any dispute over whether a nurse, midwife or nursing associate behaved dishonestly usually means that the panel's findings will depend on what conclusions they can draw about the nurse, midwife or nursing associate's state of mind from the basic facts.

To help the panel focus on the central issues and be able to express this in their reasoning, it needs to consider the following:

- What the nurse, midwife or nursing associate knew or believed about what they were doing, the background circumstances, and any expectations of them at the time
- Whether the panel considers that the nurse, midwife or nursing associate's actions were dishonest, or
- Whether there is evidence of alternative explanations, and which is more likely.

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Making decisions about a nurse, midwife or nursing associate's state of mind when they did or said something which we say is dishonest, or kept silent about something we say it was dishonest to keep silent about², will usually mean the panel needs to ask itself some questions.

What the panel must consider to reach its decision

What were the background facts or circumstances and what did the nurse, midwife or nursing associate know or believe at the time?

As part of drawing conclusions about the nurse, midwife or nursing associate's state of mind, the panel must consider what the evidence says about the background facts or circumstances, and what the nurse, midwife or nursing associate knew or believed about what they were doing.³

There may be evidence about what was expected of the nurse, midwife or nursing associate in the particular circumstances.

This doesn't mean that the panel should hear evidence about the nurse, midwife or nursing associate's own standards of honesty or their own beliefs about what the prevailing standards of honesty in society are. This is not relevant to deciding whether or not the nurse, midwife or nursing associate behaved dishonestly.⁴

Were the nurse, midwife or nursing associate's actions dishonest?

The question of what is honest or dishonest in a particular set of circumstances, is a question for the panel to

determine by applying what it understands the standards of ordinary, decent people to be.

The law assumes that people from all walks of life can easily recognise dishonesty when they see it⁵, and that in most situations it is not difficult to identify how an honest person would behave.⁶

Is there evidence of an alternative explanation? Is the alternative more likely?

It is important that the panel considers whether there is another, innocent explanation for the nurse, midwife or nursing associates's conduct, which points away from them having behaved dishonestly.⁷ It can be useful to ask whether their mind was engaged with what they were doing, or could they simply have made an innocent or careless mistake?

The panel must address this question by identifying evidence for any other explanations, not by speculating.

As a regulator, the burden and standard of proof mean that, for an allegation to be proved, we have to satisfy the panel that it is more likely than not, that it happened.

In a case about dishonesty, where there is evidence of different explanations for why the nurse, midwife or nursing associate might have done something, the question is which explanation is more likely?

1 Uddin v General Medical Council [2012] EWHC 2669 (Admin)

2 Under the professional duty of candour, nurses and midwives must be open and honest with patients when something that goes wrong with their treatment that could cause harm or distress. This means that nurses and midwives must tell the patient (or, where appropriate, the patient's advocate, carer or family) when something has gone wrong. Keeping silent when something has gone wrong is a breach of this professional duty.

3 Royal Brunei Airlines v Tan [1995] 2 AC 378, see 389C-E; Barlow Clowes International v Eurotrust International [2006] 1 WLR 1376, para 16; approved in Ivey v Genting Casinos (UK) Ltd [2017] UKSC

4 See Ivey at para 74, overruling the 'second leg' of R v Ghosh [1982] QB 1053.

5 Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67 para 53; further Ivey (para 48) restates that judges do not and must not attempt to define dishonesty, citing R v Feely [1973] QB 530.

6 See Royal Brunei Airlines as cited in footnote 2.

7 Uddin v General Medical Council, see footnote 1; R v Feely [1973] QB 530 as discussed in Ivey at para 67.