Cases with particular risks for public confidence

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In this guide
Dishonesty
Sexual misconduct
Criminal convictions

Dishonesty

Dishonesty, even where it does not result in direct harm to patients but is related to matters outside of a nurse or midwife’s professional practice can undermine the trust the public place in the profession. Honesty, integrity and trustworthiness are to be considered the bedrock of any nurse or midwife’s practice.

According to Parkinson v NMC:

'A nurse found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the register. A nurse who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than direct erasure.'

This does not mean that in dishonesty cases the Fitness to Practise Committee is left with an arbitrary choice between suspension and striking-off, or that in the absence of special circumstances a striking-off order is to be seen as a ‘default’ outcome. Rather, this decision makes clear that honesty is so integral to the standing of a profession that any departure from it will always risk a striking-off order as a possible outcome.

It is nevertheless vital that all Fitness to Practise Committee panels continue to start with the least restrictive sanction, and work upwards in order of restrictiveness. A finding of dishonesty does not remove this responsibility.

The nature of the dishonest conduct must be carefully assessed. Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse or midwife should be allowed to remain on the register will involve:

- deliberate dishonesty to conceal clinical issues, particularly those causing harm to patients
- misuse of power
- vulnerable victims
- personal financial gain from a breach of trust
- direct risk to patients
- premeditated, systematic or longstanding deception

Dishonest conduct will generally be less serious in cases of:

- one-off incidents
- opportunistic or spontaneous conduct
- no direct personal gain
- no risk to patients
- incidents in private life of nurse or midwife
Sexual misconduct

This covers a wide range of conduct, from criminal convictions for sexual offences through to sexual misconduct with patients, colleagues or patients’ relatives. Guidance on sexual boundaries has been produced by the Professional Standards Authority, which includes aggravating and mitigating features which are specific to this kind of case.

The misconduct will be particularly serious where there is an abuse of the special position of trust which the nurse or midwife holds, or where the nurse or midwife is required to register as a sex offender. Although the level of risk to patients will need to be given careful consideration, sexual misconduct seriously undermines public trust in the professions.

Sexual offences include accessing, viewing, or other involvement in child pornography, which involves the abuse or exploitation of a child. These types of offences gravely undermine patients’ and the public’s trust in the profession and seriously impact on the reputation of the professions.

It will be a relevant factor that any conviction relating to child pornography will lead to registration as a sex offender and possible disqualification from working with children.

The criminal courts identify degrees of seriousness in relation to child pornography offences. However, in the fitness to practise context, any conviction for child pornography is a matter of serious concern because it involves such a fundamental breach of trust and damages the reputation of the professions.

In all cases of serious sexual misconduct, it will be often be the case that the only proportionate sanction will be a striking-off order. Decisions to impose sanctions other than a striking-off order, will need to be particularly carefully explained, so that the reasons can be understood by those who have not heard all of the evidence in the case.

Criminal convictions

The purpose of the sanction is not to punish the nurse or midwife for a second time in relation to a criminal conviction or caution.

Sentences previously imposed by the criminal courts are not necessarily a reliable or definitive guide to the seriousness of the conviction as far as professional regulation is concerned. There may have been specific personal mitigation which led the court to its decision on sentence, which carries less weight in the regulatory context because of the different public interest considerations that apply.

Cases involving criminal offending by nurses and midwives are a good illustration of the principle that the reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the ‘price’.

According to CHRE v (1) GDC and (2) Fleischmann:

‘As a general principle (except in cases involving relatively trivial matters such as time allowed for payment of a fine, or disqualification from driving), where a nurse or midwife has been convicted of a serious criminal offence or offences, they should not be permitted to resume their practice until they have satisfactorily completed their sentence. The reasoning behind this principle is not to punish the nurse or midwife whilst they are serving their sentence, but that good standing within the nursing or midwifery professions needs to be “earned” if the reputation of those profession is to be maintained.’

1 [2010] EWHC 1898 (Admin)
3 [2005] EWHC 87 (Admin)