

Considering sanctions for serious cases

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In this guide

[How we determine seriousness](#)

[Cases involving dishonesty](#)

[Cases involving sexual misconduct](#)

[Cases involving criminal convictions or cautions](#)

How we determine seriousness

[Back to top](#)

Our [guidance on seriousness](#) explains that there are certain concerns that are more difficult to put right and often mean that the nurse, midwife or nursing associate's right to practise needs to be restricted.

In cases involving dishonesty, sexual misconduct and criminal convictions or cautions, it's likely that we would need to take action to uphold public confidence in nurses, midwives or nursing associates, or to promote proper professional standards.

The guidance below covers the considerations a panel should make when reviewing these types of cases and deciding which sanction to impose.

There's further guidance on [factors to consider before deciding on sanctions](#).

Cases involving dishonesty

[Back to top](#)

The most serious kind of dishonesty is when a nurse, midwife or nursing associate deliberately breaches the professional duty of candour to be open and honest when things go wrong in someone's care.

However, because of the importance of honesty to a nurse, midwife or nursing associate's practice, dishonesty will always be serious.

In every case, the Fitness to Practise Committee must carefully consider the kind of dishonest conduct. Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:

- deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause 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, midwife or nursing associate

The law about healthcare regulation¹ makes it clear that a nurse, midwife or nursing associate who has acted dishonestly will always be at risk being removed from the register.

Nurses, midwives and nursing associates who behaved dishonestly can engage with the Fitness to Practise Committee to show that they feel remorse, that they realise they acted in a dishonest way, and tell the panel that it will not happen again. They can do this in person, through anyone representing them, or by sending information they want the Committee to consider. If they do this, they may be able to reduce the risk that they will be removed from the register.

None of this means that the Fitness to Practise Committee only has a choice between suspending a nurse, midwife or nursing associate or removing them from the register in cases about dishonesty. It's vital that, like any other case, the Fitness to Practise Committee should start by considering the sanction with the least impact on the nurse, midwife or nursing associate's practice, and work upwards to the next most serious sanctions if it needs to.

Cases involving sexual misconduct

[Back to top](#)

Conduct ranging from criminal convictions for sexual offences to sexual misconduct with patients, colleagues or patients' relatives could undermine a nurse, midwife or nursing associate's trustworthiness as a registered professional.

When making decisions on sanctions in this kind of case, the Fitness to Practise Committee should consider the guidance on sexual boundaries produced by the [Professional Standards Authority](#).

Sexual misconduct will be particularly serious if the nurse, midwife or nursing associate has abused a special position of trust they hold as a registered caring professional. It will also be particularly serious if they have to register as a sex offender. The level of risk to patients will be an important factor, but the panel should also consider that generally, sexual misconduct will be likely to seriously undermine public trust in nurses, midwives and nursing associates.

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 nurses, midwives and nursing associates. In the criminal courts, some offences of child pornography offences are considered more serious than others. However, in fitness to practise, any conviction for child pornography is likely to involve a fundamental breach of the public's trust in nurses, midwives and nursing associates.

Panels deciding on sanction in cases about serious sexual misconduct will, like in all cases, need to start their decision-making with the least severe sanction, and work upwards until they find the appropriate outcome. They will very often find that in cases of this kind, the only proportionate sanction will be to remove the nurse, midwife or nursing associate from the register. If the panel decides to impose a less severe sanction, they will need to make sure they explain the reasons for their decision very clearly and very carefully. This will allow people who have not heard all of the evidence in the case, which includes the victims, to properly understand the decision.

Cases involving criminal convictions or cautions

[Back to top](#)

In the criminal courts, one of the purposes of sentencing is to punish people for offending. When making its decision passing sentence, the criminal court will look carefully at the personal circumstances of the offender. In contrast, the purpose of the Fitness to Practise Committee when deciding on a sanction in a case about criminal offences is to achieve our overarching objective of public protection. When doing so, the Committee will think about promoting and maintaining the health, safety and wellbeing of the public, public confidence in nurses, midwives and nursing associates, and professional standards.

It's clear that the Committee's purpose isn't to punish the nurse, midwife or nursing associate for a second time. Because of this, the sentence passed by the criminal court isn't necessarily a reliable guide to how seriously the conviction affects the nurse, midwife or nursing associate's fitness to practise. So, the personal circumstances or mitigation of the nurse, midwife or nursing associate is also less likely to be useful or helpful to the Fitness to Practise Committee when making a sanction decision than it would have been to the criminal court.

Cases about criminal offending by nurses, midwives or nursing associates illustrate the principle that the reputation of the professions is more important than the fortunes of any individual member of those professions. Being a registered professional brings many benefits, but this principle is part of the 'price'.²

What about criminal sentences that haven't yet been fully served?

The law says that, when making its decision on sanction, the Fitness to Practise Committee should consider:

- the fact that a nurse, midwife or nursing associate convicted of a serious offence is still serving their sentence (even if on probation), and
- whether the nurse, midwife or nursing associate should be able to restart their professional practice before they have completed their sentence

In general, the rule is that a nurse, midwife or nursing associate should not be permitted to start practising again until they have completed a sentence for a serious offence.³ This is a general rule that it would be right for the Fitness to Practise Committee to consider, but it does not mean that the Committee has no choice but to remove the nurse, midwife or nursing associate from the register permanently.⁴

1 Parkinson v NMC [2010] EWHC 1898 (Admin)

2 Bolton v Law Society [1994] 1 WLR 512

3 Council for the Regulation of Health Care Professionals v (1) General Dental Council and (2) Fleischmann [2005] EWHC 87 (QB)

4 Chandrasekera v Nursing and Midwifery Council [2009] EWHC 144 (Admin)