Sanctions for particularly serious cases

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In this guide

Some concerns that come before a panel are particularly serious and are likely to attract the most serious sanctions.

A conviction for a serious crime or concerns that someone has displayed discriminatory views and behaviours, been involved in dishonest or violent behaviour, engaged in sexual misconduct or abused a child or vulnerable adult[1], for example, could have a particularly negative impact on public safety, public confidence or professional standards.

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

There's further guidance on factors to consider before deciding on sanctions.

Cases involving dishonesty

Back to top

Honesty is of central importance to a nurse, midwife or nursing associate's practice. Therefore allegations of dishonesty will always be serious and a nurse, midwife or nursing associate who has acted dishonestly will always be at some risk of being removed from the register. However, in every case, the Fitness to Practise Committee must carefully consider the kind of dishonest conduct that has taken place. 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 people receiving care
- misuse of power
- vulnerable victims
- personal financial gain from a breach of trust
- direct risk to people receiving care
- 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
- incidents outside professional practice

Nurses, midwives and nursing associates who have 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. Where the professional denies dishonesty, it is particularly important that they make every effort to attend the hearing so that the Committee can hear at first hand their response to the allegations.

It is not the case 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 consider the sanctions in ascending order of seriousness, and work upwards to the next most serious sanction if it needs to.

Particular care is required where the professional has denied charges of dishonesty which are found proved by the panel. The panel must bear in mind the principle that professionals facing charges involving dishonesty, should have a proper opportunity to resist very serious allegations. That must be balanced against the necessity of protecting people receiving care and the public from professionals whose honesty and integrity they cannot rely upon.

A rejected defence of honesty may, in some cases, properly be regarded as an aggravating feature, but panels will need to consider carefully the following factors:

- there is a distinction to be drawn between an allegation of conduct which is intrinsically dishonest, like fraud or forgery, as opposed to an allegation which relates to conduct (record-keeping, for example) which is capable of being performed either honestly or dishonestly. A rejected defence of honesty is less likely to be properly regarded as an aggravating factor if it is based on a disagreement between the panel and the professional about facts relating to the professional's subjective state of mind (for example a situation where the professional's defence is that a record-keeping error was innocent, but the panel concludes that it was deliberate/dishonest).

- a professional's refusal to admit objective facts they can reasonably be expected to be aware of (such as where they were at a particular time, or what they did) is more likely to be relevant to sanction than when a panel disbelieves their evidence about their state of mind or motivation. An example of failing to admit objective facts might be telling the panel 'I told my manager that I was feeling unwell and had to finish my shift early' in circumstances where the panel concludes that no such conversation ever took place. That kind of rejected evidence is more likely to be relevant to sanction than a professional telling the panel 'my record-keeping error was a mistake' when the panel finds that the motivation was deliberate dishonesty. The fact that the panel did not accept the professional's evidence about their subjective state of mind is less likely to be relevant to sanction.

- the panel should consider whether there is any other evidence of lack of insight on the part of the professional, other than the rejected defence

- the panel should consider the nature of the rejected defence: a failure to admit an allegation does not always indicate that someone has not told the truth to the panel. The panel must consider, for example, whether the defence amounted to an act of dishonesty or misconduct in its own right. Did it wrongly implicate or blame others, or falsely accuse witnesses of being dishonest?[2]

Cases involving deliberate breach of an interim order, substantive order or an undertaking

Back to top

Deliberate breach of an interim or substantive order:

The NMC can restrict the practice of one of the professionals on our register by imposing an interim order, or a substantive order at the end of a fitness to practise case.

If a nurse, midwife or nursing associate deliberately doesn't comply with an interim or substantive order this will be taken very seriously. This is because it is likely to show a disregard by that person for the steps the NMC has put in place to keep the public safe or uphold confidence in the professions.

If the breach is in relation to an interim order this will be taken into account by a panel when reviewing that order.

We are also likely to consider bringing a separate regulatory concern against the nurse, midwife or nursing associate based on the deliberate breach.

We have separate guidance in relation to how we deal with breach of a substantive order, which can be found here.

If we are satisfied that a nurse, midwife or nursing associate has deliberately not complied with an order this is likely to call into question whether that person should remain on the register[3].

Breach of a restrictive measure in an undertaking:

As part of our fitness to practise process, the NMC is also able to agree "undertakings" with one of the professionals on our register. These are measures agreed between the Case Examiners and the professional, and are put in place to address problems in that individual's practice. We discuss these in more detail in our guidance on "undertakings" which can be found here.

As we explain in our guidance, undertakings are likely in part to include some "restrictive" measures. These may for example prevent a nurse, midwife or nursing associate from undertaking a particular activity, or may restrict their practice to a particular setting.

If the nurse, midwife or nursing associate deliberately fails to comply with a restrictive measure, we are likely to consider such a failure seriously. This is because the Case Examiners have previously decided that those restrictions are needed to keep the public safe, while the person completes their pathway back to safe practice. The person would have had to agree to those restrictions for the undertaking to be put in place. Deliberately breaching those restrictions is again likely to show a disregard by that person for the measures we have put in place to protect the public.

We explain in more detail in our guidance on undertakings how such a breach may result in a separate misconduct charge being sent to the Fitness to Practise Committee. If we are satisfied that a deliberate breach of a restrictive measure has taken place, this may call into question whether the person should remain on the register.

Cases involving sexual misconduct

Back to top

is unwelcome behaviour of a sexual nature, or behaviour that can reasonably be interpreted as sexual, which degrades, harms, humiliates or intimidates another. It includes sexual harassment and will be regarded as extremely serious whether or not it occurs in the workplace.

When making decisions on sanctions in cases involving people receiving care, the Fitness to Practise Committee should consider the guidance on sexual boundaries produced by the Professional Standards Authority together with our guidance on misconduct.

Sexual misconduct is likely to create a risk to people receiving care and to colleagues as well as undermining public trust and confidence in the professions we regulate. A panel should always consider factors such as the duration of the conduct in question, the professional's relationship or position in relation to those involved and the vulnerabilities of anyone subject to the alleged conduct. Long-term or repeated conduct is more likely to suggest risk of harm, together with conduct involving imbalances of power, cruelty, exploitation and predatory behaviour.

The Fitness to Practise Committee should be mindful of the following aggravating factors:

- situations where the nurse, midwife or nursing associate has abused a position of trust they hold as a registered professional or a position of power.
- situations where the nurse, midwife or nursing associate has to register as a sex offender.
- Convictions for sexual offences including rape, sexual assault, sexual harassment and accessing, viewing, or any other offence relating to images or videos involving child sexual abuse or exploitation. These types of offences gravely undermine the public's trust in nurses, midwives and nursing associates. Some offences relating to images or videos of child sexual abuse are considered more serious than others in the criminal courts. However, in fitness to practise, any conviction relating to images or videos involving child sexual abuse is likely to raise fundamental questions about the ability of the nurse, midwife or nursing associate to uphold the standards and values set out in the Code.

Panels deciding on sanction in cases about sexual misconduct will, as in all cases, need to start their decision-making with the least severe sanction, and work upwards until they find the appropriate outcome. However, as these behaviours can have a particularly severe impact on public confidence, a professional's ability to uphold the standards and values set out in the Code, and the safety of people receiving care, any nurse, midwife or nursing associate who is found to have behaved in this way will be at risk of being removed 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 clearly and carefully. This will allow people who have not heard all of the evidence in the case, which may include those directly affected by the sexual misconduct in question, to properly understand the decision.

Abuse or neglect of children or vulnerable people

Back to top

Safeguarding and protecting people from harm, abuse and neglect is an integral part of the standards and values set out in the Code, and any allegation involving the abuse or neglect of children or vulnerable people[4] will always be treated seriously.

When considering sanctions in cases involving the abuse or neglect of children or vulnerable adults, panels will, as always, start by considering the least severe sanction first and move upwards until they find the appropriate outcome. However, as these behaviours can have a particularly severe impact on public confidence, a professional's ability to uphold the standards and values set out in the Code, and the safety of those who use services, any nurse, midwife or nursing associate who is found to have behaved in this way will be at risk of being removed 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 clearly and carefully. This will allow people who have not heard all of the evidence in the case, which may include those directly affected by the conduct in question, 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 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. This means that the personal circumstances or mitigation of the nurse, midwife or nursing associate is 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.

Rather than rely on a criminal judge's assessment of seriousness in a criminal context, a panel will undertake a separate analysis of the underlying facts to understand how they may have impacted on the quality of care given, what they say about the professional's attitude and ability to practise safely and effectively going forward, and the likely effect that they would have on the public's confidence in the profession. The panel will have to decide how serious the behaviour is in the regulatory sense, by considering all the information before it, as well as our cautions and convictions and misconduct guidance.

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'.[5]

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.[6] 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.[7]

Cases relating to discrimination

Back to top

We may need to take restrictive regulatory action against nurses, midwives or nursing associates who've been found to display discriminatory views and behaviours and haven't demonstrated comprehensive insight, remorse and strengthened practice, which addresses the concerns from an early stage.

If a nurse, midwife or nursing associate denies the problem or fails to engage with the fitness to practise process, it's more likely that a significant sanction, such as removal from the register, will be necessary to maintain public trust and confidence.

We talk about how seriously we view concerns involving discrimination in our screening and misconduct guidance.

Cases that we regard as being particularly serious

Some concerns are serious because in these cases it is less easy for the nurse, midwife or nursing associate to put right the conduct, the problems in their practice, or the aspect of their attitude which led to the incidents happening.

Examples of this type of concern are:

- breaching the professional duty of candour to be open and honest when things go wrong, including covering up, falsifying records, obstructing, victimising or hindering a colleague or member of the public who wants to raise a concern, encouraging others not to tell the truth, or otherwise contributing to a culture which suppresses openness about the safety of care;
- abusing their position as a registered nurse, midwife or nursing associate or other position of power to exploit, coerce or obtain a benefit (including sexual or financial) from people receiving care, colleagues or students;
- relationships with people receiving care in breach of guidance on clear sexual boundaries;
- specified offences, including hate crimes, sexual offences and serious crimes against children or vulnerable people; deliberately causing harm to people receiving care;
- deliberately using or referring to false qualifications or giving a false picture of employment history which hides clinical incidents in the past, not telling employers that their right to practise has been restricted or suspended, practising or trying to practise in breach of restrictions or suspension imposed by us;
- being directly responsible (such as through management of a service or setting) for exposing people receiving care to harm or neglect, especially where the evidence shows the nurse, midwife or nursing associate putting their own priorities, or those of the organisation they work for, before their professional duty to ensure the safety and dignity of people receiving care.

Serious concerns that could result in harm if not put right

Assessing the risks presented by an individual nurse, midwife or nursing associate's practice means carefully considering the evidence about those risks.

Our evidence will need to explain clearly whether people using health or care services were put at risk by the nurse, midwife or nursing associate's conduct or failings in the past, and what harm did or could have happened to other users of services because of those failings.

We will need to assess how likely the nurse, midwife or nursing associate is to repeat similar conduct or failings in the future, and if they do, if it is likely that people who use services would come to harm, and in what way.

We wouldn't usually need to take regulatory action for an isolated incident (for example, a clinical error) unless it suggests that there may be an attitudinal issue.

Examples could include cruelty to service users or a serious failure to prioritise their safety, discrimination or

sexual misconduct. Such behaviours may indicate a deep-seated problem even if there is only one reported incident which will typically be harder to address and rectify.

A pattern of incidents is usually more likely to show risk to people who use services, requiring us to act. Conduct or failings that put people receiving care at risk of harm will usually involve a serious departure from the standards set out in our Code. These standards are intended to ensure that nurses, midwives or nursing associates practise safely and effectively.

Prioritise people

The evidence shows that the nurse, midwife or nursing associate has failed to:

- uphold people's dignity, treat them with kindness, respect and compassion, deliver treatment care or assistance without undue delay, or deliver the fundamentals of care (including hydration, nutrition, bladder and bowel care and ensuring people receiving care are kept in clean and hygienic conditions).
- make sure the physical, social and psychological needs of people receiving care are responded to.
- respect people's right to privacy and confidentiality.
  Practise effectively
  The evidence shows that the nurse, midwife or nursing associate:
- has not maintained the knowledge and skills for safe and effective practice.
- is unable to communicate clearly, work cooperatively, keep clear and accurate records, without falsification.
- failed to be accountable for decisions to delegate tasks and duties to other people and/or failed to ensure they are adequately supported.

Preserve safety

The evidence shows that the nurse, midwife or nursing associate has failed to:

- recognise and work within the limits of competence, accurately assess signs of normal or worsening physical or mental health, or make timely and appropriate referrals where needed.
- be open and candid with people in their care, or act immediately to put right, explain and apologise when any mistakes or harm have taken place.
- offer help if an emergency arises in practice.
- act without delay if they believe there is a risk to the safety of people in their care or to public protection.
- raise or escalate concerns.
- advise, prescribe or administer medicines in line with training, law and guidance.
- be aware of, or reduce as far as possible, any potential for harm associated with practice, including controlling and preventing infection, taking precautions to avoid potential health risks to colleagues, or people receiving care and the public.

Promote professionalism and trust

The evidence shows that the nurse, midwife or nursing associate has:

- failed to uphold the reputation of the profession, by not acting with honesty and integrity, treating people fairly, without discrimination, bullying or harassment, in a way that does not take advantage of their vulnerability or cause them upset or distress.
- failed to maintain the level of health needed for safe and effective practice.
- asked for or accepted a loan from someone in their care (or anyone close to a person in their care).
- failed to cooperate with investigations and audits, including requests to act as a witness.
- failed to tell us as soon as they could have about cautions or charges, conditional discharges or convictions for criminal offences.

Serious concerns which raise risks to the public's confidence in the professions generally or to professional standards:

Sometimes we may need to take regulatory action against a nurse, midwife or nursing associate to promote and maintain professional standards and the public's trust and confidence in the professions we regulate.

We will do so when the concerns raise fundamental questions about the ability of the nurse, midwife or nursing associate to uphold the standards and values set out in the Code.

Concerns do not need to have occurred within professional practice to indicate a risk to people using services in future. In some circumstances, the way a nurse, midwife or nursing associate conducts themselves outside their professional practice could indicate deep-seated attitudinal issues which could pose a risk to people receiving care or to colleagues. This will include discrimination of any kind, harassment, sexual misconduct, violence and the abuse or neglect of children or vulnerable adults. We will look closely at the particular circumstances of the concern raised with us to determine whether such attitudes and risks are present.

We are likely to take restrictive regulatory action against nurses, midwives or nursing associates whose conduct has had this kind of impact on the public's trust in their profession, particularly where they haven't made any attempt to reflect on it, show insight, and haven't taken any steps to put it right. This may even mean they can't stay on the register.

1 An adult is defined as vulnerable where they have care and support needs and, as a result of this, are unable to take care of themselves or protect themselves from abuse or neglect.
2 Sawati v GMC [2022] EWHC 283 (Admin)
3 See case of GMC v Donadio [2021] EWHC 562 (Admin) in relation to the serious nature of deliberate breaches of interim orders
4 An adult is defined as vulnerable where they have care and support needs and, as a result of this, are unable to take care of themselves or protect themselves from abuse or neglect.
5 Bolton v Law Society [1994] 1 WLR 512
6 Council for the Regulation of Health Care Professionals v (1) General Dental Council and (2) Fleischmann [2005] EWHC 87 (QB)
7 Chandrasekera v Nursing and Midwifery Council [2009] EWHC 144 (Admin)