

# Considering sanctions for serious cases

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## How we determine seriousness

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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.

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. 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<sup>1</sup>, for example, could have a particularly negative impact on public confidence.

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

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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?<sup>2</sup>

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

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### 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<sup>3</sup>.

## 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

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is unwelcome behaviour of a sexual nature, or behaviour that can reasonably be interpreted as sexual, which degrades, harms, humiliates or intimidates another.

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 [seriousness](#).

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

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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<sup>4</sup> 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

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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 guidance, particularly our guidance on [seriousness](#).

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'.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

## Cases relating to discrimination

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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 seriousness guidance, which can be found [here](#)

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)