

Early engagement and a professional's evidence

Reference: FTP-17 Last Updated: 01/10/2026

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Benefits of engaging early

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We encourage professionals to engage with us as early as possible and at every stage of the process.

Early engagement can work in a professional's favour. If information is provided that demonstrates that their fitness to practise isn't impaired that will allow us to conclude our investigation. Early engagement also gives a professional a chance to give us their side of what happened, including anything that might have in some way caused or influenced what happened. They can also tell us about any training they have done to strengthen their practice and learning they have taken from the event(s).

Examples of information that we would be interested in receiving from a professional are:

- Whether they're currently employed and any steps their employer may be taking to manage any risk
- Information about the context in which the incident occurred
- Evidence of any steps they've taken to address the concerns raised about their fitness to practise (such as completing courses or retraining)
- Evidence of any insight they have or any reflection they've undertaken so far about the concerns raised (we recognise that insight and reflection can develop over time and may also depend on how any investigation progresses).

Early engagement also allows us to understand what we need to investigate (including knowing what is and what isn't in dispute) and can help prevent delays at the investigation and hearings stages due to receiving information at a late stage of the process.

What can happen if a professional doesn't engage, or engages at a late stage?

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There may be instances where a professional can't engage with us for reasons such as ill health. We'll always take factors like these into account when making decisions on the case. However, professionals are required to co-operate with any investigation about their conduct in line with [the Code](#).¹ A failure to cooperate, particularly if repeated and without a valid reason, such as ill health, may be considered especially serious. For example, not responding to a medical testing request that would help us understand a health condition could be viewed as a failure to cooperate and may also be raised as an additional concern.

Not giving evidence at the final hearing

A panel may draw an [adverse inference](#) about a nurse, midwife or nursing associate if they don't give evidence that would normally be expected at a hearing and they have no good reason for not giving evidence.²

A panel's decision on whether to draw an adverse inference will depend on the circumstances of the case. Panels must always ensure that the professional is treated fairly. We shouldn't draw an adverse inference based on the failure to give evidence unless:

1. We've put forward sufficient evidence that the professional has been involved in misconduct or that their fitness to practise is impaired for some other reason.³
2. The professional has been given an appropriate warning that an adverse inference may be drawn if they do not give evidence. The professional must be given an opportunity to explain why it wouldn't be reasonable for them to give evidence and, if it is found that

there is no reasonable explanation, be given an opportunity to give evidence.

3. There is no reasonable explanation for the professional not giving evidence (for example, not giving evidence due to illness may be reasonable).
4. There are no other circumstances that would make it unfair to draw an adverse inference. (For example, if the professional becomes upset whilst giving evidence and is unable to continue, it would be unfair for the panel to consider drawing an adverse inference without offering them time to recover and an opportunity to continue to give evidence.)

If a witness provides written evidence but doesn't attend the hearing to provide oral evidence and be cross-examined, the panel can take this into account when considering whether to admit the written evidence and the weight to attach to it. You can read about the panel's approach to a witness not providing oral evidence at a hearing by looking at our general [guidance on evidence](#).

Raising issues at a late stage in proceedings

If a professional raises an issue at a late stage (such as the final hearing) that could impact their case and could have been raised at an earlier stage, a panel may consider whether there's a reasonable explanation for this and whether to adjourn the matter for further investigation. One example of this could be the discovery of a key clinical document at a final hearing that has an impact on the facts of the case. We have further guidance on directing [further investigation during a hearing](#).

If the panel considers that there's no reasonable explanation for the issue being raised late, it may, subject to it being fair, decide to take that into account when assessing the professional's credibility in relation to the matter raised.

Providing materially different accounts

If a professional provides a materially different version of events in relation to the concerns raised than the version of events they provided at an earlier point in time, the panel may take this into account when considering their credibility. We may invite the panel to consider the professional's credibility in relation to that issue.

Similarly, if the NMC or the professional does not disclose information within the time they are required to, the panel may decide to take this into account when considering the information. This might include drawing adverse inferences or even refusing to admit the information into the hearing.⁴

Cultural factors

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Our professionals come from a wide range of cultures and backgrounds, with diverse cultural norms and communication styles. These differences do not change their obligations as required in the Code, but the panel should consider how they might affect the professional's presentation of personal factors, such as apologies and insight. For further information, see our [guidance on context](#).

Example

A Muslim midwife is alleged to have provided poor care at the birth of a baby and disputes the allegations. The day before the multi-day hearing her relative dies. Many Muslims believe that burial should take place as soon as possible, and so the funeral is scheduled for the next day, and the midwife decides that they cannot attend the first day of the hearing. It would not be fair to draw any adverse inference based on the midwife's non-attendance in these circumstances.

Health cases

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Where the professional's fitness to practise is alleged to be impaired because of health, the panel may also take into account any refusal by them to submit to an assessment of their current health.⁵

We would require some engagement from the professional or other confirmed source to explain why their health condition is preventing them from engaging with the investigation, otherwise the failure to engage may amount to an [additional concern](#).

English language cases

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Where the professional is alleged to be impaired because of not having the necessary knowledge of English, the panel may take into account the fact that they have failed to take or failed to provide evidence of an English language test that we've required them to undertake.⁶

1. Standard 23, The Code – Professional standards of practice and behaviour for nurses, midwives and nursing associates (2018)

2. See e.g. R (Kuzmin) v General Medical Council (GMC) [2019] EWHC 2129 (Admin)

3. The legal term for this is that a 'prima facie' case to answer has been established.

4. Rule 31(8) of the FtP Rules

5. Rule 31(5)(a) NMC Fitness to Practise Rules 2004

6. Rule 31 (6A) NMC Fitness to Practise Rules 2004