Criminal convictions and cautions

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Criminal offending can affect the fitness to practise of nurses, midwives and nursing associates in a number of ways.

This page sets out when a nurse, midwife or nursing associate's criminal offending may be relevant to their registration or fitness to practise.

We also explain how we assess the seriousness of criminal convictions and what we do when possible criminal conduct does not end with a caution or conviction.

We have separate guidance on the types of **criminal offending we can't investigate**.

Considering criminal conviction or caution declarations

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Nurses, midwives or nursing associates must **declare any cautions or convictions**, unless these are for a **protected caution or conviction**, when they apply to join our register or renew their registration with us.

They also need to let us know if they become involved in criminal offending while they're on our register.

Not telling us about a conviction or caution is a clear breach of the Code.

If there's evidence the nurse, midwife or nursing associate was dishonest about criminal offending when they applied to join our register or renew their registration, we'll have to carry out a full investigation into the circumstances to determine if this affects their registration.

If a nurse, midwife or nursing associate is involved in criminal offending after they joined the register, or renewed their registration, it won't affect their entry in the register, but it may affect their fitness to practise if they kept the fact they were charged, accepted a caution, or were convicted, from us.

This is because we have a clear expectation, as set out under the Code, that nurses, midwives or nursing associates should let us know if they are involved in criminal offending as soon as they can.

In all these cases we'll consider the possible effect on the nurse, midwife or nursing associate's registration, or their fitness to practise, even if the offending itself was not serious.

Assessing the seriousness of convictions and cautions

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If the criminal offending was directly linked to the nurse, midwife or nursing associate's professional practice, it's very likely this would be serious enough to affect their fitness to practise.

For example, offences that involved neglecting, exploiting, assaulting or otherwise harming patients are so serious

that it may be harder for the nurse, midwife or nursing associate to address. In these cases it's more likely that we'll need to take regulatory action to maintain professional standards and public confidence in nurses, midwives or nursing associates.

If the criminal offending took place in the nurse, midwife or nursing associate's private life, and there's no clear risk to patients or members of the public, then it is unlikely that we'll need to take regulatory action to uphold confidence in nurses, midwives or nursing associates, or professional standards.

We'd only need to do that if the nurse, midwife or nursing associate was given a custodial sentence (this includes suspended sentences), or the conviction was for a **specified offence**.

Once we decide that the conviction, and any information we've gathered about the surrounding circumstances, would be serious enough to affect the nurse, midwife or nursing associate's fitness to practise, we'll seek police information to verify the details of the conviction or caution referred to us.

Find out more about **how we determine seriousness**.

Referring serious convictions directly to the Fitness to Practise Committee

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We may pass the case directly to the Fitness to Practise Committee for their decision[1] if:

- a nurse, midwife or nursing associate has been sentenced to immediate imprisonment, or
- the conviction was for a '**specified offence**'.

The nature of these convictions would raise fundamental questions about the nurse, midwife or nursing associate's trustworthiness as a professional, which means the Fitness to Practise Committee will probably need to take some action to restrict their registration as the possible outcomes imposed by case examiners are unlikely to be sufficient.

Police investigations that result in no conviction

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Criminal investigations into possible offending by nurses, midwives or nursing associates can end with the police, prosecutors, or the courts taking no action.

The nurse, midwife or nursing associate may be found not guilty in court, or the investigation could end before the case gets to court.

For example, the court may give the nurse, midwife or nursing associate a **conditional or absolute discharge**.

Sometimes, the police may choose not to investigate following the findings of other organisations, such as safeguarding or social services, that the nurse, midwife or nursing associate has done something that is against the law.

We would only reinvestigate the facts of these cases if the concerns they raise put patients or members of the public at risk of being harmed, or could affect the public's trust in all nurses, midwives and nursing associates or their professional standards.

When we would reinvestigate

When deciding if we would need to reinvestigate, we would need to consider if the nurse, midwife or nursing associate's alleged actions could be serious professional misconduct.

We would reinvestigate the facts of a case if:

- the offence took place in a clinical or care setting or context,
- the alleged victims were patients, service users or people in the nurse, midwife or nursing associate's care, or
- there is a clear link to professional practice[2] (which includes respecting boundaries with patients and colleagues).

Before we reinvestigate alleged offending in a care, clinical or professional context we first carefully assess why there was not a conviction, or why the police decided not to investigate.

We will look carefully at whether, and if so why, the courts or the police rejected the accounts of people who would give evidence in any fitness to practise case.

We'll consider discussing any previous criminal trial with those people and assess very carefully how willing or able they would be to attend to give evidence in any future fitness to practise case.

When we wouldn't reinvestigate

If a nurse, midwife or nursing associate is accused of offending in their private life, based on incidents that have no connection with their practice as a registered professional, and they are not convicted, we are far less justified in reinvestigating the facts.

The allegations wouldn't really be connected with our role as a professional regulator, and the investigation would not need the specialist knowledge of our regulatory investigators or case examiners.

Nurses, midwives or nursing associate's fitness to practise can be affected by very serious offending in their private life for which they are convicted. But if they aren't convicted, it's not our role to fill in any perceived gaps in the criminal justice system by taking regulatory action against them if there isn't a clear link to patient safety, clinical practice, or professional standards.

For example, if a nurse, midwife or nursing associate is investigated for an alleged mortgage fraud against a bank, but the prosecution collapses, it wouldn't be our role to reinvestigate whether they acted dishonesty as part of a possible misconduct case.

When we may investigate matters not reported to the police

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It isn't our role to fill any perceived gaps in the criminal justice system. When deciding whether to investigate concerns that could have been reported to the police, but have not, we will always consider the Code and the effect on patient safety. If the concerns could amount to a breach of the Code and could affect patient safety, we will look into them.

Concerns such as using **discriminatory** language or **inciting racial hatred via social media** are matters we are likely to look into even if they were not reported to the police as this behaviour is likely to amount to a breach of the Code and affect patient safety.

Equally, if we received a referral where it is alleged that a sexual assault against a patient had taken place, but the patient concerned did not wish to report it to the police, we are likely look into this.

By contrast, if we received concerns that nurse, midwife or nursing associate had committed a sexual offence in their private life and there was no evidence to suggest there was a risk to patient safety, we would usually say that the matter would be best investigated by the police in the first instance.

When considering these types of concerns we would want to establish why matters had not been reported to the police and if there is any evidence to support the allegation as concerns of this nature are serious. There may be situations where we need to share information with the police if we consider it is in the public interest to do so. This is explained in our **fitness to practise information handling guidance**.

1 Article 22(5)(b) requires us to refer allegations (as soon as reasonably practicable after they are received in the form required) to a Practice Committee. This includes referral directly to the Fitness to Practise Committee without consideration by our Case Examiners.

2 Ashraf v General Dental Council [2014] EWHC 2618 (Admin)