

Fitness to practise information handling guidance

Introduction

- 1 We're the independent regulator for nurses, midwives and nursing associates. We keep a register of nurses and midwives who can practise in the UK and nursing associates who can practise in England. We want to encourage openness and learning among healthcare professionals to improve care and keep the public safe. On the occasions when something goes wrong and people are at risk, we can step in to investigate and take action, giving patients and families a voice as we do so.
- 2 When we investigate allegations about the fitness to practise of nurses, midwives, or nursing associates or their entry on our register, we'll usually handle large amounts of personal information. When we process this information we generally do so either because we're under a legal obligation or because it's necessary for the exercise of our statutory functions¹ or any other function in the public interest.²

Purpose

- 3 This guidance aims to provide transparent and accessible information about how we handle the personal information of people involved in our fitness to practise proceedings. This includes:
 - Nurses, midwives or nursing associates going through fitness to practise proceedings and their representatives, where they have one;
 - People who have referred a nurse, midwife or nursing associate to us or are affected by something that we're investigating
 - Witnesses or people whose information we use as part of our investigations.

There's more information in our online [privacy notice](#) about how we process personal information in other contexts.

- 4 At the end of this document we set out how we'll use our power to share fitness to practise information in the public interest.

Investigating³ concerns

- 5 When someone tells us about a concern relating to a registered nurse, midwife or nursing associate or we receive information or intelligence that could amount to a concern, we'll often need to carry out an investigation to decide if we need to take any action to protect the public.

¹ As set out in the Nursing and Midwifery Order 2001 ('the Order')

² Where we're processing special category data we generally do so because the processing is necessary for reasons of substantial public interest.

³ Where we talk about investigations this covers both the [screening](#) and [investigations](#) parts of our process.

- 6 We'll notify the nurse, midwife or nursing associate that we've received information that could amount to a concern about their fitness to practise or entry in the register. We may also tell the nurse, midwife or nursing associate where the referral came from. When we communicate this information, we'll use the contact details the nurse, midwife or nursing associate has given to us as part of the registration process.⁴
- 7 We'll consider any privacy implications before sharing information about a third party with the nurse, midwife or nursing associate. We will take into account their wishes, but may still need to start an investigation and share the information they have provided, for example if there's a risk of serious harm to patients or service users. If we decide to do this, we'll explain this to the person who provided us with the information.⁵
- 8 When we're investigating a concern, we have a duty to take such steps as are reasonably practicable to obtain relevant information about the case. This means we'll usually need to:
- share information about a nurse, midwife or nursing associate's fitness to practise with third parties who might be able to help us with our investigation, such as past and current employers, people affected by the incidents we're investigating, the police, potential witnesses and experts; and
 - process personal information belonging to people other than the nurse, midwife or nursing associate under investigation, such as employers, patients, their families and loved ones, experts and witnesses helping us with our enquiries.
- 9 The fact that a nurse, midwife or nursing associate is under investigation is generally treated as confidential until our Case Examiners decide there's a case to answer or issue a warning. Before this point, whenever we communicate with a third party about a case, we'll explain to them that our investigation is confidential. We ordinarily won't disclose details of any fitness to practise concerns to enquirers unconnected to the investigation itself, unless we need to disclose the information because it's in the public interest (see further below).
- 10 At any time during the course of our investigation we can refer a nurse, midwife or nursing associate to a panel to decide whether to impose an interim order on their practice. Once we've finished our investigation we'll consider the information gathered and decide whether to take any action to protect the public. These decisions are made by our Case Examiners and Practice Committees. For more information about how these decisions are made you can look at our [FtP Library](#).

⁴ Registrants are required to notify us within one month of any change of name or address. For more information about keeping your contact details up to date please see our [Registration and Revalidation information handling guidance](#).

⁵ We do not require a person's consent to process their personal data where it's necessary to perform a task carried out in the public interest or in the exercise of official authority vested in the controller.

- 11 Before any decisions are made, we'll share any information or documents relating to the allegation against the nurse, midwife or nursing associate (and their representative, if they have one).⁶ We're required to do this so that the nurse, midwife or nursing associate has a fair opportunity to respond to the allegation. This means we'll usually share:
- The identities of patients, colleagues or other witnesses involved in the events which gave rise to the investigation⁷;
 - Medical, clinical or other records relating to identified patients which record or are relevant to the matters alleged;
 - Witness statements or other documents which identify the people involved in any alleged incidents. This will include anyone present or involved in the matters being considered;
 - Any material that could undermine the case against the nurse or midwife or nursing associate, could support their case, or raise a new issue for them;
 - A list of any other information or documents we've obtained using our powers to investigate, which we'll share upon request.
- 12 We won't normally share routine correspondence we've generated (such as file notes, internal correspondence about the progress of the case or call logs) or material that's legally privileged or contains opinions of non decision-making staff about the case.
- 13 Where a case has been referred to our Case Examiners, we'll share with the nurse, midwife or nursing associate any clinical advice we have received.

Sharing information with employers

- 14 When we receive a referral we may need to contact past or current employers or healthcare settings so that we can confirm the identity of the nurse, midwife or nursing associate. We may also need them to provide us with other relevant information about the nurse, midwife or nursing associate and any potential witnesses so that we can progress our investigation.
- 15 This may mean we'll need to tell an employer who didn't previously know that one of their staff has been referred to us. In doing this, we'll consider the nurse, midwife or nursing associate's interest in the confidentiality of the referral against our need to contact the employer as part of assessing the concerns, or taking reasonable steps to gather as much information as we can about the case.
- 16 In making this assessment, we usually consider that sharing fitness to practise information with employers is particularly important when we're investigating clinical incidents that suggest a risk of harm to patients. It's more likely to be in

⁶ The Nursing and Midwifery (Fitness to Practise) Rules 2004 ('the Rules'), e.g. rules 3, 6A, 6B or 6D

⁷ We'll carefully consider whether we need to share the identity of whistleblowers in order for the nurse, midwife or nursing associate to understand the case against them.

the public interest to share this information with current or former employers if it will help us to find out whether:

- the employer is able to manage any risks in the nurse, midwife or nursing associate's practice without us needing to be involved further
- evidence has already been gathered by the employer so we can work out how much further investigation we may need to do ourselves.

Patient records

- 17 In some cases we may need healthcare providers to give us patient records that identify individual patients in order to carry out a proper investigation. Where possible we'll try to inform the patients concerned, whether through the healthcare provider or directly from the patients themselves. However, we're allowed to process patient records without the consent of the patients as long as it's necessary for us to fulfil our statutory function of protecting the public. In these circumstances we don't need to apply to court for an order to allow us to use patient records.⁸
- 18 We do recognise, however, that as special category data, information about people's health is highly sensitive and we need to be very careful about how we use it. We'll always take the necessary steps to make sure that patient records are stored safely and securely when they're in our possession. Where it's proportionate and possible to do so, we'll inform patients that we're using their medical records. We'll never publish the identity of a patient and will only share patient records with people that need to see them as part of our regulatory process (see more below about our redaction process).

Medical reports

- 19 Sometimes we'll need to investigate concerns about whether a nurse, midwife or nursing associate's health is having an impact on their fitness to practise. We'll usually need to obtain evidence from an expert to help. We'll always seek the nurse, midwife or nursing associate's express consent before we contact an expert to provide a medical report. We'll keep any medical reports we receive confidential and always ensure that they're stored safely and securely.

Expert reports and clinical advice

- 20 Sometimes we obtain independent expert reports or clinical advice to comment on the clinical care a nurse, midwife or nursing associate has provided to a patient or patients. We'll usually only share these reports confidentially with the patients affected by the incident or with safeguarding agencies that need to see them for public protection reasons. This is because they can contain highly sensitive and confidential information belonging to the nurse, midwife or nursing associate and the patient affected by the incident. It wouldn't be appropriate for us to share this information with anyone else while our investigation is ongoing.

⁸ *GDC v Savery* [2011] EWHC 3011 (Admin)

Sharing the nurse, midwife or nursing associate's response with people affected by our investigation

- 21 We want to encourage openness and learning among healthcare professionals to improve care and keep the public safe. Nurses, midwives and nursing associates have a professional responsibility to be honest with patients, colleagues, employers and regulators when things go wrong.
- 22 We invite nurses, midwives or nursing associates under investigation to respond to our concerns about their fitness to practise at the beginning of our investigation, and again at the end. We consider that it will often be necessary for us to share as much as we can of their response to an incident with the patient, family member or loved one who has been affected by it.⁹
- 23 We'll try to share this information as early as possible in the process as it's important that we're able to discuss the case with the people affected by the events in an open and meaningful way. When we write to the nurse, midwife or nursing associate asking for their response, we'll explain that we'll be sharing it in this way.
- 24 If the person affected may need to be a witness at a hearing, because there's a dispute about the facts, we'll be careful about how we share the nurse or midwife's response. Before we share it, we'll make sure that the person has already given their account of what happened, whether that was in an earlier investigation, or in a formal witness statement taken by one of our investigators.
- 25 Doing this makes sure that the person affected can see what the nurse, midwife or nursing associate is saying, without having to wait until the case goes all the way to a hearing. It also makes sure that we're transparent with the nurse, midwife or nursing associate about what documents a witness has seen at what points in our process. This means any questions they may eventually want to ask that witness can be fully informed by this background.
- 26 We won't share any parts of a nurse, midwife or nursing associate's response which contain comments or details of a personal or confidential nature that are not relevant to the case (such as health information) or any information that identifies a whistleblower.

Our support services

- 27 We offer informal face-to-face and telephone support to witnesses and members of the public affected by the incidents we're investigating. While we don't write everything down that's said to us in this context we do take notes and we are clear with the people that we meet and support that the information they give us may need to be disclosed, this includes personal information where it's relevant to our investigation.

⁹ Rule 6A (2)(c) of the Rules

- 28 The information we collect will generally be used to help us to communicate with witnesses and members of the public effectively and to help us meet their individual support needs. It can also help to inform our investigation, assist us to identify sources of information and evidence and can also lead to us identifying additional concerns.
- 29 We'll always let the people using our support services know what information they provide is being shared.

Representatives

- 30 If the nurse, midwife or nursing associate has a representative we'll share all case information with them, once we've received the nurse, midwife or nursing associate's written consent. We'll only ever use a representative's details to communicate with them about the fitness to practise proceedings.

Sharing the outcome of our investigations

- 31 We'll always share the decisions we've made following our investigation with the nurse, midwife or nursing associate as well as the person who made the allegation. We'll also share our decision and the reasons for any decisions we've made with people who have helped us with our investigation (such as witnesses) and anyone who has been affected by the concern we've been investigating (such as patients, their families and loved ones).¹⁰
- 32 We think that this is necessary for the performance of our regulatory functions because:
- it helps us fulfil our commitment to transparency and the professional duty of candour,
 - it helps people affected by our proceedings to understand our process and approach to decision-making,
 - it helps us protect the public by keeping people who can give us valuable information about what went wrong engaged in our process.
- 33 We won't share any information of a personal nature that's not relevant to the case, such as dates of birth, addresses or telephone numbers. Equally we won't share information about the nurse, midwife or nursing associate's health without their agreement.
- 34 When we share the outcomes of cases which aren't published on our website, we'll do this confidentially.

Requests to reconsider investigation decisions

- 35 People can ask us to reconsider our decisions not to investigate a nurse, midwife or nursing associate's fitness to practise. We're also able to review Case Examiner decisions not to refer cases to a Fitness to Practise Committee. We'll

¹⁰ Using our powers under Article 22(10) of the Order

notify the nurse, midwife or nursing associate that we've received a request to look at our decision again. We'll also notify them of the outcome of our review and our reasons along with anyone else we think has an interest in being notified of our decision.¹¹

- 36 Sometimes we receive requests from people seeking a review to provide them with the material we've gathered as part of our investigation. Generally, we don't think it's necessary or proportionate to provide investigation material to people. This is because we think that the reasons we provide will usually give enough information for people to be able to understand and challenge our decisions.
- 37 If we think our reasons haven't provided enough information, we'll consider whether we need to provide a summary of the investigation material to help the person understand our decision. However, we won't normally share:
- routine correspondence that's not relevant to the outcome of our investigation, such as file notes, internal correspondence about the progress of the case or call logs;
 - legally privileged information or documents containing the opinions or views of non decision-making staff about the case;
 - details about the nurse, midwife or nursing associate's regulatory history, or their disciplinary record with any employer, unless the nurse, midwife or nursing associate has a live sanction against their registration that's currently visible to the public;
 - the identities of other nurses, midwives or nursing associates who we may also be investigating as part of a wider investigation into an incident, but whose cases are not related to the patients, families or loved ones we're sharing the information with;
 - the identities of people who may have made decisions during local investigations or the names of NMC staff members in non-public facing roles;
 - any other personal information that's not relevant to the case, such as addresses, telephone numbers and dates of birth.

How Fitness to Practise Committees handle information

- 38 In general, hearings before the Fitness to Practise Committee (and interim order hearings before the Investigating Committee) are held in public. This means members of the press can sometimes be present and may report on any part of the proceedings which are held in public.
- 39 Panels have the discretion to go into private session for all or part of the hearing. This will be considered:

¹¹ For the outcomes of reviews of Case Examiner decisions see Rule 7A(9) of the Rules

- when dealing with matters relating to the nurse, midwife or nursing associate's health,
- where issues are raised relating to the vulnerability of witnesses, the health of witnesses or other people who are identified but are not parties to the case, or
- to protect the anonymity of patients.¹²

The reasons published at the end of a case will mirror this approach.

- 40 The identities of patients, patients' relatives, complainants in sexual cases, and children are pseudonomised throughout hearings and in all hearing documents. We won't release the identities of people who have been granted legal anonymity to the public or the media.
- 41 The identities of all other witnesses and third parties will not be pseudonomised during the hearing (although we'll pseudonomise them in any reasons published on our website after the hearing). This means that any personal information mentioned at a hearing, such as job titles, will become part of the public record and can be reported freely within the media.

Panel decisions

- 42 The written document produced by the Fitness to Practise Committee, setting out its decision and reasons, represents the formal and official determination in the case. At a hearing, this will be handed down when the panel's decision is announced. The nurse, midwife or nursing associate will be sent a copy of this decision (as will their representative, if they have one), whether or not they were present at the hearing.
- 43 We'll also send a copy of the panel's decision along with the published reasons to the maker of the allegation¹³ and anyone who's helped us with our investigation (such as witnesses) or been affected by the case (such as, patients, their families and loved ones).¹⁴ Where the reasons are not published on our website (for example, because the panel decided that the facts could not be proved against the nurse, midwife or nursing associate), we'll notify these people that we're sharing the outcome with them confidentially.
- 44 The panel members who have heard the case are in the best position to ensure that only personal data or special category data that are necessary to the decisions they've made are included in their reasons. The panel secretary assists the panel members in preparing the written record of the reasons for the decisions they make, and is able to advise them if it appears that personal or sensitive personal data may be being processed unnecessarily. However, the final decision is for the independent panel.

¹² Further information on how panels will decide when to go into private session can be found in our online [FtP Library](#)

¹³ Rule 13(1)(b) of the Rules

¹⁴ Where the panel does not make a finding of impairment, we notify these people using our power under Article 22(10) of the Order

What we publish

- 45 Every time a panel decides that a nurse, midwife or nursing associate's fitness to practise is impaired, and imposes a sanction, we publish their decision, and the reasons for it. This will not contain confidential information that the panel considered in private.
- 46 We sometimes become aware, after a hearing decision has been made, that personal data which is not directly relevant to the panel's decisions has been included in the published reasons. Where such data is included, we may need to revise the document which captures the panel's reasoning.
- 47 We consider it is only appropriate for us to make changes to panel reasons we publish online where we need to do so to prevent such irrelevant personal data from entering the public domain. We still need to make sure, however, that the nurse, midwife or nursing associate receives a copy of the panel's decision and reasons which is the same as the determination handed down at the end of the hearing.
- 48 You can find out more about the fitness to practise information we publish on our website in our [publication guidance](#).

Charges

- 49 We'll share the details of charges upon request after they've been confirmed to the panel on the day of the hearing. Before the panel has made a finding of impairment, we won't share the details of charges that the panel hasn't found proved with general enquirers. We may however disclose the complete set of charges confidentially with requesters connected to the specific case.¹⁵

Bundles

- 50 Hearing bundles usually contain large amounts of personal information, often of a confidential nature. We think that members of the public will normally be able to understand what's going on at a public hearing without the need to access any further information contained within the hearing bundles and that this will satisfy the open justice principle.
- 51 Where we receive a request for a bundle during a hearing, we will decide whether to disclose it, rather than the panel considering the case. Requests for hearing bundles must be made two weeks in advance of the hearing via our [website](#). We'll balance whether disclosure is required in the public interest, including considering whether it is required to satisfy open justice principles or enable members of the public to understand what's going on in the case against any potential adverse impact on the hearing and our processes. We'll also consider the privacy implications of sharing the bundle.
- 52 At the conclusion of a case, we won't normally share any of the documentation before the panel with requesters. If the panel decides that the nurse, midwife or

¹⁵ For example because they're a patient or family member affected by the specific charges in question.

nursing associate's fitness to practise is impaired, we'll publish the decision and full reasons on our website. We think that this is enough for members of the public to understand why we've taken regulatory action.

Transcripts

53 We're required to record all of our hearings and supply transcripts to the parties in the case upon request. We're not required to share transcripts with members of the public but we can consider requests under the terms of the Freedom of Information Act 2000.

Media enquiries

54 Where we receive a request from the press to speak to someone involved in one of our hearings, we'll usually pass the request on to the individual concerned so that they can then decide how to respond.

55 We sometimes receive enquiries from the press about our hearings after they've finished. We'll usually share fitness to practise information with the press in accordance with our [publication guidance](#).

Redaction

56 We'll very often need to redact the case papers that our Case Examiners and Practice Committees use for making decisions. We do this to protect the identities and personal data of people involved in fitness to practise cases, some of whom are highly vulnerable.

57 The approach we take to redaction depends on the decision that's being taken, and differs between interim orders, Case Examiner consideration, and final determinations by the Fitness to Practise Committee. We explain below how we balance the need for fairness to the nurse, midwife or nursing associate, and the confidentiality of the personal information of the people involved in what went wrong. This will differ depending on the urgency of the consideration and whether the decision is one that we usually publish.

Interim order documents

58 In general we won't carry out full redactions to documents we present to an interim order panel. This is because:

- fairness to the nurse, midwife or nursing associate means we should give them the material that we're relying on to show their practice needs to be restricted. We need to give them this material in a form that allows them to comment meaningfully on the allegations. This means we'll usually identify any patients, colleagues or other witnesses concerned within the interim order application
- by their nature interim orders are urgent and we need to refer nurses, midwives or nursing associates whose practice may present a risk of patient harm to an interim order hearing as soon as the risk is identified.

Carrying out the tailored redaction required to pseudonymise patients, colleagues or witnesses would be a complex and disproportionate exercise in light of the emergency nature of the interim jurisdiction.

- 59 We won't however include in interim order bundles personal information which isn't necessary to the interim order consideration, such as addresses, dates of birth or telephone numbers of patients or witnesses or other people involved in the case.
- 60 We recognise that patient records are by their confidential nature sensitive (special category) personal data. However, we consider that the processing of that data in an un-redacted form when applying for an interim order is necessary to protect the public from nurses or midwives who may pose an imminent risk to patient safety, while allowing a fair and transparent process that the nurse, midwife or nursing associate can meaningfully participate in.

Redacting documents for Case Examiner consideration

- 61 We don't redact the information that we send to nurses, midwives and nursing associates and the Case Examiners at the end of our investigation. Nurses, midwives and nursing associates need to fully understand the case against them, which means that disclosing the identities of witnesses and patients to nurses and midwives (and the Case Examiners) is necessary for us to properly carry out our statutory functions.
- 62 However, we won't disclose (or will redact) the following types of information, which we consider to be irrelevant and unnecessary to the consideration of whether there's a case to answer:
- unnecessary personal details of patients or witnesses or other people involved in the case, such as addresses, dates of birth or telephone numbers.
 - the identities of any nurses, midwives or nursing associates involved in separate, unlinked incidents, but whose cases we have nevertheless investigated at the same time (this can happen where the incidents occurred at the same healthcare setting at around the same time).
- 63 The disclosure of this material would be disproportionate to most investigations into the fitness to practise of nurses, midwives or nursing associates. For example, in the circumstances explained above, the identity of other registrants being investigated would not make any difference to the individuals' cases. This would mean that it would not be necessary for the different nurses, midwives or nursing associates to be aware of the identity of the other(s) in order to prepare their defence. We would redact the kinds of material described above from the documents we send the Case Examiners, because the disclosure of such personal information would not be justified by our statutory function.

Redacting documents for the Fitness to Practise Committee

- 64 We're committed to being open and transparent about our proceedings while at the same time protecting the rights of the people involved in the fitness to practise process.

- 65 At a final hearing, we will only place those documents before a panel that are required to prove the factual case against the nurse or midwife, or that may be necessary to the panel's consideration of impairment and sanction.
- 66 Hearing bundles will only contain material that is relevant and admissible in evidence. Irrelevant or excessive material will not be included and prejudicial material will be removed. Sections of documents or witness statements that give details of earlier allegations that are no longer pursued will be redacted where necessary.
- 67 We will also avoid placing irrelevant personal data such as addresses or contact details, or the identity of family members where they are not in issue, before panels. Where necessary, we will redact such material from documents.
- 68 In hearing bundles, patient medical records will be pseudonomised, with a redaction technique that enables the nurse or midwife to identify the patient using an anonymity key together with the unanonymised material provided during the investigation.
- 69 Panel members or other people who have access to hearing bundles do not need to know the identity of the patients named in records to be able to perform their function. Unless the nurse or midwife takes issue with the accuracy of the pseudonomisation, it is not necessary for panels to see the personal data of third parties, particularly the medical records of identified or identifiable patients, in order for them to properly consider the fitness to practise of the nurse or midwife concerned.
- 70 In advance of the hearing, legal assessors will be provided with the same material that was sent to the nurse or midwife at the end of our investigation (in which any patient information will not have been pseudonomised). All legal assessors who attend our fitness to practise hearings are experienced legal professionals subject to professional duties of confidentiality.
- 71 As part of their preparation for the hearing, the legal assessors will be able to satisfy themselves that the redactions applied to the hearing bundle are correct. Legal assessors are independent of us and can indicate to the parties if any problems with the continuity of the evidence appear to have been caused by incorrect redaction.

Sharing information in the public interest

- 72 We can share any information about a nurse, midwife or nursing associate's fitness to practise, if we consider it's in the public interest.¹⁶ In deciding whether to use this power, we'll always think about the overarching objective of our functions as a regulator, which is the protection of the public. This includes protecting, promoting and maintaining the health, safety and wellbeing of the public, promoting and maintaining public confidence in the professions we

¹⁶ Article 22(10) of the Order

regulate, and promoting and maintaining proper professional standards and conduct for those professions.

- 73 We'll balance these aims against the nurse, midwife or nursing associate's right to privacy and their other legal rights more generally. This is especially the case when we're still investigating, or where the case has been closed with no action against the nurse, midwife or nursing associate. We generally consider that an investigation into a nurse, midwife or nursing associate's fitness to practise should be kept confidential unless our Case Examiners decide there is a case to answer or issue the nurse, midwife or nursing associate with a warning.
- 74 We'll only share or disclose fitness to practise information before this stage if our need to share the information fulfils an important purpose that outweighs or overrides the nurse, midwife or nursing associate's privacy rights. We'll always satisfy ourselves that there's no less intrusive way of us achieving our purpose before sharing the information.

Sharing with outside agencies when people are at risk of harm

- 75 Sometimes, we'll need to share information with other organisations who are responsible for safeguarding children or vulnerable adults, or who may be involved in patient safety investigations, or in preventing or detecting criminal activity.
- 76 We'll share information about previous cases or current investigations with a range of public authorities and other regulatory bodies across the four countries of the UK where it's in the public interest. These include:
- the police
 - the Crown Prosecution Service, the Public Prosecution Service and the Procurator Fiscal
 - the Care Quality Commission, Healthcare Inspectorate Wales, Care Inspectorate Wales, the Regulation and Quality Improvement Authority, the Care Inspectorate, Healthcare Improvement Scotland,
 - other healthcare professional regulators, the Disclosure and Barring Service, and Disclosure Scotland.
- 77 We have memorandums of understanding that cover exchanging information with many of these organisations. Where we don't we'll always keep a record of our decision to share fitness to practise information for accountability purposes.

This guidance sets out the approach that we'll usually take to handling fitness to practise information. We have separate information about how to make data protection and information requests on our [website](#).

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2.	29 November 2021	Assistant Director of Professional Regulation 22 November 2021
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