

## FtP Publication guidance

### Introduction

- 1 This guidance has been developed by the Nursing and Midwifery Council (NMC) and explains our approach to the routine publication of fitness to practise information.
- 2 We have a statutory duty to publish as soon as is reasonable details of substantive orders and decisions made by our practice committees (including orders made on review and restoration hearings and any order to remove or amend a fraudulent or incorrect entry on the register). We must also publish the reasons for them and details of any decision given on appeal.<sup>1</sup>
- 3 Under our legislation, we must undertake a range of duties in relation to information governance. This includes obligations arising from the Data Protection Act 1998, the Human Rights Act 1998 and the Freedom of Information Act 2000. The Data Protection Act and the Freedom of Information Act outline our duties in terms of how we make information available in specific situations.
- 4 The Data Protection Act prevents the disclosure of personal data unless certain exemptions apply. These exemptions include:
  - 4.1 where the data subject consents to the disclosure.<sup>2</sup>
  - 4.2 where disclosure is necessary for the exercise of statutory functions or the exercise of any other public functions in the public interest.<sup>3</sup>

In this context, the public interest includes the protection of the public<sup>4</sup>, the declaring and upholding of proper standards of conduct and the maintenance of confidence in the professions and the NMC.
- 5 We do not publish any information relating solely to the health of a nurse or midwife in order to protect their confidentiality as a patient and their privacy rights. This information is always treated as confidential.

### Key principles

- 6 We are committed to being transparent and open about our processes and the outcomes of our fitness to practise investigations. We are also committed to protecting the confidentiality of nurses, midwives, witnesses and other people where necessary.
- 7 We believe that historical information that has not already been placed in the public domain will only be disclosed in limited and defined circumstances.
- 8 We are committed to providing information in a form that is accessible and in line with best practice.

## Publication of information

- 9 Fitness to practise information is published in three places:
  - 9.1 via the ['search the register'](#) online search facility on the NMC website
  - 9.2 via the ['Employers Confirmation service'](#) on the NMC website
  - 9.3 in the list of ['latest hearings and sanctions'](#) on the website

## Online search the register facility

- 10 Our online published register is a list of all nurses and midwives who have a current and effective registration with the NMC. This means that their registration fees have been paid and their registration is up to date. If a nurse or midwife's registration has lapsed, it will not appear in the online search results. Some personal details we hold, such as the nurse or midwife's date of birth and address are not displayed online.
- 11 If a nurse or midwife is the subject of a caution order or an interim or final conditions of practice order their name will appear on the online list of registrants with the outcome of the hearing or details of the final sanction. Information about any conditions of practice that can be made public will also be made available online. Details of any conditions relating solely to the nurse or midwife's health will not be included.
- 12 If a nurse or midwife has been struck off the register since 1 January 2008, or is currently suspended from the register as a result of an interim or final suspension order, the fact of the suspension will also be displayed as part of the online search results. This will also be published during the period of their suspension. Sanctions imposed prior to 1 January 2008 will not be displayed online but these records will be held by the NMC.
- 13 Nurses and midwives subject to removal or striking off orders will be displayed on the online search facility with the status of 'Removed by an FtP panel'. Individuals who have been allowed to voluntarily remove their names from the register by the Registrar will be displayed with the registration status 'Voluntarily removed'.
- 14 All registration status details displayed online are fully explained in an online glossary. This is linked to from the results page and the individual entry pages.
- 15 No information will be displayed about deceased individuals once we have received formal notification of their death. Information about all other individuals removed from the register will be displayed for sixty years from the date of the order in line with our retention of data policy.

- 16 Details of all sanctions imposed by any of the practice committees, including interim orders, striking-off, suspension, or conditions of practice orders and all voluntary removal decisions are kept on record by the NMC and may be disclosed to employers and other enquirers on request indefinitely. The only exceptions to this are: information relating solely to a nurse or midwife's health and interim orders where a case is subsequently closed with no finding of impairment.
- 17 The online search results will not indicate whether a nurse or midwife is the subject of an ongoing fitness to practise investigation as this information remains confidential until the case is referred for adjudication or an interim order is scheduled.
- 18 Employers can obtain information about a nurse or midwife whose name does not appear on the online register, or more information about any other nurse or midwife by using the registration confirmation service or online employer confirmation service, described below.

### **Forthcoming hearings**

- 19 We publish hearings information on [our website](#) under the heading 'hearings and outcomes'. We do this five days before a hearing starts. We publish the following information:
  - 19.1 Nurse or midwife's name, Pin and the part(s) of the register on which they appear.
  - 19.2 Date and venue of the hearing.
  - 19.3 The county where the events that are the subject of the allegation took place, or, where that is not relevant (for example in conviction cases where the conviction does not relate to the nurse or midwife's practice), the county of the nurse or midwife's registered address.
  - 19.4 The type(s) of allegation against the nurse or midwife which will be the subject of consideration by the panel.
- 20 We do not (and are not obliged to) publish detailed charges against a nurse or midwife before the hearing starts. We consider that putting such information into the public domain at this stage is disproportionate and can be prejudicial to a nurse or midwife, in that the charges may be subsequently amended and / or not ultimately proved by the NMC. Once the charges have been confirmed to the panel on the day of the hearing, these will be available upon request.

### **Substantive hearing outcomes**

- 21 Hearings before the Investigating Committee interim orders panel and the Fitness to Practise Committee are generally held in public.
- 22 Therefore, members of the public such as journalists are permitted to attend the parts of the hearing heard in public.

- 23 When Fitness to Practise Committee hearings are not held in public, it is because the panel orders that all or part of it should be heard in private due to confidentiality reasons, usually due to matters of the nurse or midwife's health being discussed.<sup>5</sup>
- 24 Some cases involve a number of different factors, such as convictions, health, conduct or performance. When they are heard by the Fitness to Practise Committee, the panel hearing the case will try to hold as much of the hearing as possible in public. They will only go into private session for specific reasons. One example of this would be while dealing with matters relating to the nurse or midwife's health. Another could be when vulnerable witnesses are giving evidence, or when the health of a witness is being discussed, or if there is a serious risk that their identity or the identity of another anonymised person might be revealed. The published reasons will also follow this approach. Further information on how panels will decide when to go into private session can be found in our online [FtP Library](#).
- 25 Where all or part of the hearing is in private members of the public are not able to attend.
- 26 At the end of a substantive hearing before the Fitness to Practise Committee, the hearings and outcomes list on [our website](#) is updated to show the decisions and reasons in cases where a sanction is imposed. Recent decisions remain listed on [our website](#) for four months. The reasons for panel decisions where the nurse or midwife's fitness to practise was found to be impaired, and a sanction was imposed, will continue to be published for as long as any sanction has effect.
- 27 When VR is granted during a hearing, we publish the VR decision as part of the panel's reasons. The reasons remain on the hearings and outcomes list on [our website](#) for four months.
- 28 Details of the outcome will be sent to the referrer, the witnesses in the case, and the nurse or midwife's employer, where known. No additional data should be provided.
- 29 There is no statutory requirement to publish the outcome of a hearing that has resulted in a finding of no impairment or a finding of impairment where no sanction is imposed. However, where a panel has concluded that an allegation is not well founded, it shall make a declaration to that effect where the nurse or midwife asks it to, or where the nurse or midwife agrees to this.<sup>6</sup>
- 30 In these circumstances, the chair of the panel will ask the nurse or midwife concerned if they want the decision to be published, or if they consent to the publication of the decision. If they do require publication of the decision, or consent to it, the decision will be published on [our website](#).
- 31 If the nurse or midwife does not attend the hearing, we will send information in advance that informs them of their right to have a decision of no impairment, or impairment but no sanction, published. If the nurse or midwife makes a written or telephone request for any such decision to be published, the decision will be

published on the website. To avoid any misunderstanding when taking telephone requests, we will immediately contact the nurse or midwife in writing to confirm our understanding of the position.

- 32 Where no impairment is found, or no sanction is imposed but the nurse or midwife concerned has not requested or consented to the publication of that decision, then all reference to the case will be removed from the website after the hearing.
- 33 The decision and reasons for publishing the decision will not include any information relating solely to the nurse or midwife's health, unless the nurse or midwife has explicitly agreed to this information being included. This consent or request must be clearly confirmed in writing by the nurse or midwife. Where necessary, the Panel will prepare private reasons for disclosure solely to the nurse or midwife concerned and public reasons for publication and wider disclosure.

### **Interim order hearings**

- 34 Interim order hearings before any of our practice committees are held in public. When an interim suspension or conditions of practice order is imposed the outcome and public conditions are published via the [hearings and sanctions section on our website](#). Detailed decisions of interim order hearings are not published, and no information is published when an interim order is not made.

### **Changes to the register spreadsheet**

- 35 The [monthly 'changes to the register' spreadsheet](#) published on [our website](#) details the sanctions and interim orders imposed by the Investigating Committee and the Fitness to Practise Committee, in the last calendar month.

### **Information kept confidential**

#### **Information about the nurse or midwife's health**

- 36 We do not publish any information relating solely to the health of a nurse or midwife, unless the nurse or midwife explicitly consents to such information being published. This information is treated as confidential regardless of when the case was heard or whether the case was heard by the Investigating Committee or the Fitness to Practise Committee..
- 37 This means we will not publish any reasons that relate solely to a nurse or midwife's health. If such information is disclosed during any part of a hearing that is held in public, it will be redacted from the published decision and reasons. However, if the nurse or midwife has expressly consented to the information being disclosed, then subject to meeting other legal obligations, such as under the Data Protection Act, this may be disclosed. Where necessary, the panel will prepare private reasons for disclosure solely to the nurse or midwife concerned and public reasons for publication and wider disclosure.

### **Witnesses**

- 38 The names of patients, patient relatives, complainants in sexual cases and children are anonymised throughout the hearing and in all the hearing documents. The names of other witnesses and third parties who are not granted legal anonymity are not anonymised during the hearing, but will be anonymised in the decisions and reasons. These are published on our website after the hearing.
- 39 The names of witnesses and third parties not granted legal anonymity can be released into the public domain on request from a member of the public.
- 40 In most public hearings, witnesses will give live evidence in public. In some circumstances witnesses may be allowed to give evidence by video link but the hearing will still be in public and the witness will still be subject to questioning. In exceptional circumstances, vulnerable witnesses may be allowed to give evidence to the panel in private, however their evidence will still be noted in the reasons and some details may be published in accordance with this policy. Where a vulnerable witness has been anonymised, care will be taken to ensure that the publicised decision does not contain any information that may identify them. Full details will be explained to the witnesses in question at the time.

Approved by Director of Fitness to Practise: 1 August 2017

Amended by Deputy Director of Fitness to Practise: 30 January 2018

Effective from: 1 August 2017

## Notes

1. Article 22(9) of the Nursing and Midwifery Order 2001 ('the Order')
2. Schedule 2, paragraph 1 of the Data Protection Act 1998 ('DPA 1998')
3. Schedule 2, paragraphs 5(b) and 5(d) of the DPA 1998
4. Article 3(2) of the Order states the overarching purpose of the NMC's Fitness to function is to protect the public. This statutory objective is achieved by undertaking to: a) protect, promote and maintain the health, safety and well-being of the public; b) promote and maintain public confidence in the professions regulated under this Order; and c) promote and maintain proper professional standards and conduct for members of those professions.
5. Rule 19 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004
6. Article 29(1) of the Order