

NMC Guidance during the Covid-19 emergency period

Note: This guidance will remain in place during the emergency period and should be read in conjunction with any existing guidance on our website. Our Council has committed to holding a public consultation exercise before making any decision about continuing to use the provisions in the emergency rules beyond 31 March 2021.

Introduction

1. The extraordinary circumstances of the Covid-19 pandemic affect us all. The UK Government and the devolved administrations have issued advice on self-isolation, social distancing and travel in an effort to reduce the spread of the virus. When the pandemic first arose, we needed to change our operating procedures in registrations and fitness to practise, and the UK Government agreed changes to our rules to help us do this.
2. During the pandemic a number of nurses, midwives and nursing associates were, or are, due to renew their registration through the process of revalidation. Registrants have been and continue to be working in very challenging conditions and we acknowledge that they may not be able to complete their revalidation within the required timeframes. We must support these registrants and ensure that their registrations do not lapse, which would result in a loss of registered professionals during a time of unprecedented pressure on the health and care workforce.
3. We have to make sure we can carry on running our hearings, so we can continue to consider concerns raised about nurses, midwives or nursing associates, and protect the public from any professionals whose practice is considered to be below the required standard. We also have to make sure that we can allow people on our register to return to safe practice as soon as possible.
4. We also need to protect the well-being of people involved in our hearings and our staff, and we don't want to add to the risks people all across the four countries of the UK are facing from the spread of the virus.
5. In order to deliver all of this effectively we have developed some principles to guide us. These are:
 - looking after our colleagues to make sure people are safe and we can continue to operate effectively
 - maintaining our important role in protecting the public and promoting public confidence in nursing and midwifery, while looking to minimise burdens on busy professionals
 - making sure we continue to register the right people quickly: the health and social care system needs nurses, midwives and nursing associates now more than ever

- playing our part in the actions needed to respond to the coronavirus pandemic
- keeping sight of our long-term strategic aims but recognising some projects and programmes may now take longer or be deferred.

Registration guidance

Revalidation

6. We know that registrants are currently working in particularly difficult circumstances. A number of these registrants will be due to submit revalidation applications in the coming months, but may not be able to do so because of a lack of time, illness, or the unavailability of colleagues who can conduct reflective discussions and confirm their application.
7. Previously, where there was good reason to do so, the Registrar could only provide a further period of three months to allow a registrant to meet the requirements for renewing their registration and submit their revalidation application. Once this three month period had passed, the registrant's registration would automatically lapse unless they had successfully renewed their registration.
8. Under our emergency rules, the Registrar has the ability to provide extensions for any length of time, and can give more than one extension. This gives the Registrar greater flexibility to provide extensions to those that need more time to meet the renewal requirements because they have been impacted by the Covid-19 emergency. Our [current policy](#) is that we will allow one 12 week extension for anyone that requests it. A second 12 week extension may be granted where there is good reason to, should it be required however, we are reducing the extensions available as the emergency eases and a registrant won't be able to request a second extension from October 2020 onwards.
9. This means that nurses, midwives and nursing associates will be able to carry on working as registered professionals and gives them an extended period to prepare and submit a complete revalidation application. We are keeping the length of extensions being offered under review as the emergency progresses, balancing the need to offer nurses, midwives, and nursing associates greater flexibility, with the important role revalidation plays in maintaining standards and ensuring patient safety. We aim to return to our pre-Covid extension policy by January 2021, however remain able to respond to any changes in the situation such as a worsening of the emergency that may increase pressure on nurses, midwives and nursing associates.

Registration appeal hearings

10. We are reviewing our appeals on a case by case basis. Where we take the view that the appellant is capable of safe and effective practice we will progress the

appeal in a way that will allow the appellant to be registered without the need for a hearing.

11. We are taking a case by case approach to listing the remaining appeals where a hearing is required. Our considerations for listing these hearings are the same as for the fitness to practise hearings, which are set out in further detail in the sections below, although because of how our legislation on appeal hearings works, we won't be able to make equivalent adjustments to how our panels are made up.

Fitness to practise guidance

Note: Our Fitness to Practise library provides guidance on fitness to practise procedure and decision-making. During the Covid-19 emergency period, where there is a conflict between what is contained in this guidance and the fitness to practise library, this guidance should take precedence.

Our current operational priorities

12. Our fitness to practise activity is a vital part of our role in protecting the public and this needs to continue. Where there is a need to prioritise activity due to the impact of the pandemic, we will prioritise the following areas as they are central to our public protection function:
 - Reviewing and risk assessing new referrals or new information on existing referrals
 - Applying for interim orders, and reviewing existing interim orders
 - Carrying out reviews of existing substantive orders
 - Applying to the High Court or Court of Session to extend interim orders, where needed
13. We also need to prioritise our hearings activity and deliver it in a way that keeps our colleagues and the people involved in our process safe. Whilst we are now holding our full range of hearings and meetings, we will prioritise:
 - interim order review hearings where a nurse, midwife or nursing associate was not able to participate in a previous hearing because of the current crisis (for example because they were unwell) and would like an early review
 - interim and substantive order review hearings where there is new information which may suggest that there is a new risk, or that the restrictions on the nurse, midwife or nursing associate's practice could be eased
 - interim and substantive order review hearings where a panel of two has heard the case and the nurse, midwife or nursing associate asks for their case to be heard before a panel of three.

14. We hope our prioritisation principles will help lessen the burdens on nurses, midwives and nursing associates who are involved in our process, and facilitate the return to safe practice of those who can do so.
15. In March 2020 interim and substantive order events began taking place solely as virtual events. We anticipate that they will continue to be listed as virtual hearings where it is fair and practical to do so.

Substantive case work¹

16. We recognise the importance of progressing cases to a final conclusion as quickly as possible so we can meet our duty to protect the public and promote confidence in the professions and so we can avoid unnecessary delays for all those involved in our proceedings. However, holding hearings and meetings virtually is a new way of working and we need to make sure that we only list cases where it would be fair and practical for all parties involved to do so.
17. We are also now starting to list some cases for hearings in our hearing centres, where we feel we can safely do this and the nature of the case dictates that it would be more suitable for some of the parties to attend in person. Where some or all parties are participating in the hearing at one of our hearings centres we will classify it as a 'physical hearing'.
18. In order to safely hold hearings, we have significantly reduced the capacity at our centres to ensure social distancing rules are complied with. To make sure that cases are progressed to a hearing in a timely manner we will assess each case against the factors we have identified and decide whether we think it is suitable for a virtual hearing, or more suitable for some or all parties to attend a hearing centre. The factors we have identified are a non-exhaustive list and we will revisit these in order to make sure we include other factors as we gain experience and a greater understanding of how these hearings work in practice.
19. A number of cases can be dealt with at a meeting, which can be held virtually. More information about how we decide whether a case can be dealt with at a meeting can be found in our [Hearings and Meetings Guidance](#). Meetings are held in private and are more straightforward because they do not require the attendance of the registrant (or their representative) or the NMC's case presenter. Although the meeting is held in private we recognise that it is in the public interest to be transparent about our decisions and we publish outcomes (of both meetings and hearings) where impairment has been found and a sanction has been imposed. We'll also share our statement of case with interested parties,

¹Our substantive case work includes substantive meetings and hearings (including resuming hearings) and registration appeals. When we refer to our substantive case work in this guidance we are also referring to restoration hearings and administrative meetings and hearings which assist in taking a case forward to its substantive outcome.

where requested, and in line with our [information handling guidance](#). The statement of case is a document that explains our position on what has gone wrong, explains why we think the nurse, midwife or nursing associate is not fit to practise and what sanction we think the panel should impose.

20. Some cases require a hearing, rather than a meeting. This may be because the nurse, midwife or nursing associate has requested a hearing, or because the nature of the case means that a hearing is the best way to consider the matter.
21. Where a case requires a hearing, we will assess whether it's best suited for consideration at a virtual hearing or with some or all parties attending our hearing centre. We will only list cases for a virtual hearing where we consider it is fair and practical to do so. We will consider the following non-exhaustive list of factors when deciding how to hold the hearing:
 - The view of the nurse, midwife or nursing associate (or representative) as to whether the case is suitable for listing as a virtual hearing or whether it would be preferable for some parties to attend at a hearings centre.
 - Whether the participants are able to fully participate in a virtual hearing. Before listing a case we will make enquiries to find out if the participants have the right technology available, and are able to use this. We'll also make sure there aren't any other barriers, such as a disability, or personal circumstances, which might prevent their full participation either virtually or in person.
 - The complexity of the hearing. At the current time we will focus on listing more straightforward cases at virtual hearings in light of the fact that this presents a new way of working for all the parties. Longer hearings with a large number of attendees and lots of documents can be more difficult to manage virtually as the coordination and communication between parties can be more challenging when all parties are engaging virtually. When deciding whether a virtual hearing is suitable we will consider the following factors:
 - The estimated length of the hearing.
 - The number of factual charges and in particular how many are in dispute
 - The number of witnesses required to give evidence
 - The size of the hearing bundle
 - Whether the case involves multiple registrants.

This list is non-exhaustive and we may consider other reasonable factors when making a decision. As we learn from our experience in holding virtual hearings we will consider if we need to make changes to the above list of factors.

- Any evidence that suggests the integrity, fairness or smooth running of the hearing may be impacted by holding it in a particular format.

Wherever possible we will work with the nurse, midwife or nursing associate (or their representative) to narrow down the issues in dispute and will make use of [consensual panel determinations](#) and agreed statements of fact where appropriate. Where we identify complexities within a case, we will consider whether these could best be dealt with by some of the parties participating in the hearing at one of our hearing centres.

22. On occasion, where we decide that a case should be listed virtually rather than at a hearing centre, the nurse, midwife or nursing associate (or representative) may object. If this happens we will list the matter for a preliminary meeting as soon as possible, and a chair of the practice committee will be asked to give directions on how the case should proceed.² The chair will consider representations from parties before deciding whether the case should be held virtually or if some or all parties should attend a hearing centre.
23. We are keeping our approach under constant review in order to make the process as fair and as smooth as possible, and will update this guidance where necessary.

Why our Fitness to Practise rules needed to change

24. Our rules prior to the amendments introduced by the emergency rules would have made it difficult to deliver the right level of fitness to practise activity while following the Government's advice on social distancing and avoiding unnecessary contact. They might have had implications on our response to the emergency. The key problems that meant we needed to change our rules were:
 - That until recently the people involved in our hearings weren't able to attend in person because doing so could put them at risk and we had closed our offices due to government advice. Whilst we are now listing some of our substantive case work at our hearing centres, we have a much reduced capacity due to social distancing and will need to continue to make use of virtual meetings and hearings.
 - Almost all of our office staff are working from home. Royal Mail have also advised us they are no longer accepting signatures for recorded delivery post. These factors affect our ability to print and send notices and provide proof that they have been received.
 - Many of our panel members would have come to the end or are coming to the end of their second term of office. It is difficult for us to recruit and train new panel members during the emergency, and individual panel members may

² Preliminary meetings are held as described by Rule 18 of the Fitness to Practise Rules 2004. If an objection to a hearing proceeding virtually is received too close to the scheduled start date to arrange a preliminary meeting it is possible for an application to adjourn to be made to a chair (if listed prior to the hearing) or to the panel (on the day of the hearing) as per Rule 32 of the Fitness to Practise Rules 2004.

have difficulties in participating in hearings. All this could cause a severe shortage of panel members able to hear cases.

- At the start of the pandemic we were acutely aware of the need to free up colleagues on our register from panel duties during the pandemic. We knew they needed to prioritise their work in the health and care system. This could have meant we wouldn't have had enough registrant panel members to hear the urgent interim order cases and reviews of substantive orders and that we would have found it difficult to run substantive hearings and registration appeal hearings later, once the initial pressure had eased.

Our emergency rule changes at a glance

25. The rule changes, on which we give detailed guidance in the different sections below, allow us to:
 - Hold panel hearings and meetings using audio or video conferencing facilities using a specific new legal power to do this.
 - Send notices of hearing by email (these previously had to be sent by recorded delivery post).
 - Extend the terms of panel members currently on their second term.
 - Convene hearings with panels of two members, and convene hearings panels made up only of lay members.³
26. We won't always use these powers (especially the powers on panel membership) in every case. We explain how we'll use the powers in the guidance below.

Notice of hearings and meetings

27. The majority of our staff are working from home. As a result they don't have access to our normal photocopying and postal facilities. We must also make arrangements in case there is any disruption to normal postal services.
28. Before the emergency period, we would send the notice of hearing or meeting to the nurse, midwife or nursing associate by recorded delivery and provide the panel with a copy of the recorded delivery details. Now, where we have a confirmed email address for the nurse, midwife or nursing associate we'll send the notice of hearing by email instead. We do this for all hearings and meetings.
29. We treat an email address as being confirmed if it is recorded on our register. If there is no email address held on our register we can still send a notice to an email address which the nurse, midwife or nursing associate has:

³ This only applies to fitness to practise panels (our fitness to practise committee and investigating committee panels). Registration appeal panels must still have three members with one registrant who is registered in the same part of the register as the appellants.

- Used to communicate with us in the past
 - Told us about in the course of previous correspondence with us
 - Provided to us over the phone in response to a request for updated contact details
30. If a third party such as an employer or the police provides us with an email address for a nurse, midwife or nursing associate, we won't send a notice or any confidential and sensitive documents to this email address until the nurse, midwife or nursing associate has confirmed to us that it's the right address for us to communicate with them.⁴
31. If we've been told that the nurse, midwife or nursing associate is represented, we'll also send a copy of the notice to the representative by email. Sending notice to the representative is not an alternative, unless we have the nurse, midwife or nursing associate's consent to send correspondence to their representative instead of themselves.
32. As with notices sent by post, we do not have to show that the nurse, midwife or nursing associate has read or accessed the emailed notice, only that we sent it to the correct email address, giving enough notice of the hearing in line with our legal requirements.
33. If a nurse, midwife or nursing associate informs us that they are unable to receive the notice of hearing electronically, we will serve it by post to their registered address.

Our hearings and meetings

Holding hearings and meetings using video conference facilities

34. To prioritise our fitness to practise work in a way that looked after our colleagues, kept people safe and minimised the burden on busy nursing, midwifery and nursing associate professionals, we stopped holding hearings at our hearing centres. Since Monday 23 March 2020, we've been holding hearings and meetings virtually, using audio or video conferencing. From 31 March 2020 this was clearly provided for in our rules.⁵ Before our rule changes took effect, we'd been doing this with the agreement of the nurse, midwife or nursing associate where possible.
35. We are now listing some substantive case work at our hearing centres (albeit some of the parties may still attend virtually). However, we need to make sure we do this safely and have therefore reduced the number of events we will list at our

⁴ We will continue to comply with our obligations under the data protection act and ensure that we send information by email securely.

⁵ During the emergency period, r2ZA of the Fitness to Practise Rules 2004 provides that hearings and meetings can be conducted using audio or video conferencing facilities.

centres each day, to allow for social distancing. We will also continue to hold meetings and hearings virtually with all parties using audio or video conferencing to attend.

Observing our hearings

36. Where hearings are conducted virtually it will not be possible for members of the public to observe those hearings in the usual way. We are instead able to make arrangements for audio access for those who wish to observe a virtual hearing. We may have to limit the number of observers attending our virtual hearings so that we can make sure the hearing runs smoothly.
37. Where an observer wishes to be able to watch a virtual hearing we will invite them to attend our London hearing centre where this will be displayed on a screen. We will have a reduced capacity for observers because of the need to maintain social distancing. Where there are capacity constraints, the need to run hearings in our venues will be prioritised over an observer's request to watch a hearing.
38. Given the limited capacity for observers, those wishing to observe our hearings must contact us via our [website](#), so that we can see whether attendance can be accommodated. Whether attending virtually or in person, observers must not record proceedings. The rules relating to [when a hearing should be held in public or private](#) continue to apply to all types of hearings.
39. We recognise that transparency is crucial to an effective fitness to practise process. Whether we hold hearings and meetings virtually or at our hearing centres, we'll continue to:
 - arrange for records to be made of the fitness to practise hearings, from which we could produce transcripts if needed
 - publish details of any interim orders or sanctions that affect the registration of a nurse, midwife or nursing associate on our website
 - publish the outcomes and reasons of hearings and meetings in accordance with our [publication guidance](#)
 - write to the people who referred their concerns to us, to advise them of the outcomes of the fitness to practise hearing or meeting, and
 - consider providing reasons and transcripts of hearings to people who ask for them.

Engaging with virtual hearings and proceeding in absence

40. Whilst we are now listing some of our substantive cases at our hearing centres we will continue to hold many of our hearings virtually. We hope that all nurses, midwives or nursing associates who want to engage with their virtual hearing will be able to do so by video or audio link, and we encourage them to do so. We will be as flexible as we can to ensure that virtual hearings provide an effective way

for dealing with cases. For example panels may wish to give time to nurses, midwives and nursing associates to speak privately with their representative before making a decision, just as they might do if parties were in a hearing room together.

41. If a nurse, midwife or nursing associate doesn't want to engage with a virtual hearing, then we are likely to apply to proceed in their absence, as we would under normal circumstances. You can find our guidance on 'proceeding in absence' [here](#).
42. For interim or substantive order reviews, where the panel has decided to proceed in the absence of the nurse, midwife or nursing associate who is unwell, caring for someone who was unwell, or unable to attend because of the current pressures in the workplace, we will prioritise holding an early review if the nurse, midwife or nursing associate asks for one.

Rule changes relating to panels and panel members

43. We need to make sure we have panels available to deal with our hearings and meetings during this time. The new legislation gives us greater flexibility to extend panellists' terms of office and to hold hearings with two panellists, rather than three, where necessary. This will help us to deliver our key priorities and takes account of the impact the emergency could have on our panel members' ability to hear fitness to practise cases.

Extending panel members' terms

44. We recruit panel members for a term of office of four years. They can only serve a maximum of two terms of office. In the current emergency it would be difficult to recruit and train new panel members to replace those whose second term of office is due to come to an end.
45. Our rule changes⁶ allow us to extend the term of office for any panel member who was serving a second term as of 3 March 2020. We can extend the term for the period we think is appropriate (and we can do this more than once if this is necessary). This means we can make sure panel members can continue to participate in our hearings and meetings until we're able to recruit and train new ones.

Our new rules on panel constitution

46. Our panels are usually made up of three people, at least one of which must be a nurse, midwife or nursing associate ('a registrant') and at least one of which must be a person who isn't a nurse, midwife or nursing associate ('a lay person'). The chair of the panel can either be a registrant member or a lay person.

⁶ Rule 6(8A) of the Nursing and Midwifery Council (Practice Committees) (Constitution) Rules 2008, as amended.

47. Some of our registrant panel members may be required to provide front-line care given the pressure on health and social care as a result of the pandemic. More generally panel members may be unavailable if they are unwell or caring for someone else who is unwell.
48. To deal with this potential shortage, where it is not reasonably practicable to convene a panel of three members, we can now convene panels of two members. Panels must have a lay person and a chair, but no longer need to have a registrant member.
49. We'll aim to only go ahead with our substantive meetings and hearings where we have a panel of three members including a registrant member. For our priority hearings, whilst we'll always aim to have three panellists including at least one registrant member, this may not always be possible and we may have to proceed with two panellists or without a registrant panel member. There are two circumstances in which this could happen: we may become aware of panel member shortages when planning our work, or we may find out that a panel member can't attend because they're ill, or for other reasons, shortly before or on the day of the hearing or meeting.
50. If we experience a general shortage of panel members, we'll give priority to having three panel members, with a registrant member, to hear applications for new interim orders and substantive order reviews.
51. We'll try to limit arranging panels with two members (or three members but without a registrant member) to mandatory interim order reviews and substantive order reviews where a nurse, midwife or nursing associate isn't likely to attend and we haven't received any new information on the case.
52. If a panel member is unable to attend a virtual hearing or meeting at short notice, and we can't arrange a substitute panel member, the remaining two panel members will be able to proceed (with or without a registrant member). If the panel member who is unable to attend is the chair, then one of the remaining two members will chair the proceedings. This will be made known to all of the parties and the nurse, midwife or nursing associate, or their representative, will have the opportunity to object to the hearing proceeding with only two panel members.
53. We recognise the importance of having a panel of three and a registrant member on the panel. We'll prioritise early interim and substantive order review hearings where this hasn't happened, and the nurse, midwife or nursing associate has asked for their case to be reviewed by a panel of three with a registrant member.

Revision History

Version	Date	Approval
1.	31 March 2020	Director of Fitness to Practise on 27.03.20 Head of Operations Registration and Revalidation on 30.03.2020
2.	28 August 2020	Director of Professional Regulation

--	--	--