

NMC Guidance during the Covid-19 emergency period

Note: This guidance will remain in place during the emergency period as outlined in the letter from the Secretary of State and should be read in conjunction with any existing guidance on our website.

Introduction

1. The extraordinary circumstances of the Covid-19 pandemic will affect us all. The Government has issued clear advice on self-isolation, social distancing and travel in an effort to reduce the spread of the virus. In response, we need to change our operating procedures in registrations and fitness to practise, and the Government has agreed changes to our rules to help us do this.
2. Over the coming months a number of nurses, midwives and nursing associates will be due to renew their registration through the process of revalidation. Registrants will 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 national emergency.
3. We have to make sure we can carry on running essential hearings, so we can continue to protect the public from professionals whose practice could cause them a risk, but we also have to make sure, especially given the unprecedented pressures on people in the health and care workforce, that we can allow people on our register to return to practice as soon as might be 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. Delivering all of this effectively during the pandemic means we need to prioritise our activity. The principles we've identified to guide us in this 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 the long-term show on the road 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. At present, the Registrar can only provide a further period of three months, where there is good reason to do so, to allow a registrant to submit a renewal application. Once this three month period has passed, the registrant's registration will automatically lapse.
8. Under our emergency rules, the Registrar will be able to provide extensions for any length of time, and will be able to give more than one extension. This means that nurses, midwives and nursing associates will be able to carry on working as registered professionals until they are in a position to be able to submit a complete revalidation application.

Registration appeal hearings

9. We acknowledge that we need to minimise our hearings activity. We are reviewing our appeals to look at whether, where we have taken the view that the appellant is capable of safe and effective practice, the appeal can be progressed in way that will allow the appellant to be registered without the need for a hearing.
10. There will remain a number of appeals where a hearing is required. Our considerations for 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

11. For the time being we have decided that our fitness to practise activity needs to focus mainly on the following areas:

- 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
12. We need to minimise our hearings activity and deliver it in a way that keeps our colleagues and the people involved in our process safe. For the immediate future, we are focusing on the above areas, which are central to our public protection function. We hope our prioritisation principles will help lessen 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.
13. We have cancelled all final ‘substantive’ hearings which were listed but had not started until the end of June. We are keeping the situation regarding resuming hearings under review.
14. In the immediate future, our hearings and meetings activity (which we will be delivering through audio or video conferencing) will only be focusing on:
- applications for interim orders
 - reviews of existing substantive orders, and
 - reviews of interim orders.
15. Within these broad categories we will further 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.
16. We are keeping these priorities under constant review and will update this guidance where necessary.

Why our Fitness to Practise rules need to change

17. Our existing rules would make 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 implications on the response to the emergency. The key problems that mean we've needed to change our rules are:

- The people involved in our hearings won't be able to attend in person because doing so could put them at risk and we are closing our offices due to current government advice.
- Almost all of our office staff are working from home on government advice. Royal Mail have advised us they are no longer accepting signatures for recorded delivery post. It may become increasingly difficult for them to deliver mail.
- Many of our panel members are coming to the end of their second term of office. It will be very difficult for us to recruit and train new panel members during the emergency, and individual panel members may have difficulties in participating in hearings. All this is likely to cause a severe shortage of panel members able to hear cases.
- We're acutely aware of the need to free up colleagues on our register from panel duties during the pandemic. We know they'll need to prioritise their work in the health and care system. This may mean we won't have enough registrant panel members to hear the urgent interim order cases and reviews of substantive orders we're prioritising now, and it may mean we'll find it difficult to run substantive hearings and registration appeal hearings later on in the year.

Our emergency rule changes at a glance

18. The draft rule changes, which we give detailed guidance on in the different sections below, will 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 (we currently need to use 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.¹
19. We won't always be using these powers (especially the powers on panel membership) in every case. We explain how we'll use the powers in the guidance below.

¹ This only applies to fitness to practise panels. Registration appeal panels must have three members with one registrant who is registered in the same part of the register as the appellant.

Notice of hearings and meetings

20. The majority of our staff are now 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.
21. We usually send the notice of hearing to the nurse, midwife or nursing associate by recorded delivery and provide the panel with a copy of the recorded delivery details. Where we have a confirmed email address for the nurse, midwife or nursing associate we'll send the notice of hearing by email instead.
22. We will 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:
 - 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
23. 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.²
24. 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.
25. 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.

Virtual hearings and meetings

Holding hearings and meetings using video conference facilities

26. To prioritise our fitness to practise work in a way that looks after our colleagues, keeps people safe and minimises burdens on busy nursing, midwifery and nursing associate professionals, we're no longer holding hearings at our hearing venues. Since Monday 23 March 2020, we've been holding hearings or meetings virtually, using audio or video conferencing. This is now clearly provided for in our

² We will continue to comply with our obligations under the data protection act and ensure that we send information by email securely.

rules.³ Before our rule changes took effect, we'd been doing this with the agreement of the nurse, midwife or nursing associate where possible.

Transparency in virtual hearings

27. Our hearings are normally held in public and would only go into private session where necessary.⁴ However, because we're using audio or video conferencing facilities, our virtual hearings won't be open to the public in the usual way. During this exceptional period our usual rules on public and private hearings won't apply.⁵ This means members of the public, including the people who referred their concerns to us and members of the press, won't be able to observe our hearings.
28. However, we still recognise that transparency is crucial to an effective fitness to practise process. When we hold hearings and meetings virtually, we'll continue to:
- arrange for records to be made of the fitness to practise hearings, from which we could produce transcripts if needed (but as before, the record won't cover the panel members' private discussions when they withdraw to make their decision)
 - publish details of any interim orders that affect the registration of a nurse, midwife or nursing associate on our website
 - publish the outcomes and reasons for substantive order reviews 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 transcripts of hearings to people who ask for them.

Protecting privacy during virtual hearings

29. Under the emergency legislation, virtual hearings aren't open to the public so the hearing won't need to go into 'private' at any point. However, as we're keeping a record of all virtual hearings the panel will need to consider whether parts of the hearing need to be marked as 'private' or 'confidential' for the purposes of any transcript that's produced.
30. When parts of a virtual hearing touch on someone's privacy or confidentiality, the panel will need to consider whether the record of the hearing needs to be marked as confidential. This is to ensure we do not disclose any private, sensitive or confidential matters discussed during a virtual hearing if we receive requests for transcripts of a virtual hearing.

³ During the emergency period, r2B of the Fitness to Practise Rules 2004 provides that hearings and meetings can be conducted using audio or video conferencing facilities.

⁴ Under rule 19(1) of the Fitness to Practise Rules.

⁵ Rule 19(5) of the Fitness to Practise Rules, as amended during the emergency period.

31. Some examples of when the panel may need to indicate that the record of the hearing should be marked as 'confidential' include:
 - when dealing with matters relating to the health of the nurse, midwife or nursing associate,
 - 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.⁶
32. Before making a decision, the panel should give the parties attending a virtual hearing the chance to make representations about marking the transcript as confidential, and then consider the advice of the legal assessor.
33. It remains the panel's responsibility to decide which information should form part of the public reasons document, and which information should stay private.⁷ Panels will need to follow existing guidance on written panel decisions when deciding matters at virtual hearings.

Engaging with virtual hearings and proceeding in absence

34. We hope that all nurses, midwives or nursing associates who want to engage with their 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.
35. If a nurse, midwife or nursing associate isn't able to or doesn't want to engage with a virtual hearing, then we are likely to apply to proceed in their absence, as we would anyway under normal circumstances.
36. You can find our guidance on proceeding in absence [here](#).
37. The context for applications to proceed on a virtual hearing during the emergency period when the nurse, midwife, or nursing associate is not present will be important for everyone involved to consider. In particular:
 - We have cancelled all our substantive hearings to focus on the cases that raise the most serious public protection concerns, and ones where restrictions could be lifted to allow professionals back into safe practice.
 - As always, we only make applications for new interim orders where this kind of restriction may be necessary, and this judgement will take into account the current emergency.

⁶ It may also be useful to consider paragraphs 25-27 of our Information Handling Guidance, paragraph 57 of our Publication Guidance, and our section of the FtP Library on hearings in public and private, as would normally be the case when confidential or sensitive information comes up during a hearing.

⁷ See also the guidance contained in our [publication guidance](#).

- In review cases, the level of risk may have lessened, based on the evidence the nurse, midwife or nursing associate has provided, and in the current emergency, considering whether restrictions could be lessened will be a key part of being able to return to practice to help with the extreme conditions in the health and care system.
- Equally, if the evidence suggests the nurse, midwife or nursing associate now presents more of a risk, the need to consider more restrictive orders will be informed by the likelihood that local resources to further manage people's practice may be highly stretched.

38. 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

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

Extending panel members' terms

40. 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 we won't be able to recruit and train new panel members to replace those whose second term of office is due to come to an end.
41. Our rule changes⁸ 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

42. Normally our panels are made up of three people, at least one of which must be a nurse or midwife ('a registrant') and at least one of which must be a person who isn't a nurse or midwife ('a lay person'). The Chair of the panel can either be a registrant member or a lay person.
43. Some of our registrant panel members may be required to provide front-line care given the anticipated pressure on health and social care as a result of the

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

pandemic. More generally panel members may be unavailable if they are unwell or caring for someone else who is unwell.

44. 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. We no longer need to have a registrant member on the panel. Panels must still have a lay person, and someone will need to chair.
45. Whilst we'll always aim to have three panellists including at least one registrant, this may not always be possible and we may have to proceed with two panellists or without a registrant panel member. This could happen in two circumstances: 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.
46. If we experience a general shortage of panel members, we'll give priority to having three panel members, with a registrant member, hearing applications for new interim orders and substantive order reviews.
47. 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.
48. 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).
49. 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.

Approved by Director of Fitness to Practise on 27 March 2020 and Head of Operations Registration and Revalidation on 30 March 2020

Effective from 31 March 2020