

## Registration Enforcement policy

- 1 It's a criminal offence for a person with intent to deceive (whether expressly or by implication) to:
  - 1.1. say that they're on the NMC Register, when they aren't<sup>1</sup>
  - 1.2. use a protected title to which they aren't entitled
  - 1.3. say falsely that they have qualifications in nursing<sup>2</sup> or midwifery.
- 2 Our overarching objective is to protect the public. One of our core functions is to ensure that high quality standards for nursing<sup>3</sup> and midwifery care are maintained. This forms part of how we keep people safe.
- 3 The protected titles concerned are 'Registered nurse', 'Midwife', 'Nursing associate' and 'Specialist community public health nurse'. 'Nurse' is not a title protected in law.
- 4 There's also a protected legal function associated with midwifery and it's a criminal offence to attend a woman<sup>4</sup> in childbirth unless someone falls within those permitted to do so in Article 45 of the [Nursing and Midwifery Order 2001](#). Please see paragraphs 20-22 for more information.
- 5 Practising without registration is also considered to be a very serious matter. Nurses, midwives and nursing associates are responsible for ensuring that they maintain their registration and should be familiar with and adhere to [The Code](#) which contains the professional standards of practice and behaviour. They must also ensure that the contact details that we hold in relation to them are up to date. Practising without registration may also have impact upon the validity of professional indemnity arrangements, which can have serious consequences for people affected by poor care<sup>5</sup>.

### What does this document do?

- 6 This policy sets out what factors we'll consider in cases where a nurse, midwife or nursing associate has worked without registration or used a protected title which they aren't entitled to use and what actions we may take.
- 7 This policy is part of our commitment to being open and transparent, and to ensure we are fair and consistent in our approach.

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<sup>1</sup> This includes when someone falsely says they have a specific entry in the register such as a prescribing qualification.

<sup>2</sup> Nursing includes those holding nursing associate qualifications

<sup>3</sup> Nursing includes those holding nursing associate qualifications

<sup>4</sup> For the purpose of this policy, the words 'woman' and 'women' includes girls. It also includes people whose gender identity doesn't correspond with their birth sex or who may have a non-binary identity.

<sup>5</sup> Our professional indemnity policy can be found here:

[www.nmc.org.uk/globalassets/sitedocuments/registration/pii/pii-final-guidance.pdf](http://www.nmc.org.uk/globalassets/sitedocuments/registration/pii/pii-final-guidance.pdf)

## Who is this document for?

- 8 This policy is for the following people.
  - 8.1. People who may be affected or concerned by the behaviour of a nurse, midwife or nursing associate who has worked without registration or used a title which they don't have the right to use This includes members of the public who have used the services<sup>6</sup> of someone they had been led to believe was a nurse, midwife, or nursing associate when they aren't, as well as employers who employ someone in a role which requires registration, believing them to be registered with us when in fact they aren't.
  - 8.2. Individuals previously on our register who work without registration.
  - 8.3. Individuals previously on our register who use a protected title which they aren't entitled to use.
- 9 This policy explains to both groups what action they can expect from us. This will include members of the public, employers and individuals who may be under investigation.
- 10 We're committed to ensuring our policies and guidance documents are inclusive and accessible to everyone. You can visit our [equality, diversity and inclusion page](#) for more information on our reasonable adjustments policy.
- 11 If you'd like to receive this guidance in an alternative format, then please contact the equality, diversity and inclusion team at [equality@nmc-uk.org](mailto:equality@nmc-uk.org) or call 0207 681 5266/5053.

## What sort of cases does this policy cover?

- 12 This policy applies to those who hold the appropriate qualifications in nursing and midwifery and may have been previously registered with the NMC, but have worked as nurses, midwives or nursing associates when they haven't maintained their registration.
- 13 This policy will most commonly apply to someone who applies to rejoin the register after working for a period in a nursing or midwifery role when not registered.
- 14 This policy will also explain what action we may take when someone is not looking to return to the register (whether previously registered or holding approved qualifications), but we've been made aware of concerns that they've worked without registration or used a title which they don't have the right to use. We've provided some examples below in order to demonstrate the types of cases this may include.
- 15 This policy also covers those who have been removed or suspended from the register following a final decision by a fitness to practise panel.
- 16 This policy doesn't apply to cases where we have other specific powers to deal with concerns. For example, the policy doesn't cover cases where there has been

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<sup>6</sup> Including in-person and remote services.

[a fraudulent or incorrect entry onto the register](#), or cases when someone is subject to an interim suspension order but works in breach of that order.

- 17 This policy doesn't apply to those who have never been registered with us and don't hold appropriate qualifications in nursing<sup>7</sup> or midwifery. These cases are covered in our [Prosecution Enforcement policy](#).

### Examples of situations covered in this policy<sup>8</sup>

#### Example 1

A nurse doesn't update their details with us. They forget to pay their registration fee in time and so automatically lapse from the register, but don't receive the letter that tells them they're no longer registered as they didn't update their details when they changed address. As a consequence of this the nurse works without registration for 35 days until their agency identifies the issue through their Human Resources system.

The nurse makes an application for readmission and as part of this they explain the circumstances of what happened and the steps they'll take to ensure it doesn't occur again in the future. On this occasion the Assistant Registrar determines that the nurse meets the character requirements for registration and accepts the application for readmission. The nurse updates her details online and adds her payment dates to her calendar to ensure this doesn't happen again.

#### Example 2

A nursing associate is aware that their registration lapsed three months ago. However as they work long shifts they haven't had a chance to organise completing a readmission application. This is identified when the employer undertakes an audit and the nursing associate admits they knew they were lapsed but have been too busy to sort it out.

The nursing associate makes an application for readmission but doesn't demonstrate that they recognise the seriousness of their actions in this application. On this occasion the Assistant Registrar determines that the nursing associate doesn't meet the character requirements for registration and refuses the application for readmission.

The nursing associate considers the reasons given for the Assistant Registrar's decision, reads the Code and reflects on their actions. The nursing associate makes a further application for readmission and within this demonstrates remorse and insight into their actions. They also explain the steps they'll take to ensure that they don't repeat these actions. On this occasion the Assistant Registrar determines that the nursing associate meets the character requirements for registration and accepts the application for readmission.

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<sup>7</sup> Nursing includes those holding nursing associate qualifications.

<sup>8</sup> Examples provided are not drawn from any particular trends or concerns.

### **Example 3**

A registered midwife works in the cosmetic industry administering anti-wrinkle treatments. This is a role which doesn't require NMC registration, however the individual is advertising their business on the basis that they are a registered nurse. The individual also undertakes some agency work as a nurse in order to earn some additional money, but is only registered as a midwife with the NMC. We hold no record of any nursing qualifications in relation to this individual.

The NMC writes to the midwife raising concerns regarding their work both in relation to their cosmetic work and agency work. The NMC explains that if no response is received, a fitness to practise investigation will be pursued and the midwife will be reported to the police. The midwife doesn't respond. A fitness to practise investigation is opened and the individual is reported to the police.

### **When will we consider these cases?**

- 18 We may become aware of these cases from a number of sources such as employers, other healthcare professionals, the police, members of the public, another regulatory body or through the individual themselves in an application for readmission to our register.
- 19 We'll consider cases when someone has worked without registration outside the UK if registration was a requirement and they are applying to join our register as a nurse, midwife or nursing associate. If the individual isn't applying to join our register, we'll refer it to the appropriate body. That may be outside the UK.

### **What is a protected title and a protected function?**

#### **Protected title**

- 20 Only those recorded on our register as holding an approved qualification in nursing or midwifery may use the protected title of 'registered nurse', 'midwife' 'nursing associate' or 'specialist community public health nurse'. It's an offence<sup>9</sup> when someone with intent to deceive (whether expressly or by implication):
  - 20.1 falsely represents themselves to be on our register, or a particular part of it, or to be the subject of any entry in the register
  - 20.2 uses a protected title to which they aren't entitled<sup>10</sup>

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<sup>9</sup> Under Article 44 of the Nursing and Midwifery Order 2001 ('the Order')

<sup>10</sup> Titles listed in article 6(2) of the NMC Order 2001

- 20.3 falsely represents themselves to have qualifications in nursing or midwifery, or a qualification as a nursing associate in England<sup>11</sup>.

### **Protected midwifery function**

- 21 There's also a protected legal function associated with midwifery.<sup>12</sup> Only the following people may attend a woman in childbirth.

21.1 A midwife

21.2 A registered medical practitioner

21.3 A student undergoing training with a view to becoming a midwife or a medical practitioner, as part of an approved course of practical instruction

- 22 The exception to this is in a case of 'sudden or urgent necessity'.

### **What factors will we take into account?**

- 23 When we introduced [revalidation](#) in 2016 we made clear the process which nurses, midwives and nursing associates need to follow in order to stay on the register. Revalidation promotes good practice, continuous professional development, and helps to strengthen public confidence in the professions.

- 24 Since revalidation was introduced we've improved our communications and nurses, midwives and nursing associates have received clear information about the importance of maintaining their registration and the process they need to follow. If the conduct under consideration occurred prior to the introduction of revalidation we're less likely to take action as we recognise our communication could have been clearer.

- 25 When we're concerned that an individual is working without registration or is using a protected title inappropriately, we'll investigate the case and take appropriate action.

- 26 Each case will be considered by the Assistant Registrar on its own merits. When considering the facts of a case the Assistant Registrar will differentiate between a genuine mistake or misunderstanding, recklessness and an intentional act, as this affects seriousness and whether an offence under Article 44 could be proved. This is especially important as in order to prove an offence under Article 44 there has to be evidence of an intent to deceive. Once we've defined whether the case concerns a genuine mistake or misunderstanding, recklessness or an intentional act, we'll determine the most appropriate enforcement action.

- 27 The Assistant Registrar will consider the following factors when determining what action to take.

27.1 How long ago the conduct took place or if it is still taking place

27.2 Whether it was an isolated incident

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<sup>11</sup> Cases considering this part of the offence are covered by our prosecution enforcement policy.

<sup>12</sup> Set out in Article 45 of the Order

- 27.3 The individual's reflection and insight about the conduct and obligations as a registered nurse, midwife or nursing associate
  - 27.4 Any personal mitigation
  - 27.5 Any explanation offered for the conduct having occurred including whether this was due to a health concern
  - 27.6 The length of time the individual worked without registration
  - 27.7 Whether anything serious happened during the period they worked without registration (this would include harm to pregnant women)
  - 27.8 The nature of the tasks which the individual undertook (if applicable) while working without registration
  - 27.9 Whether it was clear registration was required for the role the individual undertook
  - 27.10 Whether it's likely the conduct will occur again
- 28 The longer the conduct takes place the less likely it is that the Assistant Registrar will find that the conduct was a genuine mistake or misunderstanding. However, there's no set time period which will determine whether the case is considered to involve a genuine mistake or misunderstanding, recklessness or an intentional act.
- 29 Where there's evidence of an intention to work without registration these cases will be viewed more seriously than those which are decided to be due to a genuine mistake or misunderstanding.
- 30 To determine if the individual's conduct was reckless the Assistant Registrar will consider all the information and evidence received by the NMC. In cases where the individual has worked without registration or used a protected title more than once it's more likely that the Assistant Registrar will decide that their conduct was reckless or intentional. Some examples of the type of cases this may include are outlined below.

### **Example 1**

We receive an enquiry from an employer regarding information on a former employee's website which gave the impression they were on our register despite retiring two years earlier.

We write to the former registered nurse who updates the wording on the website to reflect the true position regarding their registration status.

Six months later, we receive another enquiry from a member of the public regarding the website. The former nurse has reverted back to the original wording stating they are a 'registered nurse'.

The Assistant Registrar concludes that this is a deliberate act which the former nurse is repeating. The matter is therefore referred to the police.

### **Example 2**

An individual's registration as a midwife lapsed in 2015, but they continued working as a midwife for six weeks without registration. In April 2016, the individual applied for readmission onto the register and was successful.

This individual failed to revalidate in April 2019 and lapsed again. They apply for readmission onto the register. In the meantime, they started working in a role as a midwife in July 2019. The individual continues to work as a midwife for two months without being registered with us.

The Assistant Registrar refuses the individual's application for readmission. The Assistant Registrar isn't satisfied the applicant is of sufficient good character due to repeated incidents of working without registration.

- 31 We'll always ask the individual to respond to the concern raised and to provide any information they feel is relevant for the Assistant Registrar to consider. They don't have to provide any information, but their response and any reflection on the events can help us to understand the context in which the concerns came about.
- 32 The final decision will be based on all the information we've received about the conduct, including any information from the individual under consideration. We may need to make our own inquiries to ensure we have sufficient information to make a decision. This may include further information from the complainant, or comments from the employer of the individual concerned.

- 33 The Assistant Registrar will assess the evidence and then decide what enforcement action to take. This may include taking no action if the Assistant Registrar doesn't feel action is necessary to promote and uphold high professional standards, protect the public and maintain public confidence in the nursing and midwifery professions.

### **What action will we take?**

- 34 We intend to strike the right balance between maintaining public confidence in the professions we regulate, protecting the public, and the proportionate use of resources. We do that by considering all the circumstances of the case and the options available to us as a regulator before taking enforcement action, for example, bringing a private prosecution.
- 35 We're funded by the registration fees of nurses, midwives and nursing associates. Therefore any enforcement action must be informed by the following principles.
- 35.1 The principle of proportionality in applying the law and ensuring our enforcement action is appropriate
  - 35.2 Consistency of approach
  - 35.3 Transparency about how we operate and what those being investigated for criminal offences can expect
  - 35.4 Fairness
- 36 We'll take one or more of the following actions after the Assistant Registrar has considered all the information and evidence provided.
- 36.1 No action
  - 36.2 Refuse an application for readmission to the register (if such an application is made)
  - 36.3 Send a letter to the individual asking them to stop the conduct concerned within a specified time and warning of the consequences of not doing so
  - 36.4 Open a fitness to practise investigation (if the individual is on one of our registers)
  - 36.5 Refer the case to the police or another appropriate body<sup>13</sup> if there is information to indicate any criminal offences (including Article 44 or Article 45 offences)
- 37 In cases where the individual has professionally reflected on the issues raised and there's evidence of a commitment not to repeat the conduct, we may decide that no action is necessary. In all cases, we'll also need to assess whether the nature of the case is so serious that we may need to take action to promote and maintain public confidence in nurses, midwives and nursing associates generally.

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<sup>13</sup> This may include other regulatory bodies where issues are raised about professions not regulated by the NMC.

- 38 We know that individuals may be working without registration or using a protected title inappropriately without intending to do so. When that happens, sending a letter highlighting the concern will usually result in an appropriate outcome. If the conduct ceases no further action is likely to be necessary.
- 39 If there's evidence of other criminal offences not covered in this policy, we'll refer the entire case to the police in line with our [prosecution policy](#).
- 40 We want to encourage nurses, midwives and nursing associates to learn from mistakes. We'd only consider referring the case to the police where there's evidence of serious harm or where the conduct continues despite us asking the individual to stop.

### Concerns or complaints

- 41 If you're a nurse, midwife, or nursing associate affected by this policy and need further advice, you can also speak to your Trade Union Representative.
- 42 If you become aware of a concern, please send it to [RegistrationInvestigations@nmc-uk.org](mailto:RegistrationInvestigations@nmc-uk.org)
- 43 We believe that in the most serious cases, where there's evidence of a criminal offence, the most appropriate action is to refer the matter to the police.
- 44 There can only be a successful prosecution when there's evidence of an intention to deceive.
- 45 We'll support the police by providing information in line with our [registration information handling guidance](#). The RIU will be responsible for sharing the information and logging the cases. The RIU will work with the NMC's Information and Data team to make sure information is shared in accordance with data protection legislation.
- 46 We'll also respond to any police enquiries to ensure that all the issues identified are properly considered.
- 47 The Crown Prosecution Service covers England & Wales, the Crown Office & Procurator Fiscal Service covers Scotland, and the Public Prosecution Service covers Northern Ireland.
- 48 If the police decide to take no further action and you're unhappy with a decision not to start or to stop a prosecution, you may be able to ask for it to be reviewed through the [Victims' Right to Review](#) scheme in England and Wales. Or you may request that the decision be reviewed by the [Crown Office and Procurator Fiscal Service](#) in Scotland or the [Public Prosecution Service](#) in Northern Ireland.
- 49 In exceptional cases where the police or prosecuting authority decide not to prosecute, we may support you to seek a review of that decision and with the absolute discretion of the Council consider whether we wish to take any further enforcement action.

### **If I report a concern will my identity be disclosed to the individual?**

- 50 We may need to disclose where the complaint came from, either to the individual or to a third party such as the police.
- 51 We'll aim to protect your anonymity if you don't wish for us to disclose this information. However, this may limit the ability for enforcement action to be taken. For example, if you don't wish for us to disclose your identity to the police as the person who raised the concern they may be unable to take forward any investigation.
- 52 We'd also refer you to our [Privacy Notice](#) and our [Fitness to Practise information handling guidance](#) which set out the circumstances when we may share your identity with the individual and/or third parties.

Date: March 2022