

# Character and health decision-making guidance

## Introduction

### Role and status of the guidance

- 1 This guidance has been developed by the Nursing and Midwifery Council (NMC) for use by the Registrar and registration appeal panels when considering the character and health of applicants for admission, readmission and renewal (or revalidation) of registration. It will also provide the public with information regarding the decisions that we make regarding registration.

### Aims of the guidance

- 2 The aims of the character and health decision-making guidance are as follows.
  - 2.1 To ensure that relevant factors are considered and irrelevant ones are not considered when assessing whether applicants to the register are of sufficient character and health to be capable of safe and effective practice.
  - 2.2 To ensure that decisions about admission to the register are consistent and made with reference to objective criteria.
  - 2.3 To ensure fairness and transparency in the decision-making process.

### Legislative framework for character and health requirements

- 3 The main objective of the NMC in exercising its functions shall be to safeguard the health and wellbeing of persons using or needing the services of registrants.<sup>1</sup>
- 4 The overarching objective of the NMC in exercising its functions is the protection of the public.
- 5 This in turn involves the pursuit of the following objectives:
  - 5.1 protecting, promoting and maintaining the health, safety and wellbeing of the public;
  - 5.2 promoting and maintaining public confidence in the professions; and
  - 5.3 promoting and maintaining proper professional standards and conduct for members of those professions.<sup>2</sup>
- 6 In order to meet our overarching objective, we maintain a register of nurses and midwives. We set standards of education, training, conduct and performance for

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<sup>1</sup> Article 3(4) of the Nursing and Midwifery Order 2001 (“The Order”)

<sup>2</sup> Proposed amendments to the Order by the Health and Social Care (Safety and Quality) Act 2015

nurses and midwives and ensure the maintenance of those standards.<sup>3</sup> Only those nurses and midwives who meet the standards are eligible to be registered to practise as nurses and midwives.<sup>4</sup> In discharging our statutory role of establishing standards of education, training, conduct and performance we publish various standards and guidance, including: *The Code: Professional standards of practice and behaviour for nurses and midwives* (NMC, 2015) (“The Code”). The current standards and guidance can be found on our website at [www.nmc.org.uk](http://www.nmc.org.uk).

- 7 It is a fundamental requirement for a nurse or midwife to be of sufficient character and health to be capable of safe and effective practice.<sup>5</sup> This means practice without restriction.
- 8 In order to be admitted or readmitted onto the register, or to renew registration, applicants must satisfy the Registrar that their character and health are sufficient to be capable of safe and effective practice as a nurse or midwife.<sup>6</sup>
- 9 On application for admission or readmission to the register or renewal of registration, applicants are required to declare that they are of “good character and good health”. This declaration must be supported by submitting the evidence outlined in rule 6 of the Registration Rules.<sup>7</sup>
- 10 The Registrar can request any further information and consider any further matters which appear to them to be relevant.<sup>8</sup>
- 11 The Code sets the standards of character and health expected of a registered nurse or midwife. The Code contains a series of statements that, taken together, signify what good nursing and midwifery practice looks like. On applying to join the register and on applying to renew registration, nurses and midwives commit to upholding these standards. This commitment to standards is fundamental to being part of a profession.<sup>9</sup> Applicants seeking admission and readmission to the register or renewal of registration must display a commitment to all standards contained in the Code, including:

Standard 20: Uphold the reputation of your profession at all times

To achieve this, you must:

keep to and uphold the standards and values set out in the Code (20.1)

act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment (20.2)

be aware at all times of how your behaviour can affect and influence the behaviour of other people (20.3)

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<sup>3</sup> Article 3(2) Nursing and Midwifery Order 2001

<sup>4</sup> *The Code: Professional standards of practice and behaviour for nurses and midwives* (NMC, 2015)

<sup>5</sup> Article 5(2)(b) of the Order. This means that an applicant is capable of safe and effective practice without restriction on practice.

<sup>6</sup> Article 9(2)(b) of the Order

<sup>7</sup> Rule 5(1)(a) and Rule 6 of the Registration Rules.

<sup>8</sup> Rule 5(b) and Rule 6(5) of the Registration Rules

<sup>9</sup> *The Code: Professional standards of practice and behaviour for nurses and midwives* (NMC, 2015)

keep to the laws of the country in which you are practising (20.4)

maintain the level of health you need to carry out your professional role (20.9)

- 12 As a public body, we comply with the requirements of the Equality Act 2010 including the public sector equality duty.<sup>10</sup> This duty means that all those with protected characteristics are protected from unlawful discrimination. In complying with the public sector equality duty, we have due regard to three main aims:
  - 12.1 eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;
  - 12.2 advancing equality of opportunity between people who share a relevant protected characteristic and people who do not share it; and
  - 12.3 fostering good relations between people who share a relevant protected characteristic and persons who do not share it.
- 13 Application processes for registration or renewal of registration are open to all who meet the standards of education, training, conduct and performance that are applicable to the profession.

## Character requirements

- 14 Each applicant seeking admission to the register or to renew registration, whether or not they have been registered before, is required to declare any pending charges, convictions, police cautions and determinations made by other regulatory bodies. Matters that will affect whether the applicant is regarded as being of sufficient character include:
  - 14.1 convictions and/or cautions;<sup>11</sup>
  - 14.2 pending charges;<sup>12</sup>
  - 14.3 conduct that would breach the requirements of the Code, whether or not it has resulted in criminal proceedings; and
  - 14.4 adverse determinations made by other regulators, professional bodies and educational establishments including findings of impaired fitness to practise.<sup>13</sup>
- 15 Each application is considered on a case-by-case basis, taking into account all the relevant circumstances relating to the conduct and the applicant.
- 16 Applicants will only be admitted onto the register if they satisfy the Registrar that they are capable of safe and effective practice.<sup>14</sup>

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<sup>10</sup> In Northern Ireland we comply with the requirements of the Disability Discrimination Act 1995.

<sup>11</sup> Rule 6(6)(c) of the Registration Rules

<sup>12</sup> Rule 6(6)(e) Registration Rules

<sup>13</sup> Rule 6(6)(d) and (e) of the Registration Rules

<sup>14</sup> Article 9(2)(b) of the Order

- 17 It is for applicants to provide sufficient evidence to satisfy the Registrar that they are capable of safe and effective practice.
- 18 Applicants are under an obligation to notify us of any pending charges, convictions and/or cautions. The obligation to notify applies regardless of whether or not the convictions or cautions are regarded as spent according to the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978.<sup>15</sup>
- 19 Applicants are not obliged to declare protected convictions and/or cautions under the Rehabilitation of Offenders Act 1974.<sup>16</sup> The definition of protected convictions and cautions is contained in our guidance on informing us of cautions and convictions.

## **Guidance on assessing character for decision-makers**

### **General principles**

- 20 The decision should be taken with regard to our overarching public protection objective, and also take account of our supporting objectives to:
  - 20.1 protect, promote and maintain the health, safety and wellbeing of the public;
  - 20.2 promote and maintain public confidence in the professions; and
  - 20.3 promote and maintain proper professional standards and conduct for members of those professions.
- 21 The test of whether an applicant is of sufficient character to be admitted to the register is a high one.
- 22 The decision on whether an applicant is of sufficient character will be made fairly<sup>17</sup>

### **Considerations for the decision maker**

*The nature and seriousness of the case – especially as it relates to registration considerations (protection of the public, maintenance of professional standards and maintaining public confidence in the profession).*

- 23 There will be a presumption against admission or readmission to the register or renewal of registration if the applicant has been involved in any of the following:
  - 23.1 serious sexual misconduct (including child pornography);
  - 23.2 conduct involving dishonesty, fraud or deception;

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<sup>15</sup> Rehabilitation of Offenders Act (Exceptions) Order 1975 Article 3  
Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013  
Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979

<sup>16</sup> Rehabilitation of Offenders Act 1974 section 5  
Rehabilitation of Offenders Act 1974 (Exceptions) Order Article 2A

<sup>17</sup> These factors apply equally to conduct that has resulted in a conviction/caution, conduct that has resulted in an adverse finding by a regulatory or disciplinary body and conduct that is investigated by the NMC that has not resulted in a conviction/caution or an adverse finding by a regulatory body.

- 23.3 conduct involving serious violence or threats of serious violence;
- 23.4 conduct involving doing harm or behaving in such a way that could foreseeably risk harm coming to children or vulnerable adults;
- 23.5 conduct involving hostility to others based on their race or ethnicity, religion, sexual orientation, gender identity or disability;
- 23.6 conduct involving a breach of trust and/or abuse of position;
- 23.7 conduct that involves doing serious harm to others or behaving in such a way that could foreseeably risk serious harm coming to others;
- 23.8 conduct involving a serious departure from professional standards;
- 23.9 conduct involving a deliberate or reckless disregard for regulatory obligations;
- 23.10 conduct that has led to a conviction that will never be regarded as spent according to the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978;<sup>18</sup>
- 23.11 conduct that has led or would lead to an entry on any barred list;<sup>19</sup> or
- 23.12 being currently subject to a court order made for public protection, including but not limited to:
  - 23.12.1 Sexual Offences Prevention Order
  - 23.12.2 Sex Offenders Register
  - 23.12.3 Prevention of Sexual Harm Order

24 Factors that are unlikely to affect an application include the following:

- 24.1 a conviction for a motoring offence that resulted in a fixed penalty notice;
- 24.2 a conviction for a motoring offence which resulted in a disqualification from driving for 12 months or less with no aggravating factors (as listed above) or health concerns; and
- 24.3 a conviction or caution that is a protected conviction or caution in accordance with the Rehabilitation of Offenders Act 1974 will not affect an application.<sup>20</sup>

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<sup>18</sup> Rehabilitation of Offenders Act 1974.

<sup>19</sup> Safeguarding Vulnerable Groups Act 2006

- Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 (SI. 2009 No. 37) (as amended);
- Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) Regulations (Northern Ireland) 2009 (SR. 2009 No. 39) (as amended)

<sup>20</sup> Rehabilitation of Offenders Act 1974

*The applicant's part in the conduct or offence*

25 Factors to take into account include:

- 25.1 the age of the applicant when the conduct took place;
- 25.2 how long ago the conduct took place;
- 25.3 whether it was an isolated incident;
- 25.4 whether there has there been more than one incident;
- 25.5 whether the incident or incidents were linked to nursing practice or employment; and
- 25.6 whether the applicant's use of drugs or alcohol was a factor in the conduct. (If alcohol and/or drugs are a factor in the conduct then the Registrar may require medical evidence to be provided.)

*Whether the conduct was disclosed by the applicant to their employer, educational establishment and/or regulator<sup>21</sup>*

26 Factors to consider:

- 26.1 Has the applicant misled or attempted to mislead the Registrar about the conduct?
- 26.2 Has the applicant misled or attempted to mislead his/her employer and/or educational establishment about the conduct?

*What the applicant says about the conduct*

27 Factors to take into account, balancing the weight given to the following factors against the overriding objective, include:

- 27.1 reflection and insight about the conduct and obligations under the Code;
- 27.2 personal mitigation; and
- 27.3 any explanation offered for the conduct having occurred.

*Evidence relating to conduct and character following the conduct being assessed*

28 Factors to take into account include:

- 28.1 evidence of employment (paid or unpaid) relevant to the conduct;
- 28.2 training courses that are relevant to the conduct; and
- 28.3 any other information about how time has been spent between the conduct and the application.

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<sup>21</sup> The Code: para 23.2

## *Testimonials and references*

- 29 Factors to take into account include:
- 29.1 whether the author has demonstrated that they are aware of the conduct;
  - 29.2 whether the author is qualified to comment on the conduct;
  - 29.3 whether the testimonial or reference is relevant to the conduct;
  - 29.4 the purpose for which the testimonial or reference was written;
  - 29.5 whether it is signed by the author; and
  - 29.6 whether it is on headed paper where appropriate.

## **Health requirements**

- 30 Article 9(2)(b) of the NMC Order states that applicants to the register must satisfy the Registrar that they are of sufficiently good health to be capable of safe and effective practice.<sup>22</sup> “Good health” means that the applicant is capable of safe and effective practice either with or without reasonable adjustments. It does not mean the absence of a health condition or disability.
- 31 On application for admission or readmission to the register or renewal of registration the applicant is required to make a declaration that they are of “good health and good character”.<sup>23</sup>
- 32 In order to satisfy the Registrar that they are of sufficient health the applicant may be required to provide further information to the Registrar for review.<sup>24</sup>
- 33 The Registrar can require any further information and take into account any other matters that the Registrar regards as relevant.<sup>25</sup>
- 34 We do not assume that the presence of a health condition or a disability alone renders an applicant incapable of safe and effective practice. All applications to join the register where a health condition or disability is disclosed are treated on a case-by-case basis. Decisions are based on the applicant’s ability to practise safely and effectively. We do not make decisions on registration based solely on the nature of the health condition or disability, but based on evidence about the management of the health condition or disability so as to ensure safe and effective practice.
- 35 There are some health conditions that may mean that employment is restricted – for example, blood-borne viruses or a condition such as tuberculosis. This type of condition does not in itself mean that the applicant will not be admitted to the register even though it may mean that employment in certain areas is restricted.

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<sup>22</sup> Articles 9(2)(b) and 5(2)(b) of the Order

<sup>23</sup> Article 5(2)(b) of the Order and Rule 6 of the Registration Rules

<sup>24</sup> Rule 6(1)(e) and Rule (6)(5) of the Registration Rules

<sup>25</sup> Rule 6(5) Registration Rules

- 36 The decision on whether an application meets the test of being of “good health” will be made fairly and on a reasoned basis.

## **Guidance on assessing health for decision-makers**

### **General principles**

- 37 Consideration will be given to any case that involves a health condition or disability that could affect the ability of the applicant to meet the standards required of registered nurses and midwives. The relevant consideration for the Registrar is whether an applicant with a health condition or disability is able to manage that condition so as to be capable of safe and effective practice without restriction.
- 38 The Registrar, prior to considering an application that discloses a disability or health condition, may require further information. This could be a reference from a GP or occupational health department, a medical testing report if drugs or alcohol are a factor and/or a further medical report.<sup>26</sup>

### **Factors to be considered when assessing health**

#### *The nature of the condition or disability*

- 39 Factors to take into account include:
- 39.1 whether it is a recurring or relapsing condition
  - 39.2 whether the health condition is one which could affect the applicant’s judgment or performance; and
  - 39.3 whether the health condition is one which could pose a risk to the public.

#### *Time considerations*

- 40 Factors to take into account include:
- 40.1 the date of the diagnosis;
  - 40.2 any action taken by the applicant since the diagnosis was received; and
  - 40.3 the length of time that the health condition has been in remission, if applicable.

#### *Treatment/management of the condition*

- 41 Factors to take into account include:
- 41.1 the treatment and/or management advised for the condition;
  - 41.2 the level of insight the applicant has into the condition and/or disability;

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<sup>26</sup> Rule 6(5) Registration Rules



- 41.3 evidence that the applicant has proactively disclosed the condition and/or disability and sought support/treatment;
- 41.4 whether the applicant's employers are aware of the condition and the management of it;
- 41.5 recent evidence from the applicant regarding the effective management of the condition;
- 41.6 a report from a GP, medical practitioner or occupational health department regarding the diagnosis and/or management of the condition as it relates to the capability of the applicant for safe and effective practice; and
- 41.7 whether the health condition has led to criminal activity or conduct falling below the standard expected of a nurse or midwife.

The consideration of these principles and factors on a case-by-case basis will lead to an evidence and risk-based decision on whether the Registrar is satisfied that the applicant is capable of safe and effective practice.

This guidance was approved in October 2015.