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Hearing fitness to practise allegations together

Reference: CMT-1 Last Updated: 12/10/2018

In this guide

Overview

After case examiners have decided that there is a case to answer and referred the case or cases to the Fitness to Practise Committee, there are some circumstances where it is appropriate to deal with more than one allegation at the same hearing.

This could be where more than one case about a nurse or midwife has been referred to us, or where two or more nurses or midwives are facing allegations about the same or a connected incident.

Allegations against more than one nurse or midwife

A panel of the Fitness to Practise Committee ('panel') may consider an allegation against two or more nurses or midwives at the same hearing where the allegations arise out of the same circumstances, or where it decides a joint hearing is necessary.

Before making a decision the panel must consider the advice of the legal assessor. The panel cannot hear allegations together if a joint hearing would make the proceedings unfair.[1]

Different allegations against the same nurse or midwife

If we receive more than one referral for a nurse or midwife at the same time, and the referrals relate to different allegations of impaired fitness to practise, we will investigate the allegations and manage the matter as one case.

If we do not receive the referrals at the same time, we may have opened two or more cases against the same nurse or midwife. In this instance we will we will consider whether it is better to deal with the cases together, which may depend on where in the process each case is.

If allegations relate to a criminal caution or conviction, this must be heard **after** any allegation of misconduct has been decided[2], unless the matter requires the panel to hear evidence about the conviction/caution to understand the misconduct.

For instance, a misconduct allegation that the nurse or midwife failed to disclose a conviction to their employer. The panel may also hear evidence about a conviction where it is relevant and fair to include it as evidence of fact or bad character.

New allegations

Sometimes a new allegation is made against a nurse or midwife that is similar to, or founded on the same facts, as an allegation we have already received. If this happens, both allegations can be considered at the same hearing if the original allegation has not yet been heard.[3]

In these cases, we will tell the nurse or midwife about the new allegation and our intention to deal with them at the same hearing. We will give them the opportunity to respond within 28 days, or a different timeframe we agree.[4]

How do we make the decision to join allegations?

Considering allegations together allows us to be a more effective regulator because allows panels to consider the wider context of allegations.

Holding only one hearing or meeting reduces the time cases take, and helps witnesses by not requiring them to attend multiple hearings.

However, in making the decision, we'll always consider any risk of unfairness that may arise from hearing allegations together.

If we consider that allegations need to be dealt with together, we'll tell the nurses or midwives, and give them the chance to object to the allegations being dealt with together.

Where we want to join together allegations against more than one nurse or midwife, we will give them information about the other person's case, such as the charge and a list of witness statements or exhibits. This is to help them understand why we say the allegations should be heard together.

If nobody objects to us joining the cases, we'll join them, and arrange a joint hearing. If one of the nurses or midwives does tell us they don't want their case joined with another case we'll arrange for a preliminary meeting so that a Chair can make the final decision on whether the matters should be joined.

The joint hearing

In a case where allegations against two or more nurses or midwives are to be heard at the same hearing, we'll consider what material we've received from one nurse or midwife needs to be disclosed to the other, applying our test for disclosure of unused material.

Panels should manage cases in a way that is fair for everyone.[5] Bearing that in mind, panels should consider how any risk of unfairness can be managed in a hearing.

For example, joining cases may lead to a hearing becoming unduly long and complicated, which may affect the nurse or midwife's ability to attend, or be represented throughout the hearing.

Panels should consider the evidence against each nurse or midwife separately, even though the cases may be heard together. If a panel hears evidence about one nurse or midwife that is inadmissible and prejudicial against the other, it will exercise its judgment as a professional panel and disregard any irrelevant material.

It will decide the case fairly on the evidence before it, having been advised by the legal assessor of the proper legal approach.[6] In rare circumstances it may not be possible to disregard the irrelevant material, due to the exceptionally prejudicial nature of it, in which case the panel should consider whether it's appropriate to continue.[7]

New allegations about a nurse or midwife already subject to a fitness to practise sanction

We may receive a referral of a new allegation while a nurse or midwife is subject to a substantive order (other than a striking off order). If this happens we'll use our guidance to decide whether a panel should be made aware of the new allegation, as part of the review of the substantive order, or whether we should treat the information as a new referral.

1 Rule 29(1) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules')
2 Rule 29(2) of the Rules
3 Rule 29(3) of the Rules

4 Rule 29(4) of the Rules
5 R (O'Brien) v General Medical Council [2006] EWHC 51 (Admin)
6 R (on the application of Mahfouz) v General Medical Council [2004] EWCA Civ 233, White and Turner v Nursing and Midwifery Council [2014] EWHC 520 (Admin)
7 See paragraph 28 of R (on the application of Mahfouz) v General Medical Council [2004] EWCA Civ 233

Telephone conferences

Reference: CMT-2 Last Updated: 28/07/2017

Where the nurse or midwife is represented we will consider whether to arrange a telephone conference with the representative to discuss the proposed hearing bundle and resolve any legal difficulties.

We will provide a copy of our hearing bundle to the representative and arrange a time for the conference approximately five to six weeks before the hearing. The telephone conference may cover the following areas:

- the content of hearing bundle
- which witnesses are required
- issues in dispute
- hearing length.

After the telephone conference and once a final version of the hearing bundle has been agreed with the representative, we will send it to the panel in advance of the hearing. This has the benefit of reducing the time during the hearing that the panel needs to read the papers.

We understand that long hearings can be difficult for parties to attend, so by narrowing down which issues are in dispute, reducing which witnesses are required and having the panel read the papers in advance, we can reduce the length of the hearing and avoid inconvenience to parties that are not required to attend.

If any issues cannot be resolved at the telephone conference, we may also consider whether to arrange for a preliminary meeting to assist with the smooth running of a hearing.

Preliminary meetings

Reference: CMT-3 Last Updated: 12/10/2018

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What are preliminary meetings?

Preliminary meetings are an important case management tool which allow both us, and the nurse or midwife to raise and resolve issues in advance of a full hearing.

This means we can try to avoid delays to the case being finally resolved. We also use preliminary meetings to apply to cancel a hearing.[1]

When do preliminary meetings take place?

We can arrange preliminary meetings, the nurse or midwife can also ask for them, but they can only happen after the case examiners have made a case to answer decision and referred the case to the Fitness to Practise Committee.

Preliminary meetings can't start if the Fitness to Practise Committee has already started its final hearing of the case, even if the hearing has adjourned without being finished in its allocated time.

If that happens, and a preliminary meeting would have been helpful, we'll arrange a case management meeting before the same panel instead.

Who can attend a preliminary meeting?

Preliminary meetings are held in private before a Chair of the Fitness to Practise Committee.

A legal assessor will be present to help with questions of law. The NMC will be represented by a case presenter and the nurse or midwife, along with their representative, will have the opportunity to attend in person, or by telephone.

We give the nurse or midwife at least 14 days' notice of a preliminary meeting.

What decisions can the Chair make?

The Chair can issue directions which we or the nurse or midwife need to follow.

These directions can include:[2]

- time limits for the service and disclosure of evidence
- the length of the hearing and any dates parties or their witnesses would not be able to attend the hearing
- special measures to be put in place at the hearing for vulnerable witnesses
- that the nurse or midwife must undertake a language test
- a requirement that the parties state whether the health of the nurse or midwife is to be raised as an issue in the proceedings, and if so, whether medical reports are needed
- an agreed statement of facts where the facts are not in dispute, or the issue of misconduct is admitted

- that a scheduled final hearing be postponed or cancelled
- that cases should be dealt with together at the final hearing.

The Chair cannot make decisions involving the costs of attending a hearing or decide whether the hearing should be at a different venue.

In considering what directions to make, the Chair should think about how their decision will help the Committee to deal with the allegations of impaired fitness to practise proportionately and effectively. The Chair is not limited to only making directions about issues raised by us or the nurse or midwife.

We send all decisions in writing to the nurse or midwife after the preliminary meeting.

1 Rule 33 of The Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ("the Rules")
2 Rule 18(5) of the Rules and article 32(3) of the of the Nursing and Midwifery Order 2001

Dealing with cases at hearings or meetings

Reference: CMT-4 Last Updated: 31/08/2018

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Hearings

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We'll only arrange for a case to be heard at a hearing if a nurse or midwife has asked for one, or if we think there is a 'material dispute'.

A material dispute is a disagreement between us and the nurse or midwife about an important issue in the case.

How we decide whether there is a material dispute

We review the correspondence between us and the nurse or midwife to see if they disagree with any important issues in the case.

If the panel can point to new information or information that we haven't considered, which would have made a difference to our initial decision to arrange for the case to be heard at a meeting, a panel may decide it would be better to deal with a case at a hearing.

Sometimes an employer may interview a nurse or midwife about a concern before sending the matter to us to consider. In that interview with their employer a registrant may disagree with the details of what the employer said took place.

This information on its own is not a reason for us to hold a hearing instead of a meeting, because we may have different concerns to the employer, or the registrant may not have been touch with us.

Interim order hearings

We'll always hold the first interim order application at a hearing and give the nurse or midwife the opportunity to attend. We also hold a hearing if the nurse or midwife would like their interim order to be reviewed at a hearing.

Substantive order review hearings

A panel can order that a review should take place at a hearing. However, this will only be appropriate if the nurse or midwife is in contact with us and there is an issue that can only be solved by holding a hearing.

Restoration

We'll usually arrange for restoration cases to be heard at a hearing, as the person applying for restoration will likely have to attend and present evidence to the panel in person.

How we hold a hearing

Hearings are held in public unless there is a good reason such as a nurse or midwife's health which means it must be heard in private.

An independent legal assessor will be there to advise the panel. The nurse or midwife can attend, with or without a representative, or they can send a representative to attend on their behalf. A case presenter will attend to represent us.

Both the nurse or midwife, and the case presenter can arrange for witnesses to come to the hearing and give their evidence in person to the panel. Both parties can question witnesses and make submissions. The panel members can also ask questions of witnesses.

See our public and private guidance for more detail on when a hearing can be held in private.

Meetings

When we hold panel meetings

Fitness to practise cases

Once the case examiners have sent a case to be dealt with by a committee, we'll write to the nurse or midwife and give them 28 days to tell us if they would like their case to be dealt with at a hearing or a meeting.

If the nurse or midwife requests a meeting, or doesn't tell us what they would prefer, or has no contact with us, we'll arrange for the case to be heard at a meeting.

Even if the matters are complicated or very serious, because the panels who consider cases are experienced professionals they can deal with these kinds of cases on the papers. Their decisions and the reasons for them will be made public.

Interim orders review meeting

Following an application for an interim order, all further reviews will be heard at meeting unless a nurse or midwife asks for a hearing.

Substantive order reviews

A panel of the FtP Committee will review a substantive order at a meeting, unless a registrant has asked to attend the review. This includes applications to review striking-off orders because new evidence has become available.

How we hold panel meetings

Meetings are held in private. The panel will be present as will the independent legal assessor. The nurse or midwife doesn't attend and members of the press and public don't attend.

We do not send a case presenter to explain our case to the panel, and the nurse or midwife can't send a representative.

The committee has power to take if action if it needs to but there is no need to hear live evidence or submissions. Instead a panel of the committee can make its decision by looking at the evidence and relevant exhibits, and our statement of case.

The panel will also consider any submissions, evidence or exhibits the nurse or midwife has sent in and asked for the panel to see.

Making decisions public

Whenever a panel decides a nurse or midwife's fitness to practise is impaired and passes a sanction, we publish the details of the sanction, and the panel's reasons. We do this whether the panel made the decision at a hearing or at a meeting.

We don't publish what the outcome is if the panel decides that the nurse or midwife's fitness to practise isn't impaired, unless the nurse or midwife asks us to.

We keep some information private, like details of health conditions, or other confidential material.

Case management

For more details on this, see our **FtP Publication guidance**.

1 Rule 10(1) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules')

Voluntary removal

Reference: CMT-5 Last Updated: 28/07/2017

If a nurse or midwife is subject to fitness to practise proceedings, they can apply to be removed from the register by way of voluntary removal (VR).[1] This will conclude the proceedings without the need for a full hearing. VR supports our aim to 'reach the outcome that best protects the public at the earliest opportunity'.

The VR process also applies if a nurse or midwife who is not subject to fitness to practise proceedings tells us about a potential regulatory concern when they apply to be removed from the register by VR.

[1] Rule 14(1) and (2A) of the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004 ('the Registration Rules').

How does the voluntary removal process work?

Reference: CMT-5a Last Updated: 18/10/2019

If a nurse, midwife or nursing associate applies for voluntary removal (VR) they can be removed from the register without the need for full consideration by the Fitness to Practise Committee. This will only be appropriate if the case isn't one where the Fitness to Practise Committee needs to take action to protect the public's trust in nurses, midwives and nursing associates, or uphold professional standards, and is actually a case where patients and the public will be best protected by their immediate removal from the register. We describe the kinds of serious cases in which the Fitness to Practise Committee will need to take action to protect trust and uphold standards in our principles for fitness to practise and our guidance on seriousness. There's also specific guidance on when VR won't be appropriate.

The only circumstances in which we'll accept applications for VR are:

- the nurse, midwife or nursing associate accepts the regulatory concern(s);
- the regulatory concerns are not so serious that they are fundamentally incompatible with being a registered professional; and
- the nurse, midwife or nursing associate provides evidence that they do not intend to continue practising.

A nurse, midwife, or nursing associate can submit a VR application to us at any time during the Fitness to Practise process, including during a substantive (final) hearing.

However, our Registrar (or one of our Assistant Registrars, who also make VR decisions on the Registrar's behalf) won't consider applications for VR before our investigation is complete, and our case examiners have considered the case and decided there's a case to answer. This is because we think the Registrar should only make VR decisions once we've fully explored and investigated the regulatory concerns, and the case examiners have decided to send those concerns to the Fitness to Practise Committee. If someone sends us an application to be removed from the register before the case examiners have considered their case, we may invite them to send us another application if the case examiners do decide there's a case to answer, and refer the concerns on to the Fitness to Practise Committee.

There's no limit on the number of times that a nurse, midwife or nursing associate can apply for VR, but if refused it's unlikely that a new application for VR will be granted unless there's been an obvious and relevant change in circumstances. Nurses, midwives and nursing associates who send in a new applications because they're disappointed with the original outcome will need to explain what that change is.

When a nurse, midwife, or nursing associate makes an application for VR, we ask them to sign a 'voluntary removal declaration form', in which they confirm they won't apply to be readmitted to the register within five years of being removed.

If the application is successful, we'll amend our register so that 'voluntarily removed' is displayed against the nurse, midwife, or nursing associate's name. We'll publish the reasons for our decision for one year from the date of removal[1]. When VR is granted during a hearing, we publish the VR decision as part of the panel's reasons.

We may share the details of the regulatory concerns with potential employers and other enquirers on request where it is in the public interest for us to do so. We won't usually share information relating solely to a nurse, midwife or nursing associate's health.

1 Publishing fitness to practise information

Decision making

Reference: CMT-5b Last Updated: 22/10/2019

In this guide

How we consider voluntary removal applications

If a nurse, midwife, or nursing associate applies for VR before a substantive hearing, we will carry out a review of their application and make a recommendation to the Registrar on whether it is an appropriate case for VR.

The criteria used in the review are the same criteria used by the Registrar when making their decision.

The application will not be considered until the case examiners have decided whether there is a case to answer. This is so that we understand the full extent of the regulatory concerns.

If an application for VR has been made at the investigation stage, the nurse, midwife, or nursing associate may be invited to re-submit their application once a case to answer has been found.

When a nurse, midwife, or nursing associate applies for VR during a substantive hearing, the panel won't be informed of the VR application unless they find that the nurse, midwife, or nursing associate's fitness to practise is impaired.

If it does make that finding, the panel will make a recommendation on whether or not to allow VR, which the Registrar will take into consideration as one of the factors relevant to their decision. If the VR application is rejected by the Registrar, the panel will go on to consider whether to impose a sanction.

If a nurse, midwife, or nursing associate is subject to an interim suspension order or interim conditions of practice order, this will need to be revoked by an interim order panel before an application for VR can be granted.[1]

The Registrar will be aware of the interim order when they make the decision on whether to grant VR or not. If the Registrar decides that VR is suitable, we'll invite a panel to revoke the order, as VR has been granted by a Registrar. Only then will the VR will take effect.

If VR is granted at a hearing, the panel will make a decision to take no further action.[2] This will revoke the interim order and the VR will come into effect immediately.

Once a recommendation has been made to the Registrar, they will decide whether to grant an application for VR, carefully considering the following:

1. Whether the regulatory concerns have been accepted by the nurse, midwife, or nursing associate
2. The public interest in the case being dealt with by the Fitness to Practise Committee
3. The interests of the nurse, midwife, or nursing associate
4. Any comments received from the maker of the allegation

Acceptance of the regulatory concerns

For the Registrar to grant VR they must be satisfied that the nurse, midwife, or nursing associate accepts the regulatory concerns which have been raised.

This means that when making an application for VR the nurse, midwife, or nursing associate must confirm they accept the fitness to practise concerns.

The Registrar can take into account any relevant information, for example comments made during employer

investigations, reflective statements, or responses submitted to the NMC during the fitness to practise proceedings and alongside the application for VR.

Public interest

When deciding whether to grant VR, the Registrar must take into account the public interest. When a nurse, midwife, or nursing associate is removed from the register through voluntary removal, the public is immediately protected from the risk of future harm, and the reasons for this are published. In many cases allowing someone to leave the register quickly, without the need for a full fitness to practise hearing, will be the best way to meet the public interest. In other cases it may be in the public interest for the matter to be considered in full by a fitness to practise panel.

One of the key factors when weighing up the public interest of a case will be the seriousness of the concerns and whether they require us take regulatory action in the public interest, to promote public confidence or uphold standards.[3] In cases about clinical practice this is only likely to be needed where the concerns are so serious that they can't be put right. Types of concern that are more difficult to put right include causing deliberate harm to patients, or breaching the professional duty of candour to be open and honest. In cases not about clinical practice taking action to maintain public confidence or uphold standards is only likely to be needed if the concerns raise fundamental questions about the trustworthiness of a nurse, midwife, or nursing associate as a professional.

The Registrar should make sure that these public interest considerations are addressed in their decision to grant or refuse a VR application. These decisions will be published and the reasons for the decision will be available online for the public to view. That means it's important we provide reasons which fully explain our decision.

More serious concerns where the nurse, midwife, or nursing associate's conduct is fundamentally incompatible with continued registration are not suitable for voluntary removal as there is a public interest in these matters being dealt with by the Fitness to Practise Committee.

This is because these concerns are likely to result in the nurse, midwife, or nursing associate being permanently removed from the register by a Fitness to Practise Committee making a striking-off order. In these cases any application to return to the register should also be decided by a Fitness to Practise Committee at a public hearing and the reasons published. Where a nurse, midwife, or nursing associate has been removed by the Registrar, an application for readmission is made to the Registrar and the reasons will not be published. In cases serious enough to warrant permanent removal from the register, there is a public interest in applications for readmission being properly scrutinised in public by a panel of the Fitness to Practise committee.

When considering VR applications arising from a panel recommendation at a hearing, the Registrar will be assisted by:

1. the panel's determination on impairment, and
2. the panel's assessment of public interest concerns.

If VR is granted, details of the allegation will become public through the Registrar's decision. The allegation will also be considered if the nurse, midwife, or nursing associate subsequently applies for readmission to the register.

Interests of the nurse, midwife, or nursing associate

The Registrar will also take into account the interests of the nurse, midwife, or nursing associate when deciding whether to allow removal from the register, weighing these alongside the public interest.

The Registrar should consider the following factors:

1. the nurse, midwife, or nursing associate's reasons for seeking VR
2. their plans for the future

If the nurse, midwife, or nursing associate demonstrates a committed intention to leave the profession then this will be a factor in favour of granting VR. For example, a nurse, midwife, or nursing associate may express their intention to follow an alternative career path, be suffering from long term ill health, or have taken steps to leave the profession before we raised concerns with them. They may wish to submit a statement and / or provide evidence of this in support of their application, and we will usually ask them to sign a declaration confirming their intention to stop practising.

Alternatively a nurse, midwife, or nursing associate may want to be removed from the register for a period of time with a view to returning in the future, once the issues with their ability to practise safely have been resolved. This will usually only apply in cases of lack of necessary knowledge of English, where the nurse, midwife, or nursing associate's skill may improve over time, or health, where their health might improve or be better managed in the future.

Comments received from the maker of the allegation

The Registrar should consider any comments received from the maker of the allegation.[4] The maker of the allegation is not necessarily the person who reported the matters to us. Where appropriate it may be the person affected by the misconduct, or, in a criminal case, it may be the person or organisation that initially reported matters to the police.

Comments from the maker of the allegation can be an important way of ensuring the patient voice is heard, and can help us understand the impact a nurse, midwife, or nursing associate's actions have had on the people involved. Their comments may help us understand the seriousness of the concerns, or may support a decision to grant removal, for example where an employer confirms they are supporting a nurse to continue working as a healthcare assistant.

We will request comments from the maker of the allegation before making a recommendation to the Registrar. If the VR application arises during a hearing we will seek comments from the maker of the allegation before the panel makes its VR recommendation to the Registrar.

The fitness to practise process is not about punishing people for mistakes, and although the Registrar will take these comments into account, they will make their final decision based on how we can best protect the public and maintain public confidence.

In cases where the allegation relates to health, we do not disclose the details of the nurse, midwife, or nursing associate's health condition to the maker of the allegation. Given that health details are regarded as confidential it will not always be possible for the maker of an allegation to be fully informed of the reasons why VR was appropriate in every case, nor for the extent of the details to be published in the Registrar's decision.[5]

1 Article 12(3)(b) of the Nursing and Midwifery Order 2001 ('the Order')
2 Article 29(4) (b) of the Order
3 When assessing the overall seriousness of concerns, the Registrar will take into account our guidance on seriousness
4 This is a statutory requirement under Rule 14(2B)(a) of the Registration Rules
5 Details of the fitness to practise information we publish can be found on our website.

Circumstances where voluntary removal will not be appropriate

Reference: CMT-5c Last Updated: 10/01/2020

VR only applies to nurses or midwives who are subject to an actual or potential fitness to practise allegation. VR does not apply to nurses or midwives who simply want to be removed from the register or to let their registration lapse. In these circumstances the nurse of midwife should follow the 'cease to practise' process.

VR is not permitted when a nurse or midwife is subject to a final conditions of practice or suspension order.[1]

1 Article 12(3)(b) of the Order. There is no power to revoke a substantive conditions of practice order or suspension order

Applying the voluntary removal criteria to particular cases

Reference: CMT-5d Last Updated: 22/10/2019

In this guide

How do we apply the decision-making criteria in practice?

The decision to grant a VR application will depend on the particular circumstances of each case. There are different considerations that will apply to different types of cases; the type of concern will be a relevant factor.

Health

VR is likely to be appropriate in certain cases where there are concerns about a nurse, midwife, or nursing associate's health, in the following circumstances:

- The regulatory concerns relate to a nurse, midwife, or nursing associate's long-term physical or mental health, and there are no serious unrelated conduct issues and

- The nurse, midwife, or nursing associate accepts that their fitness to practise is impaired as a result of their health condition. The public interest may be best served by granting a VR application, even if the nurse, midwife, or nursing associate expresses a desire to seek readmission in the future should their health improve to an appropriate level;

Or

- The regulatory concerns relate to a nurse, midwife, or nursing associate's conduct or competence, but they wish to remove themselves from the register due to serious ill health. In these circumstances VR may be appropriate before a hearing starts.
- The nurse, midwife, or nursing associate accepts that their fitness to practise is impaired as a result of the regulatory concerns.

- Their serious ill health will be considered as a factor in favour of granting VR, even though it may not be the cause of concern with their practise.

If a nurse, midwife, or nursing associate is terminally ill, they may be unable to make any formal admissions, or participate in the process. These cases may be better dealt with under our cancellation of hearings process.

Lack of competence or not having the necessary knowledge of English

VR may be appropriate when:

- the nurse, midwife, or nursing associate accepts that their fitness to practise is impaired through lack of competence or through not having the necessary knowledge of English, and
- the nurse, midwife, or nursing associate has already stopped practising and doesn't intend to return to practice. VR may be appropriate in some circumstances where the nurse, midwife, or nursing associate intends to return to practise in another country where English language skills are not required, or at a time

when they have improved their knowledge of English to the required standard.

Convictions or determinations from another regulatory body

Cases where the concerns relate to convictions or determinations from another regulatory body are less likely to be appropriate candidates for VR if the seriousness of the conduct is fundamentally incompatible with being a registered professional .

Misconduct

Where allegations of misconduct are the main concern, a decision to grant VR will need to take into account the overall seriousness of the misconduct.

Where the misconduct is so serious that it's fundamentally incompatible with being a registered professional, the Registrar is unlikely to grant a VR application. The Registrar will take into account our guidance on seriousness, as well as our guidance on sanctions, when making their decision.

Serious concerns which we consider more difficult to put right are more likely to result in the most restrictive sanctions such as a striking-off order.

Examples include sexual misconduct, or causing deliberate harm to patients. There may also be cases where we need to take regulatory action to maintain public confidence in the profession. In these types of cases VR is less likely to be granted by the Registrar.

Where the misconduct is less serious, or could be remedied if the nurse, midwife, or nursing associate did not wish to stop practising, then the Registrar may be more likely to grant VR.

More than one type of concern

If it's alleged that the nurse, midwife, or nursing associate's fitness to practise is impaired because of more than one type of concern, the Registrar will need to look at all of the concerns together and decide whether VR is appropriate.

An overall assessment of the seriousness of the concerns will be made, applying each of the relevant considerations above. If the case includes allegations of a serious nature where the likely outcome is a striking-off order, then the Registrar is unlikely to grant a VR application.

Readmission to the register

Reference: CMT-5e Last Updated: 28/07/2017

VR is not necessarily permanent, as the nurse or midwife may seek to be readmitted to the register at some point in the future. For readmission to the register the nurse or midwife will need to provide a written submission and documentary evidence. The Registrar will consider these alongside the details of the allegation at the time the VR was granted.

Cancelling hearings

Reference: CMT-6 Last Updated: 04/01/2019

In this guide

A Chair of the Fitness to Practise Committee has the power to decide that a hearing should be cancelled and the matter closed.[1] We use this power only in very limited circumstances.

When we take the decision to cancel hearings

We will apply to cancel a hearing if we know that the nurse or midwife has a terminal illness. When this happens, we close the case because we recognise it wouldn't be right for us to continue to pursue a case about a regulatory concern in those circumstances.

We don't apply to cancel hearings just because there are difficulties with our evidence. Then, the right way forward is for us to apply the Fitness to Practise Committee to offer no evidence.

Nurses and midwives are also able to apply for voluntary removal, which can bring their registration to an end without their case going to a final adjudication.

These powers are usually more appropriate than us using our power to cancel a hearing.

What happens when we apply to cancel a hearing?

Our case presenter will prepare a document, called a 'reasoned opinion' that sets the background to the case, and explains the nurse or midwife's health condition.

The Chair will then decide whether to direct that the case should be closed.

Our rules require the Chair to give the person who made the allegation, a reasonable opportunity to comment on what we propose to do, and to take any comments into account.

Our case presenter will always consider what a reasonable opportunity is in every case that they prepare a reasoned opinion.

Our general position, though, is that because information about a nurse or midwife's terminal illness is sensitive and confidential, it is generally not necessary to our statutory role for us to share this information.

This means that a reasonable opportunity to comment will usually not involve us sharing information about the nurse or midwife's health condition with the person who made the allegation.

After a hearing is cancelled

If the Chair directs that the case should be closed, this will mean that the nurse or midwife's registration will lapse if they haven't paid their fee or completed revalidation, and they won't still be subject to a fitness to practise allegation, which would otherwise have kept their registration active.[2]

A decision to close a case is not a 'final determination', because the panel has not made a fully reasoned decision about the substance of the case, the evidence, or the nurse or midwife's fitness to practise.

This means that any interim order in place will have to be removed by a panel before the nurse or midwife's

registration can lapse. We will usually have arranged this before we consider an application to cancel a hearing. We always review the evidence relevant to interim orders, and if we become aware that a nurse or midwife has a terminal illness, it is extremely unlikely that an interim order to protect the public from any difficulties in their practice will still be needed.

1 Rule 33 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004

Constitution of panels

Reference: CMT-7 Last Updated: 12/10/2018

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Who sits on our practice committee panels?

The panels of our Fitness to Practise Committee or Investigating Committee are made up of three people.

One of the three people must be a nurse or midwife, and one of them must be a member of the public who is not a registered nurse or midwife (that is, a lay person). The Chair of the panel can be a nurse or midwife or a lay person.[1]

If the hearing is about a midwife, there will be a midwife on the panel. If the hearing is about a nurse, there will be a nurse on the panel.[2] There are two exceptions to this: interim orders, and some substantive order reviews.

Panels that decide on interim orders

If the panel has been asked to consider making or reviewing an interim order, one of the members of the panel must be a registered nurse or midwife.

However, the nurse or midwife on the panel doesn't necessarily have to be from same part of the register as the person whose fitness to practise, or entry in the register, we are investigating.[3]

Panels that decide on particular substantive order reviews

At reviews of substantive orders, one of the members of the panel must be a registered nurse or midwife. However, we do not require the nurse or midwife to be from the same part as the register as the person whose sanction the panel is reviewing, that is so long as the following conditions are met:

- the panel decided that the nurse or midwife's fitness to practise was impaired because of their of health or lack of competence at the initial substantive hearing
- the nurse or midwife has been continuously subject to a suspension order, a conditions of practice order, or a combination of periods of suspension and conditions, for at least two years, and
- the nurse or midwife has never engaged with our proceedings, has told us they no longer want to engage in our proceedings, or have stated that they wish to be removed from the register.[4]

What happens if a panel member cannot continue to sit?

Sometimes a panel member becomes unavailable or no longer eligible[5] to sit on our panel during the course of a hearing.

If this happens, rather than start the hearing again, we are able to substitute a new panel member for the person who is no longer able to sit.[6] The panel will still need to be made up of the same kinds of members identified above.

When we decide that substituting a new panel member is the best way to proceed, we will explain to the nurse or midwife, in advance of the hearing continuing with the new panel member, why we think it is in the interests of

justice to do this.

We will give the nurse or midwife the chance to tell us whether they agree with a new panel member being substituted.

After we have substituted a new panel member the hearing can resume.

At this point, the panel members are able to decide for themselves whether:

- the substitution is for a proper purpose
- proper procedures have been followed
- it is in the interests of justice for the substituted panel member to participate.[7]

If the panel members decide to carry out this assessment, they should consider any previous correspondence between us and the nurse and midwife, and any representations the parties make.[8]

1 Rule 6(10) of the Nursing and Midwifery Council (Practice Committees) (Constitution) Rules 2008.
2 Our Council adopted this requirement to take effect from April 2011.
3 Our Council agreed the exception for interim orders in February 2013
4 The Director of Fitness to Practise issued this guidance on behalf of Council in December 2014.
5 This could include a panel member who is a lay person becoming registered as a nurse or midwife during the hearing, or the registration of a member who is a nurse or midwife lapsing during the hearing.
6 R (on the application of Michalak) v General Medical Council [2011] EWHC 2307 (Admin)
7 Michalak, cited above, paragraph 12.
8 Previous correspondence will be particularly relevant to the question of proper procedures, which are not set out in our legislation. A key consideration is whether the nurse or midwife has been given a fair chance to have their views taken into account.

Proceeding with hearings when the nurse or midwife is absent

Reference: CMT-8 Last Updated: 12/10/2018

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Overview

There is a difference between criminal proceedings and regulatory proceedings, and as a regulatory body, we do not have the power to enforce attendance at our hearings.

A nurse or midwife is still entitled to be represented, either by a legally qualified person or by someone else.[1]

If the nurse or midwife is unable to attend, a panel can choose to proceed with the hearing and impose an interim order or sanction in their absence.[2]

This underpins our aim to protect the public, by dealing with allegations of impaired fitness to practise at the earliest opportunity by making sure that decisions are not unduly delayed due to a deliberate failure to engage in our proceedings.

Starting final hearings when the nurse or midwife doesn't attend

When deciding whether to proceed with a final hearing in the nurse or midwife's absence, the panel must exercise care and caution.

Fairness to the nurse or midwife is a prime consideration.

However, fairness to the regulator and the interest of the public should also be taken in to account.

Because of this, the panel will first consider whether all reasonable efforts have been made to serve the notice of hearing on the nurse or midwife. This should be considered alongside the nurse or midwife's duty to cooperate with our investigation and provide us with an address for correspondence.

The panel should consider all of the known circumstances, and be guided by the following principles:[3]

- the public interest in the expeditious disposal of the case.
- the inconvenience to any witnesses that have attended or due to attend.
- whether the nurse or midwife has engaged with the proceedings and their reasons for non-attendance (this should include whether the reason for non-attendance is supported by independent evidence).
- the unfairness to the nurse or midwife if the proceedings were to continue, for example, they will not have the opportunity to question evidence or provide their own evidence to the panel in person
- whether it is fair, appropriate and proportionate to proceed in the nurse or midwife's absence.

If the Panel decides not to proceed in the absence of a nurse or midwife they will consider whether to postpone the hearing.

Interim order hearings where the nurse or midwife doesn't attend

When it comes to interim order hearings different issues will apply when deciding whether to proceed in the absence of a nurse or midwife.

This is because, in contrast with final hearings, where a panel makes findings of fact based on the evidence,

interim order hearings require panels to conduct an immediate risk assessment.

To proceed in the absence of a nurse or midwife, an interim order panel must be satisfied that all reasonable efforts have been made to serve the nurse or midwife with notice of the hearing.[4]

If the nurse or midwife has informed us that they do not wish to attend the hearing the panel should proceed with the consideration of the interim order.[5]

If the nurse or midwife has not attended nor given us any representations, we will generally still ask a panel to consider imposing an interim order.

This is because we have identified risks that show that an order is necessary for the protection of members of the public, or is otherwise in the public interest, or the nurse or midwife's own interests. Referring a case for interim order consideration as soon as possible makes sure that we are properly fulfilling our legal duty.

When considering whether to proceed in the absence of the nurse or midwife, the panel should consider the nature of the allegation and our primary function of protecting the public and balance this with whether reasonable efforts have been made to serve the notice on the nurse of midwife.

1 Article 31(16) of the Order
2 Rules 8(6) and 21(2)(b) Nursing and Midwifery Council (Fitness to Practise) Rules 2004
3 R. v Jones (No.2) [2002] UKHL 5 and more recently GMC v Adeogba; and GMC v Visvardis [2016] EWCA Civ 162
4 Rule 8(6)(a) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules')
5 Rule 8(6)(c) of the Rules

Case management during hearings

Reference: CMT-9 Last Updated: 26/11/2018

It is important that our hearings are conducted in a way that maintains the public confidence in us as a regulator.

How the panel manages the case

One of the roles of the panel is to manage the case, the people appearing before it, and to make sure the hearing runs smoothly, by managing when the hearing will be in session and deciding what time people need to attend each day.

The panel will also make the decision as to whether all, or part of the hearing should be held in public or private, and which part of their reasons should be published.

What the panel does as it hears the evidence

The panel can question the witness on their evidence and considers what questions to ask the witness, in order to clarify their evidence and help decide whether the charges are proved.

If a new issue comes up after the witness has finished giving their evidence, the panel should think very carefully about whether the witness needs to be called back to give further evidence, or whether the panel can explore the issue with those who remain in session, other witnesses who haven't yet given evidence, or by considering the evidence they have already heard.

If the panel considers that we may need to carry out further investigation, it should consider carefully whether to adjourn the hearing to allow us to do this

When making these decisions, the panel should always strike a balance between the nurse or midwife's right to a fair hearing and our overarching objective of protecting the public in a fair and proportionate manner.

Hearings in private and in public

Reference: CMT-10 Last Updated: 12/10/2018

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Public hearings

If a case is being decided at a hearing because the Fitness to Practise committee needs to resolve a dispute between us and the nurse or midwife, it will usually be held in public.[1]

If a hearing isn't needed because there is no material dispute, or the nurse or midwife hasn't asked for one, the case will be decided at a meeting, which will take place in private without any representatives or the nurse or midwife present. However, all panel decisions from meetings are recorded in a written document, which is published on our website.

Patients, their families and loved ones, members of the public, and the press can observe hearings and watch the panel make its decisions. All panel decisions are recorded in a written decisions document. After the hearing, the document is published on our website.

Private hearings

In some cases, a panel will decide that some or all of the hearing should be in private.[2] In a private hearing, any members of the press or public will be asked to leave. The panel's published written decision will not contain any information that is considered private.

The decision to hear all or part of a hearing in private and what to publish is a decision for a panel to make after hearing the advice of the legal assessor.

Deciding whether to hear matters in private

Hearings should generally be held in private where the allegation is only about a nurse or midwife's mental or physical health, or about things the nurse or midwife did because of their health condition, that could cause risks to patients.

An exception to this is when the panel decides that the public interest, or the interests of any third party, outweighs the need to protect the privacy or confidentiality of the nurse or midwife, meaning that all or part of the hearing should be held in public.[3] The circumstances where it is appropriate to hear private health information in public session will be extremely rare.

A panel can hear matters in private when it is satisfied that it is reasonable and proportionate to do so, and it is justified in the interests of any party, third party, or the public.[4] Either we, or the nurse or midwife, can apply for part or all of the case to be heard in private. A panel can also raise the issue and then make a decision.

Before making a decision, the panel should give us, the nurse or midwife, and any person with an interest in the case the chance to make representations about sitting in private, and then consider the advice of the legal assessor.

A decision to sit in private may relate to all or part of a hearing. Given that transparency and open justice will normally require that (non-health-related) hearings are held in public, panels should try to hold as much of a hearing in open session as practical, even if it's occasionally is necessary to switch between public and private session.

In reaching this decision, a panel should also consider if it would be more appropriate and proportionate to take other steps such as editing documents, anonymising information or concealing the identity of a person referred to in the allegation.

The application to hear the case in private can itself be made in private session, if it is reasonable to do so. However, the panel should ask for representations from all interested parties before the full application is heard in private. Any decision on an application to hear matters in private is recorded in writing and given to the parties.

Written panel decisions

All panel decisions from hearings and meetings are recorded in writing and published on our website. It is up to the panels to carefully consider what information should appear in the public decision. Sometimes, private information, including information about people's health, or any details about children, will form an important part of the panel's decision making. However, it will be extremely rare that it would be right for us to include this information in the published decision.

For this reason, we sometimes need to produce two decision documents: one marked as public, which will be published, and one marked as private. Panel decisions are published on our website in accordance with our publication guidance[5], and it is the panel's responsibility to decide which information should form part of the public document, and which information should remain private. This may involve them having to make decisions about issues that come up during the course or a hearing.

It will often be obvious that information needs to be removed from the public decision document, for example where the case is about the nurse or midwife's health. At other times, other kinds of private information will need the panel to carry out a careful balancing exercise. The different factors are the need for transparent decision-making, protecting the interests of the various people involved in the case, including patients, service users, their families and loved ones, the nurse or midwife, and witnesses. The panel may need to think carefully about whether people other than the nurse or midwife might be identified by us publishing particular details.

In very rare cases the panel may need to consider whether we should publish the decision at all. If we, or the nurse or midwife, make representations about publishing the decision, the panel should consider the reasons for the request and then balance the public interest of matters being reported against the reasons for the application. If the panel decide that the decision is not to be published on the website it should give written reasons for this decision.

1 Rule 19(1) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (the Rules), and in accordance with the principle of open justice.
2 Rule 19(4) of the Rules
3 Rule 19(2) (a) and (b) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004
4 Rule 19(3) (a) and (b) of the Rules
5 See our Privacy notice at: www.nmc.org.uk/privacy/

When we postpone or adjourn hearings

Reference: CMT-11 Last Updated: 12/10/2018

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A postponement is when a Chair or a panel of the Investigating or Fitness to Practise Committee decides that a hearing needs to be delayed and should not go ahead on the original date scheduled. If this happens we will rearrange the hearing as soon as reasonably possible.

When the hearing is rearranged it will be before a different panel of the same committee.

An adjournment is when a panel decides not to continue with the hearing at any point after the charges have been read. When the hearing resumes it will be before the same panel.

Who can ask for an adjournment or postponement?

We can apply for a postponement or adjournment, the nurse or midwife can apply, or a Chair or Committee can decide for themselves that a postponement or adjournment is needed.

If we haven't yet sent a formal notice of hearing to the nurse or midwife, the decision to postpone a hearing is made by a senior member of our staff.

If a notice of hearing has been sent, the decision to postpone a case is made by a Chair of the Committee.[1] Where it's needed, we'll arrange for a preliminary meeting to consider the application and any representations from the parties in support or opposition to the application.

The decision to adjourn proceedings is made by a panel of the Committee considering the allegations against the nurse or midwife and can be made at any stage during the hearing.[2]

Deciding whether to adjourn or postpone

In deciding whether or not to grant a postponement or adjournment, the decision maker should consider all relevant factors, including the following.

- **The public interest in the efficient disposal of the case**

  There is a public interest in considering fitness to practise allegations swiftly; protecting the public, and maintaining confidence in the professions and us as a regulator. Although delaying a hearing may mean that witnesses find it harder to remember their evidence, there may also be a public interest in delaying the hearing. For instance, if we need more time to get further evidence that will provide the Committee with a full understanding of the concerns when they make their decision.

- **The potential inconvenience**

  Postponing or adjourning a hearing may cause inconvenience to people who have made themselves available to attend and give evidence on the original hearing dates, and who may be unable to attend a hearing at a later date.

- **Fairness to the nurse or midwife**[3]

  Postponing a hearing may allow a nurse or midwife who is unable to attend original hearing dates, to attend a future hearing and give their evidence in person. For example, due to short term ill health or other commitments that were arranged before they were informed of the hearing date.

Where consideration is being given to granting an adjournment, the panel should only make the decision to adjourn if no injustice is caused to the parties, and after hearing representations from us and the nurse or midwife, or their representative (where present) and after taking advice from the legal assessor.[4]

If an adjournment is granted, the panel shall also consider whether to impose an interim order.

The panel will ask for representations from us and the nurse or midwife, or their representative (where present). The panel will deliberate in private and announce the decision, providing reasons. We will send a notification of the decision to the nurse or midwife.[5]

1 Rule 32(1) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules')
2 Rule 32(2) of the Rules
3 Rule 32(4) of the Rules
4 Rule 32(2)(a) and (b) of the Rules
5 Article 31(14) Nursing and Midwifery Order 2001