Publication and disclosure policy

Fitness to practise
Publication and disclosure policy: Fitness to practise

Introduction

1 This policy sets out the approach of the NMC to the routine publication and disclosure of fitness to practise information.

Aims of the policy

2 The aims of this publication and disclosure policy are:

2.1 to outline the NMC’s approach to the routine publication of fitness to practise information

2.2 to outline the NMC’s approach in relation to the routine disclosure of fitness to practise information to interested parties

2.3 to outline the NMC’s approach in relation to individual requests for disclosure of fitness to practise information

2.4 to outline the NMC’s approach to the disclosure and use of patient healthcare records.

Legislative framework

3 The NMC has a statutory duty to publish as soon as reasonably practicable particulars of substantive orders and decisions made by any of its practice committees (including orders made on review and restoration hearings and any order to remove or amend a fraudulent or incorrect entry on the register) and of its reasons for them and of any decision given on appeal.¹

4 In addition, the NMC has a general power to disclose to any person any information relating to a person’s fitness to practise which it considers to be in the public interest to disclose.²

5 The NMC also has a specific statutory duty³ to give notice of a referral of any nurse or midwife to the Conduct or Competence Committee or the Health Committee to the following:

5.1 where known, the employer of the nurse or midwife or any other person with whom the nurse or midwife has an arrangement to provide professional services

¹ Nursing and Midwifery Order 2001 article 22(9)
² Nursing and Midwifery Order 2001 article 22(10)
³ Under rule 9(3) of the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 made pursuant to article 32(2)(h) of the Nursing and Midwifery Order 2001.
5.2 where known, any other body by which the nurse or midwife is authorised to practise a health or social care profession

5.3 the Secretary of State, the Scottish Ministers, the National Assembly for Wales and the Department of Health, Social Services and Public Safety in Northern Ireland, and

5.4 where the registrant is a practising midwife, their local supervising authority.

6 A similar statutory duty to give notice to the same specified persons listed above applies when an allegation relating to a fraudulent or incorrect entry in the register is referred to a panel of the Investigating Committee.\(^4\)

7 The NMC is also subject to a range of legislative duties in relation to information governance including the Data Protection Act 1998 (DPA), the Human Rights Act 1998 (HRA) and the Freedom of Information Act 2000 (FoIA). The DPA and FoIA impose particular duties in respect of information disclosure in specific situations. The DPA prohibits the disclosure of personal data unless certain exemptions apply. One of those exemptions is where the data subject consents to the disclosure.\(^5\) Another is where the disclosure is necessary for the exercise of statutory functions or the exercise of any other public functions in the public interest.\(^6\) In this context, the public interest includes the protection of the public, the declaring and upholding of proper standards of conduct, and the maintenance of confidence in the professions and the NMC.

8 The NMC does not publish any information relating solely to the health of a nurse or midwife in order to protect their confidentiality. This information is treated as confidential regardless of whether the case is heard by the Investigating Committee, Conduct and Competence Committee or Health Committee.

**Key principles of policy**

9 The NMC is committed to being transparent and open about its processes and the outcomes of its fitness to practise investigations, whilst protecting the confidentiality of nurses, midwives, witnesses and other people where necessary.

10 The NMC believes that, in general, all historical information that has already been placed in the public domain should be disclosed to enquirers.

11 The NMC believes that historical information that has not already been placed in the public domain will only be disclosed in limited and defined circumstances.

12 The NMC is committed to presenting information to enquirers in a form that is accessible and in line with best practice.

\(^4\) Rule 5(7) of the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004
\(^5\) Data Protection Act 1998 schedule 2 paragraph 1
\(^6\) Data Protection Act 1998 schedule 2 paragraph 5(b) and (d)
Publication of information

13 Fitness to practise information is published in four places:

13.1 via the “Search the register” online search facility on the NMC website

13.2 via the ‘Employers Confirmation service’ on the NMC website

13.3 in the list of forthcoming and concluded hearings and decisions on the website

13.4 in the monthly ‘changes to the register’ spreadsheet that is published on the website and is linked to in the monthly employers newsletter.

Online search the register facility

14 The online published register is a list of all nurses and midwives who have current and effective registration with the NMC. This means that their registration fees have been paid and their registration is up to date. If a person's registration has lapsed, we will still have their record but it will not appear in the online search results. Some personal details held by the NMC, such as the nurse or midwife’s date of birth and address, are not displayed online.

15 If a nurse or midwife has been made the subject of a caution order or an interim or final conditions of practice order their name will appear on the online list of registrants with details of the relevant interim order or final sanction. Information about any conditions of practice that can be made public will also be made available online. Details of any conditions relating solely to the nurse or midwife’s health will not be included.

16 If a nurse or midwife has been struck off the register since 1 January 2008, or is currently suspended from the register as a result of an interim or final suspension order, this information will also be displayed as part of the online search results. Information about those who are suspended will be published during the period of their suspension. Sanctions imposed prior to 1 January 2008 will not be displayed online but these sanctions remain in force and records will be held by the NMC.

17 Individuals subject to removal or striking off orders will be displayed on the online search facility with the status of “Removed by a FtP panel”. Individuals who have been allowed to voluntarily remove their names from the register by the Registrar will be displayed with the registration status “Voluntarily removed”.

18 All the registration status details displayed online are fully explained in an online glossary, which is linked to from both the initial search results page and the individual entry pages.

19 No information will be displayed about deceased individuals once we have received formal notification of the death. Information about all other individuals removed from the register will be displayed for sixty years from the date of the order in line with our retention of data policy.
Details of all sanctions imposed by any of the practice committees, including interim orders, striking-off, suspension, or conditions of practice orders and all voluntary removal decisions are kept on record by the NMC and may be disclosed to employers and other enquirers on request indefinitely. The only exceptions to this are: information relating solely to a nurse or midwife’s health, and interim orders where a case is subsequently closed with no finding of impairment.

The online search results will not indicate whether a nurse or midwife is the subject of an ongoing fitness to practise investigation as this information remains confidential until the case is referred for adjudication or an interim order is scheduled.

Employers can obtain information about a nurse or midwife whose name does not appear on the online register, or more information about any other nurse or midwife by using the NMC’s free registration confirmation service or online employer confirmation service, described below.

**Forthcoming hearings**

The following information is put into the public domain, by being published on the NMC website under the heading ‘hearings and outcomes’ under the ‘hearings’ tab, as soon as possible after the service of the notice of hearing. In most cases, this will be at least 28 days before the hearing starts:

23.1 Nurse or midwife’s name, Pin and the part(s) of the register on which they appear.

23.2 Date and venue of the hearing.

23.3 The county where the events that are the subject of the allegation took place, or, where that is not relevant (for example in conviction cases where the conviction does not relate to the nurse or midwife’s practice), the county of the nurse or midwife’s registered address.

23.4 The public charge(s) to be faced by the nurse or midwife or a summary of those charge(s) where appropriate. Usually, the charge will identify the precise location where the nurse or midwife was working at the time of the alleged incident(s), along with the nurse or midwife’s job title. Where the charge relates to a conviction outside the workplace, it will identify the court(s) at which the nurse or midwife was convicted and sentenced.

The website contains a notice to the effect that the charge published is the charge served on the nurse or midwife, but that it may be subject to amendment during the course of the hearing. The published charges will not include any information relating solely to the nurse or midwife’s health. The names of any witnesses or other people will not appear in the published charges.

7 [www.nmc-uk-.org.uk](http://www.nmc-uk-.org.uk)
Substantive hearing outcomes

25 Hearings before the Investigating Committee interim orders panel and the Conduct and Competence Committee are held in public and any member of the public may attend and observe the proceedings. Hearings before the Health Committee and meetings of the Investigating Committee and Conduct and Competence Committee are held in private and are not open to the public.

26 At the end of a substantive hearing before the Conduct or Competence Committee or the Health Committee, the same hearings and outcomes list on the website is updated to show the decisions and reasons in cases where a sanction is imposed in accordance with the statutory duty set out in paragraph 3 above. These decisions remain on the website for four months. All previous outcomes and reasons remain in the public domain, and are available to the public on request.

27 Details of the outcome will be sent to the referrer, the witnesses in the case, and the nurse or midwife's employer, where known.

28 There is no statutory requirement to publish the outcome of a hearing that has resulted in a finding of no impairment or a finding of impairment where no sanction is imposed. However there is a provision that, where a panel has concluded that an allegation is not well founded, it shall make a declaration to that effect where the nurse or midwife asks it to, or it may make such a declaration where the nurse or midwife consents.  

29 In these circumstances, the chair of the panel will ask the nurse or midwife concerned if they want the decision to be published, or if they consent to the publication of the decision. If they do require publication of the decision, or consent to it, the decision will be published on the website.

30 Where the nurse or midwife does not attend the hearing, the information leaflets sent out in advance will inform them of their right to have a decision of no impairment, or impairment but no sanction, published. If the nurse or midwife makes a written or telephone request for any such decision to be published, the decision will be published on the website.

31 In any case where no impairment is found or no sanction is imposed but the nurse or midwife concerned has not requested or consented to the publication of that decision, then all reference to the case will be removed from the website after the hearing.

32 The published decision and reasons will not include any information relating solely to the nurse or midwife’s health. Where necessary, the Panel will prepare private reasons for disclosure solely to the nurse or midwife concerned and public reasons for publication and wider disclosure.

---

8 Article 29(1) of the Nursing and Midwifery Order 2001
Interim order hearings

33 Interim order hearings before any of the NMC committees (including the Investigating Committee) are held in public and any decisions to make an order are published via the “Hearings and Outcomes” list on the NMC website\(^9\). No information is published when an interim order is not made.

‘Changes to the register’ spreadsheet

34 A monthly ‘changes to the register’ spreadsheet\(^10\) is published on the NMC website and contains details of all the sanctions (including interim orders) imposed by the Conduct and Competence Committee, Health Committee and Investigating Committee in the preceding calendar month.

35 This spreadsheet is incorporated into a monthly employers and managers email newsletter which is sent out to the employers in the health sector. Anyone can be added to this email newsletter by signing up on the website.\(^11\)

Information kept confidential

Information about the nurse or midwife’s health

36 The NMC does not publish any information relating solely to the health of a nurse or midwife. This information is treated as confidential regardless of when the case was heard or whether the case was heard by the Investigating Committee, the Conduct and Competence Committee or the Health Committee.

37 This means that the NMC will not publish any reasons that relate solely to a nurse or midwife’s health. Where information regarding a nurse or midwife’s health is disclosed during any part of a hearing that is held in public, this information will be redacted from the published decision and reasons. Where necessary, the panel will prepare private reasons for disclosure solely to the nurse or midwife concerned and public reasons for publication and wider disclosure.

Multi-factorial cases

38 In general, hearings before the Investigating Committee interim orders panel and the Conduct and Competence Committee are held in public and hearings before the Health Committee are held in private and are not open to the public.

39 However, some cases involve a number of different factors, such as convictions, health, conduct or performance. These are known as multi-factorial cases. When they are heard by the Conduct and Competence Committee, the panel hearing the case will endeavour to hold as much of the hearing as possible in public and will only go into private session whilst dealing with matters relating to the nurse or midwife’s health. The published reasons will also follow this approach.

\(^9\) http://www.nmc-uk.org/Hearings/Hearings-and-outcomes/
\(^10\) http://www.nmc-uk.org/Hearings/Changes-to-the-register/
\(^11\) http://www.nmc-uk.org/Get-involved/Email-newsletters/
Witnesses

40 The names of patients, patient relatives, complainants in sexual cases and children are anonymised throughout the hearing and in all the hearing documents. The names of other witnesses and third parties who are not granted legal anonymity are not anonymised during the hearing, but will be anonymised in the decisions and reasons published on the NMC’s website after the hearing with effect from 14 January 2013.

41 The names of witnesses and third parties not granted legal anonymity can be released into the public domain on request.

42 In most public hearings, all the witnesses will give live evidence in public. In some circumstances witnesses may be allowed to give evidence by video link but the hearing will still be in public and the witness will still be subject to questioning. In exceptional circumstances, vulnerable witnesses may be allowed to give evidence to the Panel in private, however their evidence will still be noted in the reasons and some details may be published in accordance with this policy. Full details will be explained to the witnesses in question at the time.

Disclosure of information

43 As set out above, the NMC has a general power to disclose to any person any information relating to a person’s fitness to practise which it considers to be in the public interest to disclose. The NMC also has specific statutory duties to give notice to specified people of all referrals to the Conduct and Competence Committee and Health Committee, and of referrals to the Investigating Committee relating to alleged fraudulent or incorrect entries in the register.

Complainant confidentiality

44 Upon receipt of a referral, the NMC will ask the referrer to provide their consent for the information contained in the referral to be disclosed to the nurse or midwife concerned. If the referrer refuses to give such consent or decides that they do not want to pursue their complaint, it is unlikely that the referral will proceed unless there is a clear public interest reason for doing so without the referrer’s consent.

Disclosure at the investigation stage

45 Early investigation work may sometimes include making contact with an employer or healthcare setting in order to confirm the identification of the nurse or midwife who is the subject of the allegation and obtain other information relevant to our initial assessment of the allegation.

46 Once the nurse or midwife has been identified and the NMC is satisfied that the referral is in the form required to proceed to the Investigation Committee for
consideration, then a notice of referral is sent to the nurse or midwife containing details of the referral.\textsuperscript{12}

47 At that stage the nurse or midwife is asked to provide details of their current employer and consent for disclosure to them if this has not already been provided to the Screening Team. Once this information has been received, disclosure of the referral is then made to the employer, if it has not previously been disclosed, and the employer will then be kept informed about the progress of the case thereafter. Confidential health information will not be disclosed.

48 Details of any concerns about a nurse or midwife who is the subject of an NMC investigation will not generally be disclosed to any enquirers (apart from current employers) or the media unless or until a public hearing takes place, except where it is necessary for an interim order to be sought in order to restrict the nurse or midwife’s practice in the meantime. Any interim order hearing will be in public and any interim order made will be disclosable. Any other disclosure at this stage, including disclosure to prospective employers, must be justifiable on public interest grounds.

49 Once a case has been referred to the Conduct and Competence Committee or the Health Committee, the NMC will give notice of that referral to all the other specified people and bodies set out in paragraph 5 above. Again, confidential health information will not be disclosed.

**Employer checks**

50 NHS employers and other employers are expected to check a nurse or midwife’s registration with the NMC when first employing them. Employers can verify the registration status and details and any conditions of practice of prospective employees by using the NMC’s online employer confirmation service\textsuperscript{13} which can be accessed via the NMC website. In order to use the online service, an employer needs to have a caller code and password issued by the NMC. If an employer has forgotten the caller code or pass number, assistance can be found by calling 020 7333 9333. Alternatively, employers can use the free registration confirmation service that can be accessed by post, telephone, email or fax. They may be asked to confirm their identity.

51 In addition to the information published on the online register and the hearings outcomes, upon further enquiry, the NMC may disclose to employers or prospective employers information about any fitness to practise concerns that are currently under investigation but are not subject to an interim order either as part of its investigation work or on public interest grounds.

\textsuperscript{12} Rule 3(2) of the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004

\textsuperscript{13} at https://www.nmc-uk.org/Employer-confirmations
Disclosure about cases closed by Investigating Committee

52 The NMC does not publish any information about cases closed by the Investigating Committee on the grounds that there is no case to answer. The decision is disclosed to the referrer and the nurse or midwife.

53 If a request for disclosure of information is made by the referrer, it will be considered by the NMC under the Data Protection Act 1988 (DPA) in accordance with the NMC policy for dealing with requests for personal data under the Data Protection Act 1998. As the information within the case file often contains the personal data of the referrer it will normally be considered as a subject access request.

54 If the request is from the nurse or midwife it may be considered as a subject access request under the DPA insofar as the case file material contains personal data about them or as a request for disclosure under the Freedom of Information Act (FoIA).

55 Information about cases closed by the Investigating Committee will not be disclosed to any other persons, as the cases are heard in private and any information about them would thus be considered exempt personal information under section 40(5) (b)(i) of the FoIA. To disclose such information would breach data protection principles.

Disclosure at the adjudication stage

56 In order to ensure that the nurse or midwife has a fair hearing, the NMC will disclose to the nurse or midwife any material in its possession that may undermine its own case or support their case.

57 Where the nurse or midwife seeks disclosure of material that is not in the possession of the NMC, the NMC will first seek to establish the relevance of that material. It will also ask what steps, if any, the nurse or midwife has taken to obtain the material directly from the person or organisation that holds it. If satisfied that the nurse or midwife has taken such steps as are appropriate to obtain it directly, and that the material is relevant to the allegations, the NMC will approach the person or organisation to seek disclosure of the material.

Public interest disclosure

58 The NMC sometimes receives requests to share information about previous cases or current investigations with a range of public authorities and other regulatory bodies such as the police, Crown Prosecution Service, the Care Quality Commission and the Independent Safeguarding Authority. We have memoranda of understanding with many of these bodies addressing issues of exchange of information and we seek to cooperate with such requests for information where

14 This policy can be found on the website at http://www.nmc-uk.org/Website-terms-of-use/Data-protection/Data-protection-policy/
15 See the link at http://www.nmc-uk.org/Freedom-of-information/
they are reasonable and where it is in the public interest to do so. Public interest disclosure may be made in order to protect the public, protect the nurse or midwife or protect public confidence in the profession. A record is kept of any disclosure made in the public interest.

Public hearings and transcripts

59 All hearings are recorded, and transcripts can be requested. These will be provided free of charge to the nurse or midwife involved in the case, or her representative. Any other person or organisation may request a transcript of any public session of a hearing, but the cost of preparing the transcript will usually need to be borne by the person or organisation making the request.

Media enquiries

60 All media enquiries are dealt with by the Media team in the Corporate Governance directorate. General Information for the press and public about how our Fitness to Practise procedures work can be found on the website.

Patient healthcare records

61 During our fitness to practise proceedings it is sometimes necessary for the NMC to request disclosure of unanonymised patient records from healthcare providers. Under the DPA, the healthcare provider, as data controller, must satisfy itself that it can lawfully process the data by disclosing it to the NMC.

62 Where the referral to the NMC has come directly from a patient, the NMC will obtain that patient’s consent for disclosure before requesting disclosure from the healthcare provider.

63 Where the referral has come from another source, the NMC encourages healthcare providers to seek the consent of the patient before disclosing healthcare records. The patient should be given full information about how the NMC will use the healthcare records, and in particular, should be told that it may be necessary to disclose the records to the nurse or midwife concerned and their representatives. The consent from the patient should be clear about what the patient does and does not consent to

64 Disclosure of patient records to the NMC without the patient’s consent will also be lawful where the disclosure is necessary for the NMC to fulfil its statutory function. In order for disclosure to be necessary, the NMC must be satisfied that, without it, the NMC would not be able to establish the full seriousness of the allegations against the nurse or midwife, or the nurse or midwife would not be able to have a fair hearing.

65 In circumstances where healthcare records have been obtained where the patient has not given consent, the NMC will seek to ensure that the patient is kept informed of the fact that the NMC has received the records, and what use the NMC will make of the records. In particular, the NMC will seek to ensure that the patient is told before the healthcare record is disclosed to the nurse or midwife, or
before being used at any public hearing. At any public hearing, the patient will be anonymised.

66 Where the healthcare provider discloses to the NMC anonymised healthcare records from which the patient cannot be identified, the NMC will not seek unanonymised healthcare records unless it is necessary for the performance of its statutory functions. In particular, in a serious case where there is a real risk of harm to the public, healthcare providers should not delay the provision of healthcare records by seeking patient consent where they are necessary for an interim order hearing. If patient consent cannot be obtained immediately, the NMC will be expect to receive anonymised healthcare records.