

Raising concerns about nurses, midwives and nursing associates

Health professional
fitness to practise:
Nursing and Midwifery
Council

This self-help guide contains useful information should you wish to raise a concern about a nurse, midwife or nursing associate.

If you have any further questions, please visit our website where you will find more advice and a range of specialised self-help guides, or call our helpline.

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avma
action *against* medical accidents

The **charity** for
patient safety and justice

AvMA is the charity for patient safety and justice. We provide specialist advice and support to people when things go wrong in healthcare and campaign to improve patient safety and justice.

For advice and information visit
www.avma.org.uk

Or call our helpline
*10am-3.30pm Monday-Friday
(03 calls cost no more than calls to
geographic numbers (01 or 02) and
must be included in inclusive minutes
or there can be a cost per minute)*

0345 123 2352



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What is fitness to practise?

Most health professions have a regulatory body that maintains a register of those qualified to work in that professional capacity in the United Kingdom. Part of a regulatory body's role is to investigate serious complaints about individual professionals to establish whether they are 'fit to practise'.

It is important to note that it is not the role of regulatory bodies to investigate complaints which, although serious, do not call into question a health professional's fitness to practise.

Issues which may require action by a regulatory body include:

- Serious professional misconduct
- Criminal offences
- Repeated poor performance calling into question the professional's competence
- Health problems, such as addictions or mental illness.

The regulatory body for nurses, midwives and nursing associates is the [Nursing and Midwifery Council \(NMC\)](#).

You can only complain to the NMC about registered nurses, midwives and nursing associates. The NMC does not regulate healthcare assistants.

What type of cases can the NMC consider?

The NMC only considers cases where the nurse, midwife or nursing associate's fitness to practice is in question.

It focuses on current impairment of fitness to practise. It is not the NMC's role to punish nurses, midwives or nursing associates or provide redress for past incidents, although it does consider past acts or failings in assessing current fitness to practise.

The NMC publication '[Ensuring public safety, enabling professionalism](#)' says:

'Fitness to practise is about managing the risk that a registrant poses to patients or members of the public in the future.'

'We may not need to take regulatory action for a clinical mistake, even where there has been serious harm to a patient or service user, if there is no longer a risk to patient safety and the registrant has been open about what went wrong and can demonstrate that they have learned from it.'

In some cases, the seriousness of past events means a finding of impairment is required to protect the public interest, even where any clinical concerns have been addressed and the nurse, midwife or nursing associate's practise no longer presents a risk of harm to patients.

Examples of the types of cases the NMC is prepared to consider include:

- Misconduct, which can include failure to adhere to the principles and values of the Code, poor practice or incidents giving rise to patient harm
- Lack of competence, such as where there is evidence of a lack of knowledge, skill or judgement which shows the nurse, midwife or nursing associate is incapable of safe and effective practice
- Not having the necessary knowledge of English
- Criminal behaviour
- Serious ill health.

What cases can the NMC not consider?

The NMC is not responsible for regulating hospital or other healthcare activity and cannot investigate wider concerns than those involving individual nurses, midwives or nursing associates.

Are there any initial steps I should take?

All qualified nurses and midwives must follow [The Code: Professional standards of practice and behaviour for nurses and midwives](#). This outlines the NMC's standards for skills, education and behaviour and we suggest that you read this before raising a concern.

By understanding these standards, you will be more able to present your concerns effectively. For example, the Code outlines the fundamentals of nursing care as:

'The fundamentals of care include, but are not limited to, nutrition, hydration, bladder and bowel care, physical handling and making sure that those receiving care are kept in clean and hygienic conditions. It includes making sure that those receiving care have adequate access to nutrition and hydration, and making sure that you provide help to those who are not able to feed themselves or drink fluid unaided.'

The Code also states that nursing or midwifery staff must *'make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay'*.

How soon do I need to raise a concern to the NMC?

The NMC does not impose a cut-off date for submitting a concern but if there has been a long delay before submitting your concern, it is less likely that it will be able to carry out an effective investigation.

How do I raise my concerns?

If you think that the nurse, midwife or nursing associate poses a threat to patient safety, you should raise your concerns directly to the NMC. In most cases, you need to have raised your concerns to the individual's employer first. The NMC increasingly expects that fitness to practice issues will be addressed by employers.

In 'Ensuring public safety, enabling professionalism', the NMC says:

'Employers are closer to the sources of risk to patients and members of the public, and better able to recognise and manage them. If they need to, they can intervene directly and quickly in a registrant's practice, and do so in a targeted way dealing specifically with the risks.'

'In the small number of cases where employers can't put the right controls in place to keep patients and members of the public safe, then we will need to become involved.'

The NMC may be prepared to look into cases at an early stage where the employer cannot effectively manage the risk of harm to patients. This may be where the nurse, midwife or nursing associate has left their job, has more than one employer or does not have an employer.

You can find out how to make a complaint to an NHS or private healthcare provider at www.avma.org.uk/guides.

NHS and private complaints procedures are separate from disciplinary proceedings against individual members of staff. A complaint to a healthcare provider is not a process through which action is taken against individual members of staff, but in some cases, staff may undertake further training or reflection and learning as a result of the complaint. In the most serious cases, disciplinary proceedings may be triggered by a complaint, which can include referral to regulatory bodies.

I have already made a complaint to the healthcare provider – how do I report my concerns to the NMC?

You should usually raise your concerns in writing by submitting an online form (see below) or by letter or email. You need to set out the nature of the allegation and the events and circumstances giving rise to it so that this satisfies the formal requirements of the NMC in its screening process.

You will need to consent to disclosure of your concerns to the nurse, midwife or nursing associate concerned.

You can complete a form online at www.nmc.org.uk/concerns-nurses-midwives/concerns-complaints-and-referrals. You can also download a form to print off and complete.

Anybody concerned about a nurse, midwife or nursing associate can call the NMC's referral helpline on **0203 307 6802**. Their team can explain:

- Who they are
- How they can help
- What support they can offer
- They can also help you to provide them with the information they need if you decide to make a referral to them.

What information do I need to supply to the NMC?

You need to provide any information relevant to your case, such as your letter of complaint and the response to this. We recommend that you keep all the original documents and only send copies to the NMC. This is in case the documents get lost or are misplaced.

Do I have to provide the person's name?

The NMC recognises it may not always be possible for you to provide the full name. If you can, provide a first name, the date and time and care setting and any other information such as a physical description. You should also give details of who was present (including patients, other staff or any other witnesses). You should provide contact details of any witnesses, such as relatives, who were present.

The NMC will then assess whether there is enough detail to enable it to identify the individual nurse, midwife or nursing associate on the register.

How does the NMC investigate concerns?

Screening

There are four stages to the NMC's screening procedures. They will consider:

- Whether the apparent facts of the case are **serious enough** to raise a concern that the fitness to practise of a nurse, midwife or nursing associate may be currently impaired, as a result of any risk to members of the public, or the public interest.
- Whether the referral meets NMC **formal requirements**
- Whether the NMC will be able to obtain **credible evidence** about the concerns
- Whether there is evidence that the individual has **addressed the concerns** involved, so the NMC can be confident that any risk to patients, the public confidence or professional standards has already been met.

The NMC will firstly assess whether the facts are so serious that they call into question the fitness to practise of the nurse, midwife or nursing associate concerned. Impaired fitness to practise means more than a suggestion that the individual has done something wrong or failed to do something that they should have. It means a concern which is serious enough to raise doubts about whether they should be allowed to continue to practise as a registered professional, either with some form of restriction on their practice, or at all.

There are six statutory grounds. The ones most likely to be relevant in a case of avoidable harm are:

- **Misconduct:** conduct which falls short of what would be expected in the circumstances. An isolated clinical error or incident, unless it is particularly serious, is unlikely to call into question a nurse, midwife or nursing associate's fitness to practise.
- **Lack of competence:** Unless it was exceptionally serious, a single clinical incident would not indicate a general lack of competence on the part of a nurse, midwife or nursing associate. Substandard care that calls into question their competence would usually involve an unacceptably low standard of professional performance, which could put patients at risk, judged on a fair

sample of their work. The core issue is a lack of knowledge, skill or judgement to be capable of safe and effective care.

- **Cases which have been investigated by the police but have not resulted in conviction**
- **Not having the necessary knowledge of English:** this can be considered in cases from February 2016 onwards. Examples of language concerns that could place the public at risk of harm include:
 - Poor handover of essential information about patient treatment or care to other health professionals because of an inability to speak English
 - Serious record keeping errors or patterns of poor record keeping because of an inability to write English
 - Serious failure(s) to provide appropriate care to patients because of an inability to understand verbal or written communications from other health professionals (or patients themselves)
 - Drug error(s) caused by a failure to understand or inability to read prescriptions.

Credible evidence

The NMC will gather evidence on which to base their assessment of your concerns. You need to be aware that this is likely to include copies of your medical records relating to the concern you have raised and that this information will be shared with third parties such as medical experts who may be asked to comment. You will be asked to consent to the NMC obtaining your records.

How does the NMC investigate?

Your concerns will firstly be looked at by a screening team to see whether the matter concerns a person who is registered with the NMC, whether the nature of the referral is something that it can investigate and whether the NMC will be able to get credible evidence. It will also consider whether the person you have raised concerns about has already taken steps to address these concerns.

A member of the screening team will contact you to discuss your concerns. The screening process can take up to eight weeks.

What happens when the NMC concludes its screening assessment?

The NMC may refer the case for further investigation, or it may decide it needs to take no further action. This may happen where:

- The matters included in the referral do not amount to an allegation of impaired fitness to practise
- It is not possible to identify an individual nurse, midwife or nursing associate
- It is not possible to obtain credible evidence in support of the allegation.

It may decide that the nurse has taken enough steps to address fitness to practice concerns, including reflection, retraining and learning, and therefore the case does not require further investigation.

It will inform you of the result of the screening procedure.

The investigation stage

An investigator will be assigned and should contact you within three weeks. The investigation stage can take up to a year, but you should be updated regularly. The investigator will obtain evidence such as medical records and also speak to witnesses. You may also be asked for additional information.

The investigator then compiles a report and a file of evidence. The investigator sends the evidence to the nurse, midwife or nursing associate and their professional representative if they have one. The nurse, midwife or nursing associate then has 28 days to comment on the findings and the evidence gathered.

After 28 days, two case examiners will examine the report, evidence and any comments the NMC receives and decide what happens next. They may:

- Give advice, a warning or ask the nurse, midwife or nursing associate to agree to a plan to ensure they are safe to practise
- Decide that the case does not need to be sent to a hearing and close the case instead.
- Decide to refer the case to a Fitness to Practice Committee. Please note that only a very small proportion of cases where a concern is raised to the NMC ever reach this stage.

Can I get any support during the investigation?

Being involved in raising a concern about a nurse, midwife or nursing associate can be stressful. The NMC offers a [Public Support Service](#) (PSS) that you can access.

This is intended to provide tailored support to patients and families when the NMC is considering whether a nurse, midwife or nursing associate is fit to practise.

They can help you to access the right information and guidance at the earliest opportunity and signpost you to further support beyond the NMC where this is helpful. You can also contact them if you are not sure whether your concern should be investigated.

If you would like further information about the Public Support Service, email publicsupport@nmc-uk.org.

What happens if I am not happy with the NMC's decision?

You can request a review of the decision the NMC has reached, but this will usually only be possible if there is new information about the case. The NMC will then review the new information and consider, together with any material that it has retained, whether its assessment of the seriousness of the case or of the availability of credible evidence has changed. It will then decide whether it needs to investigate further.

You can also ask the NMC to review its decision if there are grounds to suggest in whole or in part that the decision was wrong. Grounds may include:

- The NMC did not apply the threshold test correctly
- It did not follow correct procedures
- It did not properly consider all concerns raised.

If a significant period of time has passed, however, the NMC may not be able to re-investigate.

How do I complain to the NMC about its decision?

Please note that under its corporate complaint procedures the NMC cannot reconsider or change decisions that it has made under the Fitness to Practice process. However, you can raise a complaint about the administration of any case.

As with any complaint, you do need to raise your concerns as soon as possible and not later than 12 months after the decision.

You can find out how to raise your complaint and how the NMC will deal with this at www.nmc.org.uk/contact-us/complaints-about-us.

What other remedies may I have?

Professional Standards Authority (PSA)

This is the body that oversees the work of the NMC. It does not have legal powers which would allow it to investigate complaints about the health and care professional regulators and is not a complaint handling organisation. It does, however, invite feedback from the public on how the NMC has handled your concerns to inform its work.

The PSA may send certain concerns raised with it about a regulator to the regulator concerned and ask for its comments.

You will usually need to have taken your concern through the NMC's complaints process and given it the opportunity to respond. If this has not happened, the PSA will advise you to do this first.

The following conditions will also apply:

- Your concern cannot be dealt with by another organisation
- Dealing with your concern could help to improve health and care professional regulation and public protection.

Concerns the PSA may take forward:

- Delays in the handling of fitness to practise referrals
- Failures in the management of a fitness to practise case
- Poor customer service
- Failures in the process of quality assuring educational institutions.

Concerns that the PSA will not take forward:

- Those relating to business or financial arrangements (e.g. setting of fees or charges set by the regulator)
- Decisions not to refer a complaint for a formal hearing in front of an Investigation Committee or Fitness to Practise Committee
- Decisions to refer or impose an interim order on a registrant's practice
- Support for clinical techniques
- Registration application decisions.

You can contact the PSA at:

Professional Standards Authority

16-18 New Bridge Street

London EC4V 6AG

020 7389 8030

share@professionalstandards.org.uk

www.professionalstandards.org.uk/share-your-experience/

Judicial review

Judicial review is a legal process by which the courts assess whether a public body or quasi-judicial body such as the NMC has reached or failed to reach a decision fairly. The grounds for this can include:

- There has been an unfair or biased process, such as failure to review evidence presented by one side or to give a fair hearing on the basis of the written information
- The decision is irrational.

The most important point about judicial review is that it must be sought very quickly after the decision has been made. You should seek legal advice as quickly as possible if you are considering this route. The latest that an application can be made is three months, but this should not be taken as meaning you have three months to seek advice as you may be too late by that stage.

Judicial review proceedings can be very expensive if you lose your case.

You can find more information on judicial review at publiclawproject.org.uk.

Fitness to Practice Committees (FtPC)

If your case is referred to a FtPC, the matter can be dealt with by a meeting (which is likely to be the more common way the NMC wants to see these matters dealt with) or a hearing. The NMC increasingly will be using FtPC meetings and therefore you should not expect a public hearing or that you will be able to give oral evidence about what happened.

Meetings

At a meeting the Fitness to Practise Committee meets, along with a legal assessor (if the chair is not a qualified lawyer) and adjudicates on the case on the basis of paperwork. It is held in private.

You will not be asked to attend such a meeting and the nurse, midwife or nursing associate will also not attend in person or be able to send a representative. The meeting does not hear live evidence or submissions. Its decisions and the reasons for them will be made public.

The nurse, midwife or nursing associate can ask for a hearing rather than a meeting.

There will be a hearing if there is a material dispute, which is a disagreement between the NMC and the nurse, midwife or nursing associate about an important issue in the case.

Hearings

This is a live hearing before the FtPC. You may be called as a witness to the hearing. Usually witnesses do not have legal representation although the nurse, midwife or nursing associate is likely to have professional representation.

If you decide to attend your expenses should be covered. Hearings are usually held in London, Belfast, Cardiff or Edinburgh.

If you have any disability or special needs, you need to make the NMC aware of this so reasonable adjustment can be made.

You can take a friend or family member to support you. They can come into the hearing room with you while you give your evidence, but they can not participate in the hearing.

You need to be aware that as well as the nurse, midwife or nursing associate, members of the public and press can attend these hearings. However, if there are matters of a sensitive or confidential nature, they may be asked to leave.

Once the hearing has been heard, you will then be written to with the result of the FtPC decision.

What sanctions can be imposed?

The FtPC can:

- Issue a caution for a period of between one and five years
- Impose conditions of practice for a period of up to three years
- Suspend the nurse, midwife or nursing associate's registration for up to one year
- Strike off the nurse, midwife or nursing associate from the register.

The FtPC may also decide that the case is not proven.

How can AvMA help me?

Typically AvMA may be able to:

- Help you to understand whether to raise a concern to the NMC, such as whether your concern is a fitness to practice issue
- Help you to understand any response the NMC gives to your concern or any decision the NMC reaches
- Help you to understand how to request a review of the NMC 's decision.

How to contact us

- If you would like to talk to someone about your concern, please call our helpline on **0345 123 2352**. Lines are open Monday to Friday from 10am to 3.30pm. [See our website for details of call charges](#).
- The helpline can get very busy and you may need to request a call back if you are having problems getting through to an adviser. Please listen to the recorded message for details. You may want to explore whether the information you are looking for is available [on our website](#).

Important things to know about AvMA

- AvMA is an independent patient safety charity.
- AvMA's services are available to the public without charge or obligation. If you telephone us, you will be liable for your telephone provider's tariffs. [See our website for details of call charges](#).
- Our helpline advisers are specially trained volunteers who are medical and legal professionals. Our caseworkers are all qualified doctors or lawyers (some are qualified as both) who are all employed by AvMA. They will be able to provide you with independent, impartial advice about your options and potential rights.
- Your enquiry will be treated in confidence.
- We are self-funding and do not receive any money from NHS Resolution, government bodies or from litigation.

Be part of the movement for better
patient safety and justice

Support
AvMA's work
today

You can help make healthcare safer and fairer for all

Our vision is a simple: **People who suffer avoidable medical harm get the support and the outcomes they need.**

This vision is underpinned by four objectives, we believe, will transform trust in the NHS and healthcare generally and significantly cut the cost – financial and human – which is incurred annually in settling legal claims as well as dealing with the human costs associated with traumatic medical injuries and death. Our four key objectives are:

- To expand the range of communities we serve and so enabling more people experiencing avoidable harm to access services from us that meet their needs
- To empower more people to secure the outcomes they need following an incident of medical harm, whilst providing caring and compassionate support
- To eliminate compounded harm following avoidable medical harm
- To have the necessary diversity of sustainable resources and capacities to deliver

Ongoing donation from as little as £5 a month could go a long way:

£5/month could provide vital advice to patients and families via our helpline

£10/month could help train a volunteer helpline advisor

£50/month could help support a family through an inquest hearing

Your help could make a real difference to patient safety in the UK

Please donate today at www.avma.org.uk/donate



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