

# Reporting unfitness to practise: A guide for employers and managers

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Protecting the public through professional standards

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# Reporting unfitness to practise: A guide for employers and managers

The Nursing and Midwifery Council (NMC) is the regulatory body for nurses, midwives and specialist community public health nurses\* and our primary aim is to protect the public. We do this through setting and maintaining standards of education, training, conduct and performance.

Fitness to practise is a registrant's suitability to be on the register without restrictions.

This booklet will help you if you are an employer or manager considering whether to report a registrant to the NMC for unfitness to practise. It describes the different categories of unfitness to practise that you can report and tells you what evidence you should send to support your complaint.

If you require information about reporting lack of competence, please see the booklet *Reporting lack of competence: A guide for employers and managers*. Copies can be downloaded from our website at [www.nmc-uk.org](http://www.nmc-uk.org) or ordered from the Publications Department on e-mail [publications@nmc-uk.org](mailto:publications@nmc-uk.org) or by fax on 020 7436 2924.

## What to report

Every day employers, managers and supervisors of midwives deal with situations concerning the misconduct, lack of competence or poor health of registrants. Most of these incidents are managed at a local level and do not give rise to wider concerns about public protection.

The NMC's role is to protect the public from registrants whose fitness to practise is impaired and whose situation cannot be managed locally. In these circumstances NMC committees can restrict or remove a practitioner's registration. Reporting a case of unfitness to practise to the NMC is

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\*Nurses, midwives and specialist community public health nurses are collectively referred to as registrants throughout this booklet.

appropriate only when you believe the conduct, practice or health of a registrant is impaired to the extent that public protection may be compromised.

Fitness to practise may be impaired by:

- ▶ misconduct
- ▶ lack of competence
- ▶ a conviction or caution (including a finding of guilt by a court martial)
- ▶ physical or mental ill health
- ▶ a finding by any other health or social care regulator or licensing body that a registrant's fitness to practise is impaired
- ▶ a fraudulent or incorrect entry in the NMC's register.

The standards of conduct, performance and ethics expected of registrants are set out in the *NMC code of professional conduct: Standards for conduct, performance and ethics* (the Code). While it is impossible to compile a definitive list of complaints that the NMC investigates, the following examples will give you a broad overview of situations that could form the basis of an allegation of unfitness to practise.

### **Misconduct**

*Misconduct is conduct which falls short of that which can reasonably be expected of a registrant.*

The most common examples of misconduct include:

- ▶ physical or verbal abuse
- ▶ theft
- ▶ deliberate failure to deliver adequate care
- ▶ deliberate failure to keep proper records.

### **Lack of competence**

*Lack of competence is a lack of knowledge, skill or judgement of such a nature that the registrant is unfit to practise safely and effectively in any field in which the registrant claims to be qualified, or seeks to practise.*

Examples of lack of competence include:

- ▶ persistent lack of ability in correctly and/or appropriately calculating, administering and recording the administration or disposal of medicines
- ▶ persistent lack of ability in properly identifying care needs and, accordingly, planning and delivering appropriate care.

### **Conviction or caution**

The types of conviction or caution that could lead to a finding of unfitness to practise include:

- ▶ theft
- ▶ fraud or other dishonest activities
- ▶ violence
- ▶ sexual offences
- ▶ accessing or downloading child pornography or other illegal material from the internet
- ▶ illegally dealing or importing drugs.

### **Health conditions**

Health conditions that might lead to a finding that a registrant's fitness to practise is impaired include:

- ▶ alcohol or drug dependence
- ▶ untreated serious mental illness.

### **How to report a case to the NMC**

All allegations of impairment of fitness to practise must:

- ▶ identify the registrant concerned
- ▶ clearly set out the complaint against the registrant
- ▶ be supported by appropriate information and evidence.

A check-list of the general information and evidence that is required to support an allegation, as well as the specific reporting requirements for the various categories of unfitness to practise, are detailed below.

All allegations must include:

- ▶ the registrant's full name, PIN and current or most recent address
- ▶ the registrant's job at the time of the allegations and key aspects of the post that may be relevant in considering the complaint
- ▶ details of any previous action undertaken through disciplinary, capability or health procedures.

### **Misconduct**

Misconduct allegations must include:

- ▶ a clear account of the alleged incident
- ▶ a brief description of the context or circumstances of the incident (for example, the number and types of patients for whom the registrant was responsible, and who else was on duty at the time)
- ▶ copies of witness statements and confirmation that the witnesses agree to give a statement to the NMC's solicitors and, if required, to give evidence in person to a fitness to practise hearing committee
- ▶ copies of any relevant documents such as care plans and records, adverse incident forms, medicine administration records, financial records and work diaries
- ▶ copies of notes of any investigative or disciplinary meetings
- ▶ details of any police involvement and the name and contact details of the officer in charge of the case.

### **Conviction and caution**

Cases based on a conviction or caution must include:

- ▶ the name of the court, date of appearance and details of the offences resulting in conviction
- ▶ the name and contact details of the officer in charge of the case (if known).

### **Lack of competence**

Lack of competence allegations must include:

- ▶ details of incidents which indicate a lack of competence (witness statements)

- ▶ evidence that the registrant has been informed about the deficiencies in their practice (records of meetings and follow-up correspondence)
- ▶ evidence that the registrant has been given the opportunity to improve their competence (objectives, action plans, appraisal records)
- ▶ results of assessments following opportunities for improvement that indicate a continuing lack of competence (assessment records, witness statements).

We strongly recommend you refer to the NMC booklet *Reporting lack of competence: A guide for employers and managers* for more advice about collecting evidence of lack of competence.

### **Health issues**

Allegations about health issues must include:

- ▶ a clear account of any behaviour or incidents that show impairment due to ill health
- ▶ details of the registrant's sickness record and copies of any medical reports
- ▶ confirmation that witnesses agree to give a statement to the NMC's solicitors and, if required, to give evidence in person to a fitness to practise hearing committee
- ▶ copies of notes of any meetings where the registrant's health has been discussed.

## **What happens when you report a case?**

### **Investigating Committee**

When you send an allegation to the NMC, including all your supporting evidence, we refer the case to a panel of the Investigating Committee. We also send the registrant a copy of the allegations and supporting information and invite them to submit a written response for the panel to consider.

The panel may ask for more information – for example, it can ask solicitors to carry out further investigations or ask the registrant to undergo practice or medical assessments. It can also invite you to respond to particular points the registrant may raise in their response.

The panel of the Investigating Committee has to decide whether there is ‘a case to answer’. This means the panel must be reasonably satisfied both that the facts of an allegation are capable of being proved and that, if proved, those facts could lead to a finding that the registrant’s fitness to practise is impaired.

If the panel finds there is no case to answer it will close the case. If it finds there is a case to answer, it will refer the case either to the Conduct and Competence Committee or to the Health Committee.

As a complainant you may report an allegation about, for example, misconduct or lack of competence. However, you do not choose whether it is a matter for the Conduct and Competence Committee or for the Health Committee. If the panel of the Investigating Committee agrees there is a case to answer, it will decide which committee will hear the case.

### Hearings

Panels of the Conduct and Competence Committee and Health Committee hold hearings to decide whether a registrant’s fitness to practise is impaired and, if so, to take appropriate action. Conduct and competence cases are generally heard in public; health cases are generally heard in private.

Witnesses are not always called to attend but they will be required if there is any dispute about the facts of the case. The anonymity of patients and clients is protected and special provisions exist for vulnerable witnesses whose evidence is needed to prove a case.

### Outcomes

When a panel finds a registrant’s fitness to practise is impaired it will either decide not to take further action or it will make one of the following orders:

- ▶ a striking off order
- ▶ a suspension order
- ▶ a conditions of practice order (which imposes conditions the registrant must comply with)
- ▶ a caution order.

In misconduct cases, a *striking off order* can be made immediately. In lack of

competence and health cases, it can be made only after a two-year continuous suspension or conditions of practice order.

A *suspension order* must specify the period of suspension, which cannot exceed one year in the first instance. A panel must review the order before the expiry date. At that time it may replace, vary or revoke the order.

A *conditions of practice order* must specify for how long the conditions are to be imposed and this period cannot exceed three years. A panel must review the order before the expiry date. At that time it may replace, vary or revoke the order.

A *caution order* must specify how long the caution will show on the register and this period cannot be less than one year or more than five.

### Interim orders

In exceptional circumstances, a panel of any of the committees can make an interim suspension or interim conditions of practice order before either the Conduct and Competence Committee or the Health Committee has heard the case. This is a very serious step as the evidence may not have been tested and the registrant’s fitness to practise has not yet been found to be impaired. A panel must be satisfied that the interim order is necessary to protect the public, is in the public interest or is in the registrant’s interest. If you are dealing with a case of such serious risk, it is highly likely that you will already have involved the police.

You should get in touch with the NMC immediately if you think a case may justify interim suspension (see below for contact details.) You may not have a lot of information, but you should tell us as much you can and let us have the contact details of the police officer in charge of the case.

## Advice

If you have any questions, or if you would like to discuss a particular case, you can call the NMC's Fitness to Practise Directorate on 020 7333 6564 or 020 7333 6572 or e-mail [fitness.to.practise@nmc-uk.org](mailto:fitness.to.practise@nmc-uk.org).

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