

Considering cases at meetings and hearings

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Overview

This guidance applies to final decisions in fitness to practise and fraudulent or incorrect entry cases.

It explains the similarities and differences between hearings and meetings, and the factors that are relevant to deciding when a hearing is desirable.

We'll always hold a hearing to conclude a case if the nurse, midwife or nursing associate wants one.¹

If the nurse, midwife or nursing associate asks for a meeting (explained below), or if they don't respond when we ask them how they'd prefer us to conclude their case, we'll usually hold a meeting rather than a hearing, unless the panel (or in a case about [fraudulent or incorrect entry](#), the Registrar (or one of our Assistant Registrars who also make decisions on behalf of the Registrar)) decides that a hearing would be desirable.²

This guidance explains the similarities and differences between hearings and meetings, and the factors that are relevant to deciding when a hearing is desirable. We also discuss those factors that are likely to be less relevant to that decision.

This guidance also sets out the factors we take into account when deciding whether hearings should be held virtually (using video-conferencing or similar technology) or physically, with the parties present at one of our hearings centres.

Comparing meetings and hearings

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Our Investigating Committee and Fitness to Practise Committee panels can reach decisions on cases at a meeting³ or a hearing.

The panel's role in both a meeting and a hearing is to carefully consider all the evidence and decide if the concerns are proved.

Panels at all meetings and hearings are independent and have to make their own decision about whether the nurse, midwife or nursing associate's fitness to practise is impaired. Whether the case is considered at a hearing or meeting, the panel has the same range of sanctions available if they decide some action needs to be taken to address the concerns raised.

At both meetings and hearings, an independent legal assessor is present to give legal advice and help ensure the fairness of proceedings.

In all cases, the panel will produce a written determination that is sent to the registrant and their representative (if they have one), as well as the person who raised the concern with us and anyone who's helped us with our investigation (such as witnesses) or been affected by the case (such as patients, their families and loved ones).⁴

Meetings

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At a meeting, the panel makes its decision based only on the documents that have been submitted to it. The nurse, midwife or nursing associate doesn't attend the meeting, and nor do any witnesses, although their written statements will be considered by the panel.⁵ This means that meetings take less time to conclude than hearings and are less adversarial.

Although the nurse, midwife or nursing associate doesn't attend a meeting, they can still engage effectively with the process by sending in any information in advance that they want the panel to consider.⁶

Similarly, although the NMC case presenter doesn't attend a meeting, they provide the panel with any information in advance that they want the panel to consider. This will generally include a 'statement of case'. This is a document that sets out the relevant evidence, explains why we think the evidence suggests that the nurse, midwife or nursing associate's practice should be restricted and also sets out what sanction we propose the panel should impose. The nurse, midwife or nursing associate will have the opportunity to respond to our statement of case in writing before the meeting takes place.

Meetings are held in private, meaning that the public won't be there. However, where a nurse, midwife or nursing associate's fitness to practise is found impaired, and a sanction is given, we always publish the panel's decision following our [FtP Publication guidance](#).

Meetings can take place either virtually or physically with the panel meeting in person at a hearings centre.

Hearings

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Nurses, midwives or nursing associates will always be able to have a hearing if they want one.

They'll be able to attend a hearing with or without a representative and can also arrange for a representative to attend on their behalf.

A case presenter will attend to represent us.

A key difference between meetings and hearings is that people can give live evidence to the panel. Anyone who gives evidence can be asked questions about their evidence by the other party and by the panel.

Hearings are generally held in public whether they are being held virtually via video-conferencing or take place physically at a hearings centre. (However, any hearing may have some parts of its proceedings held in private, if necessary to protect the privacy of any party involved.) [Further information is available here](#).

Factors that are relevant to whether a hearing, rather than a meeting, is desirable

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When a nurse, midwife or nursing associate hasn't asked for a hearing, or where we haven't heard from them, we'll usually hold a meeting unless a panel or Registrar decides that a hearing is desirable. We'll keep the decision about how a case should be resolved under review and will ask the panel or Registrar to reconsider their decision if there has been a relevant change in circumstances (for example where the nurse, midwife or nursing associate decides to admit the charges against them).

In the sections below, we explain some of the considerations that will be relevant to deciding whether a hearing, rather than a meeting, is desirable.

Disputes that can only be resolved at a hearing

We encourage nurses, midwives and nursing associates to engage with us and give us their account of what happened. This includes any information about context, and any reflective work or learning they've carried out.

We sometimes find this information out as part of our investigation. For example, if a nurse, midwife or nursing

associate has provided information to their employer as part of a local investigation.

If it is clear that the nurse, midwife or nursing associate materially disputes the allegations, or the facts relating to the allegations (such as the context in which the incident occurred), then a hearing might be necessary to explore this aspect of their case with relevant witnesses. This will include asking questions of the person who is the subject of the concern, if they attend the hearing.

A material dispute in this context is where the nurse, midwife or nursing associate disputes factual matters that could affect the final outcome of the case. The 'outcome' of the case is whether the person's fitness to practise is found impaired by the independent panel, and the type of sanction that they decide to impose. If either of these could be affected by the areas in dispute, then the dispute is 'material'.

Factors that are less relevant to whether a hearing is desirable

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The public interest and seriousness

The public interest doesn't require cases to be resolved at hearings just because the allegations in a case are serious. Serious cases can be decided at meetings. The adversarial nature of hearings can have a negative impact on people, as well as being slow and resource intensive, so in many cases a meeting may be preferable.

Where there's no dispute that could affect the outcome of the case or practical reason why a hearing may be desirable, the fitness to practise decision can be made swiftly at a meeting. It is in the public interest to be transparent about our decisions and we'll publish outcomes where impairment has been found and a sanction has been imposed. We'll also share our statement of case with anyone who has been affected by the case we've been investigating (such as patients, their families and loved ones), where requested, and in line with our [information handling guidance](#).

Complexity

The fact that a case is complex is unlikely to justify holding a hearing on its own. Complex cases can be decided at meetings.

When the case is referred to a meeting, we'll create a statement to help the panel understand our position on the case because there won't be a case presenter attending. This statement will explain why we say there's enough evidence for the panel to decide that the charges are proved, why we say the nurse, midwife or nursing associate's practice should be restricted, and what action we say the panel should take, and why.

We'll also prepare an 'evidence matrix' that sets out which sections of the paperwork for the case provide evidence in relation to each charge. (The paperwork for the case is often referred to as 'the bundle'.) This makes the bundle of documents easier to follow.

The nurse, midwife or nursing associate will have the opportunity to respond to our statement of case and the bundle of documents in writing before the meeting takes place.

Our independent panel members are all experienced professionals who are able to scrutinise documents, written evidence and written submissions carefully. This means they can deal with complex cases using all the paperwork provided, without needing to hear live evidence from the witnesses or the person who is the subject of the case, unless there's a material dispute that could affect the outcome of the case or another practical reason why a hearing would be useful.

If the independent panel at a meeting decides that it needs clarification or further information on an issue, it should consider postponing or adjourning the meeting with directions to the NMC setting out what further information it requires. This is so that the matter can be looked into, and if necessary further submissions, documents or evidence can be sent to the panel when the meeting can resume.⁷

If the independent panel will not all be available to resume the meeting within a short period of time (a few weeks), then they should allow a different independent panel to conclude the case when the further information is available.

Taking such a step is likely to be more proportionate than referring the case to a hearing when this may not be

needed to resolve the issue.

Disputes about matters that aren't likely to have an impact on the outcome of the case, or where the basis for the dispute isn't clear

A hearing is unlikely to be useful if only a small number of allegations or factual matters are disputed that won't have a material impact on the outcome. In these circumstances, a fair outcome can usually be achieved by the NMC asking the panel to consider the charges at a meeting.

If the nurse, midwife or nursing associate hasn't given us any details about why they dispute the allegations, a hearing is also less likely to be desirable.

By the time the independent panel is making the decision as to whether a case should be concluded at a meeting or a hearing, the person we're investigating will already have had several opportunities to explain to us why they dispute the allegations. If the basis for disputing the allegations isn't clear, it will be difficult for the panel to identify what issues need to be explored with witnesses at a hearing.

Disagreements about impairment or sanctions, rather than the underlying facts

If the nurse, midwife or nursing associate hasn't indicated that they wish to attend or call witnesses at a hearing and any disagreement relates only to the appropriate decision on impairment or sanction, rather than the underlying facts, then a hearing is unlikely to be desirable.⁸ Our view is that any disagreement about impairment or sanction can usually be fairly dealt with at a meeting, based on a careful consideration of our statement of case, relevant evidence and any written statement received from the nurse, midwife or nursing associate.

The views of those who might have been affected by what happened

In situations where members of the public or others have been directly affected by what happened in a case, particularly if it resulted in serious consequences for themselves or a loved one, they may ask us to hold a hearing so that they can observe the proceedings, or give evidence as a witness. We will always consider requests of this type, but we're unlikely to decide to hold a hearing if the only reason for doing so is that someone affected by the case has asked us to. Our view is that hearings should normally be reserved for cases where there are significant disputes of fact that need to be explored with witnesses. In other cases, the panel will usually be able to reach a fair decision by considering all the relevant documents at a meeting, including any evidence we've obtained from those affected by what happened.

Deciding whether hearings should be held virtually or physically

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Hearings can take place remotely with all parties attending virtually or physically at a hearings centre with the main parties attending the venue in person in most cases.⁹ The NMC will decide whether to hold a hearing virtually or physically at a hearings centre on a case by case basis in discussion with the nurse, midwife or nursing associate and their representative (if they have one). We'll be guided by the principle of fairness and ensure that people can engage effectively in the hearing. We'll take into account the view of the nurse, midwife or nursing associate whose case is being considered and if anybody has a protected characteristic which makes one type of hearing more suitable than another. Before we list a case for virtual hearing we'll ask if participants have the right technology to participate effectively and are able to use it.¹⁰

Our overarching considerations will be:

- the need to act fairly towards all those taking part in the hearing;
- the need for the hearing to be run efficiently;
- the public interest in fitness to practice hearings being concluded in a timely manner.

If there is a dispute about whether a hearing should be held physically or virtually, a final decision will be made by a Panel Chair at a preliminary meeting usually held a few weeks in advance of the hearing itself.

1 Rules 5(1)(a) and 10(2)(a) Fitness to Practise Rules 2004

2 Rules 5(1)(b) and 10(2)(b) Fitness to Practise Rules 2004

3 Rules 5(5)(b) and 10(3) Fitness to Practise Rules 2004

4 Rules 5(6) and 13 Fitness to Practise Rules 2004

5 This applies to all meetings except preliminary meetings which are always held in private but where the parties

can attend.

6 Registrants have a number of opportunities to provide us with representations before their case is considered by a panel. This includes prior to the case examiner consideration and once an allegation has been referred to the Fitness to Practise Committee [See Rules 6A(2)(b), 6B(4) 9(2)(b) and 11A(2)(e)].

7 At a meeting, the panel has the power to determine its own procedure under Rule 10(4) Fitness to Practise Rules 2004

8 Meetings are more likely to be appropriate when a panel is reviewing a substantive order and a nurse, midwife or nursing associate has not indicated they'd like to attend a hearing. This is because at this point the panel is usually only looking at whether the nurse, midwife or nursing associate is still impaired, and what action if any to take. The panel at the meeting makes a decision using this guidance whether to proceed with the meeting or not. The panel can decide that a hearing is in fact desirable, and refer the case to a hearing.

9 The approach of the higher courts to remote hearings and fairness was recently summarised by the Lord Chief Justice in *Yilmaz v SSHD* [2022] EWCA Civ 300: "The use of remote technology in legal proceedings, including hearing evidence by phone or computer link, became ubiquitous in all jurisdictions during the Covid pandemic. Many reservations about its use have been dispelled but there remains a central issue about fairness and the interests of justice that is best considered on a jurisdiction by jurisdiction basis with an eye to the different types of case and participation under consideration."

10 If a nurse, midwife or nursing associate objects to the way the NMC has listed a hearing (i.e. for virtual consideration or for attendance at a hearing centre) we will list the matter for a preliminary meeting and a chair of the practice committee will be asked to give directions on how the case should proceed.