

Indicative sanctions guidance to panels

Introduction

Role and status of the indicative sanctions guidance

- 1 This guidance has been developed by the Nursing and Midwifery Council (NMC) for use by its Conduct and Competence Committee (CCC) and Health Committee (HC) when considering what sanction to impose following a finding that a nurse or midwife's fitness to practise is impaired. This guidance is also to be used when a panel is reviewing a previously imposed order.
- 2 This guidance is an authoritative statement of the NMC's approach to sanctions. It is not an alternative source of legal advice. When appropriate, the legal assessor will advise the panel on questions of law, including questions about the use of this guidance and the approach it should take. Panels must always have in mind that each case is different and should be decided on its own particular facts.

The NMC's statutory purpose

- 3 The pursuit by the Council of its over-arching objective of protecting the public involves the pursuit of the following objectives¹
 - 3.1 to protect, promote and maintain the health, safety and well-being of the public;
 - 3.2 to promote and maintain public confidence in the professions regulated under this Order; and
 - 3.3 to promote and maintain proper professional standards and conduct for members of those professions.
- 4 In relation to the above objective of the NMC is to protect the health and well-being of persons using or needing the services of nurses and midwives, our governing legislation sets out that our 'principal function' is to establish standards of education, training, conduct and performance and to ensure the maintenance of those standards.²
- 5 The Code³ sets out our professional standards of practice and behaviour for nurses and midwives. Additional information on the Code and other topics⁴ can be

¹ Article 3(4) Nursing and Midwifery Order 2001 states the over-arching objective of the NMC's Fitness to Practise (FtP) function is to protect the public. Article 3(4A) states that this is achieved by undertaking to: a) protect, promote and maintain the health, safety and well-being of the public; b) promote and maintain public confidence in the professions regulated under this Order; and c) promote and maintain proper professional standards and conduct for members of those professions.

² Article 3(2) Nursing and Midwifery Order 2001

³ <http://www.nmc.org.uk/standards/code>

found on the Code's pages on our website. Additional standards for particular areas of practice and NMC Guidance are also available online.⁵

- 6 All nurses and midwives are reminded that "...while you can interpret the values and principles set out in the Code in a range of different practice settings, they are not negotiable or discretionary," and that the NMC "...can take action if registered nurses or midwives fail to uphold the Code. In serious cases, this can include removing them from the register."
- 7 The indicative sanctions guidance is vital to how we carry out our principal function because it gives panels of our Practice Committees guidance on the action to take when a nurse or midwife has failed to comply with the standards of good practice, conduct and performance established by the NMC, and there has been a finding that their fitness to practise is impaired.
- 8 Although panels must exercise their own judgement in making decisions on sanction, they must also take into consideration the standards, guidance and advice we have established to secure the health and well-being of patients and members of the public. The starting point for any panel is the extent to which the nurse or midwife has departed from those standards.
- 9 The indicative sanctions guidance aims to provide consistency and transparency in decision making. It ensures that all parties, including the nurse or midwife and the public, are aware of the approach that the NMC's panels will take when considering what sanction, if any, to impose on a nurse or midwife whose fitness to practise is impaired.
- 10 In order to achieve this, panels should generally follow this guidance. Where a panel has reason to depart from the guidance, it should clearly explain why it has done so in its reasons. Nothing in this guidance is intended to fetter a panel's discretion in any particular case.

Some key principles

The public interest

- 11 Mr Justice Newman, in *R (on the application of Abrahaem) v GMC*⁶ described indicative sanctions guidance in the following terms:

"Those are very useful guidelines and they form a framework which enables any tribunal, including this court, to focus its attention on the relevant issues. But one has to come back to the essential exercise which the law now requires in what lies behind the purpose of sanctions, which, as I have already pointed out, is not to be punitive but to protect the public interest; public interest is a label which gives rise to separate areas of consideration."

⁴ Including conscientious objection and FGM reporting duties

⁵ <http://www.nmc.org.uk/standards/additional-standards> and <http://www.nmc.org.uk/standards/guidance>

⁶ [2004] EWHC 279 (Admin)

- 12 The courts have made it clear that the functions of panels are quite different from those of “*a court imposing retributive punishment*”⁷. The public interest must be at the forefront of any decision on sanction and this includes the particular need to protect patients and the collective need to maintain the confidence of the public in the professions.
- 13 A number of judgments have identified and confirmed that the public interest includes amongst other things:
 - 13.1 protection of patients and others;
 - 13.2 maintenance of public confidence in the professions and the regulatory body; and
 - 13.3 declaring and upholding proper standards of conduct and behaviour.
- 14 As the principal function of sanctions is not punitive but to protect the public interest, it follows that “*since the professional body is not primarily concerned with matters of punishment, considerations which would normally weigh in mitigation of punishment have less effect on the exercise of this kind of jurisdiction.*”⁸
- 15 The public interest may include the safe return to practise of a nurse or midwife. However, this must be balanced against other public interest considerations. There will be cases where the misconduct is so serious that nothing less than a striking-off order could be appropriate, and that assessment cannot change simply because the professional in question had particularly high levels of clinical skill.⁹

Proportionality

- 16 Panels imposing sanctions are under a duty to act proportionately. Any interference with a nurse or midwife’s right to practise in their chosen profession will engage the right to respect for private and family life, which is protected by Article 8 of the European Convention on Human Rights.¹⁰
- 17 Accordingly, any interference with the nurse or midwife’s ability to practise must be no more than necessary to satisfy the public interest, which includes the protection of the public. It must strike a fair balance between the rights of the nurse or midwife and the public interest.¹¹
- 18 Acting proportionately requires panels to consider all the sanctions available to them in ascending order of seriousness. Panels should start with the least restrictive sanction, until finding the order that is sufficient to deal with the factors in the case which mean that the nurse or midwife’s fitness to practise is currently impaired. This is the case whether the finding of impairment was made because of a risk of harm to patients, the maintenance of public confidence, or the need to declare and uphold proper standards.

⁷ *Raschid and Fatnani v GMC* [2007] EWCA Civ 46

⁸ *Bolton v Law Society* [1994] EWCA Civ 32

⁹ *Giele v General Medical Council* [2005] EWHC 2143 (Admin)

¹⁰ See *R (Wright) v Secretary of State for Health* [2009] UKHL 3

¹¹ *Huang v Secretary of State for the Home Department* [2007] UKHL 11

- 19 It is also good practice for panels to explain why it is not necessary to impose a more severe sanction than the one they have chosen, and to refer to the next most severe sanction to satisfy themselves that the sanction they have chosen is proportionate and correct.

Aggravating and mitigating factors

- 20 All aspects of mitigation should be considered against the backdrop of the fundamental purpose of sanctions: public protection, the declaring and upholding of professional standards and the maintenance of public confidence in the professions and the regulator.
- 21 In every case when considering sanction, panels will wish to pay careful regard to any evidence presented as mitigation at any stage in the proceedings. Mitigation can be considered in three distinct categories:
- 21.1 Evidence of the nurse or midwife's insight and understanding of the problem, and their attempts to address it. This may include early admission of the facts, apologies to the complainant or the person(s) affected, any efforts to prevent reoccurrence or any efforts to correct the difficulties.
- 21.2 Evidence of the nurse or midwife's observance of the principles of good practice. This may include a demonstration of keeping up to date with their area of practice, or their previous good character or history.
- 21.3 Personal mitigation, such as periods of stress or illness, personal and financial hardship, level of experience at the time in question, level of support in the work place (the list is not exhaustive).
- 22 While personal mitigation may carry considerable weight in favour of a defendant, when punishment is being imposed in the criminal justice system, in regulatory proceedings it is likely to weigh less. This is because it will be balanced against the public interest as defined above, and the fact that the purpose of regulatory sanctions is to protect that public interest and not impose punishment. It must be accepted that sanctions may have a punitive effect, but this is not their purpose.
- 23 Mitigation evidence may be presented by way of references and testimonials. Panels should first consider whether these are genuine and to be relied upon. Relevant factors will include:
- 23.1 Has the NMC has had an opportunity to verify the reference or testimonial?
- 23.2 Is it signed by the author?
- 23.3 Is it different in style, font or language from other references and testimonials produced?
- 23.4 Where appropriate, is it on headed paper?
- 24 Panels should then consider what weight, if any, to attach to the reference or testimonial. They should determine whether the author was fully aware of the

nature of the allegation faced by the nurse or midwife. A key consideration where the reference is from a professional colleague is to what extent, if any, they are qualified to comment on the matters that have formed the basis of the allegations.

- 25 The panel should also assess the extent to which the reference actually addresses the matters behind the factual allegations and the areas of the nurse or midwife's fitness to practise that appear to be affected by the allegations. References will often have been provided in advance of the hearing and may not stand as a wholly accurate picture of the nurse or midwife, in light of the facts found proved or the nature of the impairment.
- 26 As well as considering the mitigating features of the case, the panel will need to consider any aggravating features of the case, such as (again, the list is not exhaustive):
 - 26.1 any previous regulatory or disciplinary findings;
 - 26.2 abuse of a position of trust;
 - 26.3 lack of insight into failings;
 - 26.4 direct or indirect patient harm (or conduct that could foreseeably cause harm), which includes failures in safeguarding¹²; or
 - 26.5 a pattern of misconduct over a period of time.

Interim orders

- 27 Panels need to be cautious that they do not give disproportionate weight to whether or not the nurse or midwife has previously been the subject of an interim order. Interim order panels make no findings of fact and apply a different test. An interim order and the length of any such order will be of limited or no significance to panels determining sanction in light of a finding of impaired fitness to practise.
- 28 The fact that a nurse or midwife has been subject to an interim order may be relevant to explain that they have not had the opportunity to work towards remedying any defects in their practice by working as a registered nurse or midwife.
- 29 Any breaches of an interim order may be relevant to the panel's assessment of the nurse or midwife's insight and attitude, and to whether the nurse or midwife is likely to comply with any order made.
- 30 A proven period of compliance with and progress under an interim order may be relevant to an assessment of the nurse or midwife's insight and the risk that they may present to the public in the future.

¹² E.g. s5B of the Female Genital Mutilation Act 2003 and the mandatory duty on regulated professionals to report known cases of FGM to the police.

Transferring cases between practice committees

- 31 Any issue of whether to transfer a case from the CCC to the HC (and vice versa) will normally have been resolved before the sanction stage. However, the power to transfer between practice committees does exist at the sanction stage. Should the issue arise then, the panel should bear in mind the following matters.
- 32 A panel of the CCC has the power to refer the nurse or midwife to a panel of the HC if it appears that the allegation would be better dealt with by the HC. However, it may not do so unless it is satisfied that it would not make a striking-off order.
- 33 When considering whether an allegation would be better dealt with by the HC, a panel of the CCC should bear in mind that the HC only has jurisdiction over allegations of impairment of fitness to practise by reason of health. It cannot make a finding of impairment on any other basis (such as misconduct, lack of competence, conviction, not having the necessary knowledge of English and a determination by another health or social care regulatory body in the UK that fitness to practise is impaired).¹³
- 34 If a panel of the CCC decides that it is appropriate to refer the nurse or midwife to the HC, it should, at the same time, consider whether it may be necessary to make an interim order pending the HC's consideration of the case.
- 35 Should the panel of the HC find that the nurse or midwife's fitness to practise is not impaired due to ill health, it is required to send the case back to the CCC panel for its enquiry into the other allegation of impaired fitness to practise to be resumed. If the HC finds the nurse or midwife's fitness to practise is impaired due to ill health, it will take over the case and the CCC will have no further involvement.

Particular considerations

Dishonesty

- 36 Dishonesty, even where it does not result in direct harm to patients but is related to matters outside of a nurse or midwife's professional practice, for example, fraudulent claims for monies, is particularly serious because it can undermine the trust the public place in the profession. Honesty, integrity and trustworthiness are to be considered the bedrock of any nurse or midwife's practice.
- 37 In *Parkinson v NMC*,¹⁴ Mr Justice Mitting said:

“A nurse found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the register. A nurse who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than direct erasure.”

¹³ Article 22(1)(a) of the Nursing and Midwifery Order 2001

¹⁴ [2010] EWHC 1898 (Admin)

- 38 We do not consider that this decision means that in cases of dishonesty panels are left with an arbitrary choice between suspension and striking-off, or that in the absence of special circumstances a striking-off order is to be seen as a 'default' outcome. Rather, this decision makes clear that dishonesty is a highly serious matter and that a striking-off order will almost always be a possible outcome.

Sexual misconduct

- 39 This covers a wide range of conduct, from criminal convictions for sexual offences through to sexual misconduct with patients, colleagues or patients' relatives.
- 40 Panels should have regard to the guidance produced by the Professional Standards Authority on clear sexual boundaries.¹⁵
- 41 The misconduct will be particularly serious where there is an abuse of the special position of trust which the nurse or midwife holds, or where the nurse or midwife is required to register as a sex offender. Although the level of risk to patients will need to be given careful consideration, sexual misconduct seriously undermines public trust in the professions.
- 42 Sexual offences include accessing, viewing, or other involvement in child pornography, which involves the abuse or exploitation of a child. These types of offences gravely undermine patients' and the public's trust in the profession and seriously impact on the reputation of the professions.
- 43 Panels should be aware that any conviction relating to child pornography will lead to registration as a sex offender and possible disqualification from working with children.
- 44 The criminal courts identify degrees of seriousness in relation to child pornography offences. However, panels will wish to give careful regard to the proposition that any conviction for child pornography is a matter of serious concern because it involves such a fundamental breach of trust and damages the reputation of the professions.
- 45 In all cases of serious sexual misconduct, it will be highly likely that the only proportionate sanction will be a striking-off order. If panels decide to impose a sanction other than a striking-off order, then they will need to be particularly careful in explaining clearly and fully the reasons why they made such a determination, so that it can be understood by those who have not heard all of the evidence in the case.

Criminal convictions

- 46 The purpose of the sanction is not to punish the nurse or midwife for a second time in relation to a criminal conviction or caution.

¹⁵ <http://www.professionalstandards.org.uk/docs/psa-library/guidance-for-patients---clear-sexual-boundaries-with-health-professionals.pdf/>

47 Panels should bear in mind that the sentence previously imposed in a criminal context is not necessarily a reliable or definitive guide to the seriousness of the conviction as far as professional regulation is concerned. There may have been specific personal mitigation which led the court to its decision on sentence, which carries less weight in the regulatory context because of the different public interest considerations that apply.

48 In *R (on the application of Low) v GOC*¹⁶, Mr Justice Sullivan, referring to the statement of Sir Thomas Bingham MR in *Bolton v Law Society*¹⁷ that “*the reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price*” said:

“...because of these considerations, the seriousness of the criminal offence, as measured by the sentence imposed by the Crown Court, is not necessarily a reliable guide to its gravity in terms of maintaining public confidence in the profession.”

49 In *CHRE v (1) GDC and (2) Fleischmann*¹⁸, a case concerning child pornography offences, Mr Justice Newman said that:

“as a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained”

Review hearings

50 At a review hearing into a substantive order the panel will be reviewing an existing order and will have the power to extend, vary, revoke or replace the order with any order the panel could have made at the time the order was first imposed. The panel should refer to Article 30 of the Order and seek guidance from the legal assessor as to the specific powers and disposals it has available to it when reviewing an order.

51 On a review, the panel should not allow the nurse or midwife to resume unrestricted practice unless it is satisfied that their fitness to practise is no longer impaired. In making this decision, the panel should address the following key considerations (the list is not exhaustive):

¹⁶ [2007] EWHC 2839 (Admin)

¹⁷ [1994] 1 WLR 512

¹⁸ [2005] EWHC 87 (Admin)

- 51.1 Has the nurse or midwife successfully completed or complied with any conditions imposed?
- 51.2 What evidence has the nurse or midwife provided to demonstrate successful compliance with or completion of conditions? The panel should carefully consider the quality and provenance of the evidence.
- 51.3 Does the compliance with or completion of the conditions demonstrate that the nurse or midwife is now safe to practise and/or that there is no longer a risk to patient safety?
- 51.4 Does the nurse or midwife show insight into their failings and the gravity of the misconduct?
- 51.5 Does the nurse or midwife have an unblemished record subsequent to the finding of impairment?
- 51.6 Has the nurse or midwife taken effective steps to maintain their skills and knowledge?
- 52 If the panel is satisfied that the nurse or midwife's fitness to practise is no longer impaired, it should make no further order or revoke the existing order. If it considers that the nurse or midwife's fitness to practise is still impaired, it should go on to consider the sanctions that are available in accordance with the remainder of this guidance.
- 53 In cases of misconduct where a panel has previously imposed a suspension order in circumstances where there was no risk of repetition or risk to patients, but it was deemed necessary to declare and uphold proper standards of conduct and behaviour, it may be self-evident on a review that the nurse or midwife will be able to return to unrestricted practice provided that they have demonstrated an adequate level of insight.
- 54 Where a review hearing cannot be completed before the expiry of the order, the panel should consider carefully the need to extend the order for such period of time as will be required to complete the hearing. The panel should weigh the interests of the nurse or midwife against the significant fact that a review has not been completed and so it has not been able to satisfy itself that the nurse or midwife's fitness to practise is no longer impaired.

The sanctions

- 55 Panel members should consider the full range of sanctions open to them. The proper approach is to start with the least severe sanction. In *Giele v General Medical Council*¹⁹ Mr Justice Collins said that the panel should decide "whether it [the sanction] was right for the misconduct in question after considering any lesser sanction". This means that panels must explain why they have chosen a particular sanction, and also say why they have rejected other sanctions.

¹⁹ [2005] EWHC 2143 (Admin)

- 56 The following section of this guidance deals with each of the sanctions in turn, starting with the least serious first.

No further action

- 57 Having made a finding of impairment of fitness to practise, a panel may decide to take no further action. However, the panel should have in mind that, in finding current impairment, it has concluded that there is continuing risk to patients, and/or the nurse or midwife's failures bring the professions into disrepute, and/or they have breached one of the fundamental tenets of the professions.²⁰
- 58 In light of this, the NMC expects that panels will usually need to take action to secure patient safety, to secure public trust and confidence in the profession, or to declare and uphold proper standards of conduct and behaviour.
- 59 Before taking no further action, the panel should see cogent evidence for any factors taken into consideration. In giving its reasons the panel should set out very clearly the reasons why it considered it appropriate to take no further action notwithstanding that it has found the nurse or midwife's fitness to practise impaired. It should carefully identify the circumstances that justify such a course.

Caution order

- 60 A caution order is the least restrictive sanction that can be applied in a case where a panel has concluded that a nurse or midwife's fitness to practise is impaired. It does not restrict the nurse or midwife's ability to practise, but is recorded on the Register and published on the NMC's website. It can be imposed for a period of between one and five years. It is disclosed to anyone enquiring about the nurse or midwife's fitness to practise history.
- 61 Therefore, a caution may be appropriate where the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.
- 62 When fitness to practise is impaired by reason of misconduct and a panel is minded to impose a caution order, it should consider whether such an order provides adequate public protection, bearing in mind that it does not restrict the nurse or midwife's practice rights. It might be appropriate where the nurse or midwife's history is such that the panel is confident that there is no risk to the public or to patients which requires the nurse or midwife's practice rights to be restricted.

Conditions of practice order

- 63 A conditions of practice order requires the nurse or midwife to comply with conditions for a period of up to three years. A conditions of practice order must be reviewed before it expires.

²⁰ *CHRE v (1) NMC and (2) Paula Grant* [2011] EWHC 927 (Admin)

Key considerations

- 63.1 Will imposing conditions be sufficient to protect patients and the public interest?
- 64 This sanction may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):
- 64.1 No evidence of harmful deep-seated personality or attitudinal problems
 - 64.2 Identifiable areas of nurse or midwife's practice in need of assessment and/or retraining
 - 64.3 No evidence of general incompetence
 - 64.4 Potential and willingness to respond positively to retraining
 - 64.5 Nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision
 - 64.6 Patients will not be put in danger either directly or indirectly as a result of conditional registration
 - 64.7 The conditions will protect patients during the period they are in force
 - 64.8 It is possible to formulate conditions and to make provision as to how conditions will be monitored
- 65 Panels considering imposing conditions should refer to the NMC's *Guidance to panels on conditions of practice orders* for more information.

Suspension order

- 66 A suspension order directs the Registrar to suspend the nurse or midwife's registration for a period of up to one year. They may not practise as a registered nurse or midwife during the period that the order is in force. A suspension order must be reviewed before its expiry.

Key considerations

- 66.1 Does the seriousness of the case require temporary removal from the register?
- 66.2 Will a period of suspension be sufficient to protect patients and the public interest?
- 67 When considering seriousness, the panel should take into account the extent of the departure from the standards to be expected and the risk of harm to the public interest caused by that departure, along with any particular factors it considers relevant on each case.

- 68 This sanction may be appropriate where the misconduct is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. This is more likely to be the case when some or all of the following factors are apparent (this list is not exhaustive):
- 68.1 A single instance of misconduct but where a lesser sanction is not sufficient.
 - 68.2 No evidence of harmful deep-seated personality or attitudinal problems.
 - 68.3 No evidence of repetition of behaviour since the incident.
 - 68.4 The panel is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.
 - 68.5 In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions.
 - 68.6 In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.
- 69 When imposing a suspension order the panel, if it considers it appropriate, should set out in clear and unambiguous terms any expectations it has or actions the nurse or midwife could take that would assist the review panel when it considers the case before the expiry of the order.
- 70 The courts have upheld decisions to impose suspension orders where the professional is still serving a non-custodial sentence for a criminal offence on the grounds that professionals should not be permitted to practise while still serving a sentence. Equally, suspension may be justified for the purposes of conveying a clear public message of the importance of fundamental standards of professional conduct.

Striking-off order

- 71 A striking-off order results in the removal of the nurse or midwife's name from the register, thus preventing them from working as a registered nurse or midwife. They may not apply for restoration until a period of five years has elapsed since the striking-off order was made. An application for restoration will not be granted unless a panel of the CCC or HC is satisfied that the applicant meets the requirements for admission to the register and in addition, is a fit and proper person to practise as a nurse or midwife.

Key considerations

- 71.1 Is striking-off the only sanction which will be sufficient to protect the public interest?

- 71.2 Is the seriousness of the case incompatible with ongoing registration (see paragraph 66 above for the factors to take into account when considering seriousness)?
- 71.3 Can public confidence in the professions and the NMC be sustained if the nurse or midwife is not removed from the register?
- 72 This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional, which may involve any of the following (this list is not exhaustive):
 - 72.1 Serious departure from the relevant professional standards as set out in key standards, guidance and advice including (but not limited to):
 - 72.1.1 The code: Standards of conduct, performance and ethics for nurses and midwives
 - 72.1.2 Midwives rules and standards
 - 72.1.3 Standards for medicines management
 - 72.1.4 Record keeping: Guidance for nurses and midwives
 - 72.1.5 Guidance for the care of older people
 - 72.1.6 Raising and escalating concerns: Guidance for nurses and midwives
 - 72.2 Doing harm to others or behaving in such a way that could foreseeably result in harm to others, particularly patients or other people the nurse or midwife comes into contact with in a professional capacity, either deliberately, recklessly, negligently or through incompetence, particularly where there is a continuing risk to patients. Harm may include physical, emotional and financial harm. The panel will need to consider the seriousness of the harm in coming to its decision
 - 72.3 Abuse of position, abuse of trust, or violation of the rights of patients, particularly in relation to vulnerable patients
 - 72.4 Any serious misconduct of a sexual nature, including involvement in child pornography
 - 72.5 Any violent conduct, whether towards members of the public or patients, where the conduct is such that the public interest can only be satisfied by removal
 - 72.6 Dishonesty, especially where persistent or covered up
 - 72.7 Persistent lack of insight into seriousness of actions or consequences
 - 72.8 Convictions or cautions involving any of the conduct or behaviour set out above

- 73 The courts have supported decisions to strike off healthcare professionals where there has been lack of probity, honesty or trustworthiness, notwithstanding that in other regards there were no concerns around the professional's clinical skills or any risk of harm to the public²¹. Striking-off orders have been upheld on the basis that they have been justified for reasons of maintaining trust and confidence in the professions.
- 74 A striking-off order is not available where fitness to practise is impaired on the basis of health, lack of competence or not having the necessary knowledge of English, until the nurse or midwife has been subject to either a suspension order or a conditions of practice order for a continuous period of no less than two years. The two-year period can be made up of a combination of periods of suspension and conditions, provided that there is a continuous period during which the nurse or midwife's practice has been subject to restriction under a substantive order.

Interim orders following the imposition of a sanction

- 75 Sanctions cannot take effect until the end of the appeal period (28 days after the date on which the decision letter is served) or, if an appeal has been lodged, before the appeal has concluded. Panels have the power to impose an interim order for up to 18 months to cover the period in question.
- 76 Panels making a conditions of practice order, suspension order or striking-off order should consider whether or not to impose an interim order, using the test set out in article 31 of the order.
- 77 Panels should be aware that any previous interim order in place will lapse upon determination of the allegation, that is, at the point when the panel announces its decision on sanction. Panels should also recognise that the power to impose an interim order after the decision on sanction is discretionary and should not be viewed as an automatic decision in every case.

Approved by Council

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²¹ E.g. *Parkinson v NMC* (cited above), *Mvenge v GMC* [2010] EWHC 3529 (Admin), *Ige V Nursing and Midwifery Council* [2011] EWHC 3721 (Admin)