

## Offering no evidence guidance

### Introduction

- 1 This guidance applies to cases that have been referred to the Conduct and Competence Committee (CCC) or Health Committee (HC).
- 2 It is mainly for use by our case presenters, and sets out the criteria to be considered when deciding whether it would be appropriate to offer no evidence on a case due for adjudication by a CCC or HC panel.
- 3 For guidance on when we may apply for a hearing to be cancelled, see *Cancelling hearings under Rule 33<sup>1</sup>* (NMC, 2015).

### Background

- 4 Under article 22(1)(a) of the Nursing and Midwifery Order 2001 (the Order) a nurse's or midwife's fitness to practise may be impaired by reason of any or all of the following.
  - 4.1 Misconduct.
  - 4.2 Lack of competence.
  - 4.3 A conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence.
  - 4.4 Physical or mental health.
  - 4.5 Not having the necessary knowledge of English.
  - 4.6 A determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that the nurse's or midwife's fitness to practise is impaired, or determination by a licensing body elsewhere to the same effect.

### Guidance

- 7 When a panel agrees with our decision to offer no evidence against a nurse or

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<sup>1</sup> Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended)

midwife, this means that there will be no findings made against them in respect of those allegations.

- 8 There are specific circumstances where we may seek to offer no evidence on charges against a nurse or a midwife. These are:
  - 8.1 When the particular allegations add nothing to the overall seriousness of the case.
  - 8.2 When there is no longer a realistic prospect of some or all of the factual allegations being proved.
  - 8.3 When there is no longer a realistic prospect of a panel finding that the nurse's or midwife's fitness to practise is currently impaired.
- 9 A decision to offer no evidence should only be made when it is in the public interest to do so. The public interest<sup>2</sup> includes:
  - 9.1 The protection of the public.
  - 9.2 Declaring and upholding proper standards of conduct.
  - 9.3 Upholding confidence in the professions and the NMC.
- 10 We will not seek to offer no evidence where this would put members of the public at risk, fail to uphold proper standards of conduct, or undermine confidence in the professions and/or the NMC.

### **Offering no evidence where the charges add nothing**

- 11 If satisfied that one or more factual allegations adds nothing to the seriousness of the case, the case presenter may decide to offer no evidence on those allegations.
- 12 In these circumstances, the case presenter would have to be satisfied that the remaining allegation(s):
  - 12.1 cover the full range of misconduct<sup>3</sup> alleged;
  - 12.2 are sufficient in number properly to reflect the duration and extent of the misconduct; and
  - 12.3 relate to incidents which adequately demonstrate the harm or risk of harm covered by the nurse's or midwife's actions.

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<sup>2</sup> Article 3(2) Nursing and Midwifery Order 2001 states the overarching purpose of the NMC's Fitness to Practise (FtP) function is to protect the public. This statutory objective 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.

<sup>3</sup> Here, reference to misconduct should be taken to include reference to any of the other grounds upon which fitness to practise may be impaired, as set out in Article 22(1)(a) of the Nursing and Midwifery Order 2001.

- 13 On a rare occasion, there may be charges on which we propose to offer no evidence where the charges alone could prejudice the panel's view of the rest of the case. In this instance, the case presenter should seek to offer no evidence on those charges before a different panel in advance of the scheduled hearing.
- 14 Where we propose to offer no evidence on a particular charge in a case being dealt with by consensual panel determination<sup>4</sup>, the provisional agreement must explain this and the reasons for it.

### **Offering no evidence on facts**

- 15 It is not in the public interest for us to pursue factual charges if there is insufficient evidence to prove them.
- 16 For a case to reach the adjudication stage, case examiners will usually have decided that there is a case to answer on the factual allegations.
- 17 It will only be appropriate to offer no evidence on evidential grounds when:
  - 17.1 the state of the evidence has changed since case examiners made a finding of case to answer;
  - 17.2 it has become apparent that the case examiners' decision was made on an incorrect basis;
  - 17.3 the charge(s) rely on the evidence of a witness who cannot attend a hearing, and an application to read their statement has been rejected;
  - 17.4 the case was referred directly to the CCC or HC, and a subsequent investigation has shown that there is no case to answer.

### **Offering no evidence on impairment**

- 18 Where a case has been referred by case examiners to the CCC or HC, case examiners have found that there is a case to answer on impairment. Therefore, the case presenter will consider offering no evidence only if it has become apparent that the case examiners' decision was made on an incorrect basis, or new evidence has come to light regarding the nurse's or midwife's current fitness to practise, for example, evidence of remediation. See *Guidance for decision makers on insight, remediation and risk of reoccurrence* (NMC, 2015) for further information.
- 19 The passage of time may be a relevant change in circumstance, but only if the nurse or midwife has worked in a registered capacity and can produce evidence they have addressed the issue(s). This will never be the case where the conduct breaches one of the fundamental principles of the profession.

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<sup>4</sup> For further information on consensual panel determination go to [http://www.nmc-uk.org/Documents/FtP\\_Information/CPD/Consensual%20panel%20determinations%20leaflet%20-](http://www.nmc-uk.org/Documents/FtP_Information/CPD/Consensual%20panel%20determinations%20leaflet%20-)

## **The process**

- 20 Offering no evidence on some or all charges against a nurse or midwife should only ever be done before a full panel. It should never be done before a Chair at a preliminary meeting.
- 21 The panel has a discretion to depart from the procedure set out at rule 24(1), and can exercise its discretion to make a finding of no case to answer before it has heard any evidence on the facts or on misconduct.
- 22 Where we intend to offer no evidence, at the outset of the hearing the case presenter will invite the panel to consider the application to offer no evidence on one of the three grounds set out above (8.1 to 8.3).
- 23 Where the proposal to offer no evidence is based on grounds 8.1 or 8.2, the panel will be invited to find that there is no case to answer on the facts as no evidence will be presented. It should be noted that the discretion to find there is no case to answer on the facts is set out at rule 24(7).
- 24 Where the proposal to offer no evidence is based on ground 8.3 the panel will be invited to find that there is no case to answer as no evidence has been presented to support a finding of impairment. It should be noted that the discretion to find that there is no case to answer on impairment is set out in Rule 24(8).
- 25 If the panel is not satisfied with the proposal to offer no evidence, it retains the power to call evidence of its own motion (Rule 22(5)). If necessary, the panel would have to adjourn the hearing to secure the attendance of witnesses or refer the matter to a hearing at which witnesses could be called. In these circumstances, the case presenter would call the witnesses.

## **Informing the referrer about a decision to offer no evidence**

- 26 Where the decision has been taken to offer no evidence after the notice of hearing has been sent, and the referrer can be informed about the decision without causing any prejudice to any future hearing (e.g. because the referrer is not a witness in the case), the referrer will be informed of the decision, and the reasons for it. They will also be told that the panel may decide to proceed on the charge of its own accord.
- 27 Where the referrer is a witness, the case presenter will decide what information can be given to the referrer. The presumption is that the referrer should be given as much information as possible; however they may not always receive an explanation for the decision in advance of the hearing. In these circumstances, the referrer will be told of the decision, and will receive a full explanation after the hearing.

## **Status of allegations where no evidence has been offered**

- 28 Where no evidence has been offered on any charge and the panel is satisfied with the proposal, this brings the consideration of that charge to an end. The charge can only be reopened by an order from the High Court.

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