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Voluntary removal guidance

Introduction

- 1 A nurse or midwife who is subject to fitness to practise proceedings can apply to be removed from the register by way of voluntary removal (VR).¹
- 2 This guidance is intended to help:
 - 2.1. Our staff and decision-makers considering VR applications
 - 2.2. decision-makers involved in substantive hearings
 - 2.3. nurses and midwives subject to fitness to practise proceedings.

Overview of the process

- 3 VR enables a nurse or midwife to be removed from the register without the need for a full public hearing. This is in circumstances when it is not in the public interest to hold such a hearing and the public and patients will be best protected by the nurse or midwife's immediate removal from the register. This is only allowed where:
 - 3.1. the nurse or midwife accepts the details of the regulatory concern, and
 - 3.2. the nurse or midwife provides evidence that they do not intend to continue practising.
- 4 A VR application can be submitted either before or during a substantive hearing.
- 5 VR applications are considered by the Registrar or the Assistant Registrar ('the Registrar').² If the application is made before a hearing has started, it will also be accompanied by a recommendation on VR produced by our staff.³
- 6 If the case has reached the hearing stage, then the Practice Committee panel ('the panel') hearing the case will make the recommendation to the Registrar. This happens only after the panel has made a finding that the nurse or midwife's fitness to practise is impaired. The panel's published recommendation to the Registrar should take into consideration the public interest and upholding public safety.
- 7 After a nurse or midwife is granted VR, whether before or during a substantive hearing, they will be unable to practise again. If in the future the nurse or midwife wishes to practise again they will need to successfully apply for readmission to the NMC register.
- 8 When a nurse or midwife makes an application for VR, we ask them to sign a 'voluntary removal declaration form' confirming their intention not to apply for readmission to the register sooner than five years from the date of the removal decision.

Purpose of VR

- 9 We always aim to reach the outcome that best protects the public at the earliest opportunity. VR supports this aim as it enables nurses or midwives who are facing fitness to practise proceedings to be permanently removed from our register at an earlier stage in the process. This provides the best form of protection for the public.

Making a decision

- 10 If a nurse or midwife applies for VR before a hearing, the Registrar will wait until the investigation is complete, before considering the application and making a decision. This is so that we understand the full extent of the regulatory concern.⁴
- 11 When a nurse or midwife applies for VR during a hearing, the panel is not informed of the application unless and until they find that the nurse or midwife's fitness to practise is impaired. If the panel agrees with the application, it will make a VR recommendation to the Registrar. Where possible, the Registrar will make a decision within 24 hours.
- 12 Whether the VR application is made before or during a hearing, all decision-makers should carefully consider and balance:
- 12.1. the public interest, that is, public protection, declaring and upholding professional standards, and maintaining public confidence in the professions and their regulation
 - 12.2. the interests and future plans of the nurse or midwife
 - 12.3. any comments received from the maker of the allegation.

Public interest

- 13 When a nurse or midwife is removed from the register, the public is immediately protected from the risk of future harm by that nurse or midwife. However, this should always be considered alongside the wider public interest concerns in declaring and upholding professional standards and maintaining public confidence in the professions and the NMC as a regulator. The Registrar should ensure that all public interest concerns are addressed in their decision to grant or refuse a VR application.
- 14 There is a public interest in allegations of impaired fitness to practise being properly scrutinised in public. When this happens, professional standards are seen to be upheld and public confidence in the professions and the NMC is maintained and promoted. This element of the public interest should be carefully considered when VR is applied for before a hearing has started, as the allegations will not be considered in a public hearing if the application is granted.
- 15 To help with this consideration, the Registrar should pay particular regard to the seriousness of the allegation. This may depend upon how much harm was caused, or could have been caused, to the public.⁵ For example, VR is unlikely to be suitable where the misconduct has led to serious harm, such as cases of sexual misconduct or where a patient has died. In these cases there could be a significant impact on public confidence if the details were not considered in a public forum.

- 16 The public interest element is less likely to be a material consideration when a VR application is made during a hearing, as the panel will not consider VR applications until it has made a finding on whether the facts are proved and the nurse or midwife's fitness to practise is impaired. When considering VR applications arising from a panel recommendation at a hearing, the Registrar will be assisted by the panel's determination on impairment and its assessment of public interest concerns.
- 17 If VR is granted, details of the allegation will be made available on request to relevant enquirers.⁶ This ensures that health authorities and future employers are sufficiently informed of a nurse or midwife who has outstanding fitness to practise concerns. The allegations will also be considered if the nurse or midwife subsequently applies for readmission to the register.

Interests and future plans of the nurse or midwife

- 18 Nurses and midwives will often be at different stages of their career when applying for VR. There will also be individual circumstances influencing their decision to apply.
- 19 The Registrar should consider the following factors:
 - 19.1. the likelihood that the nurse or midwife may seek readmission to the register
 - 19.2. the length of time since the nurse or midwife last practised
 - 19.3. any evidence that the nurse or midwife intends to practise in the UK or elsewhere in the future.

Likelihood of seeking readmission to the register

- 20 The Registrar should consider whether a nurse or midwife's application demonstrates a committed intention to leave the profession and not seek readmission in the future. For example, a nurse or midwife may express their intention to follow an alternative career path, and provide strong evidence in support. Alternatively, a nurse or midwife may show a genuine desire to be removed from the register, having taken steps to leave the profession before the concerns were raised with them by the NMC. Additionally, a signed declaration form can provide evidence of a nurse or midwife's future intention.

Length of time since the nurse or midwife last practised

- 21 This is a relevant factor for the Registrar to consider, because if a nurse or midwife has not practised for a long period of time, this could indicate that they will not seek readmission to the register in the future. Any future application for readmission would be less likely to be granted due to a deterioration of clinical knowledge and practice over the passage of time.

Evidence of intention to practise in the UK or elsewhere in the future

- 22 If the Registrar considers that a nurse or midwife intends to practise in the UK or elsewhere in the future, this should be a factor that weighs heavily against granting VR. If a nurse or midwife expresses an intention to practise either overseas (on a

part-time basis or in private practice in the future), this is as relevant as where the nurse or midwife expresses an intention to practise on a full-time basis in the UK.⁷

Comments received from the maker of the allegation

- 23 The Registrar is required to consider any comments received from the maker of the allegation.⁸ The maker of the allegation is not necessarily the person who reported the matters to us. It may be the alleged victim of the misconduct, or, in a criminal case, it may be the person or organisation that initially reported matters to the police.
- 24 We will request their comments in writing or over telephone, depending on timescales. If the application arises during the hearing where the maker of the allegation is present, the panel will ask for comments before making its recommendation to the Registrar.
- 25 In health cases, the NMC will not disclose the details of the nurse or midwife's health condition to the maker of the allegation. Given that health details are generally regarded as confidential it will not always be possible for the maker of an allegation to be fully informed of the reasons why VR was appropriate in every case.
- 26 The views of the maker of the allegation form only one element that the decision-maker has to consider as part of their overall recommendation to the Registrar.

Circumstances where VR will not be appropriate

- 27 VR only applies to nurses or midwives who are subject to an actual or potential fitness to practise allegation. It does not apply to nurses or midwives who simply want to be removed from the register or to let their registration lapse.⁹
- 28 If a nurse or midwife is subject to an interim suspension order or interim conditions of practice order, this order will need to be revoked before an application for VR can be granted.¹⁰
- 29 VR is not permitted when a nurse or midwife is subject to a final conditions of practice or suspension order.¹¹

Applying the decision-making criteria to particular cases

- 30 Whether an application for VR is granted or not will depend on the particular circumstances of each case. Different considerations will apply to different types of cases. The allegation of impairment will be a relevant factor in this regard.¹²

Health

- 31 VR is likely to be an appropriate method of disposing of a case when allegations and evidence relate exclusively to a nurse or midwife's long-term physical or mental health and where there are no outstanding conduct issues.
- 32 If the nurse or midwife accepts that their fitness to practise is impaired as a result of their health condition, the public interest may be best served by granting a VR application (even if they express a desire to seek readmission in the future should their health improve to an appropriate level). Where VR is granted, this is recorded

and may be disclosed to relevant enquirers, including potential employers and overseas medical authorities.¹³

- 33 VR may also be appropriate before a hearing starts if the nurse or midwife is seriously ill. However, this will only be an appropriate course of action in exceptional circumstances, where the nurse or midwife is able to admit the details of the regulatory concern.¹⁴ If a nurse or midwife is seriously ill they may be unable to make any formal admissions, or participate in the process. These cases are better dealt with under our cancellation of hearings process, where there is no requirement for admissions.¹⁵

Lack of competence or not having the necessary knowledge of English

- 34 VR may be appropriate when a nurse or midwife accepts that their fitness to practise is impaired through lack of competence or through not having the necessary knowledge of English, and they have already stopped practising and have no intention of returning to practice. If the nurse or midwife's actions have resulted in harm to a patient, the Registrar will have to consider whether they are suitable for VR, taking into account the public interest considerations.

Misconduct

- 35 Cases where the allegations primarily relate to misconduct, convictions or determinations from another regulatory body concerning the nurse or midwife's conduct are less likely to be appropriate candidates for VR given that the seriousness of such allegations is likely to require scrutiny at a public hearing in order to uphold the public interest.

Allegations of impairment on more than one ground

- 36 If it is alleged that the nurse or midwife's fitness to practise is impaired on more than one ground, the Registrar will look at all the allegations and consider whether, in all the circumstances, VR is appropriate.
- 37 When there are allegations of impairment by reason of health, these can only be considered by the Health Committee.¹⁶ When there is a case to answer on allegations of impairment by lack of competence, not having the necessary knowledge of English or misconduct,¹⁷ but the case has been referred to the Health Committee on an allegation of impairment by reason of health, the Registrar will consider all outstanding allegations when deciding whether to grant an application for VR. If the case includes misconduct allegations of a serious nature, suitable for a suspension or striking-off order, the Registrar is unlikely to grant a VR application.

Readmission to the register

- 38 VR is not necessarily permanent, as the nurse or midwife may seek to be readmitted to the register at some point in the future.¹⁸ For readmission to the register the nurse or midwife will need to provide a written submission and documentary evidence. The Registrar will consider these alongside the details of the allegation at the time the VR was granted.

Publication of voluntary removal decisions

- 39 Once a nurse or midwife's application for VR has been granted, 'voluntarily removed' will be displayed against their name on the register. No other details about the case are published.¹⁹
- 40 We record all VR decisions and they may be disclosed to employers and other enquirers on request indefinitely. The only exception to this is information relating solely to a nurse or midwife's health.

Approved by Director of Fitness to Practise 20 April 2017

Effective from 2 May 2017

¹ Rule 14(1) and (2A) of the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004 ('the Registration Rules'). The process also applies when a nurse or midwife who is not subject to fitness to practise proceedings discloses to us information about a potential regulatory concern in the application for administrative removal from the register.

² There is no limit on the number of times that an application for VR can be made. However, unless there has been a material change in circumstances it is unlikely that renewed applications for VR will be granted.

³ The recommendation will not be submitted until the Case Examiners have considered whether there is a case to answer.

⁴ If an application for VR is made at an early stage in the investigation, the nurse or midwife may be invited to re-submit their application to the NMC at a later stage when the investigation has been completed and the case has been effectively considered by the Case Examiners.

⁵ Harm to a person may be physical, mental, emotional or financial.

⁶ This includes potential employers and overseas medical authorities.

⁷ While the remit of the NMC is confined to regulating nurses and midwives in the UK, we have a wider public interest in ensuring the protection of patients everywhere.

⁸ This is a statutory requirement under Rule 14(2B)(a) of the Registration Rules.

⁹ In these circumstances the nurse or midwife should follow the 'cease to practise' process.

¹⁰ Article 12(3)(b) of the Nursing and Midwifery Order 2001 ('the Order'). To ensure public protection, where an applicant is subject to an interim order, the Registrar will make a decision about whether the application for VR should be granted or not. The Registrar will be fully aware of the existence of the interim order and will take it into account in deciding whether or not the case is suitable for VR. If the Registrar decides that VR is suitable, the relevant Practice Committee panel will then be invited to revoke the interim order, and only then will the VR will take effect.

¹¹ Article 12(3)(b) of the Order. There is no power to revoke a substantive conditions of practice order or suspension order.

¹² See Article 22 of the Order for heads of impairment.

¹³ The details of any medical condition will not be disclosed.

¹⁴ Decision-makers should ascertain whether the nurse or midwife's ill health is substantiated by independent medical evidence, which indicates they would be unfit to make representations or give evidence before a panel hearing. In such circumstances the public interest would be met by the immediate removal of the nurse or midwife from the register.

¹⁵ See our [Cancelling hearings under Rule 33 guidance](#). If a nurse or midwife recovered their health and applied for readmission to the register in the future, we could reconsider the regulatory concerns at this stage as they would have not yet been determined.

¹⁶ These health allegations cannot be considered by the Conduct and Competence Committee alongside allegations of impairment on other grounds, such as misconduct or lack of competence.

¹⁷ Or when there has been a recommendation that there is a case to answer on allegations of impairment by lack of competence or misconduct.

¹⁸ All applications for readmission to the register are considered by the Registrar in accordance with the Registration Rules. The readmissions process is covered by [Guidance on how fitness to practise allegations are considered as part of readmission applications](#).

¹⁹ In cases where VR is granted during a hearing, the Panel's reasons are also published.