

Conditions of practice guidance

Introduction

- 1 This guidance applies to panels considering making:
 - 1.1 an interim conditions of practice order, either before or after a finding of impairment of fitness to practise has been made;
 - 1.2 a conditions of practice order following a finding of impairment of fitness to practise; or
 - 1.3 a conditions of practice order when reviewing an order imposed by a previous panel following a finding of impairment of fitness to practise.
- 2 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.
 - 2.1 Misconduct.
 - 2.2 Lack of competence.
 - 2.3 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.
 - 2.4 Physical or mental health.
 - 2.5 Not having the necessary knowledge of English.
 - 2.6 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 a determination by a licensing body elsewhere to the same effect.
- 3 A panel may impose an interim conditions of practice order for a period of up to 18 months.¹
- 4 A conditions of practice order made following a finding of impairment of fitness to practise may be for a specified period not exceeding three years.² Such an order must be reviewed before it expires, and upon review, the panel may extend the order or make any other order.³ It may also allow the order to lapse. Such an order

¹ Nursing and Midwifery Order 2001 article 31(2)

² Nursing and Midwifery Order 2001 article 29(5)(c)

³ Nursing and Midwifery Order 2001 article 30(1)

can also be reviewed at any time that it is in force, and the panel can confirm or revoke the order, extend or reduce the period of the order, replace it with another order, or vary any condition of the order.⁴

Human rights, equality and diversity

- 5 The NMC is a public authority for the purposes of the Human Rights Act 1998 (the act). The NMC will seek to uphold and promote the principles of the European Convention on Human Rights (the convention) in accordance with the act. Panels must comply with the convention and the act at all times.
- 6 The NMC is fully committed to promoting equality, diversity and inclusion in carrying out all its functions. It values and embraces difference and individuality in its staff, nurses and midwives, Council and partner members, those who work on its behalf and the public it serves. Its aim is to ensure that all of its stakeholders receive a high level of service and everyone is treated fairly. Panel members are expected to demonstrate these values and work towards this aim at all times.

Purpose of conditions

- 7 The purpose of a conditions of practice order is threefold:
 - 7.1 to satisfy the public interest, that is the protection of members of the public⁵, the maintenance of public confidence in the professions and the NMC, and declaring and upholding proper standards of conduct and performance;
 - 7.2 to address the matters giving rise to the finding of impairment of fitness to practise or, in the case of an interim conditions of practice order, to address the risks to the public, the public interest and the registrant's own interests raised by the allegations; and
 - 7.3 to enable the nurse or midwife to continue to practise.

Effect of conditions

- 8 Throughout the period that the conditions are in force, the nurse or midwife must comply with them. Failure to do so may result in the conditions of practice order being replaced with a more serious sanction. It may also amount to misconduct.
- 9 Each nurse or midwife has a single registration, although he or she may have entries in more than one part of the register. All conditions will apply to all parts of the nurse or midwife's practice, unless the conditions of practice order states otherwise.

⁴ Nursing and Midwifery Order 2001 article 30(2) and (4)

⁵ 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.

- 10 There is no power to impose a suspension order suspending part of a nurse's or midwife's registration. If a panel wants to prevent a person who is registered as a nurse and a midwife from practising in one of those professions, it must do so using a conditions of practice order.
- 11 This would be appropriate when the panel identifies problems in one of the individual's professions which requires them to be prevented from working in that area but where a complete restriction on all areas of practice would not be necessary to protect the public.
- 12 Such an order does not amount to a complete restriction on the nurse's or midwife's ability to practise (and therefore is not equivalent to a suspension order) because it allows the individual to work in one area of professional practice.
- 13 Sometimes there will be an overlap between the two areas of professional practice. Panels should therefore consider whether to impose specific conditions on their work in the other profession to make sure that the public are properly protected from the risk of harm.
- 14 For example, where the allegation suggests that an individual has serious clinical problems relating only to midwifery practice and they also have problems with their communication, it may be appropriate to prevent the individual from working as a midwife and to impose conditions on their practice as a nurse to address their record keeping errors.
- 15 Such an approach would achieve a proportionate response where the panel considers there is a need to prevent the individual from practising in one profession but they can safely practise with restrictions in the other.
- 18 Conditions are published, and details of any conditions of practice order are made available to anyone enquiring about a nurse or midwife's registration. Accordingly, it is important that panels specify any conditions that must not be published generally, for example, those relating to the nurse or midwife's health.

General principles

- 19 Conditions of practice should be **relevant, proportionate, workable** and **measurable**.
- 20 **Relevant** means that the conditions should relate to and address the matters giving rise to the finding of impairment of fitness to practise or, in the case of an interim conditions of practice order, to address the risks to the public, the public interest, and the registrant's own interests raised by the allegations.
- 21 **Proportionate** means that the conditions must be no more than necessary to achieve the legitimate aims of protecting the public and upholding confidence in the profession. They must strike a fair balance between the interests of the registrant and the public interest, which includes public protection and public confidence. There is also a public interest in nurses and midwives being allowed to practise their profession in a safe manner.
- 22 **Workable** means that it must be possible for the nurse or midwife to comply with the conditions. Any conditions imposed should not be wholly impracticable, or have the effect of amounting to a complete restriction on the nurse or midwife's

ability to practise. It is inevitable that conditions may have the effect of making it more difficult to obtain employment, but this does not mean that the conditions are unworkable.⁶

- 23 **Measurable** means that it must be possible to assess objectively whether or not the nurse or midwife has complied with each condition. The condition must be clear and unambiguous. The question of whether the nurse or midwife has complied with the condition should be capable of being answered 'yes' or 'no'. If the question is capable of being answered 'It depends...', the condition is not measurable because it is not specific enough. The conditions should also ensure that, where necessary, the nurse or midwife is under an obligation to provide the NMC with sufficient information, in sufficient time, to enable the panel at a review hearing to assess whether the nurse or midwife has complied with the condition.

Language

- 24 A conditions of practice order should be capable of being read and understood as a stand-alone document, without reference to any other document. Accordingly, the NMC does not produce a glossary of terms. Instead each panel should define exactly what it requires on a case-by-case basis.
- 25 When drafting conditions, panels should:
- 25.1 **Use plain English:** Avoid complicated words when simple ones are available. For example, use 'before', not 'prior to', 'start', not 'commence'.
 - 25.2 **Avoid jargon or technical terms:** If it is necessary to use clinical terms, these should be defined clearly in a way that can be understood by a lay person.
 - 25.3 **Use unambiguous language:** If a term is used that is capable of being interpreted in different ways by different panels, the panel must provide a clear definition of what it means by that term. For example, 'supervision' is a term that is capable of being interpreted differently by different people. Among other things, it could mean:
 - 25.3.1 having regular meetings with a supervisor to discuss clinical issues;
 - 25.3.2 working with a supervisor at the other end of a telephone if required;
 - 25.3.3 working with a supervisor who is physically present some, but not all of the time; or
 - 25.3.4 being observed at all times by a supervisor. Accordingly, if a panel considers that there should be a degree of supervision or oversight of the nurse or midwife's work, it must specify precisely the extent of that oversight. Examples are included in the *Conditions of practice library*.

⁶ *Daraghmeah v General Medical Council* [2011] EWHC 2080 (Admin)

- 25.4 **Be consistent:** A conditions of practice library has been prepared to help panels to achieve consistency in the conditions of practice that are imposed. Where the wording of a library condition meets the requirements of the panel, that wording should be used. Where there is no condition in the library that meets the requirements of the panel, the panel must create its own condition. To help panels to ensure that no conditions are published that should not be, the conditions in the library are divided into public and confidential conditions.

Timing

- 26 It is important that panels understand when conditions take effect, and that this is reflected in the order.
- 26.1 Interim conditions of practice orders take effect immediately.
- 26.2 Conditions of practice made after a finding of impairment of fitness to practise take effect on the expiry of the period the nurse or midwife has to appeal against the order (28 days after service of the decision notice) or where an appeal is made, when the appeal is withdrawn or otherwise finally disposed of.
- 26.3 Conditions of practice made on an automatic review before the expiry of an order⁷ take effect immediately on the expiry of the original order
- 26.4 Conditions of practice made on a review at the request of one of the parties during the life of an order⁸ take either:
- 23.5.1 on the date that the review takes place, if it is a decision to replace the original order with conditions of practice order; or
- 23.5.2 if it is a decision to extend a conditions of practice order, from the expiry date of the original order.
- 27 Times and periods of the order must be specified, for example:
- 27.1 'weekly', 'on the first day of each month', 'once every three months' instead of regularly
- 27.2 'within x days' instead of 'promptly.'

Registrant and third party engagement

- 28 There is no requirement for the nurse or midwife, or any third party affected by the conditions of practice order, to give express consent to the terms of the order.⁹

⁷ Nursing and Midwifery Order 2001 article 30(1)

⁸ Nursing and Midwifery Order 2001 article 30(2) and (4)

⁹ *Whitehead v General Medical Council* [2003] HRLR 9

However, panels need to satisfy themselves that conditions are workable. If a nurse or midwife refuses to comply with conditions, such an order will not be workable.

- 29 In some circumstances, conditions will be workable even where there is no current or prospective employer. For instance, a condition requiring a nurse or midwife not to work in a particular environment or role, or not to carry out a particular procedure, is workable, even where there is no known employer, because it does not require support or any other input from a third party. In these circumstances, it is not necessary to give anyone an opportunity to comment before the order is made.
- 30 In other circumstances, where the panel considers that a particular level or type of support or input from a third party is necessary in order to protect the public interest, the panel should give the parties, and any third party affected by the order, an opportunity to comment on the workability of the proposed conditions of practice. This will enable panels to make decisions from an informed position, and will avoid the need for early reviews. Where possible, the NMC will seek to arrange for any such third party to be available to comment before any order is made. Where this has not been possible (for example, because the identity of the third party was not known to the NMC before the hearing) the panel may put the case back for a limited period (ordinarily no more than one hour) to enable contact to be made and comments sought.
- 31 Where the panel considers that support or other input from a specific third party is necessary in order to protect the public, it may conclude that, in the absence of evidence showing that the specific third party is available and willing to provide the necessary support, a conditions of practice order is unworkable. In these circumstances, the panel will need to move on to consider suspension. If it does so, it should set out in its decision the nature and extent of support or other input it considered necessary to protect the public, and why it considered a conditions of practice order to that effect to be unworkable on the evidence before it. This will enable the nurse or midwife to understand what is required before a conditions of practice order can be imposed, and will enable him or her to gather the necessary evidence before a review hearing.
- 32 A case where the panel considers an order is required should never be adjourned to another day simply because it has not been possible to obtain the comments of a third party. This would leave the public unprotected in the meantime. Instead, the panel must make an order that is relevant, proportionate, workable and measurable based on the evidence it has. Either party can seek an early review of the order should further evidence become available.
- 33 Where the panel is satisfied that it is possible to create conditions that ensure public protection, but which require some degree of third party support, it may impose such conditions, despite the absence of evidence identifying a third party who is available and willing to provide the necessary support. This will be appropriate where the conditions are generic in nature, and do not require the input of a specific third party. The practical effect of this will be that the nurse or midwife is unable to practise until finding a third party willing to support them. In

the case of *Perry v Nursing and Midwifery Council* [2012] EWHC 2275 (Admin), Mrs Justice Thirlwell DBE said:

“Plainly if no one is prepared to employ the [nurse or midwife] on such conditions the applicant will not be able to practise. There will be no risk to the public. If an employer is prepared to take him on those terms then he and the public have the benefit of a nurse in practice, albeit strictly circumscribed.”

- 34 It should be noted from this that an employer or other third party cannot be placed under an obligation to support the conditions.
- 35 Conditions should always put the obligation on the nurse or midwife, not a third party. For instance, instead of saying “Your GP must provide a report to the NMC...” the condition should say “You must provide the NMC with a report from your GP”.

Midwifery supervision

Note: Changes to our legislation which are expected to take effect in Spring 2017 will remove the statutory regime for midwifery supervision. Amendments to the Nursing and Midwifery Order 2001 will mean that supervision of midwives, and Local Supervising Authorities (LSAs) will no longer be part of our legislation.

As a result of this change, the *Conditions of practice library* no longer recommends that panels should consider making conditions of practice orders requiring the involvement of a Local Supervising Authority Midwifery Officer (or LSAMO).

In the absence of a statutory role for midwifery supervision in the future, whenever panel members are considering whether to make, confirm, vary or extend a conditions of practice order in a midwifery case, they should consider very carefully what risk factors would make involvement of the LSAMO in the case necessary, that could not be met by the involvement of a line manager, mentor or supervisor nominated by the midwife’s employer.

- 36 Where a panel is considering imposing conditions of practice on a midwife because of concern about her midwifery practice, it should have regard to the system of supervision for midwives set out in the *Midwives Rules and Standards 2012*.
- 37 Local supervising authorities are responsible, through the appointed Midwifery Officer, for developing a system with employers of midwives and self-employed midwives to ensure that they are notified of all adverse incidents, complaints or concerns relating to midwifery practice or allegations of impaired fitness to practise against a midwife. They are required to investigate such reports, complaints or allegations in accordance with their procedures, which they must publish. These procedures must include a process for appealing against the outcome of the investigation.
- 38 Following an investigation, the local supervising authority may recommend no action, local action under the supervision of a named supervisor of midwives, a local supervising authority practice programme, or referral to the NMC. Guidance to the rules and standards states the following.

- 38.1 Local action may be appropriate to deal with minor mistakes where there is little or no risk of repetition.
 - 38.2 A practice programme should be used where development and assessment of a midwife's practice is required.
 - 38.3 Referral to the NMC is required if the investigation, or subsequently the practice programme, identifies that the midwife's fitness to practise may be impaired. In some circumstances, the local supervising authority may decide that it would also be appropriate to suspend a midwife from practice.
- 39 A practice programme should be:
- 39.1 planned jointly between the investigating supervisor of midwives, the midwife and her named supervisor of midwives, with the involvement of a midwife educator as appropriate;
 - 39.2 structured to include objectives and learning outcomes that are tailored to the individual midwife concerned;
 - 39.3 based on the competencies and essential skills clusters set out in the *Standards for preregistration midwifery education* (NMC, 2009) directly relevant to the midwife's scope of practice and the findings of the investigation; and
 - 39.4 completed within a minimum of 150 hours and a maximum of 450 hours, with one extension of 150 hours permitted where appropriate. The local supervising authority should allow for protected time for the midwife to undertake the programme.
- 40 Before imposing conditions requiring a midwife to complete local action or a practice programme, a panel should consider whether the midwife has previously had the opportunity to complete local action or a practice programme, and if so, what the outcome was. Given that any such programme would require the support of the local supervising authority midwifery officer, the panel should follow the guidance set out in the paragraphs above under the heading "Registrant and third party engagement".

Return to practice programmes

- 41 Return to practice (RtP) programmes are designed to enable nurses and midwives who have not complied with the practice standard as set out by the NMC in the Prep handbook to bring their skills up to date. They apply to individuals who have either not practised for the required number of hours within the last three-year period, or have failed to undertake the necessary 35 hours of continuing professional development and keep a personal profile of their learning activity.
- 42 If the nurse or midwife under consideration by a panel falls into this category, and has to complete an RtP programme before they can renew registration, the panel should bear the following points in mind.
 - 42.1 RtP programmes are not designed to remedy matters giving rise to impairment of fitness to practise or to address specific concerns about a person's practice.

- 42.2 Most, but not all, RtP courses include a practice placement, during which the candidate's status is the same as that of a pre-registration nursing student.
 - 42.3 The minimum length of an RtP programme is five days. There is no minimum requirement for the theory or practical element of the course.
 - 42.4 RtP programmes are not standardised, but can be tailored to meet the candidate's individual needs, that is proposed field of practice and the length of time out of practice. Ordinarily, this would be done by the candidate, the educational institution, and any prospective employer.
- 43 Given this, in most cases where this situation arises it will be inappropriate for a panel to rely on an RtP programme in place of a conditions of practice order. Instead, the panel should make a conditions of practice order (if it is satisfied that this is the correct type of order, bearing in mind the indicative sanctions guidance and this guidance) setting out the minimum requirements of the RtP programme and requiring the nurse or midwife to disclose the conditions to the educational institution providing the programme.
- 44 Nurses and midwives who have been suspended or struck off from the register should not be allowed to undertake an RtP programme, as it would involve them coming into contact with patients.

Medical monitoring

- 45 Should a panel consider it necessary for a nurse or midwife to undergo medical monitoring by way of chemical testing as part of a conditions of practice order, this should be carried out in line with the NMC's *Guidance to practice committees on the use of chemical testing*.

Review of conditions of practice orders

- 46 At the review of an interim conditions of practice order, the panel should apply the NMC's *Guidance to panels considering whether to make an interim order*.
- 47 At the review of a conditions of practice order made following a finding of impairment of fitness to practise, the panel should first consider whether the nurse or midwife's fitness to practise is still impaired before going on to consider what further action, if any, to take.
- 48 At all review hearings, the panel should consider the extent to which the nurse or midwife has complied with the conditions. If it concludes that he or she has failed to comply with the conditions, it should consider, amongst other things:
- 48.1 the extent of the failure;
 - 48.2 the extent to which the failure to comply with the conditions has left the matters giving rise to the finding of impairment of fitness to practise unaddressed;

- 48.3 the extent to which any alternative action taken by the nurse or midwife in an attempt to address the issue that the condition was intended to address has been effective (for example, attendance on an alternative course to that which was specified in the conditions);
 - 48.4 the nurse or midwife's culpability; and
 - 48.5 the nurse or midwife's insight into the significance of their failure to comply with the condition.
- 49 Failure to comply with a conditions of practice order may result in the order being replaced with a more severe sanction.¹⁰
- 50 Full compliance with a conditions of practice order may demonstrate insight, and, depending on the nurse or midwife's performance under conditions, may demonstrate that they are safe to continue to practise subject to the same conditions, less onerous conditions, or no conditions at all.

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¹⁰ *Pattar v General Medical Council* [2010] EWHC 3078