

Prosecution policy

- 1 It's a criminal offence for a person with intent to deceive (whether expressly or by implication) to:
 - 1.1. represent¹ that they're on the NMC Register, when they aren't²
 - 1.2. use a protected title to which they aren't entitled; or
 - 1.3. falsely represent that they have qualifications in nursing³ or midwifery.
- 2 Our overarching objective is to protect the public. One of our core functions is to ensure that high quality standards for nursing⁴ and midwifery care are maintained. This forms part of how we keep people safe.
- 3 The protected titles concerned are 'Registered nurse', 'Midwife', 'Nursing associate' and 'Specialist community public health nurse'. 'Nurse' is not a title protected in law.
- 4 There's also a protected legal function associated with midwifery and it's a criminal offence to attend⁵ a woman⁶ in childbirth unless someone falls within those permitted to do so in Article 45 of the [Nursing and Midwifery Order 2001](#).
- 5 A person also commits an offence if:
 - 5.1. intending that any person will be deceived, they cause or permit someone else to make a false representation about them of the type listed in paragraph one above
 - 5.2. with intent to deceive they make a false representation of the type listed in paragraph one above about another person.

¹ A "representation" can include saying or writing something. It can also include the impressions given by someone's behaviour, such as wearing a nurse's uniform to attend on people, or visual media such as promotional photographs.

² This includes when someone falsely says they have a specific entry in the register such as a prescribing qualification.

³ Nursing includes those holding nursing associate qualifications.

⁴ Nursing includes care provided by nursing associates in England.

⁵ 'Attendance upon' is defined in our policy concerning Indemnity arrangements for midwives which can be found here: www.nmc.org.uk/registration/staying-on-the-register/professional-indemnity-arrangement/indemnity-arrangements-for-midwives/

⁶ For the purpose of this policy, the word 'woman' includes girls. It also includes people whose gender identity doesn't correspond with their birth sex or who may have a non-binary identity.

6 Please see paragraphs 20-26 for more information.

What does this document do?

- 7 This policy sets out when we'll take action and what factors we'll consider in cases if:
- 7.1. someone who has never been registered with us and doesn't hold approved qualifications in nursing or midwifery uses a protected title or function which they aren't entitled to use
 - 7.2. they falsely represent that they have an approved qualification, and/ or they falsely represent that they're a registered professional.
- 8 This policy also covers cases where individuals cause or allow another person to make the above representations about themselves, or where they themselves make those representations about another person.
- 9 This policy is part of our commitment to being open and transparent about our approach to enforcement and to ensure we're consistent in our approach to these cases.

Who is this document for?

- 10 This policy is for people who may be affected or concerned by the behaviour of someone who is using a protected title or performing a protected function to which they aren't entitled, or causes or permits the use of a protected title in respect of themselves by another person.
- 11 This policy explains what enforcement action they can expect from us. This will include members of the public, employers and individuals who may be under investigation.
- 12 Examples of when someone could be affected or concerned include where someone may have used a service by an individual who led to believe that they're a nurse, midwife or nursing associate when they aren't (and therefore trying to deceive), or where an employer who employs someone in a role which requires registration believes them to be registered with us when that isn't the case.
- 13 We're committed to ensuring our policies and guidance documents are inclusive and accessible to everyone. You can visit our [equality, diversity and inclusion page](#) to read our reasonable adjustments policy.
- 14 If you would like to receive this guidance in an alternative format, then please contact the equality, diversity and inclusion team at equality@nmc-uk.org or call 020 7681 5266 / 5053. We'll consider any requests in line with the Equality Act 2010.

Who does this policy apply to?

- 15 This policy primarily applies to individuals who have never been registered with us and don't hold approved qualifications in nursing⁷ or midwifery. We've provided some examples below in order to demonstrate the types of cases this may include.
- 16 This policy doesn't apply to those who hold approved qualifications in nursing and midwifery and may have been previously registered with the NMC, but have worked as nurses, midwives or nursing associates when they haven't maintained their registration. These cases are covered by the Registration Enforcement policy. Although, as set out in the [Registration Enforcement policy](#), if there's evidence of criminal offences we'll refer the entire case to the police in line with this policy. If there are other individuals linked or involved in the conduct who don't fall within the scope of the Registration Enforcement policy, we'll deal with the entire case in accordance with this policy.
- 17 Decisions under this policy will be relevant to the assessment of good character under our [Health and Character guidance](#) when assessing an individual's entitlement to be admitted to one of our registers.

Examples of situations covered in this policy:

Example 1

An individual has never completed any nursing training, however they apply for a job at a sexual health clinic as a nurse and work at the clinic holding themselves out as a nurse. We're made aware of the matter when a member of the public makes a fitness to practise referral as they've received the wrong diagnosis and it's identified that the individual concerned has never been on the NMC register or completed an NMC approved course in nursing. In light of the seriousness of this matter we move straight to making a referral to the police.

⁷ Nursing includes those holding nursing associate qualifications.

Example 2

A website is set up offering training by a midwife on infant feeding. The NMC is made aware that the training is run by an individual who hasn't completed midwifery training and is therefore not on the register.

We write to the company asking that they update the website to ensure that it reflects the true position, and inform them that a failure to do so may lead to the matter being referred to the police. The company responds and updates the website making clear that the individual is not a midwife. No further action is taken by the NMC.

Example 3

The owner of a clinic providing cosmetic treatments falsely claims that all the staff members are registered nurses when not all of them are, as they know this will increase the number of customers using the clinic.

We write to the owner asking that they update their information so that the public aren't misled. The owner doesn't respond. Therefore we make a referral to the police for them to consider whether a criminal prosecution is necessary against the owner, and against any of the individuals who caused or permitted the false claims to be made about them.

When will we consider these cases?

- 18 We may become aware of these cases from a number of sources including employers, a member of the public or another regulatory body.
- 19 If the conduct concerned occurred outside the UK we'll refer the matter to the relevant regulatory body within that country or, when appropriate, the police.

What is a protected title and a protected function?

Protected title

- 20 Only those recorded on our register as holding an approved qualification in nursing or midwifery may use the protected title of 'registered nurse', 'midwife' 'nursing associate' or 'specialist community public health nurse'. It's an offence⁸ when someone with intent to deceive (whether expressly or by implication):

⁸ Under Article 44 of the Order

- 20.1 falsely represents themselves to be on our register, or a particular part of it, or to be the subject of an entry in the register
 - 20.2 uses a protected title to which they aren't entitled⁹
 - 20.3 falsely represents themselves to have qualifications in nursing or midwifery, or a qualification as a nursing associate in England.
- 21 A person also commits an offence if:
- 21.1 with intent that any person shall be deceived (whether expressly or by implication) they cause or permit another person to make any representation about them which if made by them with an intent to deceive would be an offence under paragraph 1 of Article 44 of the Order
 - 21.2 with intent to deceive they make with regard to another person any representation which is false to their own knowledge and if made by the other person with that intent would be an offence by him under paragraph 1 of Article 44 of the Order.
- 22 In order to commit an offence under Article 44 of the Order (the protected title offence), there has to be sufficient evidence to prove that the person had the intent to deceive.
- 23 We'll consider each case on an individual basis, and assess what representations are being made and what the intent appears to be – there is no specific conduct or form or wording which determines whether a prosecution should be pursued.
- 24 Someone is unlikely to commit an offence if they use a protected title with a prefix clearly indicating they aren't fully qualified such as 'trainee', 'lapsed' or 'student'. If the individual uses a prefix like this then they aren't falsely representing themselves to be on our register or attempting to mislead people into believing they are.

Protected midwifery function

- 25 There is also a protected legal function associated with midwifery¹⁰. Only the following people may attend a woman in childbirth.
- 25.1 A midwife
 - 25.2 A registered medical practitioner
 - 25.3 A student undergoing training to become a midwife or a medical practitioner as part of an approved course of practical instruction
- 26 The only exception to this is in a case of 'sudden or urgent necessity'.

⁹ Titles listed in article 6(2) of the Order

¹⁰ Set out in Article 45 of the Order

What action will we take?

- 27 If you become aware of a concern, please send it to RegistrationInvestigations@nmc-uk.org
- 28 We're funded by the registration fees of nurses, midwives and nursing associates, so we're always mindful to use our resources proportionately.
- 29 We'll take one or more of the following actions once we're aware of a concern.
 - 29.1 No action
 - 29.2 Send a letter to the individual asking them to stop the conduct concerned within a specified time and warning of the consequences of not doing so
 - 29.3 Refer the case to the police or another appropriate body if there is information to indicate any criminal offences (including Article 44 or Article 45 offences)
- 30 We know that individuals may be using a protected title inappropriately without intending to do so. When that happens, sending a letter highlighting the concern will usually result in an appropriate outcome. If the conduct ceases, no further action is likely to be necessary.
- 31 When an individual, who has not previously been on our register or completed an approved qualification in nursing or midwifery, falls within this policy and continues with the conduct concerned, we believe the most appropriate action is to refer the matter to the police. This includes cases where there are several people involved and one or more of those hasn't previously been on the register or completed an approved qualification in nursing or midwifery.
- 32 There can only be a successful prosecution when there's sufficient evidence of an intention to deceive.
- 33 We'll support the police by providing information in line with our [registration information handling guidance](#). The RIU will be responsible for sharing the information and logging the cases. The RIU will work with the NMC's Information and Data team to make sure information is shared in accordance with data protection legislation.
- 34 We'll respond to any police enquiries to ensure that all the issues identified are properly considered.
- 35 The Crown Prosecution Service covers England & Wales, the Crown Office & Procurator Fiscal Service covers Scotland, and the Public Prosecution Service covers Northern Ireland.
- 36 If the police decide to take no further action and you're unhappy with a decision not to start or to stop a prosecution, you may be able to ask for it to be reviewed through the [Victims' Right to Review](#) scheme in England and Wales. Or you may

request that the decision be reviewed by the [Crown Office and Procurator Fiscal Service](#) in Scotland or [Public Prosecution Service](#) in Northern Ireland.

- 37 In exceptional cases where the police or prosecuting authority decide not to prosecute, we may support you to seek a review of that decision and with the absolute discretion of the Council consider whether we wish to take any further enforcement action.

If I report a concern will my identity be disclosed to the individual?

- 38 We may need to disclose where the complaint came from, either to the individual or to a third party such as the police.
- 39 We'll aim to protect your anonymity if you don't wish for us to disclose this information. However, this may limit the ability for enforcement action to be taken. For example, if you don't wish for us to disclose your identity to the police as the person who raised the concern, they may be unable to take forward any investigation.
- 40 We'd also refer you to our [Privacy Notice](#) and our [Fitness to Practise information handling guidance](#) which set out the circumstances when we may share your identity with the individual and/or third parties.

Date: March 2022