

Being a witness

Taking part in a hearing

June 2021



About us

Our vision is safe, effective and kind nursing and midwifery that improves everyone's health and wellbeing. As the professional regulator of almost 732,000 nursing and midwifery professionals, we have an important role to play in making this a reality.

Our core role is to **regulate**. First, we promote high education and professional standards for nurses and midwives across the UK, and nursing associates in England. Second, we maintain the register of professionals eligible to practise. Third, we investigate concerns about nurses, midwives and nursing associates – something that affects less than one percent of professionals each year. We believe in giving professionals the chance to address concerns, but we'll always take action when needed.

To regulate well, we **support** our professions and the public. We create resources and guidance that are useful throughout people's careers, helping them to deliver our standards in practice and address new challenges. We also support people involved in our investigations, and we're increasing our visibility so people feel engaged and empowered to shape our work.

Regulating and supporting our professions allows us to **influence** health and social care. We share intelligence from our regulatory activities and work with our partners to support workforce planning and sector-wide decision making. We use our voice to speak up for a healthy and inclusive working environment for our professions.

Your role as a witness

Your participation in the hearing is very important, the Chair and our hearings staff will do their best to help you participate fully. If you need any further support please let your Case Coordinator know at the earliest opportunity and we'll talk to you about what options are available.

We understand that acting as a witness can sometimes be challenging for those involved. We've developed this guide to help you understand the investigations process and what to expect as a witness. It also provides information about the support available throughout the process.

The fitness to practise process

Employers, colleagues, patients and members of the public can let us know if they have any reason to be concerned about a nurse, midwife or nursing associate's fitness to practise. Anyone who is concerned can make a referral to us.

When we receive a referral this is first looked at by our Screening team. They assess the referral to see whether the concern raised needs to be taken to a further stage of investigation or intervention.

Once the Screening team is satisfied there's a matter to investigate, the case passes onto our Investigations team. An investigator will prepare the case by interviewing witnesses, gathering evidence and drafting, as necessary, witness statements or reports.

Any information – including the witness statement – we rely on to support our case will be sent to the nurse, midwife or nursing associate who is the subject

of the allegation so they have an opportunity to comment.

The person investigating the case will then prepare the case for the case examiners. The case examiners will decide if there's a case to answer and where necessary, they will pass the case to the Fitness to Practice Committee.

At this stage a fitness to practise meeting or hearing is held so that a final decision can be made in the case. There are some small differences between meetings and hearings but a main difference is that meetings are private events and hearings are public events. As a witness, you won't be asked to attend or provide evidence at meetings.

A case examiner can be either a nurse, midwife, nursing associate or lay person. They have the power to decide if there is a case to answer. A lay person is someone who is not a registered nurse, midwife or nursing associate.

'Fit to practise' means a nurse, midwife or nursing associate is fit to carry out their duties.

Preparing for a hearing

Do I really need to come to the hearing?

We will only ask you to act as a witness if we believe your involvement is necessary to the case.

I've given a witness statement and I have nothing to add.

If you've given a witness statement it's likely you'll have to come to the hearing or we'll ask you to attend virtually (by telephone or video-link). It's important for the panel to hear your evidence first hand as it helps them get a better understanding of the case and gives them a chance to ask you questions.

Giving your evidence in person also allows the opposing side, if present at the hearing, to ask you questions and test your evidence. This is called cross examination, and it's vital to make sure the hearing is fair and thorough.

Occasionally certain witnesses won't have to go to the hearing, for example, if the nurse, midwife or nursing associate admits the allegations against them. In these circumstances, the statement can sometimes be given to the panel to read instead.

I'm nervous – where can I go for information and support?

If you're worried about giving evidence you can speak with a Witness Liaison Officer, who can let you know about:

- what to expect at the hearing
- support available to you at the hearing
- arrangements we can make for you to be able to give evidence (for example, if you need an induction loop for your hearing aid or have other types of additional needs)
- other organisations which can provide further support.

A Witness Liaison Officer is an NMC employee responsible for providing information and support to witnesses.

You can contact the Witness Liaison team on 020 7681 5390 or at witness.liaison@nmc-uk.org

Please note that the team can't discuss your evidence or details of your case. They can only provide general support and information.

What if I don't want to come?

We'll only ask you to come to the hearing if we believe your involvement is necessary to the case. If you're worried about taking part or anything else, we encourage you to speak with your Case Coordinator or a member of the Witness Liaison team for information and support.

We have a crucial role in promoting and upholding high professional standards. Because of the nature of nursing and midwifery, this includes vulnerable people such as children, the elderly, adults with learning disabilities, and people whose ill health has made them vulnerable. We need your help to make sure all nurses, midwives and nursing associates deliver kind, safe and effective care.

We hope that, like us, you want to play your part in protecting the public and would want to engage in our investigation.

If you're a nurse, midwife or nursing associate, you're required to cooperate fully with NMC investigations as part of The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates (the Code). Failure to do so may result in your own registration being called into question. If you're a healthcare or medical professional, your own professional code of conduct may carry a similar requirement.

In exceptional circumstances, a witness can be served with a formal summons. This is something we'd only consider if all other avenues have been explored. The summons is a legal requirement for a witness to appear at a hearing. If a summons is ignored, legal action can be taken.

When and where will the hearing take place?

We'll write to you to let you know when the hearing will take place, giving you as much notice as possible. Please make sure you're available on the dates you're required to attend. There are many people involved in the hearing, including other witnesses, so it's hard to change dates without causing inconvenience to everyone else involved.

Hearings may be held virtually, physically or in some cases through a mixture of both physical and virtual attendance. If we hold a physical hearing, they'll normally be held in Belfast, Cardiff, Edinburgh or London, depending on where the person under investigation lives. There may be circumstances where the hearing will be held elsewhere. You'll be notified of the location of the hearing when you're asked to attend as a witness. You can find full [information about our hearings centres](#) in Belfast, Cardiff, Edinburgh and London, including directions and maps on our website.

The **Listings Officer** is an NMC employee who is responsible for scheduling the hearing. The **Case Coordinator** is an NMC employee who manages and oversees the case. You can contact them with any questions you have about the case.

We also have an [interactive virtual tour of our hearings centre](#) available on our website. The tour should help you to familiarise yourself with the hearings environment before coming to give evidence.

If you're asked to participate virtually by telephone or video-link, the case officer will contact you to explain the next steps and how to attend the hearing by telephone or video-link.

[Find more information about virtual hearings and how to prepare for one.](#)

Attending the hearing

Do I have to attend the hearing every day?

Your Listings Officer will confirm with you the days you're required to attend in person, by telephone or video-link. It's unlikely you'll be required to attend the hearing every day, however, witnesses may be needed at any time while the hearing is taking place. You should make sure you're available at all times during the hearing.

What if I can't get the time off work?

In these circumstances please contact your Case Coordinator to discuss. They can speak to your employer to explain the importance of the NMC's proceedings and why you must attend the hearing.

What if I become unavailable after the date the hearing has been fixed?

You shouldn't make appointments or travel arrangements on dates that you've said you're available. If there's an unavoidable change to your availability you must tell your Case Coordinator as soon as possible.

If you're ill, you'll need to send us a medical certificate or a note from your doctor confirming your condition and when you're likely to be well enough to attend. If you can't make the hearing for another reason you'll need to send evidence of this also. For example, if you need to travel unexpectedly, you'll need to send us copies of your travel documents.

We need to see this proof because the person presenting the case on behalf of the NMC may decide to apply to postpone the hearing. If they do this, they'll need to show evidence of why you can't attend the hearing. Members of the public and journalists will be asked to leave the room if any private medical information relating to a witness is to be discussed.

Who and what can I bring along?

What I should bring with me to a physical hearing

You should bring your witness statement and exhibits with you to the hearing. You'll be given time to read through them before you're called in to give evidence. If you use reading glasses please ensure you bring these with you too.

You might want to bring a book or magazine with you, or some work to do, because you might have to wait some time before you're called to give evidence. We do try to stagger the attendance of witnesses, to reduce waiting time, but this isn't always possible. If you want to do work, please know that you'll be sharing the witness room with other witnesses, and these rooms may become crowded during busy periods.

Our main hearing centres have Wi-Fi access, and tea and coffee are provided.

Can I bring someone with me for support?

You can bring someone with you for support and they can wait with you in the witness waiting area. They can also accompany you in the hearing room while you give your evidence but play no other role in the hearing. If you require additional support during the hearing so you can participate, please speak to your Case Coordinator.

We don't routinely pay the expenses for someone attending as support apart from in exceptional circumstances. We can discuss this with you in more detail before the hearing.

Can I bring my children to the hearing?

You shouldn't bring children to the hearing if possible. We can assist with childcare costs so please discuss this with the Case Coordinator before the hearing.

If you have no other option than to bring children with you, you'll need to bring another adult to look after them while you're giving evidence. We don't have childcare available on site and, for health and safety reasons, our staff can't take responsibility for children, even for short periods. We'll only agree to pay an accompanying person's expenses in exceptional circumstances (for example, if you need to bring your baby with you because you're breastfeeding).

What should I wear to the hearing?

You should wear clothes that you feel comfortable in but should remember that fitness to practise hearings take place in a formal environment.

What if I need an adjustment because I have a disability or extra needs?

All of our hearings centres are wheelchair accessible and hearing aid induction loops are available upon request. If you have a disability, communication difficulties or other specific needs, please tell as early as possible and in advance of the hearing, so that we can make the necessary arrangements.

Expenses

Will you organise my travel and accommodation?

Yes. Your Case Coordinator will contact you about travel, and hotel arrangements if necessary. If you have any special requirements that you'd like us to consider in relation to travel and accommodation, please let your Case Coordinator know.

We will send you your tickets and any other information about a week before the hearing.

Please bear in mind the NMC is funded by the fees of nurses, midwives and nursing associates so we try to keep costs down wherever we can. We ask you to use public transport instead of your own car or taxis where possible. If you feel you need to use your own car or a taxi you should discuss this with the Case Coordinator before the hearing.

Will you cover my expenses and lost earnings?

Normally you can claim back expenses and lost earnings if you were meant to be at work on the day of the hearing. You should raise this with your Case Coordinator before the hearing starts as claims are considered on a case-by-case basis.

If your claim has been approved by the Case Coordinator you should complete and return a **witness expense claim form** to us as soon as possible after the hearing.

What about meals?

Sandwiches, salads or soup are provided for all witnesses in the witness waiting room. If you have any special dietary requirements please tell your Case Coordinator before the hearing and we will do our best to accommodate this.

If you want to leave the offices to go out for lunch, please let the hearings receptionist know so they can make a note of it and ensure the hearing won't be disrupted. You should leave a contact telephone number with them so they can call you if necessary. Please note that we won't reimburse the cost of lunch taken outside.

If you're staying overnight in a hotel, your breakfast and dinner will be charged to your hotel room so that we can pay for them.

On the hearing day

What if I am unwell or delayed on the day of the hearing?

You'll need to contact your Case Coordinator as soon as possible so they can let the panel know. If you're unwell on the day of the hearing you'll need to provide us with a medical certificate or a note from your doctor confirming your condition and when you're likely to be well enough to attend.

Who should I report to on the day?

Please go to reception first. They will note that you have arrived and direct you to the witness room. The hearings receptionist will be happy to help you and answer any questions you might have during the day.

The case presenter, the lawyer working on behalf of the NMC, the Witness Liaison Officer and the panel secretary will introduce themselves once you arrive.

Can I discuss the case with other people?

You must not discuss the case with anyone until you have given evidence.

This important rule is to ensure that the evidence given by each witness is their own recollection of what happened. If you discuss the case with another witness, this might affect the proceedings.

Will the nurse, midwife or nursing associate in question be there?

The nurse, midwife or nursing associate under investigation is entitled to attend the hearing, but they don't have to. Some choose to be represented at the hearing, but again this is not essential. There will be a separate waiting area for them to use. But it's possible that you might pass them while traveling to and from the hearing or waiting room.

If you have any concerns or you'd like to know whether the person under investigation is going to attend your case, you should check with the Witness Liaison Officer, case presenter or panel secretary at the start of the day.

Who will be in the hearing room?

There will usually be three panel members present. They're independent of the NMC and completely impartial. At least one member of the panel will be a nurse, midwife or nursing associate. There will also be at least one lay member on the panel. This means they're from outside the profession and not on our register.

The panel also includes a chairperson who is an experienced panellist and is responsible for the proceedings.

As part of the process, the panel may ask the NMC, a witness, nurse, midwife or nursing associate for information.

Legal assessor

The legal assessor is an independent and experienced barrister or solicitor. The legal assessor advises the panel on the law.

Case presenter

The case presenter sits opposite the panel. They will act as prosecutor in the case, on behalf of the NMC, and will be calling the witnesses.

Panel secretary

The panel secretary is a member of NMC staff. They help the panel to run the hearing and draft its decision. The panel secretary will be a key contact for you throughout the day.

Shorthand writer

Our hearings are recorded digitally, however occasionally there may be a shorthand writer or logger present throughout the hearing, in both public and private sessions, to record the proceedings.

Observers

If the hearing is open to the public, members of the public and the press may choose to observe.

Nurse, midwife or nursing associate

The nurse, midwife or nursing associate under investigation is entitled to attend the hearing, but they don't have to.

Representative

Some nurses, midwives and nursing associates choose to have a representative present for the hearing.

Will journalists try to speak to me?

There may be a journalist in the hearing room observing the hearing, and other journalists in the building during the course of the day. Please bear this in mind during any conversations that you have outside the witness room. You don't have to speak to journalists if you don't want to. They can request a transcript of the public proceedings if they need to confirm anything that has been said in the hearing.

Will the hearing always be in public?

Normally hearings of the Fitness to Practise Committee take place in public. Sometimes the panel may decide that the hearing should be held in private. For example, if personal health details about the nurse, midwife or nursing associate in question, or a witness, are due to be discussed. During private sessions journalists, and any other observers, will be asked to leave.

Will my name be made public during or after the hearing?

The names of all other witnesses and third parties are not anonymised during the hearing, but will be anonymised in the decisions and reasons published on the NMC's website after the hearing.

However, names of witnesses and third parties who are not granted legal anonymity will be available on request from the NMC and can be reported freely within the media.

Vulnerable witnesses and third parties and patients who are granted legal anonymity to protect their identity will remain anonymous throughout the hearing, and their full names will not be released to the public or the media.

Giving your evidence

When will I be called to give evidence?

At the beginning of the day, the case presenter will let the panel know the order in which witnesses will be called to give evidence. This order may need to be changed to reflect any unexpected issues that arise during the course of the hearing and this can impact on waiting time.

Witnesses can be called at any stage of the hearing. The panel secretary will collect you from the witness room when it is time for you to give your evidence.

What happens when I give my evidence?

When you're called to give evidence the panel secretary will take you to the hearing room and show you to the witness table. Before you sit down to give your evidence the panel secretary will ask you how you want to take an oath or affirmation to tell the truth. You can take an oath on a holy book of your choosing.

Will I be allowed to look at my statement while giving evidence?

Each case is different. Usually you'll have your statement with you when you give evidence. You may refer to it or you may be asked to read the statement in full to the panel, so please let us know in advance if you need any adjustments.

On occasion the panel may require you to recall as much as possible without reference to your statement. The case presenter will explain this to you in more detail on the day of the hearing.

The following oaths are available:

- Christian (on the new testament)
- Hindu (on the Gita)
- Jewish (on the old testament)
- Muslim (on the Quran)
- Sikh (on the Gutka)

If you don't want to take a religious oath you can read out an 'affirmation' to confirm that the evidence you're about to give will be the truth.

Once you have taken the oath or affirmation you'll be asked to sit down. The chair will then introduce themselves and everyone else in the room.

Cross-examination

Cross-examination is the legal term used to describe the process of asking questions to witnesses. Cross-examination can be challenging for witnesses but please remember it is a necessary process to ensure a fair hearing.

Who will ask me questions?

The first person to ask you questions will be the case presenter. The case presenter will ask you questions about what happened and you should answer truthfully. The questions will be based on the content of your NMC witness statement. The case presenter may also refer you to any documents produced as exhibits in your statement.

If the nurse, midwife or nursing associate is present, either they, or their representative if they have one, will then ask you questions.

Why are they asking me questions?

The purpose of their questions is to make sure your account is accurate and to test your evidence.

The final set of questions will be put by the panel. These are designed to clarify and better understand the evidence that has already been given.

Whether you're attending a face to face hearing or a virtual hearing we expect everyone involved to treat each other kindly, with dignity and respect. The panel will intervene if the line of questioning or tone is inappropriate.

How long will my evidence take?

The time it takes for witness evidence varies from case to case. The case presenter will give you as much information as possible about what to expect on the day.

Will I definitely finish my evidence on the day I am called for?

We try to ensure that you finish your evidence on the day you're called for, but this is not always possible. If the hearing is due to continue on the next day, you may be asked to come back.

If you haven't finished giving your evidence by the final hearing date, we'll usually ask that you attend again on new dates booked for the hearing to resume. We'll make sure that you can make the new dates before these are confirmed.

Preparing for cross-examination

We understand that giving evidence can be stressful and the below provides some points to consider about the process of cross-examination.

- Try to be familiar with your witness statement by reading it before you give evidence.
- Questions may come in a different format than you're used to. If you don't understand the question or need it repeated, it's ok to say so.
- Listen carefully to the question you're being asked.
- Take your time and try to give clear, considered answers.
- Try not to talk about matters that don't relate to the question you've been asked.
- If you're asked about a specific piece of documentation or part of your statement, you'll be able to take some time to look at it.
- Try not to get angry if the other party or their representative challenges your evidence. It's their job
- Try not to argue with the person asking you questions.
- Keep calm and remember that cross-examination is an important part of a fair hearing.
- If you don't know the answer or don't remember something, just say so. Try not to guess or speculate.
- There may be observers in the room and they may leave or enter when you're giving evidence. Try to ignore this and direct your answers to the panel.
- If you're feeling overwhelmed at any point you can ask the Chair for a short break.
- During the hearing the panel will need to maintain people's anonymity you may prefer to be referred to by name, or you may wish to refer to a patient or witness by name or their relationship to you (for example, saying "my sister") the panel should facilitate this.

What happens next

What happens after I have given my evidence?

The case presenter will ask the panel to confirm whether you're needed to give further evidence at a later stage. Once the panel have confirmed they don't require further evidence, you're

free to go home, or you can stay and watch the rest of the hearing if you prefer. It is unlikely that the NMC will pay for you to keep your hotel room after your release unless it's too late for you to travel home or if this has been agreed in advance. You can speak to your Case Coordinator about this.

How does the hearing work in general?

There are three possible stages to a fitness to practise hearing. We call these stages 'facts', 'impairment' and 'sanction'.

At the 'facts' stage the panel is building up a picture of what happened using all of the evidence put before it. This includes any documentary evidence, the live evidence of witnesses and live or documentary evidence put forward by the nurse, midwife or nursing associate under investigation. The panel will then decide if the allegations are found proved. If the panel doesn't find the allegations proved, the hearing ends there.

If some or all of the allegations are proved, the panel will then move on to decide whether the person's fitness to practise is impaired, that is, whether they're fit to carry out their duties. At this stage the panel considers whether the person can remain on the register without any restrictions. The panel has to decide if the person's fitness to practise is impaired on the date of the hearing, not whether it was impaired at the time when the event took place. In view of this the panel may need to know more about what's happened since the event occurred. At this stage they're not considering whether any specific sanction should be imposed, just whether or not a restriction is required. If the panel doesn't find impaired fitness to practise the hearing ends there.

If the nurse, midwife or nursing associate's fitness to practise is found to be impaired, the panel will go on to the final stage: 'sanction.' At this stage the panel will be considering what sanction, if any, is appropriate in the case. The panel may hear further evidence about the person's history and personal circumstances. It must take into account the public interest as well as the interests of the nurse, midwife or nursing associate under investigation. The public interest includes the protection of members of the public, the maintenance of public confidence in the professions and the NMC, and declaring and upholding proper standards of conduct and performance.

The options open to the panel at the sanction stage of a Fitness to Practise Committee hearing are outlined on the next page.

Made up of people on our register and lay people, the **Fitness to Practise Committee** have the power to make the final decision about a fitness to practise case.

Sanction options

Take no action

The nurse, midwife or nursing associate will have no action taken against them and the matter won't remain against their name on the register.

Issue a caution

This cautions the nurse, midwife or nursing associate without preventing them from practising. It's a formal record to show there have been some concerns. It stays on the register for at least one year and up to a maximum of five years. All employers should check the registration of a nurse, midwife or nursing associate before offering them a job. If there's a caution against their name, the employer will be made aware of this, and can then get an explanation as to why that person received the caution.

Make a conditions of practice order

This order restricts a nurse, midwife or nursing associate's practice from between one to three years. They must comply with the restrictions in order to practise. For example, they may be restricted from working in a particular setting, or from carrying out some aspects of the job without supervision. The order must be reviewed by an NMC panel before it expires, unless they decide that a review is not needed. A reviewing panel will then later look at the order and decide whether to extend, change or remove the order, given the particular facts of the case.

Make a suspension order

This suspends the nurse, midwife or nursing associate from practising for a set period of time, up to one year in the first instance. The order must be reviewed by an NMC panel before it expires, unless they decide that a review is not needed. A reviewing panel will then later look at the order and decide whether to extend, change or remove the order, given the particular facts of the case

Making a striking-off order

This removes the nurse, midwife or nursing associate's name from the register, which means they're not allowed to work in these professions in the UK (or in England for nursing associates).

The nurse, midwife and nursing associate can apply to be readmitted to the register five years after the striking-off order is made. In those circumstances an NMC panel will decide at a hearing whether or not to allow the former nurse, midwife or nursing associate to be readmitted to the register. The committee will take into consideration the initial charge, the nurse, midwife or nursing associate's understanding and insight into their past behaviour and any action they may have taken since being struck off.

For more information about the Fitness to Practise process see our [Fitness to Practise library](#).

After the hearing

Can I talk about my evidence now?

Once the hearing has finished completely you can talk about what you saw and the evidence you gave. If you've finished giving your evidence, but the hearing is still continuing, please don't discuss the case with any of the other witnesses who are still waiting to be called.

How will I find out about the outcome?

The outcome and reasons document of the hearing will be published [on our website](#).

A hearings manager will also write to you to tell you the outcome.

Any sanction imposed by the panel will be displayed against the nurse, midwife or nursing associate's name through our online [search the register](#) facility.

Can the outcome of the initial hearing be appealed?

The nurse, midwife or nursing associate can appeal against the outcome of a hearing to the High Court of Justice in England and Wales, the High Court of Justice in Northern Ireland or the Court of Session in Scotland (depending on where their case was heard).

The Professional Standards Authority (PSA) reviews all substantive fitness to practise outcomes. The PSA can also refer outcomes to the High Court if they consider that a decision by a panel is unduly lenient.

Where there's an appeal there will be an appeal hearing, after which the court will decide whether or not the decision was correct. Witnesses don't have to attend these hearings, but they are public hearings, so you could choose to attend.

If an appeal is successful, the Court has the power to substitute its own decision or refer the case back to the NMC for all or part of the case to be reheard. This happens very rarely. You'll be given more information in the unlikely event it happens in your case.

Can I give feedback?

We recognise the valuable contribution you have made as a witness and we welcome your feedback on how we can improve the experience of witnesses in the future.

You can find out more about giving feedback [on our website](#).

If you'd like a hard copy please speak with your Case Coordinator or witness liaison officer at the hearing.

Will the NMC need me again?

In most cases the NMC won't need your help after you have given your evidence.

Other helpful sources

[Our jargon buster](#)

[Information on virtual hearings](#)

[Attending a hearing](#)

[Support for patients, families and the public](#)

[Fitness to Practise library](#)

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