

Language Impairment Guidance

Introduction

- 1 The Nursing and Midwifery Council (NMC) has the power to investigate and determine allegations that a nurse's or midwife's fitness to practise is impaired because they do not have the necessary knowledge of English to practise safely.¹
- 2 In order to assist us with the investigation and determination of such allegations, the Registrar and the Conduct and Competence Committee (CCC) have the power to direct a nurse or midwife to take a language assessment. This will usually be the International English Testing System (IELTS) which assesses an individual's abilities in reading, writing, listening and speaking.
- 3 This guidance aims to assist the Registrar, Case Examiners and the CCC in making decisions about allegations of impairment by reason of not having the necessary knowledge of English. It also sets out what factors the Registrar and the CCC should take into account when deciding whether to direct a nurse or midwife to undertake an IELTS assessment.

Process

- 4 When a nurse or midwife is referred to us because of concerns about their knowledge of English, the Registrar has to decide whether the referral amounts to an allegation of impaired fitness to practise by reason of not having the necessary knowledge of English. In order to determine this, she may carry out a preliminary investigation.² If the Registrar decides the referral does amount to an allegation, the case will be referred to Case Examiners.³ Otherwise, the investigation into the allegation will end and the case will not be pursued.⁴ Upon referral to the Case Examiners, the Registrar is likely to carry out a full investigation.⁵ This will normally involve directing the nurse or midwife in question to take a language assessment⁶, which the nurse or midwife will arrange through IELTS and which we will fund.

¹ The Nursing and Midwifery Order 2001 ('the Order'), as amended by the Health Care and Associated Professions (Knowledge of English) Order 2015, and the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules'), as amended by the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment No.2) Rules Order of Council 2015.

² Rule 2A(4)(a) and 2A(4)(c) of the Rules

³ Rule 2A(2) of the Rules

⁴ Unless there are any other potential allegations of impaired fitness to practise that need to be investigated

⁵ Rule 6B(1) of the Rules

⁶ Rule 6B(3A) of the Rules

- 5 Once the Registrar's investigation is complete, the Case Examiners will determine whether or not there is a case to answer in relation to the allegation.⁷ If the Case Examiners decide there is a case to answer, the allegation will be referred to the CCC and determined at a final hearing or meeting. At any time prior to the final consideration of the allegation, a Chair of the CCC at a preliminary meeting can also direct the nurse or midwife to take an IELTS assessment and provide us with the results within a set period of time⁸.

Decisions on language impairment

- 6 If a nurse or midwife is referred to us because of concerns about their knowledge of English, decisions will be taken by:
- 6.1 the Registrar, on whether the referral amounts to an allegation that is capable of impairing a nurse's or midwife's fitness to practise;
 - 6.2 the Investigating Committee (IC) or the CCC, on whether an interim order is required;
 - 6.3 the Case Examiners, on whether there is a case to answer in relation to the allegation; and
 - 6.4 the CCC, on whether the nurse's or midwife's fitness to practise is impaired by reason of not having the necessary knowledge of English.

Language assessments

- 7 When a nurse or midwife is referred to us because of concerns about their knowledge of English, they can be directed to undertake a language assessment by:
- 7.1 the Registrar, as part of the investigation into the allegation;
 - 7.2 the CCC, when cases are referred to them by the Case Examiners, or by a Chair at a preliminary meeting prior to the final determination of the allegation; and
 - 7.3 the Registrar, prior to any substantive order review hearing or meeting⁹.
- 8 All directions to take a language assessment must be made in writing and must specify the date by which the nurse or midwife is required to take the test and provide us with the result.¹⁰ This time frame will usually be 60 days, however depending on the circumstances of the case we may shorten or extend this period. An example of when we would extend this time period would be if a nurse or

⁷ Rule 6C(1) of the Rules

⁸ Rule 18(c)(j) of the Rules

⁹ Rule 6B(3A), Rule 18(5)(j) and 25A of the Rules

¹⁰ Rule 6B(3A) and (3C) of the Rules

midwife requires reasonable adjustments to enable them to take the IELTS assessment.

Allegations

- 9 If a nurse or midwife is referred to us because of concerns about their knowledge of English, the Registrar must decide whether the referral amounts to an allegation of impaired fitness to practise. Not every concern raised will be sufficiently serious to call into question a nurse or midwife's fitness to practise. The key consideration will be whether the nurse's or midwife's lack of knowledge of English could place patients at potential or actual risk of harm. For example, if the concern relates to poor spelling or difficulty in understanding regional slang or English colloquialisms, the referral is unlikely to amount to an allegation of impaired fitness to practise and the case will not be pursued.
- 10 Examples of language concerns that could place members of the public at risk of harm include:
 - 10.1 Poor handover of essential information about patient treatment or care to other health professionals because of an inability to speak English;
 - 10.2 Serious record keeping errors or patterns of poor record keeping because of an inability to write English;
 - 10.3 Serious failure(s) to provide appropriate care to patients because of an inability to understand verbal or written communications from other health professionals (or patients themselves); and
 - 10.4 Evidence of drug error(s) caused by a failure to understand or inability to read prescriptions.
- 11 In every case, the Registrar must exercise her judgment in light of the individual circumstances of the case and the information available. If the Registrar considers that there is insufficient information to make an informed decision, or that further information would be of assistance in deciding whether the concerns raised affect the nurse or midwife's fitness to practise, she can carry out preliminary investigations. Such investigations are likely to involve:
 - 11.1 contacting the referrer for further details of the complaint, for example, inviting them to send examples of the nurse's or midwife's written work;
 - 11.2 contacting any known current employers to ascertain if they have any concerns about the nurse's or midwife's knowledge of English;
 - 11.3 contacting our registrations department to obtain details of any previous language assessments undertaken by the nurse or midwife as part of the registrations process; and
 - 11.4 inviting the nurse or midwife to provide any evidence they have about their knowledge of English. This could include evidence of any recent qualifications they have obtained that have been taught and examined in English.

Interim Orders

- 12 In investigating and considering an allegation of impaired fitness to practise arising out of language concerns, we will apply to a Practice Committee for an interim order where an order appears necessary to protect members of the public, is in the interest of the nurse or midwife concerned, or is otherwise in the public interest.¹¹
- 13 We perform an ongoing risk assessment of all referrals we receive, which continues throughout the life of the case. In cases involving language concerns, particular factors that will be relevant when considering whether an interim order is necessary are likely to include:
 - 13.1 the severity of any potential or actual clinical risk, or any actual or potential harm caused to patients related to the alleged lack of knowledge of English;
 - 13.2 the results of any language assessment taken by the nurse or midwife; and
 - 13.3 any refusal or persistent failure to undergo an assessment.
- 14 Any interim order imposed is subject to regular review by a Practice Committee, and can be reviewed at any time when new relevant evidence becomes available. This could include any evidence of knowledge of English sent to us by the nurse or midwife concerned.

Case Examiners

- 15 If the Registrar decides that a referral about a nurse or midwife's knowledge of English does involve an allegation of impaired fitness to practise, the case will be referred to the Case Examiners. Their function is to decide whether or not there is a case to answer in relation to the allegation.
- 16 Prior to the Case Examiners' decision, the Registrar will normally carry out a full investigation. This will generally involve directing the nurse or midwife in question to undertake an IELTS assessment and provide us with the results. We will pay for the cost of the IELTS assessment but will not normally pay travel costs associated with the language assessment.¹²
- 17 The IELTS result (or a failure to undertake the assessment) will typically be used as the basis of any recommendation to the Case Examiners on whether there is a case to answer.

¹¹ 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.

¹² However, we may make an exception in cases of hardship to cover the cost of travel when necessary

- 18 If the nurse or midwife is unable to demonstrate that they have achieved a minimum score of 7.0¹³ in each of the four components of the IELTS assessment (reading, writing, listening and speaking), then we are likely to recommend that there is a case to answer in relation to the allegation. We consider that a score of 7.0 in each component reflects the minimum knowledge of English necessary to practise safely¹⁴.
- 19 When the Registrar's investigation is complete, the Case Examiners must decide whether or not there is a case to answer in relation to the draft charge and impairment of fitness to practise. This decision should be made in accordance with this guidance and the *Case to answer guidance*.
- 20 The draft charge will usually allege that the nurse or midwife does not have the necessary knowledge of English to practise safely as a nurse or midwife. Case Examiners can take into account any appropriately signed certificate stating the IELTS result as conclusive proof of the result achieved¹⁵.
- 21 If the Case Examiners decide that there is a case to answer in relation to the draft charge, they must then consider whether there is a realistic prospect that a panel of the CCC could find the nurse's or midwife's fitness to practise to be impaired by reason of not having the necessary knowledge of English. In determining whether there is a case to answer, the Case Examiners will take into account the results of the IELTS assessment (or any failure to undertake the assessment or provide of the results) as well as any other relevant factors, such as:
- 21.1 any written responses or evidence the nurse, midwife or employer has submitted suggesting they have the necessary knowledge of English to practise safely;
 - 21.2 any evidence that the nurse or midwife has trained or practised in an English speaking environment for a period of time;
 - 21.3 any evidence that the nurse or midwife has previously completed an IELTS assessment to the required standard (for example, as part of a previous application to the NMC register); and
 - 21.4 any evidence that the nurse or midwife has recently obtained a qualification that has been taught and examined in English.
- 22 These factors are likely to be particularly relevant if the nurse or midwife has averaged just below 7.0 in the IELTS assessment. In such instances, there could be a lesser likelihood that the CCC would ultimately make a finding of current impairment. In all cases, Case Examiners should exercise their judgement and

¹³Each component is given a score of between 1 and 9.

¹⁴ This is the same score expected of applicants to the NMC register. It demonstrates that they have the necessary knowledge of English to be capable of safe and effective practice under Rule 5(g)(2)(ab) of the Nursing and Midwifery Council (Education, Registration and Registrations Appeals) Rules 2004

¹⁵ Rule 31(4A) of the Rules

balance the individual features of the case and the actual harm or risk of harm to patients.

CCC hearing or meeting

- 23 At a final substantive hearing or meeting, the CCC must first decide whether the factual charge (that the nurse midwife does not have the necessary knowledge of English) has been proved, whether the nurse's or midwife's fitness to practise is currently impaired, and, finally, which sanction, if any, to impose. Each of these decisions should be made in separate stages in the following order:¹⁶
- 23.1 Does the nurse or midwife lack the necessary knowledge of English to practise safely?
 - 23.2 If the nurse or midwife lacks the necessary knowledge of English to practise safely, is their fitness to practise currently impaired?
 - 23.3 Which sanction, if any, is the most appropriate to protect the public?
 - 23.4 Finally, the panel will need to consider whether an interim order is necessary in light of its findings.
- 24 In deciding whether the facts are proved, and whether the fitness to practise of the nurse or midwife is impaired by reason of not having the necessary knowledge of English, the CCC should take into account the same considerations set out at paragraphs 18-23 above.
- 25 The CCC panel can also take account of how the nurse or midwife participates in the fitness to practise proceedings and the hearing process. In some cases this might include the nurse or midwife's ability to engage with the hearing and what their interactions with the panel might suggest about their knowledge of English.
- 26 If the CCC finds the facts proved and decides that the nurse or midwife's fitness to practise is impaired because of not having the necessary knowledge of English, then it will be required to decide which sanction to impose, if any. The available sanctions are:¹⁷
- 26.1 a caution order of between one and five years;
 - 26.2 a conditions of practice order for up to three years; or
 - 26.3 a suspension order for up to one year.
- 27 In cases of language impairment, striking-off orders are not available unless the nurse or midwife has already been continuously suspended, or subject to a conditions of practice order following a substantive hearing, for a period of at least two years. This can include separate periods of suspension and conditions of

¹⁶ At a hearing the panel should announce its decision on each stage before moving on to the next.

¹⁷ Article 29(5) of the Order.

practice, as long as the nurse or midwife has been continuously subject to one or the other.¹⁸

Directions

Directions at the investigation stage

28 Once the Registrar has referred an allegation to the Case Examiners, a direction will usually be made that the nurse or midwife must undertake an IELTS assessment and provide us with the result within a specific period of time.¹⁹ This is because we rely upon the outcome of the IELTS assessment to support the allegation of impairment by reason of not having the necessary knowledge of English.

CCC directions

29 Before the allegation is considered by the CCC, a Chair at a preliminary meeting can direct a nurse or midwife to take an IELTS assessment.²⁰ The CCC also has the power to direct an IELTS assessment after the allegation has been referred to the CCC.²¹

30 The circumstances when the CCC or a Chair will make such a direction in cases that have always been based on an allegation that the nurse or midwife does not have the necessary knowledge of English are likely to be limited because in most cases the Registrar will have already directed an IELTS assessment as part of the investigation. An example of when it may be appropriate for the CCC or a Chair to make such a direction is if a significant amount of time, for example a period of two years or more, has passed since the previous IELTS assessment meaning the result no longer provides an accurate assessment of the nurse or midwife's knowledge of English. In such circumstances the CCC can direct the nurse or midwife to provide us with an up-to-date IELTS result so it can make an informed decision about their current fitness to practise.

31 However, there may be existing cases against a nurse or midwife with different allegations of impaired fitness to practise (for example misconduct or lack of competence), which have already been considered by Case Examiners, where a potential allegation based on the nurse or midwife's knowledge of English has become apparent to us more recently. In these circumstances, we may arrange a preliminary meeting and invite a Chair of the CCC to direct a language assessment.

¹⁸ Article 29(6) of the Order, as amended.

¹⁹ This time period will usually be 60 days

²⁰ Rule 18(5)(i) of the Rules

²¹ Rule 9(4)(c) of the Rules

Review hearings

- 32 If the CCC imposes a conditions of practice or suspension order following a finding of language impairment, a review hearing will be held prior to the expiry of the order. Before the review hearing, the Registrar has the power to direct the nurse or midwife to undertake a further IELTS assessment. The Registrar will not automatically direct every nurse or midwife to undertake a language assessment but only when doing so will assist the CCC to review the order and determine what action to take at the hearing or meeting. An example of when a further IELTS assessment will be directed might be when a significant amount of time has passed since the previous IELTS assessment and the nurse or midwife has since provided us with evidence that suggests they may no longer be impaired by reason of not having the necessary knowledge of English.
- 33 At a review hearing the panel will need to consider:
- 33.1 Does the nurse or midwife still lack the necessary knowledge of English to practise safely so that their fitness to practise is currently impaired?
- 33.2 If yes, what sanction is the most appropriate to protect the public? A striking off order is not available unless the nurse or midwife has been continuously suspended, or subject to a conditions of practise order for more than two years. After this period the power to strike off will be available.

Failure to cooperate

- 34 All nurses and midwives are required to cooperate with us.²² If they fail to comply with a Registrar's direction to take an IELTS assessment as part of the investigation into an allegation (or where an assessment has been directed by the CCC on referral of the case, or by a Chair at a preliminary meeting) or provide us with the results, our rules provide that a panel of CCC at a substantive hearing or meeting can take the failure into account. The panel is able to draw any inferences as seem appropriate.²³ The CCC may find that a failure to take the assessment or provide us with the result is likely to be a strong indicator that the nurse or midwife lacks the necessary knowledge of English.
- 35 There may be circumstances where if the nurse or midwife has not provided a good reason for their failure to cooperate, we may treat such the failure as an allegation of misconduct. This is more likely to be the case if the nurse or midwife has explicitly refused to undertake the testing or share the results with us.
- 36 At the final hearing or meeting the CCC can draw such inferences as seem appropriate from a nurse's or midwife's non-cooperation.

²² Nurses and midwives are required to cooperate with all investigations under paragraph 23 of *The Code: Professional standards of practice and behaviour for nurses and midwife* (NMC 2015)

²³ Rule 31(6A) of the Rules

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