

# Being a witness

Your part in an  
investigation

June 2021



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# 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.

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## 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.

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# The fitness to practice 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.

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**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.

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# Being a witness

**When we investigate an allegation we speak with witnesses to build up a picture of what happened. A witness is usually a person who saw the alleged event, or some part of it, or has some background knowledge that is relevant to the case.**

## What's involved?

### **What does it mean to be a witness?**

Witnesses provide a written and/or oral account of what they know about the matter being investigated. We may also speak with people who didn't see the incident in question but might be able to provide background information or documents relating to the case.

Referrals made to the NMC often relate to matters which occurred in the workplace, so our witnesses are often colleagues of the person under investigation, including fellow nurses, midwives, nursing associates or care assistants. Some of our witnesses are patients or members of the public. Before speaking with patients we may consult the professionals involved in their care so that we can decide whether or not to make contact wherever possible, we'd make this decision with the patient. We'll not speak to patients if doing so could harm their health or wellbeing in any way.

### **Why do you want to be a witness?**

The person investigating the case will have studied all of the evidence. They have asked to speak with you because, at this stage, they need you to tell us what you saw or did in relation to the event and this is to help with decision making. We may also need you to give us any relevant documents you might have.

**Even though you may not think that you saw anything important, you might still be able to help with the investigation, so a conversation with you will help ensure that our investigation is thorough and fair.**

## I'm nervous

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

### Where can I go for information and support?

We understand that some witnesses find the process of giving evidence worrying. If you have any needs or require any adjustments please tell your Investigator at the earliest opportunity and we'll talk to you about what options are available.

You can also get support and information from our dedicated Witness Liaison team. In particular, a Witness Liaison Officer can provide you with information about:

- What to expect during a Fitness to Practise investigation
- What to expect should the case end in an Fitness to Practice 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)
- **Other organisations** which can provide further support

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**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](mailto: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 act as a witness?

We have a duty to protect, promote and maintain the health, safety and wellbeing of anyone who comes into contact with nurses, midwives and nursing associates. 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'll want to play your part in protecting the public and 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 that 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, and, if a summons is ignored, legal action can be taken.

**If you're worried about acting as a witness we encourage you to speak with your Investigator or a member of the Witness Liaison team for information and support.**

## Giving evidence

### How will I give my evidence?

An Investigator, or a legal firm acting on our behalf, will contact you to make arrangements for an investigation interview. They'll arrange the interview at a time convenient for you so that you're able to discuss the matter in private without being disturbed. Most interviews are conducted over the phone.

If we conduct a face-to-face interview as an adjustment, this may take place at the hospital or care home where the alleged incident took place. Usually, we ask one of the people working there to make arrangements for the interviews. If you feel uncomfortable about meeting the Investigator at work, we will try to find an alternative location.

If you're a member of the public, we try to organise a convenient and neutral place to meet. We will also reimburse all reasonable travel expenses.

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**Investigators** are responsible for the administration and management of the case and carrying out the NMC legal investigation; conducts interviews with witnesses, drafts witness statements and reports.

### When will you need me to give evidence?

We'll usually only ask witnesses to provide an account of what they know or saw at the investigation stage and it can take several months to get to this point. If you're concerned about forgetting important details then please speak to your Investigator to discuss the options available to you. If necessary, we can take a statement from you earlier, but we may need to clarify details at a later stage if the case progresses.

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

Please tell your Investigator at the earliest opportunity and we'll talk to you about what options are available.

### Can I discuss the case with other people?

You must not discuss the case with anyone else involved while the investigation is ongoing. It's important that the evidence given by each witness is their own, individual recollection of what happened. If you discuss the case with another witness, this might affect the investigation. If you think this is going to be difficult for you then please speak to the Investigator about this.

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# The investigation interview

## What will happen during the interview?

During the interview the Investigator will ask you questions about what you saw or did. They will take notes of what you say and then may need to type these up on your behalf into a document called a witness statement. The Investigator will let you know if this is necessary.

Any documents that are mentioned in your witness statement may be attached to it. These will then be known as 'exhibits'. Exhibits help tell the story of what happened and contain useful information that can be read alongside your witness statement.

## What will I be asked

### What questions will I be asked?

You'll be asked about what you saw, or did, in relation to the incident. You may be asked why the incident caused you concern. You may also be asked to provide relevant documents.

Remember, we're not investigating you, your actions or those of the other witnesses. We need to have the clearest picture possible of what took place, so that our investigation is fair. To help us achieve this, we will need you to tell us as much as you can about what happened.

### What will I be asked about?

We understand it can be upsetting to recall the details, so if you have any concerns about this please contact the Investigator.

You may be asked about your employment history, experience and qualifications, but only if this is relevant to the case. You'll also be asked if you have any criminal convictions or cautions.

We will need your contact details, so that we can keep in touch with you throughout the case. If your contact details change, please tell us as soon as possible.



## **Why will I be asked about convictions or cautions?**

We're required by law to investigate cases in a fair and neutral way.

This means that we have to find out about anything that might help the person being investigated, or that might undermine our case.

Very occasionally, witnesses have criminal convictions or cautions that are relevant to the case.

When this happens, the person under investigation has to be told about them. If the conviction or caution is not relevant to the case, we won't tell anyone about it. For instance, we don't usually tell anyone about driving offences.

## **The events took place a long time ago. How am I supposed to remember what happened?**

The Investigator taking your statement will not expect you to remember every detail of what took place. They will understand that time has passed and that you may need to refresh your memory.

The Investigator will know what they want to ask you about, and they will have copies of documents which may help you remember. These will be documents that you saw at the time of the incident. It might be the statement you wrote for your employer, the incident report form that you filled in, a completed medication administration

record or the patient's care plan. If you're a member of the public and you made the initial referral, you may be shown a copy of your original letter of complaint to help you remember or any other evidence you provided to us, for example a photograph.

## **Can someone sit in with me during the investigation interview?**

Yes, we we'd be happy for you to have a friend or colleague sitting in with you during the meeting if it makes you feel more comfortable. However, this should not be another witness in the case.

The person who comes with you will not be allowed to have any input into the conversation about the events and must keep all information confidential, given the private nature of NMC investigations.

The information you give us must be your own and must come from you.

Remember that you decide whether or not you want someone to come with you. If you're uncomfortable with a colleague sitting in with you, but your employer wants this to happen, you should tell the interviewer so that they can make your feelings clear.

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# After the investigation interview

## My witness statement

### When will I receive my witness statement?

If it's necessary to draft a formal witness statement the Investigator will send it to you as soon as possible after the interview. Read and check it carefully to make sure it accurately reflects what you saw or did.

Any exhibits you refer to in your statement will also be sent to you so you can check these are correct too. If any areas of your statement do not reflect your account you should change it or add to it accordingly, the Investigator will help with this.

The Investigator will usually only capture the details that are relevant to the specific concerns that are being investigated.

As soon as you're satisfied that it is correct, you should sign, date and return it to the Investigator. You must do this as quickly as possible, so that the investigation is not delayed.

### What will happen to my witness statement?

A copy of your witness statement, alongside the other witness statements in the case and an accompanying report from the Investigator, will be passed to the case examiners. A copy will also be sent to the nurse, midwife or nursing associate under investigation.

We won't share your witness statement or any exhibits you refer to with any other witnesses and we won't be able to share any other witnesses statement or exhibit they refer to with you, this is to ensure a fair process. For more information please see our [Fitness to Practise information handling guidance](#).

### Why does the person under investigation have to see a copy of my witness statement?

By law, we have to give them 28 days to comment on our findings and the evidence we have gathered.

It's very important that the nurse, midwife or nursing associate under investigation knows what information we have about them, and how we are

going to use it in the case. This gives them a fair chance to answer the case and give their own explanation of events.

## What happens next?

### How long will the investigation take?

We aim to conclude the majority of cases within 15 months, including a final hearing if one is required. Sometimes cases may take longer due to the number of cases we're investigating or if we have problems identifying or locating witnesses, or getting the evidence we need.

We will keep you up to date with any developments in the case and you can speak to your Investigator about how you'd like to be updated and how often, but we need your help to make sure we can finish our investigation as quickly as possible.

### What happens after the investigation?

Two case examiners decide if there is a case to answer on the basis of the evidence gathered during the investigation. This requires the case examiners to assess whether there is a realistic prospect that a panel of the Fitness to Practise Committee could find the nurse, midwife or nursing associate's fitness to practise to be currently impaired.

One case examiner will be a nurse, midwife or nursing associate. The other will be a 'lay' person. Case examiners will read the evidence and decide what action to take.

Sometimes, even though something serious happened, the nurse, midwife or nursing associate might have shown that they can practise safely now, and that they understand that what they did was wrong. In these circumstances, the case examiners can give the nurse, midwife or nursing associate some advice, a warning or ask them to agree to a plan to ensure they are safe to practise, or they may decide that the case doesn't need to be sent to a hearing and close the case instead. We call this no case to answer

However if the case examiners think the nurse, midwife or nursing associate might not be fit to practise without restriction, they may decide to hand it over to the Fitness to Practise Committee. We'll write to let you know the case examiners' decision.

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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.

# What if there's a hearing?

We also have a further information on [what to expect at a hearing on our website](#).

## What happens if there is a case to answer?

A panel of the Fitness to Practice Committee will first decide whether the case should be dealt with at a hearing or a meeting. Hearings are held in public and witnesses are called to give live evidence before the panel. Meetings take place in private and the outcome of the case is decided using only the case documents, including the witness statements. As meetings are held in private witnesses do not attend.

## What happens if there is a case to answer?

If there is a hearing of the Fitness to Practice Committee it's likely you'll have to attend to give evidence in person. It's important for the panel to hear your evidence firsthand as it helps them get a better understanding of the case and gives them a chance to ask you questions about your account.

Giving your evidence in person also allows the opposing side, if present at the hearing, to cross-examine you on your evidence. This is vital to ensure a fair and thorough hearing.

In certain circumstances witnesses may not have to go to a hearing, for example, when the nurse or midwife

**Cross-examination** is the legal term used to describe the process of asking questions to witnesses on the opposing side.

admits the allegations against them. In these circumstances, the statement can sometimes be given to the panel to read instead.

## Where might a hearing take place?

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.

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.](#)

## **Where can I obtain further information about attending a hearing as a witness?**

If the case is referred to a Fitness to Practice Committee hearing, you should refer to our leaflet [Witness information: Hearings](#).

### **Other helpful sources**

[Our jargon buster](#)

[Information on virtual hearings](#)

[Attending a hearing](#)

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

[Fitness to Practise library](#)

## **How do I give feedback?**

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

Once you have given your witness statement you can complete our [witness feedback survey](#) on our website.

If you would like a hard copy please speak with your Investigator.

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