



## Policy for Referral of NHS Lothian Nurses and Midwives to the Nursing and Midwifery Council (NMC)

Title:

### Referral of NHS Lothian Nurses and Midwives to the Nursing and Midwifery Council (NMC) Policy

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<b>Policy Owner:</b>	Nurse Director, Corporate Nursing		
<b>Executive Lead:</b>	Executive Nurse Director		
<b>Target Audience:</b>	Registrants Registered with NMC, all managers of Nurses and Midwives registered with NMC		
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## Midwives to the Nursing and Midwifery Council (NMC)

### Version Control

Date	Author	Version/Page	Reason for change
Oct 2024	Nurse Director, Corporate Nursing	v0.1-2	New policy development
Nov 2024	Nurse Director, Corporate Nursing	v1.0	Approved by the Policy Approval Group

### Executive Summary

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The Nursing and Midwifery Council (NMC) is the regulatory body in the United Kingdom responsible for setting standards of education, training, conduct, and performance for nurses and midwives.

It ensures that registrants are competent and safe to practise through registration, education, and enforcement of standards. The NMC also investigates complaints and concerns about nurses and midwives to protect the public and maintain public confidence in the profession.

NHS Lothian has an essential role to ensure the safe practice of registered Nurses and Midwives. Where there are failings in the nurse/midwife practice that cannot be addressed at local level a referral will be made to the NMC on behalf of NHS Lothian.

NHS Lothian has a responsibility to support registrants through any referral process, acknowledging that this can be a stressful time for the registrant and signposting to support services should be made available either via the line manager or by an individual trade union.



# Policy for Referral of NHS Lothian Nurses and Midwives to the Nursing and Midwifery Council (NMC)

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## 1.0 Purpose

This policy aims to provide staff with direction and guidance about determining whether to refer a registered nurse or midwife (registrant) to the Nursing and Midwifery Council (NMC) in order to maintain professional standards, comply with regulations, and protect the safety and welfare of patients and staff and the public.

Adherence to this policy will:

- ensure consistency and fairness throughout the process.
- encourage appropriate and timely referrals.
- prevent inappropriate referrals.
- ensure appropriate authorisation and sign off.
- direct staff to information and advice on the process.

It should be highlighted that all NHS Lothian staff, members of the public, and other organisations have an obligation to report themselves or any registrant to the NMC if they believe there is a risk to the public (or a specific patient) that justifies taking such action.

## 2.0 Policy statement

NHS Lothian is committed to upholding the highest standards of professionalism, patient safety, and nursing practice.

NHS Lothian will, as an employer, refer cases to the NMC when concerns are raised about a registrant's conduct, competence, or suitability to practise (including for health reasons), where these are considered to be contrary to the NMC Code and or are unresolved through local action and/or constitute a risk to the public or the profession.

NHS Lothian will co-operate with the NMC in relation to cases, raised by other parties and/or members of the public, about nurses and midwives currently or previously employed in NHS Lothian.

NHS Lothian will support registrants through any referral process, acknowledging that this can be a stressful time for the registrant and signposting to support services.

## 3.0 Scope

This policy covers Employer referrals in relation to all NHS Lothian employees, including bank workers, who are registered with the NMC and is applicable across all areas in NHS Lothian.

The NMC is the regulatory body in the United Kingdom responsible for setting standards of education, training, conduct, and performance for nurses and midwives. It ensures that registrants are competent and safe to practise through registration, education, and enforcement of standards. The NMC also investigates complaints and concerns about nurses and midwives to protect the public and maintain public confidence in the profession.

It may be necessary to refer a case to the NMC to protect patients and the public at any point during a formal investigation, as part of NHS Scotland's Workforce Policies Investigation Process, or due to additional findings or evidence.

## 4.0 Definitions

### 4.1 Fitness to Practise

The NMC Code represents the professional standards that nurses and midwives must uphold in order to be registered to practise in the UK.

The NMC Code is structured around four themes:

- prioritising people;
- practicing effectively;
- preserving safety, and
- promoting professionalism and trust.

In order to be considered “fit to practise” registrants must meet all of the standards under each of these themes.

### 4.2 Health Referral

A health referral is appropriate when someone's health condition presents a risk of harm to the public that as an Employer you are unable to manage or presents a risk to public confidence in the profession.

As cited by the NMC website, this may be, for example, where someone has a long-term physical or mental health condition that is untreated (or unsuccessfully treated) and could affect their ability to provide safe care. Alternatively, it may be where the registrant has not acknowledged the health condition that is affecting their practice.

### 4.3 NMC Powers

The NMC has legal powers to investigate two types of concern:

- a) allegations of fraudulent or incorrect entry of an individual nurse, midwife (or nursing associate in England) on the NMC register.

#### **Examples of Fraudulent entry that should be Referred to the NMC:**

- The fraudulent use of another registrants NMC PIN to secure revalidation.
  - An alternate person using the registration details of a genuine registrant.
- b) allegations about the fitness to practise of nurses and midwives. The NMC's fitness to practise process is about managing any risk that a nurse or midwife poses to members of the public in the future. It is not about punishing people for past events.

## 4.4 Fitness to Practise allegations:

Allegations about fitness to practise can be based on:

- Misconduct
- Lack of competence
- Criminal convictions and cautions
- Health
- Not having the necessary knowledge of English
- Determinations by other health or social care organisations – Nurses and midwives and can be registered members of other health or social care professions regulated by different legal bodies in the UK or overseas who sometime make referrals to the NMC.

### 4.4.1 Examples of Fitness to Practise concerns that should be referred to the NMC

The NMC cite the following are types of concerns that should be referred to them:

#### 1. Concerns that pose a serious risk to people who use services and would be difficult to put right. These concerns may include:

- deliberate harm or prolonged neglect of people who use services.
- exploiting people who use services for financial or personal gain or engaging in relationships with patients in breach of guidance on clear sexual boundaries.
- serious dishonesty, such as covering up mistakes, deliberately falsifying records, deliberately obstructing investigations, bullying colleagues who want to raise a concern, or otherwise engaging in activity that is intended to suppress openness about the safety of care.
- deliberately using false qualifications or a false picture of employment history which hides patient safety incidents or restrictions on practice.
- serious criminal activity, even when not related to care, such as sexual assault, child abuse, or using child pornography.
- being directly responsible (such as through managing a service or setting) for exposing patients or people who use services to harm or neglect – especially where the evidence shows the individual put their own priorities, or those of the organisation they work for, before the safety and dignity of people who use services.

**When to refer these concerns:** This category of concerns should almost always be referred as soon as evidence emerges to support the concern, even if this is before full investigation takes place.

#### 2. Concerns where local action cannot effectively manage any ongoing risks to people who use services. These concerns may include:

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- The individual has resigned or otherwise disengaged as a direct response to questions about their practice or being informed of your investigation, without taking action to fully address the concerns.
  - The individual has been dismissed due to serious concerns about their ability to practise safely and effectively.
  - The individual has been suspended pending an investigation but are aware that they are working elsewhere, and this may put people who use services at risk.
  - The individual has refused to engage with an action plan or has failed to pass or fully complete an action plan (for example, by resigning before completion).
  - Previous support has not been effective in addressing the risk of the nurse or midwife’s practice. For example, there are continued errors in clinical practice after retraining, or a persistent significant lack of competence.
  - Previous support has not been effective in addressing a risk associated with an individual’s health condition. For instance, the individual has stopped managing the health condition or engaging with necessary adjustments and this puts either themselves, the public or colleagues at risk of harm.

**When to refer these concerns:** Generally, before reporting significant issues that may be resolved with reflection, understanding, stronger practice, and support, a local investigation conducted in accordance with NHS Scotland's Workforce Policies Investigation Process would be concluded. If it was felt that there are risks to people who use services that cannot be effectively managed while a local investigation is being conducted, then the concern should be referred.

**3. Concerns that require the NMC to take action to protect public confidence in the professions and uphold standards. These concerns may include:**

Conduct that could affect trust and confidence in nurses, midwives, and such as dishonesty, bullying and harassment related to professional practice or within a nurse or midwife’s private life, criminal convictions that relate to specified offences or result in custodial sentences which are likely to undermine public confidence in the professions.

**When to refer these concerns:** These cases should be referred at the point where there is sufficient evidence (from either NHS Lothian, the police or other investigating body) to indicate serious wrongdoing. This might include police charging someone with a crime or evidence of social media activity indicating bullying, harassment, or discriminatory conduct. Without some evidence, it is unlikely the NMC would be able to take regulatory action.

## 5.0 Implementation roles and responsibilities

### 5.1 Staff Responsibilities

#### 5.1.1 Executive Director of Nursing, Midwifery and Allied Health Professionals

The Executive Director of Nursing, Midwifery and Allied Health Professionals who assumes overall responsibility for the implementation, monitoring, and review of this policy.

#### 5.1.2 Nurse Director, Corporate Nursing

The Nurse Director (Corporate Nursing) is accountable on behalf of the Executive Director, Nursing, Midwifery and Allied Health Professions for NHS Lothian Board policy and procedures on referral to the regulator and manages all correspondence on behalf of the Board regarding referrals to the NMC Regulator, liaises with the NMC to maintain accurate record of referrals, interim orders and outcomes from Fitness to Practise hearings; is nominated as the primary referrer for all referrals and in that role has strategic oversight of all referrals to ensure compliance with this policy and the NMC guidelines and that these are applied in a fair and consistent manner; will provide an annual report to the Executive Director Nursing, Midwifery and Allied Health Professions.

#### 5.1.3 Nurse/Midwifery Directors, Associate Nurse/Midwifery Directors, and Chief Nurses

Nurse/Midwifery Directors, Associate Nurse/Midwifery Directors and Chief Nurses are accountable and responsible for the wellbeing and protection of patients and staff. They are required to ensure an effective monitoring/ audit process is in place within their Service to ensure all nurse/midwives maintain fitness to practise and NMC registration, to support employees in compliance with any assigned responsibilities concerning NMC referrals and outcomes. Before referring a registrant to a regulator, they must have a clear oversight of all plans and actions made in connection to helping the registrant make improvements.

#### 5.1.4 Clinical Nurse/Midwifery Managers and Senior Charge Nurses/Midwives/Team Leaders

Clinical Nurse Manager and Senior Charge Nurse/Midwives are accountable and responsible for ensuring that any instances where the fitness to practise of a registrant is called into question are escalated without delay to their line manager and they must take necessary action to further support the well-being and protection of staff and patients when required. They must also support staff who are involved in any cases whether the registrant or witnesses to the case.

#### 5.1.5 Registered Nurses and Midwives

Registered Nurses/Midwives are accountable for adhering to Professional standards of practice and behaviour as specified in the [NMC Code of Conduct \(2015\)](#).

#### 5.1.6 Other Professionals



Any person who identifies a concern regarding a nurse or midwife's fitness to practise should, in consultation with the professional nursing or midwifery lead for the area, discuss the appropriateness of making a referral to the NMC.

#### 5.1.7 Employee Relations

There may be investigations being undertaken via ER / HR Policies that require consideration for referral to the NMC. The HR / ER will support senior staff at all levels in the application of this policy and associated SOPs.

#### 5.1.8 Staff-side Organisations

Staff Side organisations can provide additional support to members involved in any aspect of the NMC referral process (as the registrant being referred or those participating as witnesses in the process). It is the responsibility of the individual registrant, to make contact with their Staff side organisation and be a member of the trade union to obtain access to support during this process.

Other sources of support are set out at section 5.3.

## 5.2 Confidentiality

All information relating to concerns, investigations, and referrals shall be treated confidentially.

## 6.0 Associated materials

Standard Operating Procedures for the Referral to NMC for NHS Lothian Registered Nurses and Midwives, will be developed and these will provide the additional details and information to support staff with the implementation of this Policy.

Guidance Documents

- Summary of processes
- Interim Suspension/Conditions of Practice
- Providing Evidence as a Witness
- [Communication and Support for Staff \(scot.nhs.uk\)](https://scot.nhs.uk)
- [Staff Support and Counselling \(scot.nhs.uk\)](https://scot.nhs.uk)

There is further information on the intranet - [Support for staff being complained about](#), which includes details of Occupational Health Services, Staff Counselling Service, Spiritual Care Services as well as the Staff Health and Wellbeing pages on the intranet.

## 7.0 Evidence base

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[NMC Code of Conduct \(2015\)](#)

[Concerns about nurses, midwives or nursing associates - The Nursing and Midwifery Council \(nmc.org.uk\)](#)

## 8.0 Stakeholder consultation

There has been significant consultation on this policy via the Executive Director for Nursing, Midwifery and Allied Health Professions which has been principally via the Operational Nurse Director Group. There has also been consultation and discussion at Lothian's Area Nursing and Midwifery Advisory Committee (LANMAC) who provide professional advice to the NHS Lothian Area Clinical Forum, which is a formal sub-committee of NHS Lothian Board. The draft policy has also been made available via the NHS Lothian Consultation site for all staff to have the opportunity on the draft document.

## 9.0 Monitoring and review

This policy will be reviewed, as a minimum, every three years, but may be subject to earlier review in the event of changes in NMC guidance or legislation, results from other reviews or any other factors that may render the policy in need of review.