



Nursing and Midwifery

SOP: Referral of NHS Lothian Nurses and Midwives to The Nursing and Midwifery Council (NMC)

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Appendix 1 – NHS Lothian Referrals to the NMC

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1 Purpose

The purpose of this procedure is to provide staff with guidance on how to make referrals to the NMC in the event that there is a concern about an individual's fitness to practise.

2 Scope

This procedure covers the process to be followed when considering referral of a registrant to the Nursing and Midwifery Council (NMC).

This procedure relates to all NHS Lothian employees who are registered with the NMC and is applicable across all areas in NHS Lothian. It should be read in conjunction with the Referral of NHS Lothian Nurses and Midwives to the Nursing and Midwifery Council Policy.

For issues relating to Verification of Registration, staff should follow the NHS Lothian Verification of Registration Policy [under review].

3 Reasons for Referral

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

- allegations of fraudulent or incorrect entry of an individual nurse or midwife on the register;
- allegations about the fitness to practise of nurses or midwives (or nursing associates, only regulated in England currently). 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 isn't about punishing people for past events.

3.1 Fitness to Practise Allegations

Allegations about fitness to practice can be based on:

- **Misconduct:** The Code sets the professional standards of practice and behaviour for nurses and midwives. If a nurse or midwife's conduct falls seriously short of the expectations in the Code, what they did or failed to do could be professional misconduct.
- **Lack of competence:** This would usually involve an unacceptably low standard of professional performance, for instance if a nurse or midwife demonstrates a lack of knowledge, skill or judgment which shows they're incapable of safe and effective practice. Unless it's exceptionally serious, a single clinical incident wouldn't usually indicate a general lack of competence.

- Criminal convictions and cautions: Nurses and midwives have to declare any cautions or convictions unless these are protected cautions or convictions, regardless of whether these are work-related or not. Generally, the registrant themselves will make a self-referral but where the employer is concerned that the conviction raises a risk to patient safety or the public's confidence and trust in the nursing or midwifery professions, an employer referral may be appropriate.
- Health: The NMC doesn't normally need to get involved in a nurse or midwife's practice because of ill health unless there is a risk of harm to patients or to the public's confidence and trust in the nursing or midwifery professions.
- Not having the necessary knowledge of English: Not every language concern raised will need a referral to the NMC. Language concerns that could place the public at risk of harm include serious failures to give appropriate care to patients because of an inability to understand verbal or written communications from other health professionals or patients.
- Determinations by other health or social care organisations: Nurses and midwives can be registered members of other health or social care professions regulated by different legal bodies in the UK or overseas, which may make referrals to the NMC.

Allegations about fitness to practise may sit within the following three types of concerns that should be referred to the NMC:

1. Concerns that pose a serious risk to people who use services and would be difficult to put right.

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 can't effectively manage any ongoing risks to people who use services.

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 can't 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 cases should be referred at the point where there is sufficient evidence (whether from NHS Lothian, the Police or another investigating body) to indicate serious wrongdoing. This might include police charging someone with a crime, for example, 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.

4 Conducting a Local Investigation

When a concern is raised about someone's practice, it's important to respond in a way that promotes learning and openness.

When the manager identifies or is made aware of a concern or incident, they must take immediate action to ensure the safety of persons, the environment, and physical evidence.

For the purposes of both the internal investigation and any potential referral, maintaining records of specific incidents/events is important. Where the registrant may belong to a third party (eg agency), this is particularly important as the third party will be responsible for their local investigation and any referral to the NMC. NHS Lothian has an obligation to make information available to the NMC in the event of a third-party referral where events happened in NHS Lothian; this could be some time after the event.

For Bank workers and substantive employees, a local investigation should be conducted in accordance with [NHS Scotland's Workforce Policies Investigation Process](#).

5 Managing Concerns locally

If the local investigation finds that a nurse or midwife's practice or behaviour are a risk to public safety, the NMC state that the employer is usually best placed to manage concerns and lessen that risk. Employers can often address public safety risks by supporting the professional to make any necessary changes or improvements.

Recommendations should be made in line with NHS Scotland's Workforce Policies and criteria for referral to external agencies guidance:

- [NHSScotland Workforce Bullying and Harassment Policy](#)
- [NHSScotland Workforce Conduct Policy](#)
- [NHSScotland Workforce Capability Policy](#)
- [NHSScotland Workforce Grievance Policy](#)
- [Referral to External Agencies | NHS Scotland](#)

6 When to make a Referral

If local action cannot effectively manage any ongoing risks to patients and/or staff, then a referral to the NMC should be considered.

In the first instance, consultation with AND/Chief Nurse/Associate Midwifery Director is appropriate as they or their deputies must be aware of all local referrals.

The Nurse Director (Corporate Nursing) and team are available to provide advice, and the NMC Helpline is available to assist with the decision on whether it is appropriate to make a referral.

If it is believed that the nurse or midwife may pose a risk to patients and the public, a referral to the NMC should be made at the earliest opportunity through the Nurse Director (Corporate Nursing) office – loth.nmcreferrals@nhs.scot.

Immediate concerns about abuse or neglect should be dealt with under local public protection procedures first ([NHS Lothian Public Protection Policy](#)).

7 Who can make a Referral?

Registered nurses and midwives have a professional duty to put the interests of the people in their care first and to act to protect them if they consider they may be at risk. This does not just indicate those people whom they deliver specific care for or have direct clinical or managerial responsibility for. It indicates all of those people they come across or know about because of their work as a nurse or midwife. The [NMC Guidance for Raising Concerns](#) should be read together with [The Code: Professional standards of practice and behaviour for nurses and midwives](#) for further guidance.

7.1 Self-Referrals

[Making a self-referral - The Nursing and Midwifery Council \(nmc.org.uk\)](#)

Registrants should be encouraged to make a self-referral when:

- they have received a caution or been charged with an offence.
- they have received a conditional discharge about or have been found guilty of a criminal offence that isn't a protected caution or conviction.
- they have been disciplined by another regulatory or licensing organisation. This includes organisations that don't work in health and care.
- In some cases of ill-health, it is in the interests of the individual to declare their condition rather than have an employer referral submitted.

NHS Lothian will engage with the NMC as described above in relation to all requests for information where there has been a self-referral.

7.2 External Referrals

External referrals are those made by members of the public or other employers (agencies, care homes etc). In these cases, NHS Lothian will be asked to respond to the concerns. Sometimes these concerns will already be subject to an employer referral (and the cases can therefore be linked in the NMC)

NHS Lothian will manage the correspondence between the Employer/Service and NMC where there has been an external referral.

Where the registrant referred to the NMC has an affiliation to NHS Lothian (such as working with NHS Lothian via agency), NHS Lothian will be a **designated interested party**.

Where the registrant is employed by NHS Lothian (substantively or via Staff Bank), NHS Lothian will act as described above in providing evidence etc on behalf of the Employer.

NHS Lothian will engage with the NMC as described above in relation to all requests for information where there has been an external referral.

7.3 Employer Referrals

Employer referrals can be made through the professional line; usually the AND/AMD/Chief Nurse will co-ordinate the completion of the referral.

Registrants who have concerns about a colleague's practice should escalate these through the professional line in the first instance. This allows remedial action to be taken and allows managers to assess whether or not to make a referral. Colleagues or other members of NHS Lothian staff referring registrants to the NMC outwith the Employer route will be dealt with by the NMC as a "member of the public referral". NHS Lothian will always be asked to respond to such referrals.

8 How to make an Employer Referral

All Employer referrals made on behalf of NHS Lothian Board must have approval to proceed from the Associate Nurse Director/Chief Nurse/Associate Midwifery Director (or the relevant professional Nurse/Midwifery Director) and must be made through the Nurse Director (Corporate Nursing) Office: loth.nmcreferrals@nhs.scot.

The Nurse Director (Corporate Nursing)'s Office will provide an Employers' Referral Proforma to be completed and returned for submission to loth.nmcreferrals@nhs.scot. Employers' referrals **must NOT be submitted independently to the NMC via the portal**. This is to enable an accurate file to be retained and managed by Corporate Nursing for the organisation.

In addition to the guidance on the proforma, the following information should be adhered to:

- Referrer is always the Nurse Director (Corporate Nursing)

- Second referrer is usually the AND/Chief Nurse/Associate Midwifery Director or the Clinical Nurse Manager/Midwifery Manager – this person is NHS Lothian’s primary respondent to the case
- All other people will be recorded as witnesses

Specify the allegations/cause for concern about fitness to practise in as much detail as possible. Note that patient information should be redacted, i.e. the description must not contain any patient names or patient-identifiable information. Patients should be referred to as Patient A, Patient B etc.

The previous concerns section must set out any incidents and your local actions taken prior to the event(s) that have given rise to the referral. **There is no time limitation on prior events.**

For all current and previous concerns, the full documentation must be provided to enable the NMC to assess the case.

Each document should be provided as a separate file (i.e. not a zip file nor an embedded document). The naming convention of the file should match the list of documentation in the referral.

Documents that might be required include:

- Evidence of local (ER) investigations/conduct hearing & outcome letters
- Complaints statements and outcome letter
- Capability Management process documentation
- Any Correspondence to and from registrant
- Details of any previous allegations/concerns of a similar nature and the findings/action taken
- Details of any previous significant concerns addressed locally.

All documentation should be redacted, i.e. it must not contain any patient names or patient-identifiable information. Patients should be referred to as Patient A, Patient B etc.

The referral should include any known concurrent employment in the Employment Status section. This includes bank work – the referring manager should confirm this with the Staff Bank or other known employment with agencies or other organisations.

The referral form **MUST** be reviewed by the Professional Lead (AND /AMD/ Chief Nurse) or the appropriate Nurse/Midwifery Director before it is submitted.

The Corporate Nursing Team are happy to discuss and review the referral form at any stage in its drafting.

9 How the Referral is Managed

9.1 Submission

- All referrals must go through the Nurse Director (Corporate Nursing)'s office by submitting an Employer's referral proforma, together with any supporting documentation, to loth.nmcreferrals@nhs.scot.
- The referral will be reviewed, and any clarifications needed will be discussed with you/the professional lead.
- No materials should be sent directly to the NMC - **all correspondence on behalf of NHS Lothian is co-ordinated centrally from Corporate Nursing via the Egress secure email system only.**
- **NB - The NMC email address is not on the secure email transmission guidance list, therefore correspondence must not be sent via any route other than Egress from Corporate Nursing.**

9.2 Screening

- On receipt, the NMC carry out **Screening** – the more information that is provided at the point of referral, the speedier this part of the process may be.
- If gaps in information are identified, the NMC will send SCREENING questions to the Nurse Director (Corporate Nursing)'s office.
- The screening questions will be set out on a Request for Information Template by the Nurse Director (Corporate Nursing)'s office and will be forwarded to the person identified as the second referrer (this is usually the AND/AMD/Chief Nurse).
- The NMC will have given a request return date (this is often a very tight turnaround time) – if this timescale cannot be met for any reason then advise the loth.nmcreferrals@nhs.scot email address at the earliest convenience in order that an extension can be applied for.
- The response, when agreed, will be provided back to the NMC via the Nurse Director (Corporate Nursing)'s office via the Egress secure email system.

9.3 Interim Orders

The NMC may make an Interim Order during the screening process (see guidance on interim orders):

- **Interim Suspension Orders (ISO)** – the registrant is temporarily suspended from the register. The registrant CANNOT work in a Registered Nurse/Registered Midwife role if an ISO is in place.
- **Interim Conditions of Practice (ICOP)** may be made upon the registrant – this is a set of requirements that the registrant is required to comply with. One of the conditions of practice is usually that the registrant must share their conditions of practice with their line manager.

These interim orders will be notified to the Nurse Director (Corporate Nursing)'s office and this notification will be shared with the second referrer for local action.

Cases may be closed at the end of the screening process. Alternatively, if the case is to be pursued, the NMC will initiate an investigation.

9.4 Investigation

- The NMC will conduct an investigation. This will be led by either a Case Officer from the NMC or a legal team that are subcontracted by the NMC.
- The investigation can run over a long period of time.
- There may be further requests for additional information from the organisation which will be co-ordinated via the Nurse Director (Corporate Nursing)'s office, using the Request for Information Template.
- The NMC often ask for the information to be submitted in a very short period of time – if this timescale cannot be met for any reason then advise the loth.nmcreferrals@nhs.scot email address at the earliest convenience in order that an extension can be applied for.

In addition to obtaining further information from the organisation (i.e. the referrer) the NMC will contact witnesses.

9.5 Witnesses

- Witnesses may be contacted directly by the NMC (or lawyers working on behalf of the NMC) to give personal accounts.
- The Nurse Director (Corporate Nursing)'s office will not necessarily be advised of this activity. However, if witnesses who have been cited on the referral do not respond to the NMC (or the lawyers working on behalf of the NMC), the Nurse Director (Corporate Nursing) will be asked to intervene.
- Witness statements may be requested by NMC; these can be submitted by the witness themselves via NHS Lothian email **as long as there is no patient identifiable information in the statement** - Witnesses should be reminded to anonymise their statement to Patient A, Patient B etc.
- If for any reason there is any identifiable information, the loth.nmcreferrals@nhs.scot email address can be used to forward the statements via the Egress secure route.

9.6 Case to Answer

On concluding the investigation, the findings are reviewed and there is a determination as to whether or not there is a case to answer.

- If there is a **Case To Answer**, this means that a hearing or a meeting will be held with a panel to determine any sanction that is appropriate.
- Again, there can be a delay between the conclusion of the investigation and the outcome being determined by either a hearing or a meeting.

- Whether the decision is being taken at a hearing or a meeting there is a panel that comprises 3 people, including:
 - a nurse, midwife or nursing associate (nursing associates are regulated in NHS England only at present)
 - a member of the public who isn't a registered nurse, midwife or nursing associate
 - the Chair of the panel – this person can be a member of the public or a registered nurse, midwife, or nursing associate.

10 Case Hearing or Meeting

Both are formal proceedings, and both can reach the same outcome.

10.1 Hearings

Hearings are usually held in public (although a panel may hear all or part of a hearing in private when it is satisfied that it is reasonable and proportionate to do so, and it is justified in the interests of any party (including any third party) or is in the public interest). The registrant is present at a hearing. Witnesses will also be present and give evidence at a hearing. Questions can be asked of the registrant and the witnesses during the proceedings.

Hearings may be in person at a Hearings Centre (there is a Hearings Centre for Scotland in George Street, Edinburgh) or held virtually.

10.2 Meetings

Meetings are held in private. The panel makes its decision based on the documents and evidence that has been submitted and they usually take much less time to resolve.

Fitness to practise cases which are focused on the health of the nurse, midwife or nursing associate concerned will always be held in private, due to the confidential nature of these cases.

See information about [Case Hearings](#).

The outcome decision of the Hearing or Meeting will be communicated to the Nurse Director (Corporate Nursing) via the Egress system (although this is also a matter of the public record on the NMC Website). Outcome letters will be notified to the Nurse Director (Corporate Nursing)'s office and this notification will be shared with the second referrer for local action (when the registrant remains employed) or information (when the registrant has left NHS Lothian employment).

More information on the steps in the Fitness to Practise process are set out in guidance [What is fitness to practise - The Nursing and Midwifery Council \(nmc.org.uk\)](#).

11 How the Referrals are monitored

The Nurse Director (Corporate Nursing) will meet with NMC Liaison on a regular basis to review progress of all current cases.

Any queries from service should be directed to the Nurse Director (Corporate Nursing)'s Office.

Any progress, updates or outcomes on the case will be communicated back to the second referrer by the Nurse Director (Corporate Nursing)'s Office.

12 Staff Support

The fitness to practise process can feel overwhelming and sometimes lead to anxiety for all involved.

NHS Lothian has a responsibility to support registrants and witnesses through any referral process and signposting to support services should be made available either via the line manager or by an individual trade union.

Advice and Support regarding the process is available from the Corporate Nursing Team: loth.nmcreferrals@nhs.scot

NHS Lothian has a wide range of staff support services available including:

- [NHS Lothian Staff Confidential Counselling Service](#)
- [Here 4 U](#)
- [Staff Wellbeing and Support](#)

Full list of resources available online here: [Staff Support](#)

- **NMC Fitness to Practise Careline: 0800 587 7396**

This confidential service is available 24 hours a day, 365 days a year.

The NMC have partnered with CiC, a leading employee assistance provider, to give emotional support and practical help and advice to all nurses, midwives and nursing associates during the fitness to practise process.

The careline counsellors are experienced in working with sensitive and personal information and can also signpost towards specialist organisations to help with specific issues.

There is also online support available – more information here:

<https://www.nmc.org.uk/concerns-nurses-midwives/information-for-registrants/support-for-you/>

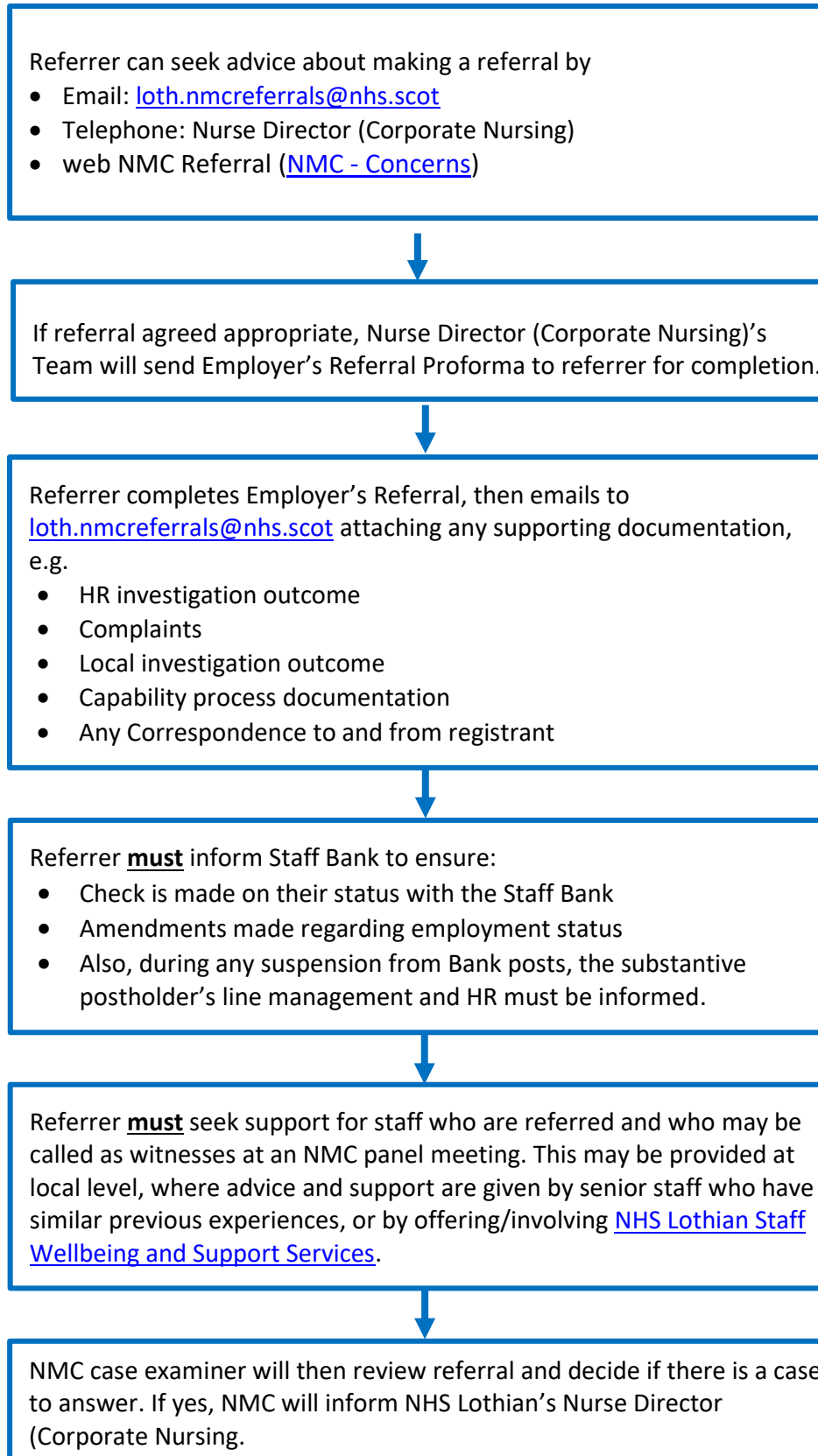
- **NMC Support for Witnesses**

The NMC has a Witness Liaison Team to ensure staff have a single point of contact to offer information and support while acting as a witness.

Telephone: 020 7681 5390 or **email:** witness.liaison@nmc-uk.org

Appendix 1 NHS Lothian Referrals to the NMC

The Nurse Director (Corporate Nursing) must be consulted on all referrals made on behalf of NHS Lothian and must be aware of ALL Employer referrals sent to the NMC.



Appendix 2: External NMC Referrals

When NMC informs NHS Lothian of a referral made by an external party.

