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Convener
Health, Social Care and Sport Committee
Scottish Parliament

By email: hscs.committee@parliament.scot

24 June 2025

Dear Clare

Introducing our equality, diversity and inclusion (EDI) strategic objectives and targets

I am writing to share more information about our new, bold EDI targets, which we will present to our Council for approval next Wednesday (2 July), alongside our latest research by the University of Greenwich – which is part of our *Ambitious for Change* research programme, helping us understand disparities in our regulatory processes.

The EDI targets and the *Ambitious for Change* research follows the publication of our three-year Culture Transformation Plan in March. A key pillar of this plan is our framework for embedding EDI throughout the NMC.

The Culture Transformation Plan is a key part of our turnaround programme for the NMC, which we have been rolling out since the turn of the year under our new leadership team, which comprises me, as Interim Chief Executive and Registrar, and Ron Barclay-Smith, as our new Chair of Council.

Our EDI targets

In order to bring about a step change in our ambitions to ensure EDI – and to become an anti-racist organisation – we are putting bold, new EDI targets to our Council next week.

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We're the independent regulator for nurses and midwives in the UK, and nursing associates in England. Our vision is safe, effective and kind nursing and midwifery practice that improves everyone's health and wellbeing.

Registered charity in England and Wales (1091434) and in Scotland (SC038362)

These state that we will:

- Eliminate disparities in treatment based on ethnicity and gender in the NMC's fitness to practise processes by 2030
- Eliminate the disproportionate pattern of FtP complaints received from employers in relation to ethnicity by 2030
- Eliminate disproportionate outcomes in nursing and midwifery education and training by 2035
- Eliminate disparities in the representation of Black, Asian and ethnic minority NMC colleagues in the upper two pay quartiles, starting now, and
- Eliminate ethnicity, gender and other pay gaps by 2030.

The EDI targets are unflinching and will certainly challenge us, but we believe it is only by setting ourselves stretch targets that we will make real and lasting change.

At Council, we will also be putting forward a wider set of more general EDI strategic objectives.

The purpose of these will be to:

- Build a positive, empowering and inclusive culture for colleagues
- Achieve more diverse representation and reduce pay gaps, focusing on ethnicity and gender
- Put EDI at the heart of our infrastructure and decision-making, including governance, processes and prioritisation
- Ensure greater regulatory fairness and a reduction in disparities for groups across our regulatory processes, and
- Become an anti-racist organisation.

We've already started work on these objectives.

In April, we signed the UNISON Anti-Racism Charter.

In May, we began rolling out psychological safety training for managers.

We've also significantly increased the diversity of our fitness to practise panel members – helping to ensure they better reflect the diversity of professionals on our register and the people who use health and care services.

Additionally, we are taking steps to reduce our ethnicity pay gap, such as pledging to ensure ethnically diverse shortlists where there are Black, Asian and ethnic minority candidates who meet the minimum requirements for a role.

We are also ensuring that 80 percent of participants on our flagship mentoring programme, Rising Together, are Black, Asian and ethnic minority colleagues.

Our latest *Ambitious for Change* research

On 25 June, we will also publish research by the University of Greenwich, commissioned to help us better understand how different professionals experience our processes. This marks the third phase of our *Ambitious for Change* research programme. A copy of the research report is enclosed. **Please treat it as sensitive until its publication on 25 June.**

While no bias was found in our final decisions, disparities in how we handled some cases involving Black professionals compared to white professionals, and male professionals compared to female professionals, were identified. This included giving closer scrutiny to evidence provided in their cases and some inconsistent application of conditions of practice imposed through interim orders. The research also found that we inconsistently used the more sensitive, supportive communications that we have developed to improve people's experiences.

We have already invested in refreshed unconscious bias training for all of our decision makers and as we deliver our improvement plan for FtP we will also embed equity in our quality assurance framework.

We have taken on board the research's findings and have used them alongside what we know from our previous work to shape our EDI strategic objectives and targets.

By drawing on the insights from our recent research and reports, we are strengthening our approach to fairness and equity. This is central to becoming a more inclusive organisation and a more effective regulator.

Yours sincerely

A handwritten signature in black ink that reads "Paul Rees". The signature is written in a cursive, flowing style.

Paul Rees MBE
Interim Chief Executive and Registrar

Enclosed:

- **Ambitious for Change: A review of the Nursing and Midwifery Council's (NMC) Fitness to Practise Process**



Ambitious for Change: A Review of the Nursing and Midwifery Council's (NMC) Fitness to Practise Process

**Radu Cinpoes and John Azah
April 2025**

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Executive summary

Context and purpose

- The Nursing and Midwifery Council (NMC), the independent professional regulator for nurses and midwives in the UK, and nursing associates in England launched in 2019 its 'Ambitious for Change' research programme aimed at assessing the impact of its Fitness to Practise (FtP) processes on different groups of professionals.
- The primary goal of the NMC's Fitness to Practise framework is to protect the public. This is done through ensuring the health, safety, and wellbeing of the public, maintaining confidence in nursing and midwifery professions, and upholding professional standards. Regulatory actions focus on managing future risks to patient safety, not punishing professionals for past mistakes, and are taken swiftly and transparently when necessary. The management of risks is ensured through a process that allows professionals to demonstrate insight and learning by reflecting on actions and by taking steps to strengthen practice. Thus, the engagement with reflection and learning are important factors in determining outcomes of regulatory actions.¹
- In phase one of the programme, quantitative research² found outlying patterns in how groups of professionals based on protected characteristics experience outcomes of regulatory processes. Disparities were identified in the case of the following groups:
 - Black professionals compared to White professionals.
 - Male professionals compared to female professionals.
 - Disabled professionals compared to non-disabled professionals.³
 - Professionals with unknown or withheld sexual orientation information compared to heterosexual professionals.
- Starting from findings showing disparities in how groups are treated in the FtP process, this report aims to find out why differences in outcome occur in the cases involving Black relative to White professionals, male relative to female professionals, disabled relative to non-disabled professionals, and professionals with unknown or withheld information on sexual orientation relative to heterosexual professionals.
- The report looks qualitatively at two areas where potential bias might explain differences in how professionals proceed through the FtP stages:
 - FtP process – drawing on 270 cases involving registered nurses and midwifery professionals.
 - FtP policies and guidance.

Findings

The research findings respond to two key research questions.

Research Question 1: How far, if at all, does bias or discrimination in the fitness to practise decision-making process explain differences in how far particular groups progress in the fitness to practise and the outcome they receive at the end of it?

- **There is evidence of bias** which explains differences in outcomes in cases involving **Black professionals** (compared to white professionals), and in cases involving **male professionals** (compared to female professionals).
- Differences in outcomes are explained by:
 - **Direct factors:**
 - Bias in how **data and evidence** are considered in the FtP process.
 - Bias in how different **restrictions** (e.g. Interim Conditions of Practice) are placed on professionals.
 - Indirect factors:
 - The uneven **level of support** provided to professionals while not showing bias in itself, has indirect consequences on the level of engagement in **reflection and remediation** activities.
 - The presence of **formal representation** supporting professionals in the FtP process.⁴.
- **No clear bias** is observed in the case of **disabled professionals** compared to those who are not disabled, and in the case of **professionals with unknown or withheld information on sexual orientation** compared to heterosexual professionals.

Research Question 2: To what extent does the content of current policies and guidance effectively promote equal opportunity and eliminate discrimination?

- The **FtP policies and guidance documents** align with the **organisational values of fairness, kindness, collaboration, and ambition**. They are **conducive to procedural fairness**.
- **Procedural fairness** was examined in terms of three dimensions:
 - **Instrumental** aims to ensure a fair and equitable FtP, by balancing the need to protect the public with the drive to encourage reflection and strengthening of practice.
 - **Dignitarian** accounts for the need to treat professionals with dignity and to respect their ability to exercise agency in determining their best interests.
 - **Public accountability** ensures fair and transparent representation of all relevant stakeholders.

- The examination of policies and guidelines reveals no discriminatory aspects. However, the investigation of the dynamic context linked to their application in concrete cases reveals that, by design, they give people space to make different judgements. This can result in a large margin of interpretation that can produce inconsistent decisions and prejudice certain groups. Such policy and guidance areas include:
 - Guidance on equitable treatment of evidence.
 - The toolbox outlining Interim Order Conditions of Practice Orders.
 - Guidance relating to Agreed Removal.

Recommendations

The final focus of the research was to identify potential areas for improvement.

Research Question 3: Based on the analysis of the fitness to practise policies and guidance and the decision-making informed by these, are there any potential improvements that can be made to the existing fitness to practise policies, guidance, and processes in order to maximise fairness and consistency?

The report proposes recommendations in several areas. It suggests:

- Strengthened quality assurance to ensure that existing best practice of an **empathetic and supportive approach in communicating with professionals referred to FtP** is consistently applied.
- **Consistent provision of supporting materials** including **case study examples of reflection**. This is likely to enhance the professionals' engagement with reflection and remediation and may reduce differences based on protected characteristics.
- **Consistent documentation and advice on interpreting evidence** for NMC colleagues and independent panels investigating FtP cases, in order to minimise discrepancies in outcomes. This should include **guidance on evaluating qualifications and proof of good practice obtained overseas**, addressing existing disparities, especially for Black professionals. Additionally, **excluding hearsay and unreliable statements** from evidence would help ensure fairer outcomes.
- **Clearer guidance on applying Interim Order Conditions of Practice**. Evidence indicates significant variation in **interpreting and assigning conditions from the Conditions of Practice Library toolbox**. Establishing more specific parameters could ensure a consistent approach. This would help reduce disparities in outcomes that negatively affect Black and male professionals.
- **Guidance provided to Independent Panels on assigning Interim Order Conditions of Practice**. Conditions that inadvertently prevent professionals from

securing employment and undertaking remedial actions undermine the educational and practice-strengthening goals of the FtP process. **Within the overall goal of ensuring public safety**, panels should ensure that **conditions of practice are feasible, allowing professionals to engage in meaningful remediation and learning activities.**

- Guidelines for **Agreed Removal Applications** (voluntary removal) to **clearly define conditions for rejection.** The guidelines should emphasize protecting the public while also **upholding the principle of presumption of innocence.**
- Policy guidelines **for Interim Orders** that address **the implicit pressure on professionals to admit fault during the reflection process.** Case examinations show that acknowledging what constitutes concerning behaviours or actions is important. However, professionals can still demonstrate good insight, reflection and learning that support good practice and patient safety, even when they deny having done the concerning acts alleged in the referrals.
- **Continuing work towards reducing the duration of the FtP process** to mitigate professionals' disengagement.⁵ It is common for professionals to have completely disengaged with the FtP process by the time they are struck off the register. Thoroughly **evaluating the underlying causes**, such as **difficulties in maintaining formal representation or the lengthy nature of the process**, can help **enhance confidence in both the process and the profession.**
- Considering the **corroborative evidence from these findings and previous NMC research**, which highlight discrepancies in how the FtP process treats certain categories of professionals, particularly Black professionals compared to White professionals, and male professionals compared to female professionals. Although this report does not identify systematic and deep-seated discrepancies due to its qualitative nature, **further investigation into the treatment of these categories and actions to reduce inconsistencies is recommended.** More in-depth research on these categories could reveal additional areas in the FtP process that explain outcome differences.

I. Context

The Nursing and Midwifery Council (NMC), a statutory body since 2002, acts as the independent regulator for nurses and midwives in the UK, and nursing associates in England. It sets the standards of practice for over 840,000 nursing and midwifery professionals. Its role is to:

- Regulate – through promoting high education and professional standards; through maintaining the register of professionals, and through investigating concerns about registered professionals.
- Support – through developing resources and guidance for standards of practice, and empowering people.
- Influence – through sharing intelligence and practice with partners to shape decision-making processes in the sector and to promote a healthy and inclusive work environment.⁶

The NMC aims to embed equality, diversity, and inclusion principles in all areas of its work. This is explicitly articulated in the most recent five-year strategic plan (2020-2025), in which the organisation states: ‘We champion the values of equality, diversity and inclusion. We value the diversity of the people on our register, those they care for and our NMC staff. We believe that equality of opportunity is essential for people to do their jobs well.’⁷

To ensure that its commitment to equality, diversity and inclusion (EDI) values is represented in all areas of activities, the NMC launched in 2019 the *Ambitious for Change* research programme, which aims to gather detailed insights into practices, to identify areas for improvement, and to shape policy and decision-making processes accordingly. The project built upon the findings of the 2017 report commissioned by the NMC, which showed that Black and Ethnic Minority professionals were disadvantaged regarding FtP process and outcomes.⁸ Phase one of the *Ambitious for Change* programme resulted in the 2020 report ‘Ambitious for Change: Research into NMC Processes and People’s Protected Characteristics’.⁹

The report took a quantitative approach analysing data from the 13,781 cases that received an outcome from the NMC’s FtP process between 2016 and 2019. It found that some protected characteristics correlate with how far professionals progress through various stages of the FtP process.¹⁰ More specifically, Black professionals appear to go further through the stages of the FtP process compared to White professionals, but at the adjudication stage (the final stage in the NMC FtP process) they are no more likely to receive more serious outcomes. As with Black professionals, men are more likely to go further through the FtP process compared to women, but in contrast, men are also more likely to receive more serious outcomes at the end. Outcomes for professionals with

unknown or withheld sexual orientation compared to heterosexual professionals are similar to those of Black professionals (they go further through the FtP stages, but do not receive more serious outcomes at the adjudication stage). Finally, outcomes for disabled professionals compared to non-disabled professionals are similar to those of men (they go further through the FtP stages and are more likely to receive more serious outcomes).

Phase two of the project has so far produced the 2022 report ‘Ambitious for Change: Phase Two Report’¹¹, which was looking to explain differences in referrals to FtP and revalidation rates. It involved speaking to professionals and employers about their experiences of fitness to practise and raised concerns about the clarity of NMC processes and expectations from professionals; issues with individual employers in areas such as appropriateness of referral and support through the NMC process; and broader systemic issues that perpetuate ‘insider’ and ‘outsider’ cultures.¹²

This report is part of Phase Two of the ‘Ambitious for Change’ research and sits within the broader framework of the initiatives carried out by NMC in the areas of equality, diversity, and inclusion (EDI). It represents a qualitative investigation into the NMC FtP process, examining the discrepancies linked to protected characteristics highlighted by Phase One of the research.

II. Aims

The aim of the project is three-fold:

1. Analysis of fitness to practise processes

The first aim is to provide an analysis of decision-making in the FtP process to assess whether or not it reveals biases that can explain differences in how far particular groups progress in the FtP process and the outcome they receive at the end of it. Particular attention will be placed on the following question:

Research Question 1: How far, if at all, does bias or discrimination in the fitness to practise decision-making process explain differences in how far particular groups progress in the fitness to practise and the outcome they receive at the end of it?

The purpose here is to investigate:

- whether or not decisions on cases that involve Black professionals compared to White professionals, male professionals compared to female professionals, disabled professionals compared to non-disabled professionals, and professionals with unknown or withheld sexual orientation information compared to heterosexual professionals were consistent with the policies and guidance in place at the time that the decision was made, given the evidence available to the decision makers at that point.
- whether or not decisions on similar/comparable cases that involve Black, male, disabled or professionals with unknown or withheld sexual orientation information were consistent with those that involve White, female, non-disabled or heterosexual professionals and if not, how far differences can be explained by the specific context or nature of the case, for example, the nature of the allegation, the professional's engagement with the investigation, etc.

2. Audit of fitness to practise policies and guidance

The second aim is to audit NMC policies and guidance documents concerning FtP to assess how they influence decision-making. The following question will guide this:

RQ2: To what extent does the content of current policies and guidance effectively promote equal opportunity and eliminate discrimination?

3. Lessons and recommendations

The final aim is to draw lessons from the analysis and provide recommendations to improve the NMC's FtP policies and procedures to enhance fairness and support the

organisation's emphasis on equality, diversity, and inclusion principles.

RQ3: Based on the analysis of the fitness to practise policies and guidance and the decision-making informed by these, are there any potential improvements that can be made to the existing fitness to practise policies, guidance, and processes in order to maximise fairness and consistency?



III. Conceptual considerations

The conceptual framework for the research focuses on the notion of organisational justice. Promoting fairness and equity as core organisational values and as drivers for internally consistent guidance, policies, and processes constitutes the reference point for the research. This notion of fairness and equity is more specifically operationalised based on current requirements by the Public Sector Equality Duty and other legislation relevant to the existence and purpose of the NMC.

The legal framework under which the NMC operates – the Nursing and Midwifery Order 2001 – states that its overall objective is the protection of the public. This is achieved through the pursuit of the following objectives:

- (a) to protect, promote and maintain the health, safety, and well-being of the public;
- (b) to promote and maintain public confidence in the professions regulated under this Order; and
- (c) to promote and maintain proper professional standards and conduct for members of those professions.¹³

The FtP case analysis will focus on exploring two dimensions of **organisational justice: procedural** (how the decision is made) and **distributive** (the fairness of the decision).

The **procedural dimension** will provide insight into whether existing policies and guidance are applied consistently when investigating allegations concerning FtP. The **distributive dimension** focuses on equitability in terms of outcomes that people across different protected characteristics groups receive.¹⁴

The second step would be to assess the robustness of the NMC policies and guidance relating to FtP processes. The report will have at its core the notion of procedural fairness as a concept that legitimises decision-making processes. This is an important key concept in the field of social justice, with particular application to legal and policy research.¹⁵ Following research in health care, procedural fairness will be explored using **instrumental, dignitarian** and **public accountability** aspects.¹⁶

In pursuing these objectives, the NMC FtP process – through its investigation and panel-based adjudication mechanisms – adopts a court-like proceeding when dealing with concerns.

- The **instrumental aspect** of proceedings relates to prioritising public safety while taking an approach to justice that focuses on removing risks to patients by supporting professionals to take steps towards remediation and strengthening of

practices. The policy emphasises that the NMC's purpose is not to punish professionals but to assess their current FtP, in the public interest: 'Evidence of the nurse, midwife or nursing associate's insight and any steps they have taken to strengthen their practice will usually be central to deciding whether their FtP is currently impaired'¹⁷.

- The **dignitarian aspect** relates to the inherent respect given to the professionals. Procedural fairness, in this sense, reflects the respect for individual agency and interests, by establishing a participative framework that ensures equity and legitimacy to the FtP process.¹⁸
- Finally, the **public accountability aspect** accounts for the transparency of the FtP process and the legitimate representation of a wide range of stakeholder interests in the FtP process.¹⁹



IV. Methodology

Approach

The project aim was to tease out explanations concerning differences in outcomes relating to FtP processes. As such, the research used a qualitative research design. Through its interpretive nature and focus on context and meaning, qualitative research allows for nuanced and in-depth explanations of complex social phenomena and interactions. It also offers flexibility and adaptability when analysing data.²⁰ Thus, the research design is suited for understanding the extent to which protected characteristics play a role in how the FtP decision-making processes are being employed.

The research employed reflexive thematic analysis as a method of analysing FtP case file data. This technique is appropriate for investigating practices and accounts of practices and for analysing influencing individual and social factors that underpin particular phenomena and dynamics.²¹ Themes develop through active involvement by the researcher (rather than passively emerging from data). The reflexive aspect of the analysis is given by the researcher being situated ‘at the intersection between data, analytic process and subjectivity’, in a process that ‘requires a continual bending back on oneself – questioning and querying the assumptions we are making in interpreting and coding the data’.²² The thematic analysis focused on the latent (rather than semantic) level, examining underlying ideas, assumptions and interactions emerging from the data.²³

Sampling

Data sampling followed a disproportionate stratified random sampling method. The cases cover the period 2017-2023. The selection of cases was based on the following criteria: the type of allegation, the protected characteristics of the professionals, and the stage in the FtP process.

- **Allegations**

The purpose of this study was to compare decision-making processes on similar cases involving different groups of professionals. In order to ensure similarity of cases, allegations related to FtP were used as a proxy. Allegations related to FtP are coded based on three levels. The first level covers the general category of incidents. The second level unpacks the first level in more detailed sub-sets of incidents. The third level narrows incidents further into more detailed types. Figure 1 provides an illustrative (but not exhaustive) example of how allegations are subdivided across the three levels, using the Level 1 category ‘Patient care’.

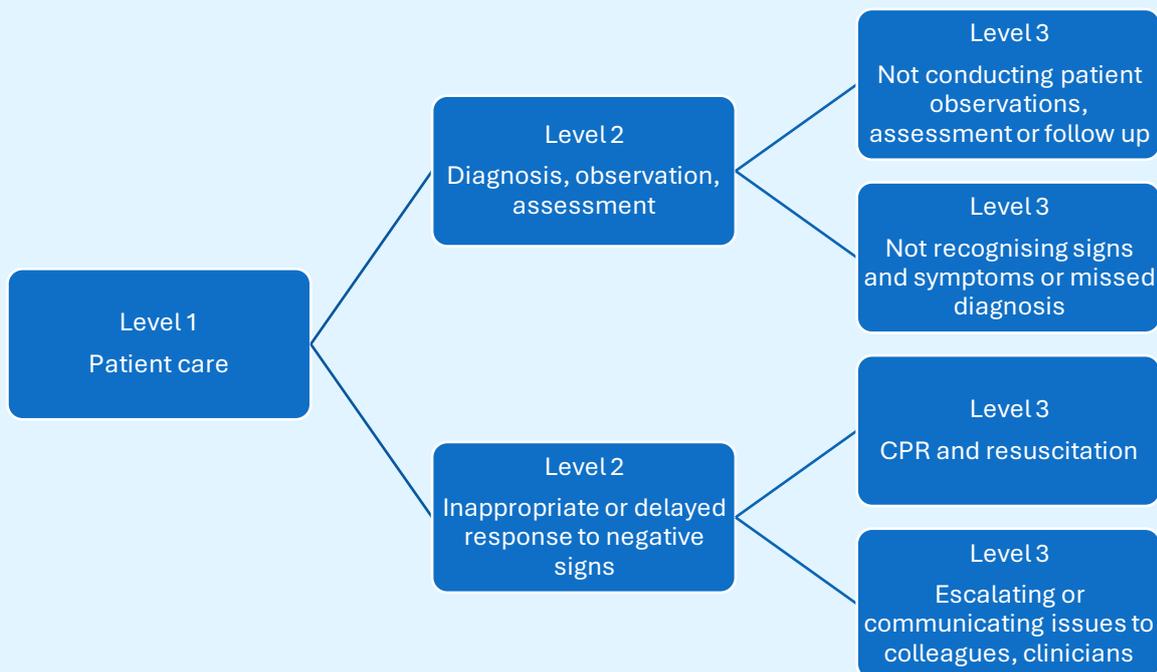


Figure 1: Example of allegations sub-divided across the three levels²⁴

For the purpose of the research, cases were selected using the Level 2 coding of the allegations. This allowed for a more nuanced picture of cases. For instance, the Level 1 allegation category ‘Patient care’ is unpacked at Level 2 in allegations ranging from ‘Diagnosis, observation, assessment’ and ‘Inappropriate or delayed response to negative signs, deterioration, or incidents’ to ‘Handling patients’, ‘Other patient care issues’, etc. Thus, identifying cases based on more specific types of allegations makes for a closer comparison of similar issues.

- **Protected categories**

This criterion included four categories related to protected characteristics: Black, male, disabled, and unknown sexual orientation, each contrasted – for the purpose of a variation-finding comparison to their immediate counterparts: White, female, non-disabled, and heterosexual, respectively. These categories were highlighted in the previous quantitative research by the NMC in the ‘Ambitious for Change’ initiative as displaying differences regarding the progression into FtP processes and outcomes.²⁵

- **Fitness to Practise stages**

The selection of cases followed all FtP stages, divided into four categories: allegations closed at screening, allegations closed at investigation, allegations closed at adjudication where the professional was found to be fit to practise (sometimes subject to conditions of practice), and allegations closed at adjudication where the professional

found unfit to continue. The division of the 'adjudication' stage into these two outcomes allows us to observe potential differences in the severity of outcomes at this level between professionals from different protected categories.

To sum up, applying these stratifying criteria, the final sample was generated as follows:

- Eight groups of professionals were selected, paired on the basis of the protected characteristic they belong: Black-White, male-female, disabled-non-disabled, and unknown sexual orientation-heterosexual.
- For each pair group, three types of Level 2 allegations were selected based on their frequency across all 4 FtP stages (allegations closed at screening, allegations closed at investigation, allegations closed at adjudication where the professional was found fit to practise, and allegations closed at adjudication where the professional was found unfit to practise).
- For each of these units, three cases were selected randomly (one every third of the total number in each instance).
- This selection process generated 288 case files (N=288): 8 categories of professionals x 4 FtP stages x 3 most common allegations x 3 case files per instance (Table 1).

The 'Conviction' allegation (when occurring in the top three most common allegations) was discarded, and the next most common one was selected instead. This was done in agreement with the working group because allegations included under the 'Convictions' label are different from other allegations as they are essentially a process code and do not appear as an allegation in their own right (they are always used in conjunction with another allegation), thus potentially distorting results.

Allegation type	Demographic characteristics of professionals	Screening	Investigation	Adjudication (fit to continue practise)	Adjudication (unfit to continue practise)
<ul style="list-style-type: none"> • Diagnosis, observation, assessment • Patient and clinical records • Inappropriate or delayed response to negative signs, deterioration, or incidents 	Black	9 cases (3 per allegation)	9 cases (3 per allegation)	9 cases (3 per allegation)	9 cases (3 per allegation)
	White	9 cases (3 per allegation)	9 cases (3 per allegation)	9 cases (3 per allegation)	9 cases (3 per allegation)
<ul style="list-style-type: none"> • Patient and clinical records • Diagnosis, observation, assessment • Bullying, intimidation or harassment 	Male	9 cases (3 per allegation)	9 cases (3 per allegation)	9 cases (3 per allegation)	9 cases (3 per allegation)
	Female	9 cases (3 per allegation)	9 cases (3 per allegation)	9 cases (3 per allegation)	9 cases (3 per allegation)
<ul style="list-style-type: none"> • Diagnosis, observation, assessment • Patient and clinical records • Mental health 	Disabled	9 cases (3 per allegation)	9 cases (3 per allegation)	9 cases (3 per allegation)	9 cases (3 per allegation)
	Non-disabled	9 cases (3 per allegation)	9 cases (3 per allegation)	9 cases (3 per allegation)	9 cases (3 per allegation)
<ul style="list-style-type: none"> • Patient and clinical records • Diagnosis, observation, assessment • Inappropriate or delayed response to negative signs, deterioration, or incidents 	Unknown/undeclared sexual orientation	9 cases (3 per allegation)	9 cases (3 per allegation)	9 cases (3 per allegation)	9 cases (3 per allegation)
	Heterosexual	9 cases (3 per allegation)	9 cases (3 per allegation)	9 cases (3 per allegation)	9 cases (3 per allegation)

Table 1: Selection of cases

The thematic analysis followed the standard stages: data familiarisation, data coding, initial theme generation, theme development and review, theme refining, defining and naming themes, and thematic analysis write-up. This resulted in several cases being discarded because they included insufficient data (e.g., absent information or instances where cases were stopped because they were referred to the police for investigation), leading to a final sample of N=270 cases. The thematic analysis focused on the latent (rather than semantic) level, examining underlying ideas, assumptions and interactions emerging from the data.²⁶

Following the process of development and refining, five themes were identified:

- Communication – how the FtP process and other relevant information are communicated to the professional.
- Data and evidence – the weight attached to the evidence used in decision-making during the FtP process.
- Response – the level of engagement by the professional with the process in terms of reflection, insight and remediation.
- Formal representation – whether the professional is represented during the FtP process by a legal or trade union representative.
- Decision – the rationale for the decision in the FtP process.

The FtP policy audit encounters the same difficulties associated with any such evaluation, which are generated by the moving target nature of policies, since changes often occur during the process. To manage this, the report will take a real-time evaluation framework approach, which follows the dynamic process of the policy as it unfolds.²⁷ Thus, the first step was a brief assessment of the FtP policy content in relation to the key values underpinning the work of the NMC: fairness, kindness, collaboration and ambition.²⁸ This was followed by a critical evaluation of policy aspects driven by evidence emerging from the analysis of the cases.

Limitations

The research design has several advantages: it enables the processing of a large dataset, avoids pre-conceptions or pre-determined categories for analysis, and the depth of the investigation can help capture different experiences and perspectives. The research team approached the development of themes in two steps. In the first instance, each researcher engaged in data familiarisation independently. This allowed the process of coding and theme generation to emerge collaboratively and reflexively, which – as Brown and Clarke suggest – allows for a ‘richer, more nuanced reading of data’, instead of a primary focus on consensus.²⁹ The researchers’ different professional expertise (combining academic and policy research experience in extremism, discrimination, intolerance, human rights and social justice with practice-based policy and activism experience in race discrimination, asylum seeker rights, and community justice and equity) helped the reflective, collaborative process by allowing different perspectives on the data. Additionally, the researchers’ personal ‘stories’ allow for diverse views to be represented (both researchers are from a migrant background and have different ethnic characteristics, which are informative especially when exploring issues concerning racial bias).

The study comes with certain limitations. Importantly, the findings are not generalisable. Therefore, potential biases identified in FtP cases relating to professionals in a specific

protected characteristic group cannot be extrapolated to the pair of protected characteristics groups. Nonetheless, emerging patterns in the data can be identified. Also, the reflexive nature of the analysis generates difficulties in the dependability and replicability of findings.³⁰ Finally, representing findings visually is difficult to achieve.

Ethical concerns

While the research does not entail direct subject participation, the sensitive and confidential nature of the data required substantive ethical considerations. To address these concerns, a data-sharing agreement between the NMC and the researchers was signed stipulating the framework for data usage. Data was managed in compliance with the Data Protection Act 2018. Access to data was provided by the NMC using a secure platform for transfer that was only made available to the research team. The data was then stored in password-protected folders accessed only by the researchers. All data used in the analysis was anonymised and all information apart from the four category pairs based on protected characteristics (male/female, Black/White, disabled/non-disabled, and unknown or undeclared sexual orientation/heterosexual) and details of the country of training where relevant were excluded.



V. Results

Research Question 1: How far, if at all, does bias or discrimination in the fitness to practise decision-making process explain differences in how far particular groups progress in the fitness to practise and the outcome they receive at the end of it?

Key findings

The analysis of the cases identified differences in how groups were treated in the FtP decision-making process.

- **Differences are visible in the case of Black and male professionals**, compared with White and female professionals, respectively.
- **No meaningful differences** are observed in the case of disabled and non-disabled professionals or **the case of professionals with unknown or undeclared sexual orientation and heterosexual professionals**.
- **In the case of Black and/or male professionals**, there are some cases showing **direct evidence of bias** in how **Case Examiners and panels consider evidence** and in terms of how **Conditions of Practice are being assigned**.
- **In the case of Black and/or male professionals, indirect factors also affect outcomes**. **Lack of supporting information** consistently provided by the NMC and **lack of formal representation** affect the response of the professionals and their level of **engagement with reflection and remediation**. This, in turn, has **negative consequences on outcomes**. These are indirect factors, because while they occur indiscriminately across the board, they tend to impact Black and/or male professionals more.

The analysis of the cases identified differences in how different groups were treated in the FtP decision-making process. Such variations were identified in the case of Black professionals when compared to white professionals and in the case of male professionals when compared to female professionals, and in both instances, they occur when cases progress to investigation and adjudication levels. Two sets of factors explain the differences. The first consists of direct instances of bias in the application of the FtP process. At the same time, the second is the consequence of broader issues that – while not explicitly pointing at Black and male professionals – indirectly affect the two groups more.

Due to the qualitative nature of the research (with small numbers of similar cases investigated), these findings cannot be generalised to the entire NMC caseload relating to each protected characteristics group. Also, it is important to note that case processes and outcomes are expected to fall within a margin of difference. Put simply, in different cases, examiners and adjudication panels may produce some variance in terms of their findings, because their assessment relies to some extent on interpreting available evidence. However, the fact that the differences in outcomes tend to affect specific categories of people points to a wider issue that requires further attention and consideration.

The thematic unpacking of the analysis sheds light on the direct and indirect differences in process and outcomes highlighted here. The analysis is divided into five themes developed through the examination of the data: communication, data and evidence, response from the professional, formal representation, and decisions.

Communication

In summary:

Supporting information included in NMC's written communication with professionals, especially in the early stages of the FtP process, has a positive influence on professionals' engagement with reflection and remediation. In particular, the presence of case study examples to guide engagement has a positive effect. The absence of supporting information can influence reflection and remediation negatively. In conjunction with other indirect factors, this may affect Black and male professionals more.

Communication with professionals that are referred to the NMC tends to be appropriate and in line with the policy: it clearly states the reason (e.g., referral, investigation, hearing, etc.), provides detailed information about the process (with signposting to relevant policy), and guides the professional about next steps (e.g., advice on formal representation, on engagement, and support mechanisms, etc.).

There is variation in how the NMC communicates with professionals with an FtP referral. An example of such variation is the presence or absence of additional supporting information in the written communication³¹ with the professionals. In some cases, the initial communication is accompanied by specific advice on the importance of reflective accounts and evidence of insight and remediation for the outcome of the FtP process. In these instances, detailed support regarding reflection embedded into the initial communication to professionals includes reflective account forms organised in sections that guide professionals through various aspects of the reflective process. Useful additional information includes fictional case study examples of reflections mapped against outcomes (e.g., a good reflection statement that led to a positive outcome,

compared to a poor reflection statement or no reflection statement that led to an escalation of FtP process or restrictions of practice). Cases including additional information are much less numerous; in most cases, such information is not provided.

While the variations regarding the inclusion of additional information in the communication with the professional are random and do not align with group characteristics, there is evidence that in some cases, they – in conjunction with other factors – indirectly influence outcomes based on protected characteristics.

Additional support and information facilitate better professional reflection engagement, especially in cases with no or limited formal representation. Conversely, in cases with no formal representation and with no additional information provided by the NMC, the professional's engagement with reflection and remediation is reduced and results in cases progressing further in the FtP process. The absence of supporting information from the NMC and the absence of formal representation have a cumulative effect. They affect the engagement with the FtP process and the outcomes for Black professionals and, to some extent, male professionals more than for White professionals and female professionals, respectively.

Case Illustration

Black male nurse: the **initial communication included detailed information on reflection and fictional case study examples**. Despite the absence of formal representation, the **professional provides a thorough, reflective account**. The case is closed at Screening, and **the decision explicitly references the professional's reflective evidence** (among other things).

Black female nurse: the **initial communication does not include additional information about reflection**. The **benefits of reflective engagement are only communicated in detail to the professional at the Investigation stage, but no fictional cases are provided**. The **professional only provides limited evidence of insight and reflection at the Interim Order hearings**. Formal representation is only present at the Investigation stage, and the professional represents themselves at the Interim Order hearings and is represented by spouse at the Adjudication level. In the initial stage, however, the case was progressed to investigation, despite a court decision on a case raised by the professional against the hospital confirming concerns about the employer allegations (that led to referral) and about the internal investigation and suspension of the professional by the employer.

Additional points to consider:

Another point to consider is the initial communication notifying professionals of FtP referral. All communication is factual and provides relevant information and resources about the scope and the structure of the FtP process. In some instances, communication additionally shows empathy towards the professional and provides reassurance about a fair and expeditious process. This is particularly visible in the email notifications to the professional, which are accompanied by a formal letter. Such communication illustrates good practice and reflects the values of fairness and kindness the NMC advocates.

Data and evidence

In summary:

There is direct bias in how data and evidence are considered in some cases: supporting evidence is scrutinised further in the case of Black and male professionals. By contrast, it is more likely to be taken at face value in the case of White and female professionals, respectively. No differences are visible in the case of disabled and non-disabled professionals or in the case of professionals with unknown or undeclared sexual orientation and heterosexual professionals.

Generally, data and evidence are used thoroughly and consistently to inform investigations and decision-making. Investigators and Case Examiners go to great lengths to ensure testimonies, statements and references are obtained (from those raising concerns, current and previous employers, professional, witnesses, etc.).

However, there are instances in cases involving Black and/or male professionals where data and evidence are not considered on par with similar data and evidence involved in comparable cases with White and/or female professionals. While policy-compliant, interrogation of data and evidence, and decision-making based on reflection and remediation allow for a visible margin in outcomes. The margin is aligned with Black/White and male/female differences. Data and evidence are taken more at face value in cases of White/female professionals. Data and evidence are interrogated further in the case of Black/male professionals. There is no clear evidence of differences in the treatment of cases involving professionals with different sexual orientation and/or disability status.

Case illustration

Black female nurse: while there is evidence of previous underlying concerns about poor practice, a large part of the investigation focuses on allegations of the professional attending work under the influence of alcohol and alcohol addiction. Witness testimony suggesting the smell of alcohol on the professional was based on hearsay, and the line manager's statement specifically asserted that the professional did not smell nor appear under the influence of alcohol. In addition, a statement from the trust accommodation services (providing housing to the professional) makes gratuitously inflammatory statements about the professional's alcohol consumption habits. The investigation pursues these issues in detail (with DNA testing evidence requested from the professional to assess levels of alcohol abuse). It is important to note that the case was nuanced and raised other concerns. The Case Examiners expressed sympathy for the difficulties faced by the professional (health issues and homelessness). The outcome for the professional was a striking-off order issued by the FtP panel.

White female nurse referred by a member of the public: allegations refer to unprofessional behaviour and dishonesty. Evidence from the employer of several previous complaints about the professional about similar issues as in the referral, and from ombudsman investigation and internal investigation finding in favour of complainant appears not to factor significantly in the decision-making process. On the other hand, evidence of appraisal documentation that does not refer to any of the issues raised in previous complaints and that states that the professional had met all targets is taken at face value. In addition, while the professional denied all allegations, there is no evidence of reflection, learning or remediation. The Case Examiner investigation resulted in a no case to answer outcome.

Direct bias is visible in some instances in how evidence is considered: supporting evidence provided by Black or male professionals is scrutinised further while supporting evidence provided by White or female professionals is taken at face value.

Differences are also visible in the treatment of supporting evidence provided by professionals. Overseas qualifications and professional references are not given the same weight compared to references from UK employers. This pattern particularly affects Black professionals who trained and gained experience overseas before being employed in the United Kingdom.

On the other hand, there is no clear evidence of differences in the treatment of cases involving professionals with different sexual orientation and/or disability status.

Response

In summary:

The professionals' engagement with reflection and remediation varies across all groups. When considered alongside other indirect factors, such as the lack of supporting information provided by the NMC and the absence of formal representation, engagement by Black and/or male professionals is reduced in comparison with that by White and female professionals. No differences are visible for disabled and non-disabled professionals and for professionals with unknown or undeclared sexual orientation and heterosexual professionals.

The focus of the FtP process is addressing concerns that would impact public safety through remediation actions and not on punitive measures. As such, a meaningful engagement by professionals with the process constitutes a mitigating factor when outcome decisions are taken. Factors contributing to reducing risks to public safety and strengthening public trust in the profession are the degree of insight professionals show into their actions and the consequences deriving from such actions. A reflective process that accounts for these aspects and shows remorse for any harm caused reduces further risks to public safety. Most importantly, remediation actions taken by professionals in the form of steps towards correcting and strengthening practice are key criteria used in determining the likelihood of conduct being repeated and public safety being impaired.³²

The cases examined suggest no visible bias in how NMC colleagues involved in the FtP process treat engagement that demonstrates remedial action and steps towards strengthening practice. However, when professionals reject or deny the allegations, they are often required to show a higher level of reflection and remediation than those who accept the allegation to demonstrate that they no longer present a risk to patients. There seems to be an implicit perception in the decision-making process that a lack of acknowledging failures by the professional is equivalent to a lack of remorse or insight. This is a case where fictional case studies with examples of reflections can provide helpful guidance on how reflection and insight can be demonstrated.

Providing effective reflection and remediation engagement while denying allegations remains a difficulty for professionals. However, the cases examined reveal instances where this is done successfully, without detriment to the professional.

Case illustration

Heterosexual female nurse: **allegations are firmly denied by the professional, who engages thoroughly with reflection in both internal debrief and FtP investigation. Reflective statements include factual and personal reflection on the allegations, strong insight and evidence of good practice, and reflection on how the professional consistently engaged in appropriate conduct that aligned with policy and practice.** In this case, the vague and convoluted nature of the public complaint and the lack of evidence accompanying it undoubtedly contributed to the no case-to-answer decision by the Case Examiner. However, **the quality of engagement by the professional was highlighted in the final decision, which reinforced the absence of a concern for public safety.**

While direct evidence of bias in how the reflection and remediation by professionals contribute to the FtP decision-making process, there are cumulative factors mentioned earlier that point to differences in outcomes visible in the case of Black professionals (compared to White professionals).

The level of engagement is enhanced by additional support in communication with professionals (i.e., reflection forms and fictional case study examples). More importantly, formal representative support facilitates much better reflection and remediation engagement. When both are absent, Black and/or male professionals are less likely to engage effectively in relevant reflection and remediation actions. This is particularly visible in the case of overseas professionals. This suggests either that the importance these factors play in the FtP decision-making process is not conveyed adequately to professionals or that the absence of suitable support through the process prevents some groups from taking full advantage of this dimension in the FtP process. Without detailed reflection forms and exemplary case studies, communication about referrals to professionals only includes a link to generic information about the importance of engagement.³³

Formal representation

In summary:

There is no direct bias based on whether professionals have formal representation or not during the FtP process. In the case of Black and/or male professionals, lack of representation cumulated with other indirect factors (lack of supporting information from NMC) may result in a lower level of engagement with reflection and remediation, which negatively affects outcomes.

There is no clear evidence of direct bias in terms of who has access to formal representation during the FtP process, but the investigation found that access to formal

representation indirectly affects outcomes. This confirms wider research showing that professionals who are represented receive less serious sanctions.³⁴ There is evidence from cases that reflective accounts submitted without formal representation support are treated fairly by case examiners and adjudication panels. The emphasis is clearly put on the content of the reflection, not on the quality of the expression.

This suggests that professionals' submissions are assessed using an approach that focuses on inclusivity and diversity and is not influenced by cultural differences and/or language skills. In addition, there is no direct bias in cases where professionals represent themselves or are represented by lay persons. In the example below, while the Case Examiners found there was no case to answer, they issued a warning.³⁵

Case illustration

Black female nurse: the initial communication to the professional about the referral is comprehensive and empathetic, with good supporting information about engagement. The professional **submitted a comprehensive reflective account that demonstrates insight, remorse and concern for patients and their practice. The account also reflected the out of character nature of the incident with evidence of long positive practice, as well as remediation actions. The statement was submitted via a lay representative, who also provided a convincing statement requesting the dismissal of the case.**

While direct bias is not present in the FtP process relative to the issue of formal representation, there are indirect consequences linked to representation. As suggested earlier, the presence of formal representation can (alongside reflection forms and case studies) enhance both the level of engagement of professionals in reflective and remediation practices and the strength of the submission by generating more comprehensive and meaningful action. Also, the level of engagement by formal representatives impacts the quality of submissions to hearings (whether Interim Orders or adjudication ones). This, in turn, can influence outcomes. Lack of formal representation is more visible in the case of Black professionals (compared to other categories), especially those from overseas, and to a much lesser extent in the case of male professionals.

In short, the availability of formal representation and its engagement level in the case influence outcomes, with professionals who are not represented receiving more serious outcomes.

Case illustration

Male nurse: the Royal College of Nursing representative was very engaged in the case from the beginning, supporting the professional in preparing evidence and liaising consistently with the NMC colleagues involved. The professional was issued with Interim Conditions of Practice. At the first review of the Interim Conditions of Practice, the formal representatives present a compelling case leading to reduced conditions. The case made by the formal representatives at the Investigation was comprehensive, with substantive evidence included and, as a result, the Case Examiners issued a no case to answer decision.

The length of the FtP process is another factor that indirectly affects Black and overseas (internationally trained) professionals. Even though professionals are more likely to seek formal representation if an Interim Order hearing occurs or if the cases proceed beyond the Screening stage, lengthy proceedings raise difficulties in sustaining such representation, especially in cases leading to the Adjudication Stage. There are numerous instances where professionals are initially supported by formal representation, but that disappears later in the process. In several cases professionals are supported by legal representation in the early phases. As the cases progress, examples where solicitors inform the NMC that they are no longer representing the professionals who then represent themselves or are not able to attend hearings suggest that professionals may encounter difficulties with maintaining legal support. While this pattern is visible across the board, it indirectly affects Black professionals, who are less supported by formal representation to begin with.

Case illustration

Black male nurse: the professional is initially represented by a solicitor through the referral to Investigation and during the Interim Order hearing. Subsequently, solicitors are no longer present, and the professional represents themselves at the IO review hearing and at the substantive hearing. The Adjudication panel assesses that while some of the charges are proven, no misconduct took place and based on evidence of remediation and training in new employment, it takes a no case to answer the decision.

Decisions

In summary:

There is direct evidence of bias in decisions regarding the selection of specific Conditions of Practice. The bias affects Black and/or male professionals more than other categories of professionals. On a different note, the duration of the

proceedings can result in the professionals disengaging with the FtP process. This disengagement is further impacted by uneven approaches to the Voluntary Removal guidance.

Decisions at all stages are considered in line with the policies, and significant effort is made to ensure a fair balance of probability. The justification for the decisions is transparently aligned with the policy. Adjudication panels follow a consistent approach to assessing the burden of proof, applying suitably civil standards based on the balance of probabilities.

At a more granular level, some decisions suggest uneven approaches that can indirectly produce different outcomes. Some cases suggest that Interim Order Conditions of Practice (IOCP) Orders can undermine employment and remediation. Although the main focus of a sanction is to ensure the public is protected, Conditions of Practice orders are sometimes applied in a way that is too broad or not tailored enough. As a result, this can undermine efforts to help professionals strengthen their practice or participate in meaningful remediation.

This flexibility is seen in relation to requirements from the professional to have frequent meetings with their line manager to discuss progress with their Personal Development Plan. In the case of Black and/or male professionals, the frequency of meetings imposed in the IOCP is often every two weeks. By contrast, in the case of White and/or female professionals, the frequency is set to monthly meetings without any apparent differences in the cases. At the same time, other Conditions of Practice are identical. This variation indirectly affects professionals' ability to engage in meaningful practice-strengthening and remediation activities. Very frequent meetings place a significant burden on employers in terms of monitoring personal development progress. In some cases, professionals are forced to leave employment because the employer cannot accommodate the requirement of the IO, or they are prevented from securing employment. This, in turn, renders professionals unable to evidence strengthening of practice and remediation, which prolongs the Interim Orders and negatively affects case outcome.

Case illustration

Male overseas nurse: **the Interim Conditions of Practice imposed biweekly meetings with the line manager** to assess personal progress. In that situation, **the professional was dismissed from the Care Home because the employer could not accommodate the Conditions of Practice**. The professional continued to work at the same care home in a **volunteering, unpaid position to acquire evidence of strengthening practice and work towards remediation**. Only in the subsequent Interim Order hearing did the conditions vary, **reducing the frequency of meetings and the supervised personal development framework to reflect the remedial actions taken by the professional**. The case outcome was that Case Examiners found no case to answer, and the Interim Order was lifted. (N.B. The professional had strong formal representation at all stages).

Black male nurse: **the Interim Conditions of Practice imposed a very detailed reflective and remediation plan overseen by the line manager**. The professional found it very difficult to meet the conditions because of the need for commitment placed on the employer. The Interim Order hearing acknowledges the professional's inability to secure employment as a registered nurse due to the Interim Conditions of Practice, **but the Interim Order is maintained**. The Adjudication decision is to impose Conditions of Practice similar to those of the Interim Order for twelve months. (N.B. In this case, the professional had no formal representation throughout the process).

Female nurse: **the Interim Conditions of Practice imposed monthly meetings with the line manager to assess personal progress (in the context of a serious case resulting in patient harm)**, and the **Conditions of Practice are reduced at the Interim Order review**. The Investigation found no case to answer. (N.B. In this case, the professional had union representation at the Interim Order hearing and a strong formal submission for the Investigation).

An important aspect emerging from the research is that at the Adjudication stage, striking-off decisions often happen in a context where professionals have completely disengaged with the process. The length of the process may be a contributory factor to this. In such cases, professionals tend to request Voluntary Removal (now known as Agreed Removal) from the register and leave the profession. In reference to the length of the FtP process, it is important to note that many cases investigated in this research project stretch over the Covid-19 pandemic, which has understandably caused significant delays and backlogs in the processing of cases and outcome decisions. In this context, it is difficult to assess whether prolonged cases are the result of the pandemic conditions or are a more endemic phenomenon.³⁶

Case illustration

Black female midwife: following Interim Conditions of Practice for 18 months (confirmed in subsequent hearings), a Court Extension of the Interim Order and a further 12 months of Conditions of Practice and 12 months suspension, an Adjudication panel reaches a striking-off decision. **In the first instance, the professional engages in further training, secures a new employment position, and starts to collect evidence of remedial activities.** Further down the line, **the professional requests Voluntary Removal via a formal representative and then stops engaging with the FtP process, which is denied. The suspension and final striking-off order occur without the professional's engagement.**

Other thematic findings

In the analysis process, several potentially relevant patterns unrelated to the research question emerged, summarised for future consideration and research.

Examining bias in the referral process was not part of the scope of the research. Nonetheless, in examining professionals' engagement with the FtP process, professionals made allegations that discrimination, bullying, and unfair treatment were the drivers for the referrals and informed the evidence provided in referrals. Given that such allegations come from Black and male professionals, in particular, this reveals potential biases in the referral process.

In some cases examined, the professionals suggested that environmental factors influencing performance and failings (staff shortages, busy and high-pressure environments, lack of training availability and support) rather than individual failures are responsible for failures in practice. Concerns about structural and environmental factors are particularly raised in cases related to care homes and nursing homes and tend to affect professionals employed via agencies more. These alleged biases behind referrals and the environmental factors often have a compounded effect. This is supported by case evidence. For example, there are instances of professionals with alleged poor performance in one institution, which is then followed by a referral. However, when the professional changes employment during the FtP process, they show evidence of very high performance in the new employment setting.

Examining the Voluntary Removal from the register, research noted some variability in decisions. Denial of Voluntary Removal from the register can happen on subjective grounds. However, decisions around Voluntary Removal did not involve bias in respect of protected characteristics.³⁷

Case illustration

White female nurse: following Interim Conditions of Practice, **the professional (with no formal representation) requested a Voluntary Removal from the register. The request was denied due to an absence of ‘a genuine desire’ to leave the profession.** A Court Extension of the Interim Order is secured for 8 months, followed by an Interim Suspension Order for 18 months and a striking-off decision.

Finally, the phase one Ambitious for Change research showed that concerns raised by members of the public are less likely to progress through FtP stages than referrals from professionals and employers. This review did not identify any evidence of bias in how the FtP process engages with such referrals. The difference is largely caused by the fact that public referrals often focus more generically on the quality of care and, therefore, are difficult to attribute to individual practice or are less likely to reflect criteria aligned with FtP policy and process.

Research Question 2: To what extent does the content of current policies and guidance effectively promote equal opportunity and eliminate discrimination?

Key findings:

- The FtP policies and guidance evaluation shows their alignment with the NMC values of fairness, kindness, collaboration, and ambition.
- The FtP policies and guidance appear responsive to feedback and focused on promoting equal opportunities and fairness.
- However, when the policies and guidance are applied in practice, decisions can fall within a large margin of variation.
- The margin of variation in the decisions can directly or indirectly affect Black and/or male professionals more than the other categories.

The FtP policies and guidance audit is focused on two distinct elements. First, it reviews the alignment of the FtP policies and guidance with the NMC values. Second, it used the three dimensions of procedural fairness (instrumental, dignitarian, and policy accountability) to assess how well they are reflected when policies and guidance documents are applied in practice.

Policy and Guidance and the NMC values

The NMC builds its work on four key values that inform the way the organisation aims to promote excellence in nursing and midwifery that benefits the public (Figure 2).

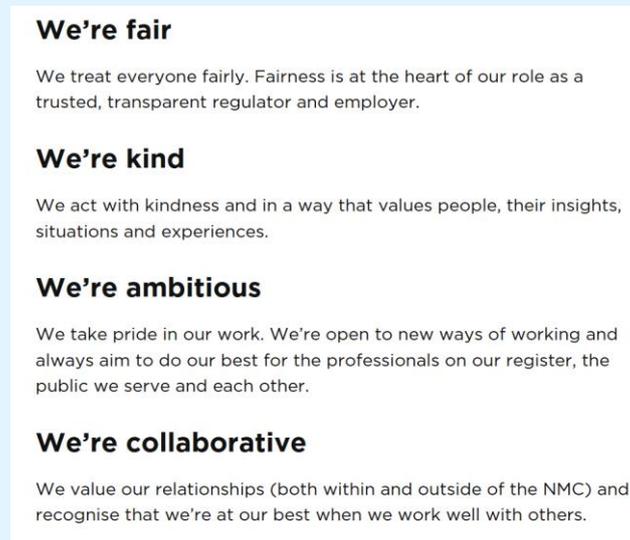


Figure 2: NMC values³⁸

The real-time evaluation of the FtP policies and guidance reveals its alignment to the key NMC institutional values of fairness, kindness, ambition, and collaboration, as well as its dynamic, evolving nature.

Fair

The NMC ensures it meets its requirements as a regulator to all concerns regarding the fitness to practise of all registered professionals practice raised by different stakeholders. NMC's policies and guidance make it clear that all FtP referrals – whether from members of the public, health care professionals, employers, or self-referrals – are given equal weight and are thoroughly investigated. This commitment to fairness is central to NMC's role as a transparent regulator.

The process is staggered across several stages: from initial assessment through the screening stage, to the Case Examiners' decision following an Investigation and finally to a final decision by an independent panel at the Adjudication stage.

The FtP process allows for thorough consideration of evidence and for frequent opportunities for professionals to respond to allegations, and there are clear criteria justifying levels of escalation with public safety and trust remaining at the heart of the policy. Evidence of insight and strengthened practice are influential in the decision-making process. This provides a valuable balance: it ensures public safety through a

constructive approach based on professionals' education and remedial action to remove public risks.

Kind

The corrective approach to professional practice reflects the overarching supportive ethos of the policy. This is evidenced by the focus on opportunities for professionals to reflect on incidents, demonstrate insight and remorse, learn from mistakes, and engage in remediation and strengthening of practice. The focus on removing risk through education and continuous professional development and improvement works at two levels. At the individual level, rather than being punitive, guidance offers professionals the opportunity to learn from mistakes, thus encouraging staff retention and confidence in practice. At the organisational level, it promotes an 'open and learning culture that's most likely to keep people receiving care and members of the public safe'.³⁹

Another important feature of the FtP policy reflecting kindness is the value placed on professionals' insights, situations, and experiences. The policy accounts for the fact that context is relevant in evaluating whether risks to people in care exist. It acknowledges the 'role of other people, the culture and environment they were working in when something went wrong' in the decision-making process.⁴⁰

Collaborative

The collaborative value is embedded in NMC's policies and guidance documents through the involvement in the FtP process of all relevant stakeholders. This is visible at all levels. The referral mechanism is open so that concerns about professional practice can be raised by a broad range of contributors, including patients and members of the public. The format for the referral is simple and direct. The NMC ensures that concerns are pursued even when the person raising a complaint (this generally applies to referrals from members of the public) does not fully conform to the referral format. This encourages strong stakeholder engagement and ensures that meaningful improvements in practise are prioritised over following formal processes for their own sake.

When a concern is received, the investigation process involves all relevant parties. Evidence is thoroughly collected, documented, and evaluated. The views of the professionals are accounted for, and their engagement with the process is encouraged. Equally, Case Examiners and FtP committee panels gather views from employers, colleagues, witnesses, patients, and relatives when building a case relating to concerns over a professional's practise. Finally, decisions are clearly communicated to all parties, ensuring the loop is closed.

These mechanisms ensure that standards of care are met, and concerns are investigated transparently and in the spirit of collaboration.

Ambitious

The focus on producing the best outcomes for registered professionals, patient care and public protection and trust in the profession reflects the NMC's goal to be ambitious. The FtP policy strives to ensure a fair and effective regulatory process which aims to secure the overarching aim of ensuring public protection and safety.

Important in this respect is the NMC's approach that considers the FtP policies as 'living' documents that can constantly be improved, adapting and responding directly to lessons learnt from their application.

Recent improvements in the overall approach highlight a growing emphasis on equity, diversity and inclusivity, a stronger push towards developing support systems for professionals and a focus on life-long learning and strengthening of practice, as well as launching a referral helpline for people wanting to raise concerns about practise, and support for people involved in cases (including referrers, witnesses, and vulnerable individuals).⁴¹ Importantly, efforts are being made to shorten the process and reduce case backlogs (especially in the context of delays caused by the Covid-19 pandemic). Major changes were recently made to the voluntary removal process, opening it to all stages of the FtP process.⁴²

At face value, while the FtP policy appears to be effective in promoting equal opportunity and eliminating discrimination, the examination of the cases has shown areas in which the policy and guidance, as well as the process, can produce different outcomes for professionals. Moreover, different outcomes appear to affect negatively (either directly or indirectly) some groups, in particular, Black and male professionals (compared to White and female professionals). No clear differences are visible in the case of disabled, non-disabled, heterosexual and professionals with unknown or undeclared sexual orientation.

These differences in outcome are primarily based on how the policies are applied in practice. It is expected that in a situation where different case examiners and panels evaluate evidence, decision-making is likely to fall within a margin of variation. The issue is, however, that patterns are visible within this margin in relation to specific groups. This suggests the potential for strengthening policies and guidance documents to reduce such gaps.

Procedural fairness

Picking up on three dimensions of procedural fairness (instrumental, dignitarian, and policy accountability), some policy and guidance areas are identified, which are responsible for potential bias and indirect negative influence of decision-making.

Emerging as a social justice concept procedural fairness has been employed in a range of fields, including legal studies, public policy and health. In the context of health studies, the instrumental, dignitarian and public accountability dimensions represent:

Instrumental	Capacity to deliver justice
Dignitarian	Value in the interests of the autonomous individual
Public accountability	Legitimacy of the decision-making process for all stakeholders

Table 2: Three dimensions of procedural fairness⁴³

Instrumental dimension

The instrumental dimension of the policy is concerned with ensuring a fair and equitable FtP process that, on the one hand, removes risks and reinforces public trust in the profession and, on the other, supports professionals in strengthening practice and promotes staff confidence in the process through a fair and open process.

A key issue in this context is that professionals are treated equitably.

Evidence from the cases has shown differences in how evidence is being considered, influencing outcomes. This suggests that the policy and guidance allow such direct biases to occur. This is visible in cases where evidence of overseas practice is not given equal weight. Similarly, evidence of prior concerns about practice is not considered consistently. Finally, testimonies based on hearsay or incorporating biased statements appear to be taken at face value.

In addition to the direct factors highlighted above, indirect factors can influence outcomes. Some aspects of the policy covering Interim Orders open the possibility for flexible interpretation, which, in turn, leads to outcomes that prejudice specific groups of professionals. The Interim Order Conditions of Practice Library provides a valuable toolbox for panels setting conditions that can be imposed on professionals restricting their practice to ensure public safety. The wide range of conditions and the vague provisions of time frames in some cases result in panels often interpreting conditions loosely and even deviating from provisions. This results in uneven practice across cases. One concrete example emerging from cases is the use of Point 23 in the Conditions of Practice Library, which states:

‘You must engage with [X] on a frequent basis to ensure that you are making progress towards aims set in your personal development plan (PDP), which include:

- Meeting with [X] at least every [insert timeframe] to discuss your progress towards achieving the aims set out in your PDP'.⁴⁴

The guidance accompanying this condition states: 'Panels should set out: The minimum frequency of meetings and the name(s) / role of the person(s) who can supervise and support the PDP'.⁴⁵ The vagueness of the provision gives significant latitude to panels. As the case examination has shown, putting this into practice has resulted in a pattern of tougher timeframes being imposed on Black and/or male professionals than on other categories. The indirect consequence is that Black and/or male professionals found it difficult to manage such conditions, preventing effective remediation actions. Areas concerning the need for professionals to engage in personal development plans, logs, and reflective practice (points 17 to 22 in the Conditions of Practice Library) are also prone to too much flexibility, which can trigger inconsistent outcomes.

Another area of the Interim Order policy that opens the possibility for inconsistent interpretation and practice concerns the frequency of Interim Order review hearings: the policy states that 'interim orders have to be reviewed every six months, by either the committee that made the order, or (if the case has been referred to the Fitness to Practise Committee) by the Fitness to Practise Committee'.⁴⁶ There is no provision clarifying the process when a review does not take place. While such a situation is very unlikely to happen, one of the cases analysed exposed such a situation. In that instance, the panel interpreted the policy to mean that if a review had not taken place, the conditions of the order remained in effect. This interpretation might prove prejudicial to the professional, as potential remedial action and removal of risk are not taken into account.

Dignitarian dimension

The dignitarian dimension addresses the respect for the dignity of the professional and facilitates their agency and ability to make decisions that serve their interests.

In this context, the FtP policy emphasises the importance of insight and remediation shown by the professional in the outcome decisions. The guidance regarding insight, reflection and remediation offered to professionals subject to an FtP process varies significantly. The provision of supporting materials about reflection and remediation (detailed reflection forms and illustrative fictional case studies) is shown to facilitate better engagement with the process. However, guidance for a consistent use of such supportive materials in the communication with professionals is absent.

Also, the communication informing professionals about FtP referrals shows variation. Exemplary cases that display empathy for the professional's situation are very much in line with guidance that emphasises a supportive and respectful approach to professionals. This can indirectly contribute to enhancing engagement and confidence

in the process. However, there are significant disparities in the early communication with professionals.

The focus on insight, remorse and remediation tends to implicitly prioritise the need for professionals to accept fault in relation to allegations. In the absence of more explicit guidance on this issue, decision-making processes give more weight to reflective accounts where fault is partially or totally accepted. A concrete instance of this issue emerged from a case showing that voluntary removal from the register was conditioned on the professional accepting fault, thus restricting the ability of professionals to exercise agency. It is essential to note the dynamic and evolving nature of the policy, which in this instance has rectified the problem, and voluntary removal is no longer conditioned by acceptance of fault.

Finally, the agreed removal guidelines clarifying application conditions can affect the dignitarian dimension of procedural fairness by effectively undermining what in the criminal justice sphere is referred to as ‘the presumption of innocence’, which in the context of the NMC is the presumption of fitness to practise, thus potentially resulting in wide margins of interpretation. The guidance states that: ‘more serious concerns where the nurse, midwife, or nursing associate’s conduct is likely to result in a striking-off order aren’t usually suitable for agreed removal’.⁴⁷ The wording in the guidance effectively anticipates the outcome of an FtPC, thus potentially prejudicial to a fair process.

Public accountability dimension

The public accountability dimension reflects the ability of the policy to ensure a transparent and equitable engagement by relevant stakeholders.

This aspect is particularly relevant given the role of the NMC as a professional regulator in protecting the public and in maintaining public confidence in the professions.

In this context, the main area of concern emerges from the duration of the FtP process, especially in the more advanced stages. As the cases have demonstrated, this often results in professionals’ alienation from and disengagement with the process. Equally, lengthy proceedings also undermine the public confidence in the effectiveness of the process and implicitly in the safety and wellbeing of the public. It is important to stress again in relation to evidence emerging from the case analysis, that a large number of the cases investigated stretch throughout the Covid-19 pandemic that caused understandable delays.

RQ3: Based on the analysis of the fitness to practise policies and guidance and the decision-making informed by these, are there any potential improvements that can be made to the existing fitness to practise policies, guidance and processes to maximise fairness and consistency?

There is evidence that the NMC's approach to the FtP process, in terms of both policy and practice, is guided by an overarching concern to strike a fair balance between protecting public safety and interest, supporting professionals and addressing concerns about practice in a constructive and educative manner, and ensuring public accountability and transparency. That being said, there are areas of policy that could benefit from further clarification and strengthening to ensure consistency and fairness. In the area of implementation of policies and guidance, more effort is required to eliminate opportunities for bias in the decision-making process and to minimise the effect of indirect factors that can generate differences in outcomes based on protected characteristics.

Further work should be undertaken in these areas of policy and practice both individually and in relation to one another. More specifically, attention should be given to ensuring that:

- **Quality assurance around written communication with professionals regarding FtP** is strengthened to ensure consistent alignment with existing good practice that balances factual information with empathy and reassurance about the process. This will ensure the process remains rigorous while engaging with professionals in a supportive and dignifying manner.
- **Documentation sent to professionals includes exemplary cases of reflection/remediation linked to outcomes** and forms guiding the reflection process. Given that insight, reflection, and remediation are crucial to removing risk to practice, supporting professionals with adequate information is conducive to more meaningful engagement with the FtP process. This is also likely to mitigate differences in outcomes based on protected characteristics.
- **Consistent documentation and advice on how to interpret evidence for NMC colleagues involved in investigating FtP cases** to reduce the margin of differences in outcome. This could include guidance on considering and assessing evidence of qualifications and proof of good practice obtained overseas, which might address existing discrepancies, particularly in outcomes for Black professionals. Additionally, guidance on the exclusion of hearsay and

spurious statements (due to concerns about credibility) from the evidence would ensure fairer outcomes.

- **More precise guidance in applying Interim Order Conditions of Practice.** As evidence shows a wide margin of interpretation for selecting conditions of practice from the Conditions of Practice Library toolbox, more specific parameters could generate consistency in approach. This could mitigate existing differences in outcomes prejudicial to Black and male professionals.
- **Review of guidance to Independent Panels regarding Interim Order Conditions of Practice.** Interim Order Conditions of Practice that implicitly prevent a professional from securing employment and taking remedial action undermine the educational and strengthening of practice principles behind the FTP process. While the main concern remains public safety, within the frame of protecting the public, panels should consider making conditions of practice feasible, so that professionals can engage in meaningful remediation action.
- **Review of Agreed Removal Application** (voluntary removal) guidelines to clarify conditions for rejection. Guidelines should specifically focus on the need to protect the public while at the same time ensuring that the presumption of innocence principle is upheld.
- **Review causes of disengagement with FtP at the Adjudication stage.** The main drive behind professionals being struck off the register is disengagement with the FtP process. This suggests that evaluating causes thoroughly (e.g., the inability to maintain formal representation, the length of the process, etc.) can enhance confidence in the process and the profession.
- **Work on addressing the timely resolution of cases** to avoid disengagement and maintain public trust in the process. This is essential for both professionals involved in the FtP process and for public confidence.
- Provide **policy guidelines regarding Interim Orders**, addressing the implicit pressure on professionals to acknowledge fault in the reflection process. Case examinations reveal that even when professionals acknowledge concerning behaviours or actions but deny involvement, they can still demonstrate thorough insight and reflection, indicating their understanding of good practice.
- **Reflect on corroborative evidence** from these findings and previous NMC research that highlight discrepancies in how the FtP treats some categories of professionals (particularly Black professionals relative to White professionals and male professionals relative to female professionals). While findings in this report do not identify systematic and deep-seated discrepancies (mainly due to the qualitative nature of the investigation), further probing into the treatment of these

categories and actions to reduce inconsistencies are advised. More in-depth research on these categories could uncover further areas in the FtP process that explain outcome differences.



VI. Conclusions

This report aimed to provide an analysis of the NMC FtP framework through a qualitative examination of cases and a brief audit of FtP policy and guidance. The study fits within a broad initiative by the NMC to probe its practices to ensure that they adhere to the organisational goal to promote fairness, diversity, and inclusion across all areas of activity. The programme entitled 'Ambitious for Change' was launched in 2019. The first phase investigated regulatory practices and found differences in outcomes based on the group characteristics.

This report is part of the second phase of the research programme. Its aim was to examine how different groups fare regarding the FtP process and outcomes. The research adopted a qualitative thematic analysis approach to investigating FtP cases for four pairs of professional groups: Black and White professionals, male and female professionals, disabled and non-disabled professionals, and professionals with unknown or undeclared sexual orientation and heterosexual professionals. Additionally, the report considered different dimensions of procedural fairness in assessing FtP policy and guidance.

The analysis was guided by three research questions. The first one looked at whether bias and discrimination explain differences in how different groups progress through the FtP stages and the outcome they receive. The second research question looked at whether current FtP policies and guidelines promote equal opportunities and eliminate discrimination. The final question tried to identify potential improvements in the FtP policies, guidelines, and process.

The research examined more than 250 cases, selected through a disproportionate stratified sampling method, covering the most common allegations at all stages in the FtP process (screening, investigation, adjudication where professionals are found to be fit to practise and adjudication where professionals are found unfit to practise).

The research found that there is direct evidence of bias, as well as indirect consequences of uneven practices that explain differences in outcomes between Black professionals and White professionals and between male professionals and female professionals. No similar patterns of difference were identified in the case of disabled and non-disabled professionals and in the case of professionals with unknown or withheld information on sexual orientation and heterosexual professionals.

The differences identified are visible across five themes: communication with professionals, the examination of data and evidence, the professionals' response (in terms of engagement with insight, reflection, and remediation), availability of formal representation, and the basis for the decision (see Table 3).

	Direct factors affecting outcome	Indirect factors affecting outcome
Communication		<ul style="list-style-type: none"> • Lack of supporting information and case study examples in NMC communication. • Lack of empathy in NMC written communication with professionals.
Data and evidence	<ul style="list-style-type: none"> • Bias in how evidence is considered 	
Response		<ul style="list-style-type: none"> • Lack of engagement with reflection and remediation (affected by the lack of supporting information and formal representation)
Formal representation		<ul style="list-style-type: none"> • Lack of formal representation (affects lack of engagement with reflection and remediation)
Decision	Bias in the use of Conditions of Practice and variation in how Voluntary Removal decisions are approved.	

Table 3. Summary of direct and indirect factors affecting outcomes.

The policies and guidance review found that while they are broadly aligned with the organisational values and demonstrate procedural fairness, there are areas in the policy and guidance that contribute to the differentiated treatment of some groups.

Finally, the report contributes to the efforts by the NMC to ensure fair, transparent, and inclusive treatment to all registered professionals by recommending improvements to policy and practice, especially concerning empathetic and supportive communication, fair treatment of evidence, and clarity in guidance.

List of references

- ¹ Our fitness to practise aims and objectives - The Nursing and Midwifery Council.
- ² Ambitious for change: Research into NMC processes and people's protected characteristics.
- ³ This category refers to professionals that have not declared any disability.
- ⁴ 'Formal representation' here refers to legal or trade union representatives supporting professionals during the FtP process. This is contrasted to situations where professionals represent themselves or are represented by lay persons (e.g. family members, friends, members of their community).
- ⁵ It is important to note that the improvement of the FtP processes in terms of timeliness, making the process more efficient and reducing caseload are already accounted for by the NMC as a KPI in its 2023-2024 Annual Report. See: Annual Report and Accounts 2023-2024 and Strategic Plan 2024-2026.
- ⁶ What we do - The Nursing and Midwifery Council.
- ⁷ nmc-strategy-2020-2025.pdf.
- ⁸ West E, Nayar S & Taskila T (2017) The Progress and Outcomes of Black and Minority Ethnic (BME) Nurses and Midwives through the Nursing and Midwifery Council's Fitness to Practise Process. University of Greenwich.
- ⁹ Ambitious for change: Research into NMC processes and people's protected characteristics.
- ¹⁰ Idem.
- ¹¹ nmc-ambitious-for-change-report.pdf.
- ¹² Idem.
- ¹³ the-nursing-and-midwifery-order-2001-consolidated-text.pdf.
- ¹⁴ See Saunders, M.N.K. & Thornhill, A. (2004). Trust and mistrust in organizations: an exploration using an organizational justice framework. *European Journal of Work and Organizational Psychology*, 13(4), 493-515, and Lilly, J.D. (2022). Organizational Justice. In: Farazmand, A. (eds) *Global Encyclopedia of Public Administration, Public Policy, and Governance*. Springer, Cham. https://doi.org/10.1007/978-3-030-66252-3_2472.

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- ¹⁵ See Rottman, D. B. (2007). Adhere to procedural fairness in the justice system. *Criminology and Public Policy*, 6(4), 835-842.
- ¹⁶ Kirkham, R. *et al.* (2019) 'The procedural fairness limitations of fitness to practise hearings: a case study into social work', *Legal Studies*, 39(2), pp. 339–357. doi:10.1017/lst.2018.42.
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- ¹⁹ Ibid.
- ²⁰ Lim, W. M. (2024). What Is Qualitative Research? An Overview and Guidelines. *Australasian Marketing Journal*, 0(0). doi.org/10.1177/14413582241264619.
- ²¹ Braun, V. & Clarke, V. (2021). Thematic Analysis. In Lyons, E. & Coyle (eds.), A. *Analysing Qualitative Data in Psychology* (3rd ed). London: Sage, 129-147.
- ²² Braun, V. and Clarke, V. (2019) 'Reflecting on reflexive thematic analysis', *Qualitative Research in Sport, Exercise and Health*, 11(4), 589-597, doi.org/10.1080/2159676X.2019.1628806.
- ²³ Braun, V. and Clarke, V. (2006) 'Using thematic analysis in psychology', *Qualitative Research in Psychology*, 3(2), 77-101. doi: 10.1191/1478088706qp063oa.
- ²⁴ Figure 1 does not cover the whole of the Patient Care allegation and its underlying levels. It is a simplified depiction illustrating the branching out of each allegation into Level 2 and Level 3 sub-divisions.
- ²⁵ Ambitious for change: Research into NMC processes and people's protected characteristics.
- ²⁶ Braun, V. and Clarke, V. (2006) 'Using thematic analysis in psychology', *Qualitative Research in Psychology*, 3(2), pp. 77–101. doi: 10.1191/1478088706qp063oa.
- ²⁷ Hanberger, A. (2001). What is the Policy Problem? Methodological Challenges in Policy Evaluation. *Evaluation*, 7(1), 45-62. <https://doi.org/10.1177/13563890122209513>.
- ²⁸ Annual Report and Accounts 2023-2024 and Strategic Plan 2024-2026.

²⁹ Braun, V. and Clarke, V. (2019) 'Reflecting on reflexive thematic analysis', *Qualitative Research in Sport, Exercise and Health*, 11(4), 589-597, doi.org/10.1080/2159676X.2019.1628806.

³⁰ Nowell, L. S., Norris, J. M., White, D. E., & Moules, N. J. (2017). Thematic Analysis: Striving to Meet the Trustworthiness Criteria. *International Journal of Qualitative Methods*, 16(1). <https://doi.org/10.1177/1609406917733847>.

³¹ In discussing communication, the research focuses on the written communication which included emails and letters send by NMC colleagues to professionals during the FtP process.

³² Insight and strengthened practice - The Nursing and Midwifery Council.

³³ Engaging with your case - The Nursing and Midwifery Council.

³⁴ Insight into Fitness to Practise December 2024.

³⁵ For NMC guidelines about warnings see: Warnings - The Nursing and Midwifery Council.

³⁶ See the Annual Fitness to Practise Report: 2020-21, which sets out the changes made to the FtP process during covid-19 and the impact this had on timeliness and caseload numbers.

³⁷ The issues concerning the denial of Voluntary Removal are reflected in the cases examined. However, it is important to emphasise – as mentioned earlier – that the new Agreed Removal policy and guidance that replaced Voluntary Removal in 2023, corrects some of these issues. For the current Agreed Removal policy, see: Removal by Agreement - The Nursing and Midwifery Council.

³⁸ Our values and behaviours - The Nursing and Midwifery Council.

³⁹ Aims and principles for fitness to practise - The Nursing and Midwifery Council.

⁴⁰ Taking account of context - The Nursing and Midwifery Council.

⁴¹ Annual Report and Accounts 2022–2023 and Strategic Plan 2023–NMC Annual Report and Accounts 2022-2023 and Strategic Plan 2023-2025. See also: Our plan for fitness to practise 2024-2026.

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⁴³ Kirkham, R. *et al.* (2019) 'The procedural fairness limitations of fitness to practise hearings: a case study into social work', *Legal Studies*, 39(2), pp. 339–357.

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⁴⁴ Conditions of practice library - updated 13 September 2019.

⁴⁵ *Ibid.*

⁴⁶ Interim orders, their purpose, and our powers to impose them - The Nursing and Midwifery Council.

⁴⁷ How we consider removal applications - The Nursing and Midwifery Council.



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