



# NHSGG&C

## Referring Registrants to the Nursing & Midwifery Council Policy

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### **Important Note:**

**The Intranet version of this document is the only version that is maintained**

Any printed copies should therefore be viewed as “uncontrolled” and, as such, may not necessarily contain the latest updates and amendments

## Contents

<b>1. Introduction .....</b>	<b>3</b>
<b>2. Purpose.....</b>	<b>3</b>
<b>3. Scope .....</b>	<b>3</b>
<b>4. Reasons for Referral.....</b>	<b>4</b>
4.1 Misconduct	
4.2 Lack of Competence	
4.3 Character Issues	
4.4 Serious Ill Health	
<b>5. NMC Referral Process .....</b>	<b>5</b>
5.1 When to Referral to the NMC	
5.2 Urgent Referrals & Interim Suspension Orders	
5.3 Non-urgent Referrals	
5.4 Inappropriate Referrals	
<b>6. Making a Referral to the NMC.....</b>	<b>7</b>
6.1 NMC Referral Form Template	
6.2 Midwifery Referrals	
6.3 NHSGG&C Referral Process	
<b>7. What Happens When a NMC Referral is Made.....</b>	<b>9</b>
<b>8. NMC Enquiries.....</b>	<b>9</b>
<b>9. Grievance .....</b>	<b>9</b>
<b>10. Monitoring and Review.....</b>	<b>10</b>
<b>Appendix 1 NMC Referral Decision Tree.....</b>	<b>11</b>
<b>Appendix 2a NMC Nurse Referral Pathway.....</b>	<b>12</b>
<b>Appendix 2b NMC Midwifery Referral Pathway.....</b>	<b>13</b>
<b>Appendix 3: NMC Referral Covering Letter Template.....</b>	<b>14</b>

## **1. Introduction**

The Nursing & Midwifery Council (NMC) is the regulatory body for UK nurses, midwives and specialist community public health nurses. The NMC exists to safeguard the health and well being of people using or needing the services of nurses and midwives. It aims to protect the public through setting and maintaining professional standards of education, training, conduct and performance. It is also the responsibility of the NMC to determine if a registrant's fitness to practise is compromised and as a result has breached the Code: Professional standards of practice and behaviour for nurses and midwives, effective March 2015 <http://www.nmc.org.uk/standards/code/> .

Fitness to practise is a registrant's suitability to be on the NMC register without restrictions. Members of the public, colleagues, managers, other clinicians and registrants themselves can make a referral to the NMC. Protecting the public and reporting concerns about registrants are key responsibilities for all those on the register and their employers.

The aim of this policy is to provide guidance to staff working in NHS Greater Glasgow & Clyde (NHSGG&C) and the six Health & Social Care Partnerships (HSCPs) within the Board area (Glasgow City, Renfrewshire, East Renfrewshire, Inverclyde, East Dunbarton, and West Dunbarton) who may require to make a referral to the NMC. Referrals are made for a variety of reasons it is therefore essential that there is consistency and fairness throughout the referral process. To ensure this, all referrals must be notified to, discussed with and logged by the Nurse Director.

## **2. Purpose**

The purpose of this policy is to support appropriate and timely referrals to the NMC and to avoid unnecessary and inappropriate referrals and delays. In order that NHSGG&C appropriately discharges its responsibilities as an employer, the policy sets out when referral should be considered; the details of the referral process both internal to the Board including the HSCPs and from a NMC perspective; and how to access advice.

It should be noted; however, that all registrants have both a right and a duty to refer any registered nurse to the NMC if, in their assessment, the risk to the public (or individual patient) warrants such action.

## **3. Scope**

This policy applies to all nurses, midwives and public health nurses on the NMC register employed by and affiliated with NHSGG&C. The policy covers the processes to be followed when considering the referral of a registrant to the NMC. It does not set out how registrants should be supported during this time. In this respect, good practice, as set out in NHSGG&C Human Resources (HR) policies, should be followed. This must include advising the registrant of the referral, and right to representation, where to get help and the right to appeal mechanisms.

It should be noted; however, there is no right of appeal in the application of the decision to refer as this is the discharge of professional judgment based on an assessment of risk and the duty of registrants and employers to protect the public.

#### **4. Reasons for Referrals**

The Code is the foundation of good nursing and midwifery practice. It is a key tool in safeguarding the health and wellbeing of the public. If nurses and midwives do not follow the Code their fitness to practise may come into question.

Being fit to practise means that a nurse or midwife has the skills, knowledge, good health and good character to do their job safely and effectively.

Referrals to the NMC are made when it is alleged that a registrant's suitability to be on the register without restrictions is compromised. The NMC provides an overview of situations that could form grounds for the allegation of a registrant's lack of fitness to practise. These fall into 4 broad areas listed with examples below.

##### 4.1 Misconduct

Misconduct relates to behaviour which falls short of what can reasonably be expected of a nurse or midwife. The most common examples of misconduct include:

- Physical or verbal abuse of colleagues or members of the patients/public
- Theft
- Significant failure to deliver adequate care
- Significant failure to keep proper records

##### 4.2 Lack of Competence

Lack of competence relates to a lack of knowledge, skill or judgment of such a nature that the nurse or midwife is unfit to practise safely. Lack of competence may be an issue if over a prolonged period of time a nurse or midwife makes continuing errors or demonstrates poor practice which involves, for example:

- Lack of skill or knowledge
- Poor judgement
- Inability to work as part of a team
- Difficulty in communicating with colleagues or people in their care

##### 4.3 Character Issues

Cases concerning character nearly always involve some form of criminal behaviour. Only **serious** criminal convictions or cautions should be referred to the NMC. A minor fixed penalty traffic offence, for example a speeding fine or parking ticket, is unlikely to be a case for the NMC.

On some occasions, employers will need to consider whether to discipline or educate a nurse or midwife whose behaviour has brought the profession into disrepute, even if their actions have not resulted in legal proceedings. For example, a nurse or midwife's behaviour outside work may cause you or a patient to question whether they are the right sort of person to be giving people care.

If you are ever unsure whether to make a referral, you should discuss with the Chief Nurse / Midwife; Professional Nurse Advisor / Professional Lead in the first instance and she/he will seek advice from the Chief Nurse Professional Governance and Regulation/ Nurse, Director Health & Social Care Partnerships (HSCP), as appropriate, in addition, the NMC can also be contacted directly for advice (see Section 8). Examples of behaviour that indicate questions around character include:

- A caution or conviction – for example, theft, fraud, violence, sexual offences or drug dealing
- Dishonesty
- Serious cases of accessing illegal material from the internet
- Inappropriate use of social media
- A fraudulent or incorrect entry on the NMC register

#### 4.4 Serious Ill Health

Good health is necessary to undertake practice as a nurse or midwife. Good health means that a person must be capable of safe and effective practice without supervision. The NMC is concerned about long-term, untreated or unacknowledged physical or mental health conditions that impair a registrant's ability to practise without supervision. To be considered fit to practise, nurses and midwives should also demonstrate suitable attention to their personal needs and should not, for example, abuse or be dependent on alcohol or drugs. Examples of poor health conditions include:

- Long-term, untreated alcohol or drug dependence
- Unmanaged serious mental illness.

For further information and advice refer to the *NMC Referral Decision Tree (Appendix 1)* which is contained within the *NMC Advice and information for employers of nurses & midwives, 2011* [http://www.nmc-uk.org/Documents/FtP\\_Information/Advice%20and%20information%20for%20employers%20of%20nurses%20and%20midwives.pdf](http://www.nmc-uk.org/Documents/FtP_Information/Advice%20and%20information%20for%20employers%20of%20nurses%20and%20midwives.pdf)

## **5. NMC Referral Process**

### 5.1 When to Refer to the NMC

At any stage of a formal investigation, as part of the application of the Board HR policies or as a result of other findings or evidence, consideration can be given to the need for a referral to the NMC in order to safeguard patients and the public. Generally, a referral will not be made until a formal Disciplinary Hearing outcome has been reached following due process. If a registrant is dismissed or suspended because of patient safety concerns for anything more than a short period of investigation, a referral to the NMC should be made. Automatic and immediate referrals should be made in the following circumstances:

- If a registrant resigns before the investigatory or disciplinary processes are concluded and there are public protection issues a referral should be made
- If the organisation believes that the public's health and well being is at immediate and serious risk, an urgent referral will be made summarily (see 5.2)

## 5.2 Urgent Referrals & Interim Suspension Orders

As an employer the organisation has the power to suspend or dismiss a registrant but this may not prevent the individual from working elsewhere.

The NMC is the only organisation with legal powers to prevent nurses and midwives from practicing if they present a risk to patient safety. If the Board considers that an individual nurse or midwife poses an immediate risk to the health and well being of patients and/or the public, an urgent referral should be made even before an internal investigation has been carried out. This allows for the possibility of the NMC issuing an Interim Suspension Order or restricting the practice of the nurse or midwife concerned until the case has been thoroughly investigated.

## 5.3 Non-urgent Referrals

All cases received by the NMC are referred to a panel of the Investigating Committee which will decide if there is a case to answer. If the panel finds that there is no case to answer it will close the case. If it is found that there is a case to answer it will be referred either to the Conduct and Competence Committee or the Health Committee. It should be noted that the referrer does not choose which Committee will consider the case.

## 5.4 Inappropriate Referrals

Every day, employers, managers and supervisors deal with situations concerning the misconduct, lack of competence, bad character or poor health of nurses and midwives. Most of this can be managed locally through internal disciplinary procedures and does not give rise to wider concerns about the health and wellbeing of patients and the public.

The NMC makes reference to the type of cases that are better dealt with by employers and notes that it will not normally become involved in a case if the employer cannot demonstrate that measures have been taken to tackle the situation at a workplace level.

Examples of such cases may include:

- a) A minor instance of wrong doing where no real harm has been caused. In this situation there may be a requirement for internal investigatory or disciplinary processes. The outcome may lead to a recommendation for further training, for example with or without a disciplinary warning; however, it may not be so serious that the employer requires the NMC to consider the practitioner's eligibility to remain on the NMC register. If there are no patient safety issues and there is the possibility to help an employee to improve then the employer should take all reasonable steps to do so.

- b) Cases of ill health can also usually be managed locally if the nurse or midwife acknowledges their condition, takes necessary steps to manage the condition following a doctor's advice or an employer's requirements, and importantly where there is no risk to patient safety.

With the exception of cases where there are significant concerns that patients and/or the public may be at risk (see section 5.2 Urgent Referrals & Interim Suspension Orders) before contacting the NMC, the Board must:

- Carry out an internal investigation
- Carefully collect and manage evidence
- Make use of the NHS GG&C disciplinary and competence policies and procedures

## **6. Making a Referral to the NMC**

### 6.1 NMC Referral Form Template

The NMC provide a Referral Form for Managers and Employers making fitness to practise referrals and this can be downloaded from the website (<http://www.nmc.org.uk/concerns-nurses-midwives/concerns-complaints-referrals/referral-forms/>).

It is important when making a referral that the NMC are provided with a detailed record of the information collected during the investigation, all evidence gathered and the reasoning behind any decisions made. Each referral must:

- Identify the nurse or midwife concerned and include their PIN
- Clearly explain the complaint against the nurse or midwife
- Be supported by appropriate information

In addition, the registrant being referred should be informed of the referral. Referrers should not send to the NMC any information or evidence which they are not prepared for the NMC to share with the registrant.

Witnesses should be made aware that their statements are being sent to the NMC, that they may be called to give evidence; and their consent to co-operate with any investigation should be confirmed. It is recommended that witnesses are made aware of this at the investigation stage of a disciplinary process and invitations to investigatory interviews should make reference to this, where appropriate.

In all cases it is important to note when the registrant's registration is due for renewal and to advise the NMC if you are preparing a case which is not likely to reach them prior to this date.

**The NMC cannot take action if the registrant has allowed his/her registration to expire; however, if notified in advance of the renewal date that a referral is pending, the NMC will not allow the registration status to lapse.**

## 6.2 Midwifery Referrals

Referrals concerning midwives should always be discussed with the Local Supervising Authority Midwifery Officer <http://www.midwiferysupervision.scot.nhs.uk/>

## 6.3 NHSGG&C Referral Process

NHSGG&C has identified the need for a standardised approach which provides local guidance and timescales to ensure that a consistent, effective and efficient approach is taken to making nursing and midwifery referrals. This is illustrated in **Appendices 2a & 2b**.

- In general and where appropriate, the decision to make a referral to the NMC should be jointly agreed between the Disciplining Manager and the Chief Nurse /Midwife/ Professional Nurse Advisor / Professional Lead on the Disciplinary Hearing Panel, at the end of the disciplinary process.
- The planned referral should be notified to and discussed with the Chief Nurse for Governance and Regulation / Nurse Director Health & Social Care Partnerships, as appropriate, who will inform the Nurse Director of the referral

### 6.3.1 Acute Division Referrals

When the decision is made to make a referral to the NMC within the Acute Division, the Chief Nurse / Midwife, Head of Sector Director will follow the timescales outlined in **Appendix 2a** and will:

- Discuss the planned referral with the Chief Nurse for Governance and Regulation
- Complete and quality assure the NMC referral form and supporting documentation
- Send the referral form and supporting documentation by registered post to the NMC with the standard, signed covering letter in **Appendix 3**
- Confirm referral with the Chief Nurse for Governance and Regulation and send a copy of the NMC referral form to be retained on the Board database
- The Chief Nurse for Governance and Regulation will inform the Nurse Director of the referral

### 6.3.2 Infection Prevention Nurses

When the decision is made to make a referral to the NMC within the Infection Prevention service, the Associate Nurse Director will follow the timescales outlined in **Appendix 2a** and will:

- Discuss planned referral with the Chief Nurse for Governance and Regulation
- Complete and quality assure the NMC referral form and supporting documentation
- Send the referral form and supporting documentation by registered post to the NMC with standard, signed covering letter (**Appendix 3**)
- Confirm referral with the Chief Nurse for Governance and Regulation and send a copy of the NMC referral form to be retained on the Board database.
- The Chief Nurse for Governance and Regulation will inform the Nurse Director of the referral

### 6.3.3 Health & Social Care Partnership Referrals

When the decision is made to make a referral to the NMC within Partnerships, the Professional Nurse Advisor / Professional Lead (PNA / PL) will follow the timescales outlined in **Appendix 2a** and will:

- Discuss the planned referral with the Nurse Director HSCP /the Chief Nurse for Governance and Regulation.
- Inform the appropriate Senior Manager and Integrated Chief Officer via appropriate governance routes
- Assist the Investigating Officer to complete and quality assure the referral
- Forward the completed referral and supporting documents to the Nurse Director HSCP
- Nurse Director HSCP will send the referral form and supporting documentation by registered post to the NMC with the standard, signed covering letter in **Appendix 3**
- Nurse Director HSCP will inform the Nurse Director of the referral and send a copy of the NMC referral form to be retained on the Board database

### 6.3.4 Board Nurse Bank Referrals

In all cases of referral to the NMC, the Nurse Bank Professional Nurse Lead must be informed to ensure a check is made on the registrant's status on the Nurse Bank and amendments made regarding employment status.

Where the Nurse Bank member of staff being referred has concurrent substantive employment within the Board, the appropriate Senior Nurse and Service Manager must be notified of any planned referral.

### 6.3.5 Urgent Referrals

As previously noted, there may be instances when an urgent NMC referral is required before the disciplinary process has begun or before it has concluded. This should be discussed with the relevant Senior Operational Manager and the Chief Nurse for Governance and Regulation / Nurse Director HSCP, as appropriate. If agreement is reached, the Chief Nurse / Midwife; Professional Nurse Advisor / Professional Lead will send a referral informing the NMC of the urgent nature of the referral and the fact that the investigatory process has not been concluded.

In all cases, a copy of the NMC referral form should be copied to the Nurse Director's Office so that a Board database of referrals can be maintained and regular reports made available. A database for Partnerships is maintained to enable the Nurse Director HSCP to report to the Chief Officers and the Integrated Joint Boards thus providing assurance to the new organisations in line with the Scheme of Delegation.

## **7. What Happens When a NMC Referral is made?**

When a referral is received by the NMC the referrer will be given a named contact who will deal with enquiries and will confirm receipt of the referral. The named contact will check that the person referred is on the NMC register and that the nature of the complaint is something that the NMC should be involved in. If for some reason the nature of the complaint falls outside the remit of the NMC the referrer will be informed. If the referral is appropriate for investigation, contact will be made in order to manage the flow of information between the referrer and the NMC.

The NMC will also send the nurse or midwife being referred a copy of the allegations and the supporting information and will invite the registrant to submit a written response.

For more detailed information for employers and managers considering fitness to practise referrals, please refer to <http://www.nmc-uk.org/Employers-and-managers/Fitness-to-practise/>

For an explanation of how fitness to practise processes work from investigation to adjudication, please refer to <http://www.nmc.org.uk/concerns-nurses-midwives/investigations-process/>

For information relating to Hearings, Outcomes and advice for witnesses and registrants whose practice is under investigation please refer to: <http://www.nmc.org.uk/concerns-nurses-midwives/hearings-and-outcomes/>

## **8. NMC Enquiries**

Fitness to practice enquiries can be made to the NMC in relation to individual cases or general processes by email on [fitness.to.practise@nmc-uk.org](mailto:fitness.to.practise@nmc-uk.org)

Urgent fitness to practise enquiries can be made by telephone from Monday to Friday 08.00 – 17.45 (excluding Bank Holidays) on **020 7462 5800 / 5801**.

## **9. Grievance Procedure**

Any employee aggrieved by the operation of this policy may pursue a formal grievance in accordance with the Grievance Procedure. It should be noted; however, that once a referral is made, the NMC will proceed with their own processes regardless of any grievance that may be raised or its outcome.

## **10. Monitoring and Review**

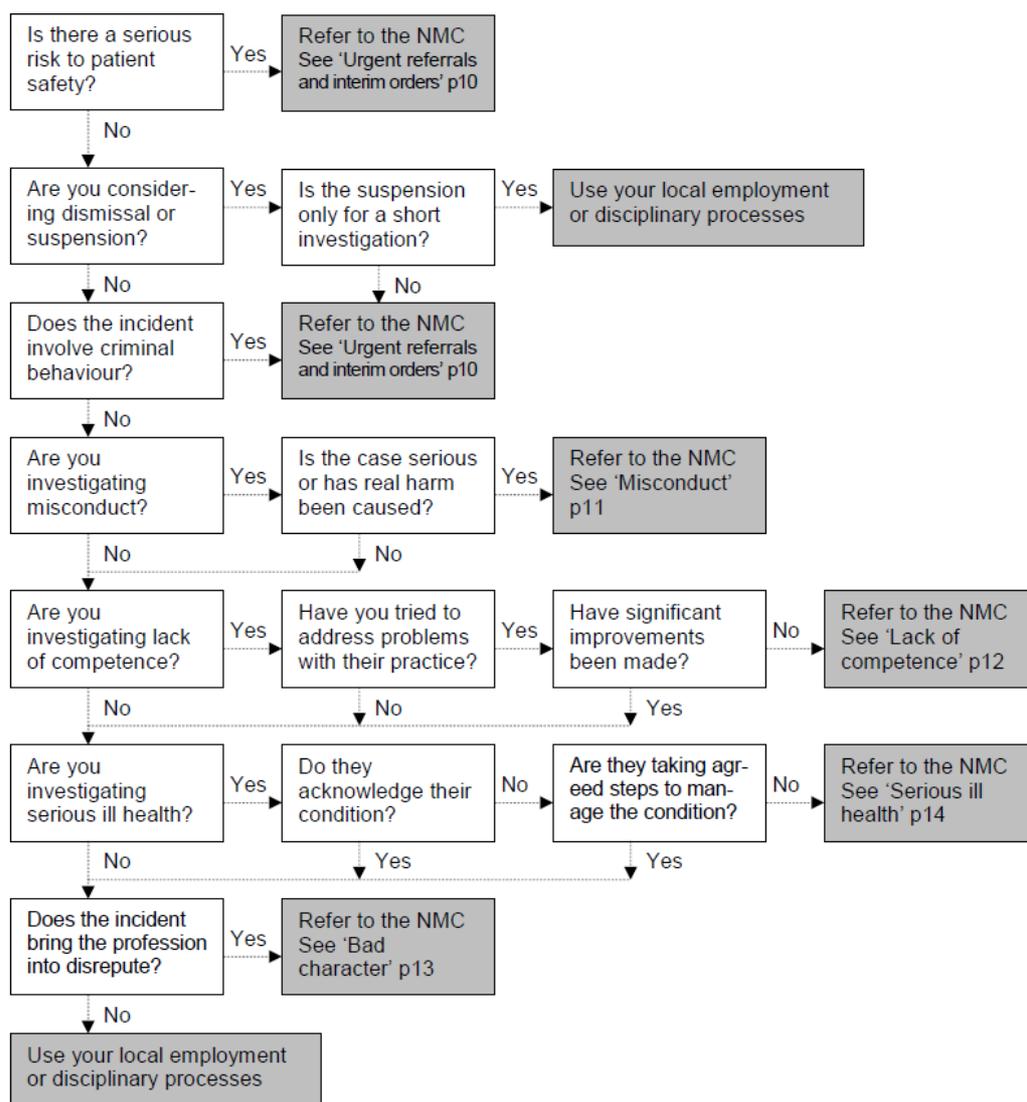
The application of this policy will be monitored jointly by the Nurse Director and the Area Partnership Forum to ensure equitable application for all employees.

The Board is required by law to gather monitoring information relating to a broad range of characteristics with regard to equality and diversity (e.g. race/ethnicity, age) for many aspects of employee relations. Employees may be asked for information relating to the above in connection with the policy. Employees do not have to give the monitoring information if they do not wish to. Any equalities monitoring information will be held separately and not used to inform any proceedings that occur in relation to this policy.

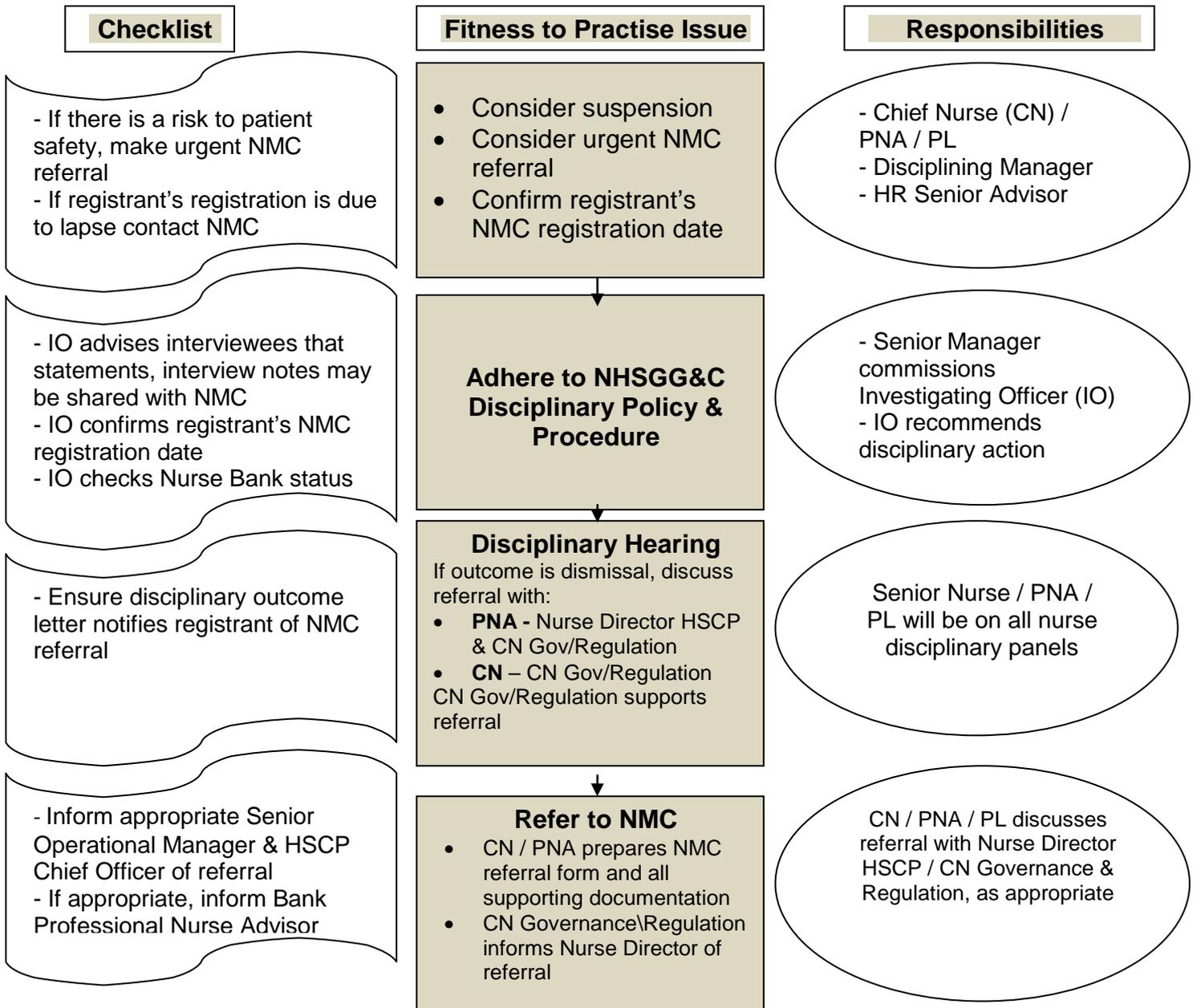
The operation of this policy will be regularly reviewed by the Area Partnership Forum to ensure its continued effective operation and will be formally reviewed no later than October 2017.

## Appendix 1 NMC Referral Decision Tree

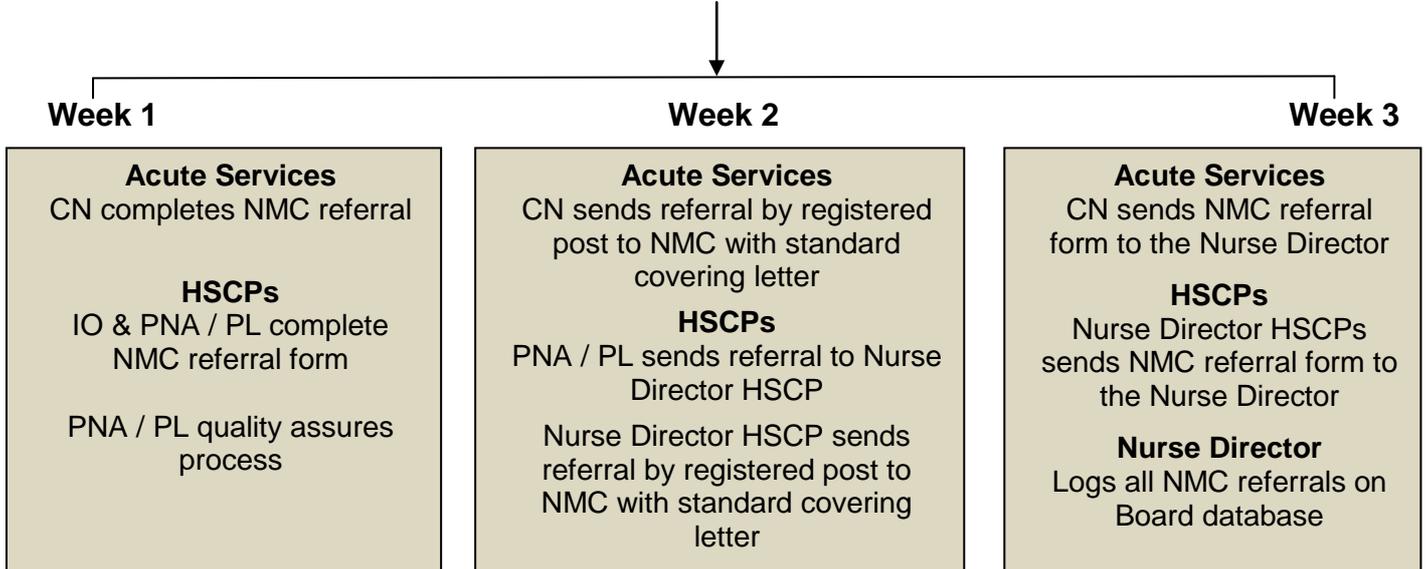
This section outlines the circumstances in which a referral to the NMC should be considered. The Decision Tree can help to guide decisions about whether a referral to the NMC is necessary or whether issues can be managed at a local level. You can make a referral to the NMC at any time, even if your local investigation is not complete. If in the course of a local investigation you become aware of any serious risks to patient safety you should refer to the NMC immediately. If you dismiss a member of staff, or suspend them because of patient safety concerns for anything more than a short period of investigation, you should also make a referral to the NMC. If you wish to discuss a potential referral you can call the fitness to practise directorate for advice.



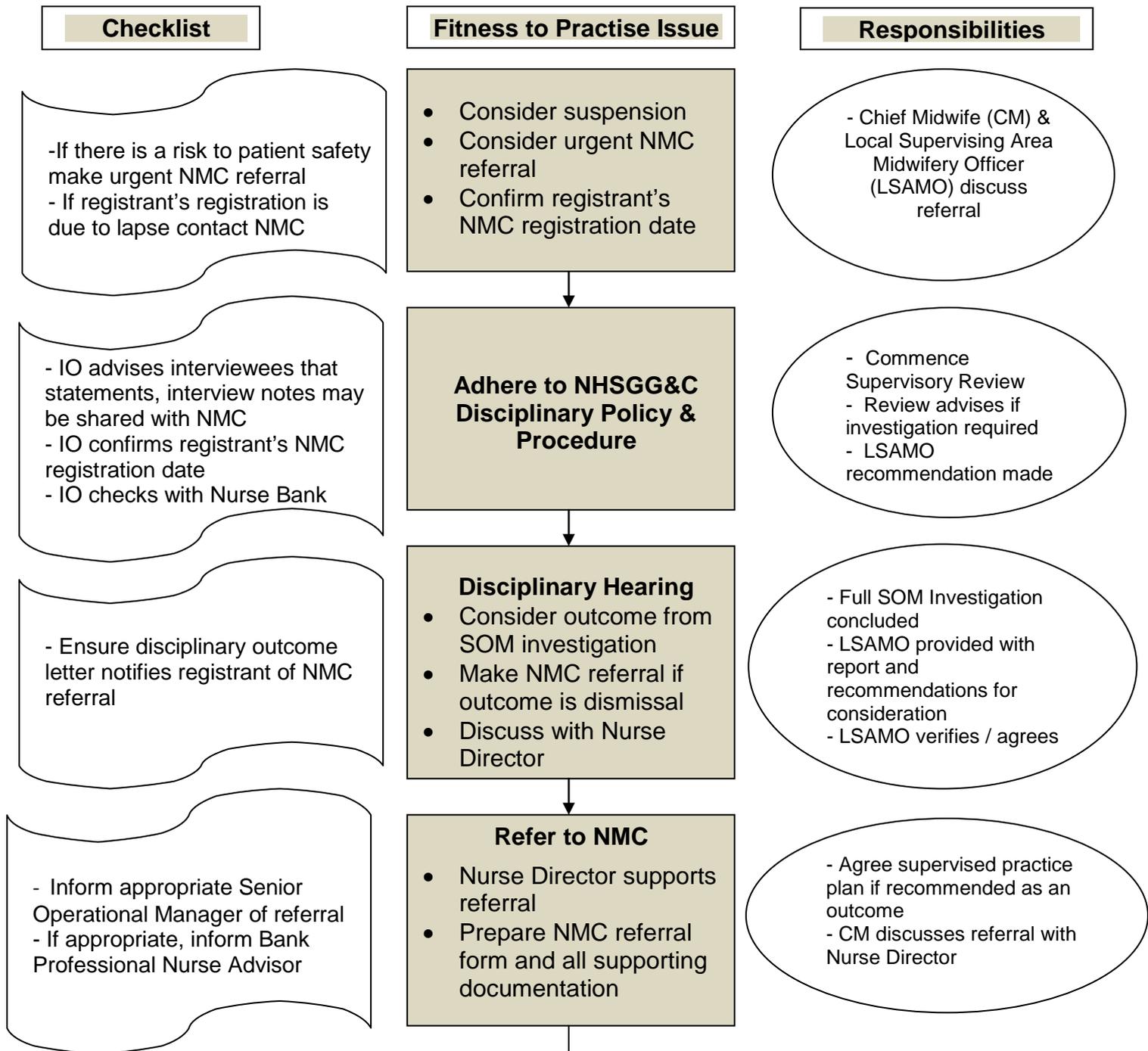
## Appendix 2a NMC Nurse Referral Pathway



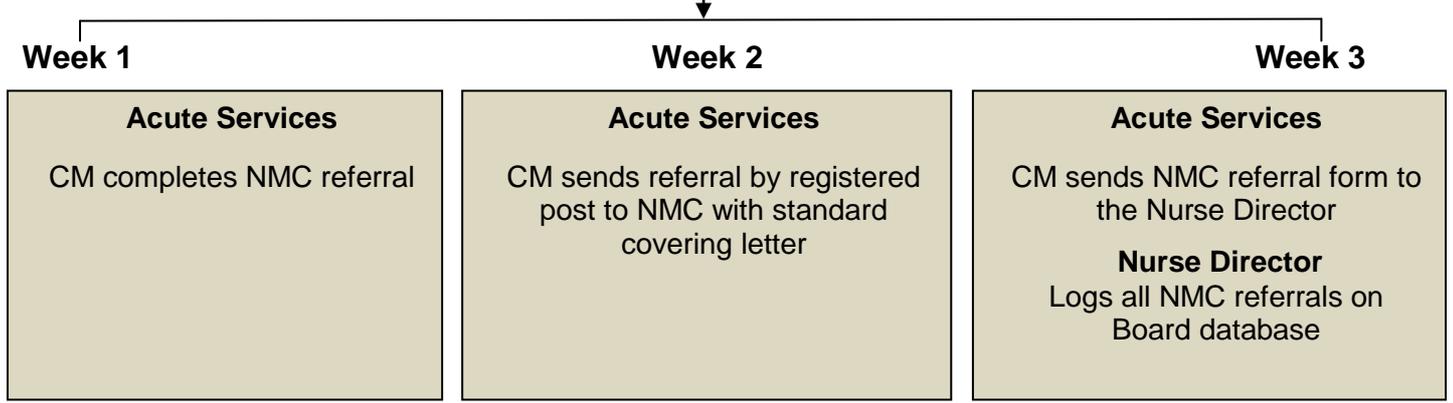
### Internal Timeline for NMC Referrals



## Appendix 2b NMC Midwifery Referral Pathway



### Internal Timeline for NMC Midwifery Referrals



## Appendix 3

### Address

Nursing and Midwifery Council  
Screening Manager  
Fitness to Practise  
1<sup>st</sup> Floor  
1 Kemble Street  
London  
WC2B 4AN

**Date:**  
**Your Ref:**  
**Our Ref:**  
**Direct Line:**  
**Fax:**  
**Email:**

Dear Sir / Madam

### **Fitness to Practise Referral**

**Name of Nurse:**

**Registered as:**

**NMC PIN:**

I have enclosed the completed referral form and supporting documentation in respect of the above registrant and request that you undertake an investigation of his / her Fitness to Practise based on the findings of an internal disciplinary investigation undertaken by NHS Greater Glasgow & Clyde.

The outcome of this investigation led to (*detail sanction*). Full details of this decision are contained in the Disciplinary Hearing Outcome Letter of (*insert date*).

Please do not hesitate to contact me if you require any further information or support with your enquiries.

Yours sincerely

Nurse Director Health & Social Care Partnerships / Chief Nurse /Chief Midwife