



LSA National Forum (UK) Guidelines for the statutory supervision of midwives

GUIDANCE FOR SUPERVISORS ON SUSPENSION OF MIDWIVES FROM PRACTICE

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Guidance for Supervisors on Suspension of Midwives from Practice

1. Introduction

Suspension from practice is solely the responsibility of the Local Supervising Authority (LSA). The purpose is to protect the public and not to punish the midwife and as such must be justified as essential in the interest of public protection. Supervisors of midwives have no power to suspend a midwife from practice and they should not confuse suspension from practice with an employer's authority to suspend an employee from **duty**.

The midwives rules and standards (Nursing & Midwifery Council (NMC) 2004) Rule 5 – Suspension from practice by a local supervising authority

1. *Subject to the provisions of this rule a local supervising authority may, following an appropriate investigation (which is to include, where appropriate, seeking the views of the midwife concerned), suspend from practice -*
 - a) *A midwife against whom it has been reported a case for investigation to the Council, pending the outcome of the Council's investigation; or*
 - b) *A midwife who has been referred to a Practice Committee of the Council, pending the outcome of that referral.*

1.1 Legal framework

The Nursing and Midwifery Order 2001 (Part V) established the Conduct and Competence Committee to investigate allegations of incompetence and misconduct, which is termed 'impaired fitness to practise' within the Order. The NMC is required to define what is meant by lack of competence and the process by which any such allegations will be investigated.

1.2 Unfitness to practise

Fitness to practise may be impaired by:

1.2.1 Misconduct

Misconduct is conduct which falls short of that which can reasonably be expected of a registrant.

1.2.2 Lack of competence

A lack of knowledge, skill or judgement of such a nature that the registrant is unfit to practise safely and effectively in any field in which the registrant claims to be qualified, or seeks to practise

1.2.3 A conviction or caution

The types of conviction or caution that could lead to a finding of unfitness to practise include: theft, fraud or other dishonest activities, violence, sexual offences, accessing or



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downloading child pornography or other illegal material from the internet, illegally dealing or importing drugs.

1.2.4 Physical or mental ill health

Health conditions that might lead to a finding that a registrant's fitness to practise is impaired include: alcohol or drug dependence and mental illness.

1.2.5 Other factors

A finding by any other health or social care regulator or licensing body that a registrant's fitness to practise is impaired.

2. Process

2.1 Alleged lack of competence / unfitness to practise

When a midwife is suspected of impaired fitness to practice, lack of competence or misconduct, it is the responsibility of the supervisor of midwives to:

- i) Investigate the incident/allegation as soon as possible
- ii) Inform the LSA Midwifery Officer of the incident/allegation
- iii) Write a detailed report
- iv) Forward a copy of the report to the LSA

2.2 Responsibilities of the LSA

2.2.1 It is the statutory responsibility of the LSA to investigate prima facie cases of lack of competence /unfitness to practise or misconduct and to determine whether there is a case to answer which requires referral of the midwife to the NMC as laid down in Paragraph 43(1) of the Nursing and Midwifery Order (2001). The LSA will also determine whether there is a requirement to suspend the midwife from practice under Rule 5 of the midwives rules and standards (2004) in order to protect the public.

2.2.2 The LSA Midwifery Officer will undertake an independent investigation, usually involving meetings with the;

- midwife against whom the allegations have been made
- the supervisor of midwives who undertook the local investigation
- any other relevant persons

2.2.3 Suspension from practice would be considered when the LSA has evidence following an investigation that any of the following have occurred and can no longer be supported as a local issue or is of extreme severity;

- Misconduct
- Lack of competence
- A conviction or caution
- Physical or mental ill health



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- A finding by any other health or social care regulator or licensing body that a registrant's fitness to practise is impaired
- A fraudulent or incorrect entry in the NMC's register
- Failure to complete supervised practice

2.2.4 Following the above the LSA Midwifery Officer will:

- Decide whether there are grounds or not to refer the case to the NMC Fitness to Practise department
- Inform the midwife of the outcome of the investigation and confirm this in writing
- Inform the contact supervisor of midwives of the outcome if employed in a Trust.
- If a period of supervised practice is set up ensure that any agreed development programme is undertaken with regular updates to the LSA Midwifery Officer.

2.2.5 The NMC expects lack of competence to have been managed locally as far as possible, giving the registrant has been given the opportunity to address their weaknesses with clear aims and objectives and a timescale for achieving these i.e. supervised practice. If the objectives have not been met and there is no scope for improvement, or if the midwife refuses to undertake supervised practice the midwife should be suspended and referred to the NMC.

2.2.6 If suspension from practice is decided upon the LSA will:

- Confirm in writing to the midwife the decision and the reasons.
- Confirm the allegations and the midwives rules and standards, and NMC codes etc that have been breached
- Refer the matter to the NMC
- Inform the appropriate Strategic Health Authority
- Inform the contact supervisor of midwives
- Inform the Head of Midwifery if employed by a Trust

2.3 Following suspension;

2.3.1 When a midwife is suspended by the LSA and referred to Fitness to Practise Directorate at the NMC the case is referred to a panel of the Investigation Committee.

2.3.2 The registrant is sent a copy of the allegations and supporting information and is invited to submit a written response for the panel to consider.

2.3.3 The panel may ask for more information e.g. ask a solicitor to investigate, ask a registrant to undergo practice or medical assessments.



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- 2.3.4** The panel of the investigating committee has to decide whether there is 'a case to answer'. This means the panel must be reasonably satisfied both that the facts of an allegation are capable of being proved and that if proved those facts could lead to a finding that the registrant's fitness to practise is impaired.
- 2.3.5** If the panel finds there is no case to answer it will close the case. If it finds there is a case to answer, it will refer the case either to the Conduct and Competence Committee or to the Health Committee.
- 2.3.6** The Interim Suspension Panel of the Investigation Committee must consider whether or not to make an interim suspension order or interim conditions of practice order in respect of the midwife concerned.
- 2.3.7** Where the Interim Suspension Panel does not uphold the suspension order the Local Supervising Authority must revoke the suspension.
- 2.3.8** If the Interim Suspension Panel does make an interim suspension order but that order is subsequently revoked, the Local Supervising Authority must revoke their suspension.

3. LSA Appeals Process

- 3.1** The LSA shall notify the midwife in writing of the process for appeal against any decision. If a midwife is suspended from practice by a LSA, a hearing by the Interim Suspension Panel of the Investigating Committee or Health Committee is arranged by the NMC Fitness to Practise Department to review the complaint against the midwife. The midwife is entitled to attend this hearing with representation should he/she wish, to answer questions and to give their views of the allegations against them. The Interim Suspension Panel can decide to uphold the LSA suspension from practice by replacing it with an interim suspension order. If this is not the case the LSA must revoke the suspension.
- 3.2** Where the LSA Midwifery Officer has suspended a midwife registrant from practice following investigation the midwife has the right to appeal to the LSA against the process of the investigation. The midwife must lay out the concerns in writing within 21 days of receipt of the notification of the decision to suspend him/her. The LSA will use SHA (or equivalent) complaints procedures to manage and deal with the complaint.

References

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