

Standard operating procedure (SOP):
Managing third party investigations

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Team	Investigations	Trim ref	
Objective <ul style="list-style-type: none"> To assist investigators, managers and lawyers in deciding whether a case should be put on hold while a third party investigation takes place and when that hold should be removed. To guide how to manage cases that are on hold during a third party investigation. To help investigators progress an investigation in a way that doesn't adversely affect a third party investigation. To accurately record third party investigations in CMS, including updates and completion of the third party investigation. 			
Responsibility	Head of Investigations		
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Contents

Introduction	1
Process map	3
Section 1 - Should an investigation be put on hold?	4
Prejudice to a third party investigation.....	4
Impractical for us to proceed	5
Significant time or cost savings	5
It is likely to impact on our own decision on fitness to practise.....	6
Section 2 - Cases not put on hold and stopping points	7
Stopping points	7
Could the third party investigation outcome result in our case being reconsidered where we plan to recommend case closure?	7
Could the third party investigation outcome have an impact on our case?.....	8
Section 3 - Cases put on hold	8
Managing cases put on hold	8
Section 4 - Recording third party investigations in CMS	9
Adding third party investigations in CMS.....	9
Updating third party investigations in CMS.....	10
Concluding a third party investigation in CMS	10
Appendix 1 – Examples of the 'Source' categories	11

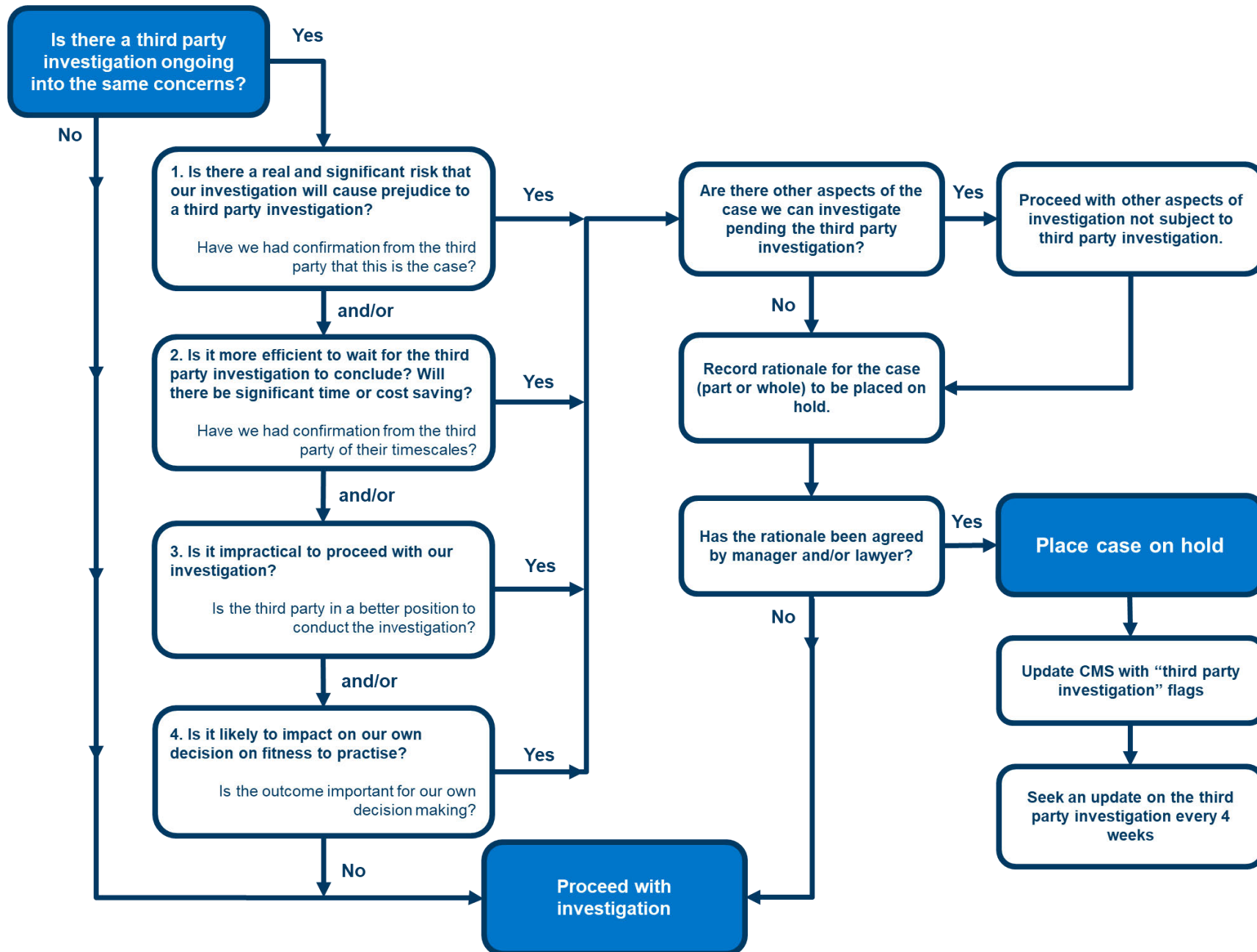
Introduction

1. Some cases being investigated by or for the NMC may need to be put on hold because of a third party external investigation which prevent the progression of our

case. Police investigations and coroner's inquests are common third party investigations where this may apply, but cases may also be subject to investigation by employers, NHS counter-fraud and other regulators.

2. In these cases our investigation needs to be carefully managed to ensure that the public is protected and the case is progressed as efficiently as possible.
3. This guidance only applies to third party investigations that are currently taking place. It is unlikely that a potential future investigation will necessitate a case being put on hold. However, investigators should liaise with the third party when in doubt and seek legal guidance if necessary.

Process map



Section 1 - Should an investigation be put on hold?

4. The starting position in all cases should be that our investigation should take place without delay. There must be clear and compelling reasons for an investigation to be put on hold and the case owner will need to record why doing so is in the public interest. All decisions and rationale need to be clearly recorded on the case record.
5. In some cases, the third party investigation may mean that it is not possible or practical for our investigation to proceed in the interim. In other cases, our investigation may be possible but it is preferable to await the outcome of the third party investigation.
6. Generally, our investigation can and should proceed unless one or more of the following conditions is met:
 - 6.1. There is a real and significant risk that our investigation will cause **prejudice to the third party investigation** and this has been confirmed by the third party.
 - 6.2. The existence of the third party investigation makes it **impractical for our investigation** to continue in the interim.
 - 6.3. Placing our investigation on hold until the third party investigation is complete is likely to result in **significant time or cost savings** because of reliance on the third party investigation and outcomes of that investigation. For example when a police investigation concludes with a criminal conviction.
 - 6.4. The outcome of the other investigation is likely to have an impact on our decision on the fitness to practise of the person we are investigating
7. Where **one** or more of these conditions is met, consideration should be given to whether it is possible for us to investigate other aspects of the case while the third party investigation continues.

Prejudice to a third party investigation

8. It's most likely that our investigation can risk prejudicing an investigation by another organisation when the other investigation has criminal prosecution functions, such as the police, Serious Fraud Office (SFO) or Health and Safety Executive (HSE). For example, there can be a risk that the evidence we've gathered could conflict with or taint the evidence being gathered by their investigation, or it could interfere with their ability to prosecute or start other proceedings.
9. This will not occur in all cases and investigators should liaise with the third party to understand their views on the matter. Where there is a genuine risk of the other

investigation being prejudiced, it may still be possible for us to investigate some areas because our investigations typically have a broader scope. For example, criminal proceedings might focus on an allegation of assault while our related proceedings might include other aspects such as the quality of the nursing care provided.

10. Where such an approach is being considered, the investigator will need to liaise with the third party to agree what areas can be investigated. It will sometimes be necessary to agree with the third party which witnesses can be contacted and what subjects can and cannot be covered with witnesses. Investigators should always discuss these cases with their team manager or lawyer. All decisions and rationale need to be clearly recorded on the case record.
11. We should seek advice on information contained within bundles of material to avoid inadvertently disclosing information that may risk jeopardising any ongoing third party investigation, particularly a police investigation. This will normally involve talking to the third party involved.
12. In cases where the registrant is not directly the subject of the third party investigation, for example where the employer organisation is being investigated, it is unlikely that our investigation will cause prejudice. The third party should still be contacted in these cases as a precaution and as part of good customer service, because disclosure of documents or information from that party may assist our investigation.

Impractical for us to proceed

13. In some cases, the nature and scope of a third party investigation will mean that it is not practical for our investigation to proceed. An example is where the police have seized all medical records as part of an ongoing investigation and there are no other lines of enquiry to pursue.
14. Cases where we would be unlikely to investigate in the absence of a criminal conviction or caution also fall into this category, for example allegations of serious sexual offences (e.g. rape or possessing indecent images of children) outside of the workplace.

Significant time or cost savings

15. It can sometimes be significantly quicker, or otherwise more efficient, if we put our investigation on hold to allow the other organisation's investigation to conclude. For example, if an employer is investigating a concern, they may already have interviewed many of the witnesses we'd need to contact. This would have an impact on our case in terms of how much of the evidence is likely to be available. Equally, it may be that the outcome of the third party investigation will materially affect our case in terms of the available evidence or the prospects of a finding of

impairment, for example where the nurse, midwife or nursing associate may have been able to address the problems in their practice under their employer's guidance. Depending on how significant that effect is likely to be, it may be more sensible to await the outcome of the third party investigation before proceeding.

16. Investigators should also consider how far the third party investigation needs to get before we can commence our investigation. It is seldom necessary to delay an investigation simply for a disciplinary hearing to take place where we already have the employer's investigation materials.
17. Cases may arise where the third party is better placed to carry out the investigation because of the nature or scale of the allegations. A good example of this might be a wide-ranging investigation into a serious public safety incident within a setting or healthcare organisation. Putting our case on hold would therefore be reasonable assuming all other lines of enquiry have been pursued.

It is likely to impact on our own decision on fitness to practise

18. There can be times when the outcome of an investigation by another organisation is important for our own decision making in respect of the fitness to practise of the professional.
19. For example, if the Police were investigating alleged criminal offending which was not connected to a professional context, the outcome of the criminal investigation is likely to impact on our own decision on whether we need to take regulatory action at all.
20. Another example of this could be where another investigation is being carried out into major systemic failings within the professional's place of employment, which is relevant to the issues in the professional's practice that we are investigating. The result of this could be that we better understand the "context" in which the issues occurred, and this in turn could impact on the view we take of the professional's fitness to practise. If this is the case, we will need to carefully consider the impact that has on our own investigations, as it may be fairer for us not to conclude our investigation until the third party investigation has finished.
21. We may need to proactively share information with other organisations if we identify that systems issues caused or contributed to a situation. When we do so we will also need to ask the other organisation whether they intend to conduct their own investigations into those systems issues and consider the impact that has on us progressing our own investigations. Investigators should always discuss these cases with their team manager or lawyer and all decisions and rationale need to be clearly recorded on the case record.

Section 2 - Cases not put on hold and stopping points

Stopping points

22. In cases where it is decided that our investigation should proceed, consideration should be given to whether a stopping point should be identified to allow the third party investigation to conclude before our case proceeds further (generally by being referred to case examiners).
23. Investigators should be aware of the effect that the passage of time can have on the quality of evidence. Some evidence, such as health reports, are only useful while it is relatively current and should normally be obtained when our investigation is about to conclude. On the other hand, evidence from a factual witness is usually more valuable the more contemporaneous it is to the relevant events and their willingness to cooperate may change over time. In cases where our investigation is likely to be put on hold at some point, the best approach will often be to take witness statements at the outset and then to contact witnesses to reconfirm them once the case is no longer on hold. Any decision about this should be made in consultation with a manager and, if necessary, the third party.
24. When deciding whether a stopping point should be put in place, the potential impact of the outcome of the third party investigations on our case will need to be considered. Key factors to consider are:
 - 24.1. whether a third party outcome might result in our case being reconsidered where we plan to recommend closure;
 - 24.2. whether a third party outcome could have an impact on our case.

Could the third party investigation outcome result in our case being reconsidered where we plan to recommend case closure?

25. The likely length of time until the conclusion of the third party investigation may be a determinative factor here. If there is any possibility that the third party investigation could cast doubt on the currency of the decision to close the case or to solicit a request for us to reopen the case, and that investigation is likely to conclude in the short term, it will normally be preferable to await the outcome of that investigation before our investigation report is submitted. Conversely, where the third party investigation has no end in sight or its conclusion is still a significant length of time away, it is likely to be appropriate to conclude our investigation in the interim.
26. Any time we recommend a case be closed where third party investigations are ongoing, care should be given to avoid giving any party the impression that the matter has been finally dealt with. In some cases we can reconsider allegations where new information has surfaced, including outcomes of third party

investigations. Investigators should consider making specific reference in closure letters and the investigation report to the possibility that the case could be reconsidered at the conclusion of the third party investigation if the outcome of that investigation justifies doing this.

Could the third party investigation outcome have an impact on our case?

27. An example of this could be where a third party investigation finds major systemic failings within the registrant's place of employment. The result of this could be that the prospect of a practice committee finding the registrant's practice is impaired is significantly reduced or that additional evidence is required to support our case.
28. In cases where this is a real possibility, it will seldom be appropriate to conclude our investigation until the third party investigation has finished.

Section 3 - Cases put on hold

29. Where our investigation is put on hold, it is vital to maintain regular contact with the third party. The third party investigation is likely to remain fluid and unexpected information could surface at any time that might affect the decision to put our investigation on hold or the length of time it should be on hold for. Equally, the third party investigation is likely to be the key source of new information and regular updates will be necessary to ensure we can conduct accurate risk assessments.

Managing cases put on hold

30. Updates on the progress of a third party investigation should be obtained every 4 weeks as a minimum, unless a specific update date has been given (e.g. a court date). If clear dates are set in relation to the third party investigation (e.g. court dates) then regular updates should still be sought at least every 3 months. Case parties should be updated as agreed and the agreed comms plan should be recorded on the case record.
31. When an update is obtained, investigators should consider whether the risk level has changed:
 - 31.1. It may be that the information we receive increases the risk and we need to take action to restrict the nurse or midwife's practice.
 - 31.2. A nurse or midwife may be already subject to restrictions on their practice, and if the risk decreases we may need to review the restrictions in place.
 - 31.3. A risk assessment should be completed and discussed with a manager or lawyer. The risk assessment should be recorded on CMS in line with *Local guidance on completing risk assessments within Investigations from May 2018 Trim Ref: 5801877*

32. Investigators should also consider whether a case should remain on hold (and discuss with a manager or a lawyer) when the circumstances change e.g. a coroner's inquest concludes; a criminal trial ends; the police take no further action.
33. Once the third party investigations have concluded, we should begin progressing our investigation as soon as possible.
34. When circumstances don't change for an extended period, investigators should obtain legal and/or managerial advice as to whether it's necessary for the case to remain on hold, e.g. where an inquest hasn't been listed after six months of waiting, or where a police investigation remains ongoing six months later.

Section 4 - Recording third party investigations in CMS

Adding third party investigations in CMS

35. Open the relevant case in CMS
 - Open '**Chase Information**' tab
 - Click '**New**'
36. In the Instructions field select '**Third Party Investigations**'
37. Enter a '**Source**' using one of the following:
 - Criminal
 - Regulatory
 - Employer
 - Coroner
 - Safeguarding

See Appendix 1 for more detail on the five source types. Investigators should speak to a manager if unsure.

38. Enter '**Details**'
 - The first entry must be the date the NMC became aware of the third party investigation or the date the NMC put the case on hold. This should be followed by details of the organisation(s) involved and a description of the event and, where possible, any other information relevant to the delay. The entry should be concise but clear on why the case is on hold. For example:

01/02/2021 – Surrey Police – Ongoing investigation into possession of class A drugs.

- Click '**Save**'

- The details field should be updated throughout the course of the third party investigation to provide the most recent information. Information entered into the details field should not be deleted, only added to (unless entered in error).
- Copy the case into the third party work stream.

Updating third party investigations in CMS

39. Ensure that regular updates are clearly recorded in the Chase Information tab on a regular basis (unless you have been provided with a specific update date this should be a minimum of every 4 weeks). For example:

05/05/2021 – update from Police – Registrant has been bailed and due to attend Guildford Police station on 29/05/2021

Concluding a third party investigation in CMS

40. To record the conclusion of a third party investigation and take the case off hold:

- Open relevant case
- Open **‘Chase Information’** link
- Highlight relevant **Third party Investigation** in list
- Click **‘Edit’**
- In the **‘Received Date’** field use the calendar to select the date when the case is taken off hold i.e., when we know we can proceed with the investigation
- Update **‘Details’** if required, for example:

30/05/2021 – update from Police – Registrant released without charge. Police to take no further action.

- Click **‘Save’**
- Remove from the third party work stream.

Appendix 1 – Examples of the ‘Source’ categories

1. Criminal – Case on hold due to a live investigation into potential criminal conduct.

- Police;
- Crown Prosecution Service;
- The Crown Office and Procurator Fiscal Service;
- Public Prosecution Service for Northern Ireland;
- Counter Fraud;
- Serious Fraud Office
- National Crime Agency;
- UK Border Agency;
- Department for Work and Pensions.

2. Regulatory – Case on hold due to a live investigation conducted by other regulators.

- Care Quality Commission;
- Parliamentary Health Service Ombudsman;
- Disclosure and Barring Service;
- Disclosure Scotland;
- Care Inspectorate;
- The Regulation and Quality Improvement Authority;
- General Medical Council;
- General Dental Council;
- Health and Care Professions Council;
- Solicitors Regulation Authority.

3. Employer – Case on hold due to a local investigation or disciplinary proceedings.

4. Coroner – Case on hold due to an ongoing Coroner’s inquest.

5. Safeguarding – Case on hold due to an ongoing safeguarding investigation:

Health – Case on hold or seriously delayed due to a registrant’s health, for example:

- The registrant is unable to respond or provide medical consent due to ill health.
- The registrant is unable to attend a substantive hearing due to their health.
- The NMC have been advised not to send correspondence to a registrant due to serious ill health.

Referrer – Case seriously delayed or put on hold due to actions by the referrer, for example:

- The referrer initiates or is on the process of taking civil action against the Employer and/or the registrant which impacts or hampers the NMC case.

Disclosure – Case seriously delayed due to difficulties obtaining information, for example:

- Severe difficulties obtaining essential disclosure where there is no live third party investigation and the allegation(s) raise serious public protection issues.

Linked – Case seriously delayed due to linked or new referrals, for example:

- A new linked referral is received which necessitates a current FtP case being delayed until the new case(s) is closed or catches up.