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## Managing concerns: a resource for employers (all guides)

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This resource has been designed to support all employers of nursing and midwifery professionals on our register, including agencies. We recognise the diversity of settings and range of sectors in which our professionals work across the UK and while this resource aims to capture best practice for all, the content should only be read as a guide where applicable, which does not replace existing guidance, policies or processes.

### Overview

Our vision is safe, effective and kind nursing and midwifery practice that improves everyone's health and wellbeing. As the professional regulator of nurses and midwives in the UK and nursing associates in England (hereafter referred to as 'professionals'), we have an important role to play in making this a reality.

We know that nursing and midwifery professionals work hard every day to provide safe care to people who use services. However, on rare occasions, there may be concerns about someone's professional practice and, as their employer, you will need to take steps to respond to those concerns.

We've produced this resource to support effective, fair and unbiased responses to concerns about a professional's practice, that demonstrate commitment to a just and learning culture.

### What's in the resource

- How to decide when to manage concerns at a local level
- When concerns need to be referred to us
- Guiding principles
- Questions for you to consider

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- Referral scenarios

### Concerns you should refer to us

Referring someone to their professional regulator is a significant step. You should read this resource to make sure you're clear on making a possible referral to us.

We know there will always be times when you want to talk things through. You might think a possible referral is 'borderline' and that a little more guidance would be helpful. Or you may just want us to confirm your own conclusions. Whatever the situation, we strongly encourage you to always speak with one of our experienced Regulation Advisers before making a referral to us.

Before you call us check if the professional works for you, for an agency or other provider. This will help inform our discussion and the decision-making process.

Please get in touch with us by either calling on 020 7462 8850 (phone line open between: 9:00 - 17:00) or by email: [employerlinkservice@nmc-uk.org](mailto:employerlinkservice@nmc-uk.org)

Somebody in our team will ask you for:

- your name, job title, place of work, phone number and email address
- details about the issue and your reasons for seeking advice from us
- the name and PIN of the professional.

Our Employer Link Service works with employers across health and social care in England, Scotland, Northern Ireland and Wales. You can find your local Regulation Adviser on the table below:

Northern Ireland	Pamela Craig	<a href="mailto:pamela.craig@nmc-uk.org">pamela.craig@nmc-uk.org</a>
Scotland	Linda Martin	<a href="mailto:linda.martin@nmc-uk.org">linda.martin@nmc-uk.org</a>
Wales	Sharon Clement-Thomas	<a href="mailto:sharon.clement-thomas@nmc-uk.org">sharon.clement-thomas@nmc-uk.org</a>
North West and Isle of Man	Paula Palmer-Charlery	<a href="mailto:paula.palmer-charlery@nmc-uk.org">paula.palmer-charlery@nmc-uk.org</a>
North East	Kristian Garsed	<a href="mailto:kristian.garsed@nmc-uk.org">kristian.garsed@nmc-uk.org</a>
East of England	Kate Lettin	<a href="mailto:kate.lettin@nmc-uk.org">kate.lettin@nmc-uk.org</a>
Midlands	Tony Newman	<a href="mailto:tony.newman@nmc-uk.org">tony.newman@nmc-uk.org</a>
London	David Taylor	<a href="mailto:david.taylor@nmc-uk.org">david.taylor@nmc-uk.org</a>
South East	Nicola Moreton David Porter	<a href="mailto:nicola.moreton@nmc-uk.org">nicola.moreton@nmc-uk.org</a> <a href="mailto:david.porter@nmc-uk.org">david.porter@nmc-uk.org</a>
South West, Jersey and Guernsey	Michele Harrison	<a href="mailto:michele.harrison@nmc-uk.org">michele.harrison@nmc-uk.org</a>
Independent Health and Care	Loucia Kyprianou	<a href="mailto:loucia.kyprianou@nmc-uk.org">loucia.kyprianou@nmc-uk.org</a>
Principal Regulation Adviser	Linda Kenward	<a href="mailto:linda.kenward@nmc-uk.org">linda.kenward@nmc-uk.org</a>
Principal Regulation Adviser	Mark Brooke	<a href="mailto:mark.brooke@nmc-uk.org">mark.brooke@nmc-uk.org</a>

### Key considerations before making a possible referral

When deciding whether to make a referral, you'll need to think about the types of allegations that we consider:

- allegations that a professional has fraudulently or incorrectly joined our register.
- Or allegations about fitness to practise based on:
  - misconduct
  - lack of competence
  - criminal convictions and cautions;

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- Physical or mental health that impairs the ability to practise safely
- not having the necessary knowledge of English
- determinations by other health or social care organisations.

You'll also need to consider the points below:

- The nature and seriousness of the concern
- Were there any **contextual factors** that contributed to the concerns?
- Were there any **health issues** that contributed to the concerns?
- Has the professional shown insight into the concerns?
- Have they been supported to try to **put things right**?
- Have you taken steps to ensure that your referral is **fair and unbiased**?
- Do you have the **right information** and evidence to support the referral?

## Ensuring your decisions to refer are fair and unbiased

We want to support you to only make appropriate referrals. Our data shows that professionals from ethnic minority groups and male professionals are disproportionately referred to fitness to practise processes.

Our study, [Ambitious for Change](#), published in October 2020, found that professionals from a Black and minority ethnic background are more likely to be referred to us by employers, while White professionals are more likely to be referred by the public and people who use services.

Most of the professionals who spoke to us as part of the [second phase of our research](#) felt one or more of their diversity characteristics, such as their ethnicity and/or gender, played a part in their referral from their employer and said an 'insider/outsider' culture left them feeling unsupported.

We also found that the setting where someone works, and the type of work someone does, can influence a person's experience of revalidation or fitness to practise. Those working in care homes, GP practices or for providers which employ a lot of bank and agency staff are particularly affected. We know that certain groups, such as Black and overseas-trained professionals, are over-represented in these settings.

We're committed to working with employers and our partners across health and social care to address the longstanding, systemic inequalities across health and social care that perpetuate the disparities we're seeing.

Your decision to refer needs to be free from bias and discrimination (as defined in the Equality Act 2010 and other relevant legislation). Should there be evidence of bias or discrimination within a referral, this may require further investigation by us, in compliance with the legislation mentioned above.

## Take equality, diversity and inclusion into account

We know that employers can respond to concerns about people in different ways. Professionals from a Black and minority ethnic background can experience discrimination, unfairness and disproportionate disciplinary action. Professionals may be treated differently as a result of any protected characteristic.

[See our University of Greenwich literature review.](#)

All nursing and midwifery professionals have the right to be treated fairly and proportionately, and not be treated less favourably because of a protected characteristic. Consider equalities and human rights law, including the public sector equality duty to eliminate discrimination (where it applies to your organisation), advance equality of opportunity and foster good relations between different groups.

When reviewing decisions and actions you should always look for areas where bias or discrimination may have been a factor in an incident, concern, investigation or disciplinary action and take steps to address this.

## Promote a culture of openness and learning

We believe that promoting a culture that balances fairness, learning and accountability is essential. There are different ways to embed principles that support a culture of fairness, openness and learning.

Where a concern about a professional's practise is linked to a \_\_\_\_\_, your organisation will have systems and processes for responding to those for the purpose of learning and improving

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patient safety.

For NHS commissioned services in England, there is an expectation that the NHSE [Patient Safety Incident Response Framework](#) (PSIRF) be used as the tool sets out the NHS's approach for responding to patient safety incidents.

If during those processes, concerns about a professional's fitness to practise are identified an additional response will be required and a separate investigation should be undertaken applying [being fair principles](#).

For example, the [Being Fair tool](#), or similar, can be used to support a conversation between managers about whether a professional involved in a patient safety incident requires specific professional support or intervention to work safely.

The 'Being Fair' tool, was developed in consultation with various partners and many employers in health and care outside the NHS who also use, or reference this tool as good practice, across the four countries of the UK.

It is considered best practice that being fair principles be applied before considering making a referral. These ensure that all concerns about a professional's fitness to practise are considered fairly.

Using tools and processes that are appropriate for your setting along with local policies that promote a culture of openness and learning will help you look at concerns in a way that avoids fear and blame. It will also help professionals and people who use services to feel confident about speaking up, knowing they'll be supported and treated fairly.

Any approach will need to take into account relevant contextual factors that may need to be addressed separately from concerns about a professional. For example, contextual factors may include:

- staffing levels, skill mix and workload at the time of the incident
- a constantly changing environment presenting new challenges
- unusual expectations for staffing levels and workload pressures
- distractions
- management pressure or poor management
- third party pressures for example from families or carers
- physical environment
- device, equipment or product design
- working practices, social norms or organisational/team culture
- history of bullying, harassment or discrimination in the team
- personal stress, health problems.

This approach can help you understand whether someone else with similar experience and qualifications would have acted in the same way or made the same decisions in the same circumstances. If they would, there are likely to be wider issues that need to be addressed.

If you do make a referral to us, we'll ask you for documentation showing any contextual factors that you found to be relevant to the concerns, such as those listed above.

## Considering evidence of insight and strengthening practice

We want to assure professionals that our role isn't to punish people for past mistakes.

This will support them to be open and honest when something goes wrong and help to promote a culture that supports openness and learning, not blame. This is more likely to lead to safe care.

As an employer, you should take into account any evidence of the professional's insight and steps taken to put things right when deciding whether to make a referral to us.

You may not need to refer a concern related to clinical errors or other mistakes made in someone's practice if the professional has demonstrated insight and is willing to take steps, or has taken steps, to fully address the concern. This will mean:

- there's no longer a risk to the public and people who use services (for example, where the professional has undertaken retraining and has demonstrated competence)

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- the professional has been open about what went wrong
- the professional can show what they've learned from it.

To learn more about how we consider insight and strengthened practice in fitness to practise cases, see our [guidance on insight and strengthened practice](#).

### The three types of concerns you should raise with us

#### 1. Concerns requiring us to take action to promote public confidence in the professions and uphold standards

In some cases, you may need to refer a professional to us if their actions undermine public confidence in the profession, or where their actions raise fundamental questions about their ability to uphold the standards and values set out in the Code, whether or not there is a risk to people who use services.

Concerns that someone has, for example, displayed discriminatory views and behaviours, engaged in sexual misconduct, behaved violently (including in a domestic setting), abused a child or vulnerable adult, or committed a serious crime either in practice or outside professional practice, could have a particularly [negative impact on public confidence](#).

Outside professional practice, criminal convictions that relate to specified offences or result in custodial sentences are also likely to undermine public confidence in the professions.

This would also apply where clinical failings are so serious that, even if put right, they could affect the public's trust in the professions if action isn't taken.

You should make a referral where the concerns could have a serious impact on public confidence in the professions we regulate.

#### When to refer these concerns to us

You should refer these cases at the point where you (or the police or other investigating body) have some evidence to indicate serious wrong doing. For example, this might include the police charging someone with a crime, written account(s) about concerns raised, video footage relevant to the alleged incident, or evidence of social media activity indicating bullying, harassment or discriminatory conduct. Without some evidence, it's unlikely that we would be able to take regulatory action.

#### 2. Concerns where local action can't effectively manage any ongoing risks to people who use services

Not all breaches of the Code or issues with practice will require regulatory action by us. Bear in mind that our fitness to practise process is about managing any risk that a professional poses to people receiving care or members of the public in the future. It isn't about punishing people for past events.

We may not need to take regulatory action for a clinical mistake if there's no longer a risk to members of the public and the person has been open about what went wrong and can demonstrate they've learned from it. These types of concerns might include clinical errors, communication problems, and concerns related to a professional's physical or mental health.

Normally, you should be able to manage these concerns locally without making a referral, for example through a probationary period, and/or through additional management support and training. But if you can't, you may need to refer the concern to us.

Below are some examples where you might not be able to effectively manage the concerns and may need to make a referral to us:

- The professional has resigned or otherwise disengaged as a direct response to questions about their practice or being informed of your investigation, without taking steps to fully address the concerns.
- You've dismissed the professional due to serious concerns about their ability to practise safely and effectively.
- You've suspended the professional pending an investigation but are aware that they're working elsewhere

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and this may put people who use services at risk.

- The professional has refused to engage with an action plan or has failed to pass or fully complete an action plan (for example, by resigning before completion).
- Previous support hasn't been effective in addressing the risk of the professional's practice. For example, there are continued errors in clinical practice after retraining, or a persistent significant lack of competence.
- Previous support hasn't been effective in addressing a risk associated with a professional's health condition. For instance, they have stopped managing the health condition or engaging with necessary adjustments and this puts either themselves, the public or colleagues at risk of harm.

[Read more about deciding whether to refer concerns about health.](#)

### When to refer these concerns to us

Usually, you should complete a local investigation before referring serious concerns that could be put right with reflection, insight and strengthened practice, proactive management and support.

If you feel that there are risks to people who use services that can't be effectively managed while you carry out a local investigation, we strongly encourage you to always speak with one of our experienced Regulation Advisers before making a referral to us.

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

A small number of concerns are so serious that it would be difficult for the professional to put right the problems in their practice, their behaviours, or the aspect of their attitude which led to the incidents happening. These concerns may include:

- deliberate harm or prolonged neglect of people who use services
- exploiting people who use services for financial or personal gain, or engaging in relationships with patients in breach of guidance on clear sexual boundaries
- serious dishonesty, such as covering up mistakes, deliberately falsifying records, deliberately obstructing investigations, bullying colleagues who want to raise a concern, or otherwise engaging in activity that is intended to suppress openness about the safety of care and is not in keeping with the Code.
- deliberately using false qualifications or a false picture of employment history which hides patient safety incidents or restrictions on practice
- serious criminal activity, even when not related to care, such as sexual assault, child abuse, or downloading/accessing child pornography
- being directly responsible (such as through managing a service or setting) for exposing patients or people who use services to harm or neglect – especially where the evidence shows the professional put their own priorities, or those of the organisation they work for, before the safety and dignity of people who use services.

### When to refer these concerns to us

This category of concerns should almost always be referred to us as soon as evidence emerges to support the concern, even if this is before your full investigation takes place.

An immediate referral allows us to consider whether an interim order is necessary. This would restrict or suspend the professional's practice while we carry out our investigation.

It's important to note that we can only seek an interim order if the person who makes the referral permits us to disclose the information we've received to the professional who has been referred.

If we do put an interim order in place, we'll still need you to complete your investigation and share your findings with us.

### Deciding whether to refer concerns related to health

You may have concerns that a professional's physical or mental health is impacting (or could impact) their ability to provide safe care.

Usually, these concerns can best be managed with your support, as an employer, to safely reduce any risk to

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people who use services.

You won't need to make a referral if:

- the professional has demonstrated good insight into the extent and effect of their condition
- the professional is taking appropriate steps to access treatment and is following any advice from their health professionals
- occupational health (where available) is providing support through the employer
- the professional is managing their practice appropriately, for example by taking sickness absence.

Referrals aren't necessary when a professional has a disability or long-term health condition but is able to practise with or without adjustments to support their practice. Equally, a professional may be signed off as 'unfit for work' due to ill health, but this does not necessarily mean their fitness to practise is impaired.

Generally, there needs to be a clear link between a health condition and a risk to people receiving care or a related risk to public confidence in the profession. You should only make a referral when there is clear evidence of this risk to people receiving care that you're unable to manage, or a risk to public confidence in the profession.

This may be, for example, where a professional has a long-term physical or mental health condition that is untreated (or unsuccessfully treated), or where they haven't acknowledged the health condition that's affecting their practice, or where a professional who suffers from a dependence on alcohol or medication attends work whilst under the influence. These situations are suggestive of a risk to people receiving care.

### Who should approve and make the referral

Through our work with employers we're aware that every employer aims to keep a central record of all referrals concerning their staff and/or professionals who were working in their organisation when concerns arose.

We've also found that we can more quickly and efficiently reach decisions about referrals when an employer follows their own processes they may have in place for escalating concerns internally and then completing and submitting referrals to us.

Depending on the size and type of organisation, some principles to consider are:

- Assign one senior person, such as the person responsible for nursing and midwifery staff, to have oversight and responsibility for signing off referrals.
- Provide us with the name of one person within your organisation who can respond to our requests for information about referrals. This could be the person (mentioned above) who has oversight and responsibility for referrals. Alternatively, it may be a senior person who is responsible for submitting referrals along with supporting documentation.
- Where possible, try to be sure that the person who makes or signs off referrals is not the same person who investigated the concerns. That way the person making the referral can review what has been done so far. They can decide whether to refer the case to us, taking account of their own processes and policies, this resource, and, when necessary, advice provided through our advice line.

### How to make a referral

If you decide that you need to make a referral (or have consulted our advice line and been advised to refer), [take a look at our guidance](#). This explains how to complete our online referral form.

We can only investigate and reach a decision in a case if we have sufficient evidence of the concerns. You'll need to submit all relevant information when you make the referral.

This may include unredacted care records, investigation reports complete with all appendices, decision letters and any action plans put in place for the professional. Providing as much information as possible from the outset will help avoid delays and will reduce the need for us to repeatedly seek further information from you.

When conducting a local investigation, you should make sure all evidence and decisions are well-documented. If a referral is made, this documentation will be important information for us to consider.

We have powers under [Article 25\(1\) of the Nursing and Midwifery Order 2001](#) to require employers to provide information and documents which appear relevant to our investigation.

If we do ask you for further information, we may ask you to provide this quickly, particularly if we need to seek an

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interim order to prevent any immediate risks to people who use services.

Your swift response will enable us to reach a decision as quickly as possible for the professional and all others involved in the fitness to practise process.

Our [Employer Link Service](#) is available to help you decide whether to make a referral and provide further guidance about what you need to submit.

When a concern is raised about a professional's practice, it's important for you to respond in a way that promotes learning and openness. We know that fear of being blamed or punished can stop people from speaking up and learning from mistakes.

Professionals will value being treated fairly and being supported to put things right. And people who use services will value being listened to and having open and honest communication.

We recognise that your approach to local investigations is an important part of establishing a just and learning culture in your organisation. We believe that being fair balances fairness, learning, and accountability. It also makes sure that all nursing and midwifery colleagues are treated equally.

Based on our collaboration with employers, professionals, our regulatory partners and representatives of people who use services across the UK, and drawing on our own experiences in fitness to practise cases, we've set out things we think are important for you to consider when conducting a local investigation into concerns about a professional's practice.

They're also based on our work with wider professionals, partners and representatives of people who use services to identify best practice. We thought you might find it helpful to have some principles to support you in managing concerns about agency and bank staff, so we've included some information on that.

This isn't a guide about how to do an investigation. Instead, it sets out high level principles that you might want to consider alongside your own local processes and policies, or national requirements (including any relevant requirements under employment or data protection laws).

Using this resource will help you give us relevant information if you need to make a referral. It will also help us to respond quickly and proportionately.

### Guiding principles of a good local investigation into concerns about a professional's practice

With the help of our professionals, regulatory partners and patient representatives, we've identified 10 guiding principles of a good investigation into concerns about a professional's practice. You might find these useful if you have determined that a formal investigation is necessary.

These principles aren't meant to tell you how to do an investigation. They're high-level principles for you to consider alongside your own local processes and policies (including any relevant requirements under employment or data protection laws).

Our guiding principles:

- Promote a culture of openness and learning
- Have clear policies and procedures and follow best practice guidance
- Have a clear plan and terms of reference
- Start as early as possible
- Be objective
- Listen to people who use services and families, keep them informed, and take their information and views into account
- Support staff and encourage openness without blame
- Take equality, diversity and inclusion into account
- Keep records of all evidence and decisions
- Avoid delays and stick to a reasonable timeframe

If you need to [refer a concern to us](#), following these principles will help to make sure that your investigation will

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give us the information we need to reach a decision more quickly.

It's important to note that not all concerns about someone's practice will need to be investigated formally. Your organisation's processes should determine when to start an investigation. Clear and transparent processes will help make sure that any decision to investigate is fair, proportionate and justified.

### Managing concerns involving agency staff

Some organisations use staff retained through agencies (or a third-party provider of bank staff).

If there's a concern about the practice of an agency professional, the organisation in which the incident occurred or where the concerns were identified should work closely with the agency to decide:

- how to investigate the concern (if necessary)
- how to minimise risks to people who use services
- whether the professional needs health and wellbeing support and whether it can be offered or signposted.

### Sharing information with the agency

Normally the organisation in which an incident happened, or where concerns were raised, will have relevant information about:

- what happened or what concerns were raised about the professional's behaviour
- any systems issues or workplace pressures at the time
- any witnesses to the incident or the concerns.

Sharing information (while complying with relevant data protection legislation) means you can work together to respond to the concerns effectively (see next section).

### Employers and agencies working together

When an organisation has concerns about an agency member of staff, they might be inclined not to offer them any more shifts. While this approach might address the immediate risks for the organisation, it doesn't help the agency understand these risks, nor does it give the professional the chance to address the concerns.

It's better to work together if there's a patient safety incident and/or concerns about the professional's practice. Working together can include:

- clearly identifying who'll lead an investigation into the concerns, and which process will apply
- identifying who'll be a point of contact and make sure that the member of the public and/or family is involved in any investigation where relevant
- keeping in close contact during an investigation, to share updates and information, and manage any risks related to someone's practice
- the agency checking records of any history of concerns, or information about other agencies or employers that the professional works for – this should inform any decision about how to respond
- agreeing next steps after an investigation ends, which might include supporting the professional to address any concerns, or the organisation or the agency making a regulatory referral.

There are other opportunities for organisations and agencies to work together. For example, an agency might decide to make a referral to us based on concerns across different organisations. They may need the organisations to collaborate on supporting information for the referral.

Sometimes we ask for information from both the organisation and agency involved when we respond to referrals from people using services or members of the public.

### Have clear policies and procedures and follow best practice guidance

Your organisation's own policies and procedures should outline how to carry out a good local investigation into concerns about a professional's fitness to practise. You may want to review them to make sure there's a consistent approach that applies to everyone, whenever concerns are raised.

Here's some best practice guidance that you might want to take into account:

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- [Acas guidance](#)
- [Being Fair tool](#)
- [NHS Resolution, Being Fair.](#)

We recognise that both trade unions and professional associations play a vital role in offering local support, representation and guidance to staff.

When concerns arise in relation to a professional, we would encourage you to work with any elected representatives to ensure that staff are fully supported.

### Have a clear plan and terms of reference

It's best practice to have a carefully considered plan for an investigation, with clear terms of reference.

A good plan would include all relevant information needed to ensure a fair and thorough investigation, including clearly defined and framed allegations or descriptions of the concerns.

The plan will help the investigator know what is expected of them. It will help to make sure steps are taken to communicate openly, sensitively, and compassionately with the person who is the subject of the investigation, people who use services and their family members, and any staff members involved.

A clear plan and terms of reference will also help to avoid delays.

### Start as early as possible

Starting your investigation as soon as possible will help prevent risks to people using services.

Starting early means you'll be able to gather detailed evidence while it's still available, and take statements from people while their recollections are still fresh.

You may need to take immediate steps to ensure safe care for people using services before or while you conduct the investigation.

Sometimes the start of your investigation may depend on the outcome of a third-party investigation, such as a police or safeguarding investigation. In these cases, it's important to manage any risks while you wait for an outcome. Also consider how you will keep the professional involved regularly informed about timescales and progress.

### Be objective

It's important that people who are investigating and making decisions about concerns have no biases or conflicts of interest. Wherever possible, they should have no involvement with the team, events or concerns under investigation.

For example, consider whether the lead person(s) investigating the concerns has previously worked with the professional, and the impact that might have on their objectivity, and on the staff member involved.

If prior involvement or possible conflicts can't be avoided, it's good practice to declare them in advance and make sure they're stated in the investigation report.

Investigators will need to be experienced and skilled in classifying, evaluating and weighing evidence objectively. They should be able to take a range of factors into account, including equality, diversity and inclusion. Training will help to ensure that an investigator is competent and confident in their fact finding and analysis.

Good investigators ask appropriate non-leading questions. They know how to handle sensitive issues and topics, treating people with dignity and respect at all times.

You may want to consider how to balance the protected time for investigations against demands on services and the impact on other colleagues.

### Listen to people who use services, keep them informed, and take their information and views into account

When investigating concerns about a professional's practice, think about the people receiving care, their relatives

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and carers who may have been affected, physically and/or emotionally. It will be important to listen to their concerns, communicate openly and honestly and keep them well informed about the progress of an investigation. How will they be involved in the investigation, and how can you support them?

Consider, for example:

- whether they'll be asked to contribute to the terms of reference or investigation plan
- how and when will you update them on your progress and actions? And does this meet their needs?
- how, when and where will they be able to contribute their views and experience in a way that's supportive and encourages openness?
- any complaint response already provided
- Services to which they can be signposted for support (local and national)

It's important to keep people who use services and families informed, and to be compassionate and honest. This includes managing people's expectations about how their input will be taken into account. Also think about how to balance transparency with confidentiality, considering relevant data protection legislation.

### Support staff and encourage openness without blame

The Code is clear that nursing and midwifery professionals must raise and, if necessary, escalate any concerns they may have about public safety, or the level of care people are receiving.

It's supportive to reassure anyone raising concerns that they'll be taken seriously and treated fairly, and that their concerns will be escalated appropriately. This includes keeping them up to date about how you're responding to their concerns.

If there are concerns about a professional's practice, let them know as soon as possible (unless this wouldn't be appropriate, for example if police advise against it).

The professional will need a clear explanation of the concerns and the next steps. They'll also need the chance to give an open and honest account of their actions. A person-centred approach will help make sure they're treated with respect and dignity throughout the process.

If you decide an investigation is needed, you might consider, if possible, giving the professional a single point of contact to liaise with the investigation.

Health issues can sometimes appear to have caused the concerns about a professional's practice. If so, it will be important to document when you became aware of the health issues, your understanding of the situation, what actions you took to support your employee and keep their practice safe, any safeguarding or wellbeing considerations and how they responded or engaged with that support.

When you're investigating concerns about professionals, they can feel vulnerable, stressed and in need of support and reassurance.

Discuss with the professional how you can support them throughout the process. This may include professional support, emotional support, or support for their physical health and wellbeing. It may be helpful to encourage staff to find support outside work, for example from friends or family.

We recognise that both trade unions and professional associations play a vital role in offering local support, representation and guidance to staff.

When concerns arise in relation to a professional's practice, we would encourage you to work with any elected representatives to ensure that staff are fully supported.

[Find out more about supporting your employee.](#)

Students who are studying on programmes that prepare them to enter our register are also expected to raise and, if necessary, escalate any concerns.

[Raising concerns as a student](#)

Keep records of all evidence and decisions

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A good investigation will document all evidence and a clear rationale for decisions. If a referral to us is needed at any stage, well-documented evidence and rationales will help us understand the concerns and any action you've taken. This can include:

- Factual statements from people who saw and/or heard the events taking place or can explain directly what happened (whether staff, people who use services, or relatives). Make sure they're typed, signed and dated. They should also include confirmation that the person making the statement believes the content is true to the best of their knowledge and recollection. We know that workforce changes can happen during the course of an investigation and would recommend that you take personal contact details for all witnesses. This means you can keep in touch with them and can pass their details on to us if a referral is needed later.
- Clear copies of relevant records. This could include unredacted patient notes, care plans, and medication administration records.
- Evidence of staffing levels and skill mix at the relevant time and what the expected staffing level was, including rotas and details of handovers.
- Evidence of how busy the setting was, whether this was normal, and whether there were any people using services with unusually complex needs at the time.
- Relevant policies or standards in place at the time.
- Any evidence from the nursing or midwifery professionals involved about their own health and wellbeing at the time, as well as any statements about how they've reflected on their practice and made improvements.
- Records of your attempts to work with the professional to address the concerns (see more on [managing concerns locally](#)).
- Documented evidence of any action plans put in place, such as supervision or guidance for the professional. Explain how this compared to supervision or guidance you'd normally expect to give those with similar experience and qualifications. Also give details of any further training they've done (referencing the course provider, for example online tuition, or class based/practical learning).
- Documented decisions, such as correspondence with the professional about the outcome of an investigation or disciplinary proceeding.

It would be helpful if from the outset, investigators are familiar with [the types of evidence and documentation we need for a fitness to practise referral](#).

## Avoid delays and stick to a reasonable timeframe

Delays in the process can increase stress, frustration and isolation for those involved. So it's helpful to give people involved a clear, reasonable and proportionate timeframe in advance.

If delays can't be avoided, it's important to communicate openly, honestly and often with the professional about the reasons why. Professionals may also welcome any ongoing emotional support.

## During your investigation

### Reviewing information throughout

New information may come to light while you're examining concerns about someone's practice. So we'd advise that managers regularly review the investigation's progress against local policies, relevant guidance, and the principles in this resource.

Serious concerns might emerge as your investigation progresses. These might need referring to an external organisation, even before your investigation is complete. This may include a referral to a local safeguarding team, the police or a systems or professional regulator.

Reviewing information throughout the process will help to make sure that nothing is missed and concerns are referred as soon as possible, if necessary.

### Managing risks

At the outset, you as the employer are best placed to assess any risks that a professional may present if they keep practising, without restriction or supervision, during your investigation.

It's your responsibility to take immediate steps that may be needed to address any risks to people who use

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services.

In many cases, you'll be able to manage these risks during the investigation, while supporting the professional and keeping them in work. Measures might include moving a professional out of a public-facing role, restricting some duties, or providing supervision.

### If your employee leaves or may be working elsewhere

If the professional leaves your employment before an investigation is complete, or you believe that they may be working elsewhere as a professional, for example for an agency, consider whether they might present a risk to people using services at a new organisation.

If you think they'll pose a risk, [consider making a referral to us](#) or [call our advice line](#).

Wherever possible, you should continue with and complete your investigation. That way it will be available to us in the event of a referral.

We encourage employers to work together to manage risks associated with someone's practice. For example, where it's consistent with their policies about references, former employers can work with prospective employers to share information about concerns, including how to address them. This approach can also help when employers are aware of concerns about someone's practice, and know the person works for an agency/bank or another employer as well.

Employers should seek their own HR and independent legal advice, to inform a decision about what information to share when asked to provide a reference, or a decision about what information to proactively share with other organisations when a person has left their employment.

### Concluding your investigation

A good investigation ends with a report giving clearly stated findings of fact.

As far as possible, the report should show that all relevant evidence has been considered thoroughly and fairly. The factual findings are the basis for an action plan.

### Making sure your response is fair and proportionate

In some cases, your investigation may lead to a disciplinary process, possibly with formal actions. We know that disciplinary actions can take a toll on a person's mental health, particularly if they're not fair and proportionate.

You'll want to reflect on whether the proposed disciplinary action is a proportionate and justifiable response. Sanctions shouldn't be decided by one person alone, or by anyone who may have an actual or perceived conflict of interest.

### Developing an action plan

The factual findings of your investigation are the basis for an action plan.

In developing an action plan, consider if:

- [you can manage any concerns locally](#)
- [you need to make a referral to us \(or other regulatory body\)](#)

### Managing concerns locally

#### Overview

If your [local investigation](#) finds that a professional's practice or behaviour are a risk to public safety, you'll usually be best placed to manage concerns and lessen that risk.

You can often address public safety risks by supporting the professional to make any necessary changes or improvements.

#### Deciding the best approach

There are many ways that concerns can be managed. Deciding on the best approach will depend on the nature of

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the concerns, the local context, and the available options for managing concerns.

As an employer, consider:

- What are the main concerns?
- Are they related to clinical competencies?
- Are they related to the professional's health or wellbeing?
- Are they related to professional behaviours?
- Is there a risk to people who use services if the person continues to practise as they are now?
- What actions can eliminate the risk to people who use services, while giving the professional the chance to reflect on the issues, and show that they understand the concerns and are both willing and able to improve?

The answers should lead you to a plan for managing any concerns.

In some cases, your investigation into concerns about a person may also reveal wider cultural or behavioural issues in a team. You might need to consider how to address these issues, using an approach that encourages change through openness and learning.

Some of the steps you might consider include:

- coaching, mentoring, or regular supportive conversations
- reflective practice, such as journalling and/or review of relevant local policies and procedures
- performance management and objectives
- revisiting The Code and relevant Acts and Regulations
- competence assessments
- referral to occupational health or another healthcare professional
- formal training or retraining
- role changes
- supervision of practice or elements of clinical practice
- supernumerary practice
- in rare cases, where people who use services can't be kept safe using other steps, suspension.

Some options may be challenging to put in place depending on the resources available. That's why it helps to develop a well-documented plan to address the risks that's realistic and achievable, both for the professional and for your service. You'll also want to clearly document all of the steps a person has taken to address the concerns about their practice.

Ultimately, if we do become involved, we'll want to see all of this detailed information so that we're clear about the steps that have been taken to address any concerns before any referral to us.

## Considering insight

It will also be important for you to encourage reflection and document any insight the professional gives about the concerns, or any other responses they give during this process. You might need to give someone time and space to think things through.

When you evaluate the strength of their insight, you'll want to consider:

- Does the professional recognise what went wrong or why their actions, behaviour, or decisions are concerning?
- Do they recognise potential public safety risks?
- Have they fully engaged with the investigation process, and the action plan, including completing a reflective statement?

If you subsequently refer a professional to us, information about their level of insight and engagement will help us decide on the right course of action.

## Making a referral to us

You may need to make a referral to us if your local action can't effectively manage any ongoing risks to people who use services.

[Find out more about when to make a referral to us](#)

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### Working with us when managing concerns

We want to work more closely with you to help resolve as many issues as possible locally, quickly and effectively.

### Get advice

Please get in touch with us by either calling on [01202 616161](#) or by [email](#).

or by

Our Employer Link Service also offer inductions about fitness to practise, these are for senior members of your nursing and midwifery teams, such as Chief Nurses, or Directors or Heads of nursing and midwifery.

We can provide group learning sessions about fitness to practise and our other core regulatory functions, including the Code and our education standards.

To find out more, please get in touch by emailing us.

### Engaging with us

As the professional regulator for nurses and midwives and nursing associates we must respond to concerns brought to our attention which fall within our remit regarding:

- the practice or conduct of any of the professionals on our register
- any concerns about the safety, quality or suitability of practice learning environments for students
- issues relating to registration, such as people practising while not on the register, without indemnity or having joined the register without meeting our registration requirements.

If you have any concerns or any concerns are raised with you about any of the above, it's your responsibility as an employer to be open and proactive in your response to concerns and to decide whether to refer professionals on our register to us.

Our employer resource has been developed to support you to effectively respond to concerns about a professional's conduct or practice. We would also encourage you to speak with our Employer Link Service for advice on making a referral, if necessary.

Where we become aware of the types of concerns raised above, we may contact you to request information. In that event, we ask you to respond to our enquiries as quickly as possible so that we can make decisions without delay.

We always welcome proactive communication from employers at the earliest stage that concerns arise so that we can decide the most appropriate steps to address any concerns.

### Support on offer for employees

#### Overview

We know being referred to our fitness to practise process can have a significant impact on people's health and wellbeing.

We encourage you always to support professionals who are going through the process, including those who are asked to give information or act as a witness.

The support will depend on the people involved and the concerns raised, but may be as simple as regular check-ins on the person's wellbeing. There are also practical things that you can do to help professionals [reflect on their practice and address concerns](#).

It's helpful if you encourage your employee (or former employee) to engage with our fitness to practise process. This will help us to better understand the issues involved and more quickly resolve the case.

We recognise that both trade unions and professional associations play a vital role in offering local support, representation and guidance to staff.

When concerns arise in relation to a professional's practice, we would encourage you to work with any elected representatives to ensure that staff are fully supported.

### Careline

A Careline was established in October 2019 to provide emotional and practical support for nursing and midwifery professionals going through fitness to practise proceedings.

It's delivered in partnership with CiC, a leading employee assistance provider. It gives emotional support and practical help and advice to all professionals during the process, available 365 days of the year, 24 hours a day.

[Find out more about the fitness to practise Careline](#)

[Find out more about support with the fitness to practise process](#)

### Support line for witnesses or who people who have made a referral

Information about support for witnesses in our fitness to practise process is available on our website. There's also an independent support line for people who've made a referral to us or the General Medical Council, or people who are a witness in a fitness to practise case. This offers confidential emotional support or practical help from a specially trained team.

[Find out more about support for witnesses](#)

[Find out more about the independent support line](#)

Our section on the guiding principles for a good investigation also support employers to make sure their processes are fair and open.

### Additional support

- [Referral scenarios](#)
- [A positive culture toolkit for adult social care \(skillsforcare.org.uk\)](#)
- [Case studies to help you decide if you need to make a self referral](#)

### Appendix

#### How we developed this resource

We've collaborated with employers, professionals, our regulatory partners and representatives of people who use services across the UK to identify good practice that will help you promote a just and learning culture.

We also drew on our own experiences in fitness to practise cases to support you to decide when you should manage concerns and when we need to be involved. We believe in giving professionals the chance to address concerns, but we'll always take action when needed.

It's important to note that this resource is intended to be used alongside, and not to replace, existing national and local guidance and policies that you may need to follow when there are concerns about a professional's practice. For example, this would include requirements under local polices and employment or data protection laws.