

# The three types of concerns you should raise with us

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## 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 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 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.