4. Alleged unprofessional behaviour: concerns being suitably managed locally

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Background

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Nurse A has been employed by their current employer for the past 24 months with no concerns about their clinical practice.

About eight months ago, the employer gave Nurse A an informal warning due to a combination of concerns, including frequent lateness when coming onto shifts, leaving shifts a few minutes early on several occasions and using a work computer for personal administration during work time.

Six months ago, a colleague raised a further concern that Nurse A had made a discriminatory comment towards another colleague. The colleague reported that a nurse who joined the register from overseas was completing a shift handover, during which they apologised for the poor quality of the handover note, due to the shift having been hectic and short staffed.

It was alleged that Nurse A responded in an unpleasant tone by saying, “don’t worry, we know you struggle to write English so we forgive you”.

What the employer did

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In response to the concerns, Nurse A’s employer took the following steps.

- They met with the colleague who reported the concern and reassured them that it would be taken seriously.
- In accordance with their local procedures, they decided they should formally investigate the concerns. They spoke with Nurse A to explain the investigation process and what this entailed. The employer explained that although Nurse A had received an informal warning previously for unrelated behaviour, they would be looking at this new allegation without bias and would make sure that Nurse A was kept up to date with the progress of the investigation and next steps.
- They carried out a detailed and thorough investigation to ensure that: there weren’t any further incidents that hadn’t been reported; this behaviour wasn’t indicative of a pattern of bullying or harassment; Nurse A hadn’t behaved inappropriately towards patients at any time. The concerns about Nurse A’s behaviour towards her colleague were substantiated with no wider issues identified.
- They held a disciplinary hearing which found Nurse A’s behaviour fell seriously below the conduct that they would expect of their employees, and had acted in breach of the organisation’s policies. Nurse A maintained there was no mal-intent in what had been said, it was a joke that had been misconstrued.
- They gave a final written warning and put in place a detailed action plan, including equality and diversity training.

What happened next

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The employer in this case made a referral to us following the disciplinary hearing.

We closed the case at the screening stage. The concerns weren’t serious enough to raise fundamental concerns about Nurse A’s trustworthiness as a registered professional, so we didn’t need to take restrictive regulatory action.

The employer had suitably and proportionately addressed the concern at a local level, so there was no role for us.

If the employer had contacted our Employer Link Service, we would have been able to provide advice so Nurse A

vouldn't have been unnecessarily referred.

What should the employer have considered?

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1. What's the risk?

Nurse A's behaviours, which previously amounted to an informal warning, aren't matters which would involve us as they don't put patients at risk of harm and don't raise fundamental concerns regarding Nurse A's trustworthiness as a registered professional.

Nurse A's most recent conduct towards their colleague amounts to a breach of the Code and standards. We don't condone behaviour which is derogatory or unprofessional and may seek to take action if there was a concern that Nurse A's actions amounted to bullying or harassment. However, following the employer's full investigation, there's no suggestion that this is the case here.

The facts of this case don't suggest any risk to patient safety. The risk here relates to Nurse A's behaviour and whether it's serious enough to put the reputation of the profession at risk (see further below).

2. Can you effectively manage the risk to ensure patient safety?

There is no risk to patient safety in this case. Through the local investigation, the employer is satisfied that there are no wider concerns regarding Nurse A's behaviour towards colleagues or patients. On the facts of this case, this isolated incident would not amount to serious professional misconduct from a regulatory point of view.

Our approach to fitness to practise says:

> "In cases that aren't about clinical practice, taking action to maintain public confidence and uphold standards is only likely to be needed if the concerns raise fundamental questions about the trustworthiness of a registrant as a professional."

This is a high threshold which suggests that members of the public might take risks with their own health and wellbeing by avoiding treatment by nurses, midwives and nursing associates.
Nurse A's conduct in this case is not sufficiently serious to call into question their fundamental trustworthiness as a professional.

The employer has taken suitable steps to manage the concerns in relation to Nurse A's behaviour. They did this by fully investigating the matter to make sure this isn't a pattern of behaviour, giving a formal warning and giving Nurse A the chance to engage in a detailed action plan to avoid repeating this behaviour in future.

The information suggests that Nurse A has fully engaged with the employer to date and therefore the employer's action is suitable to effectively manage the concerns at a local level.

3. Has the nurse/midwife/nursing associate shown insight and willingness to put the concerns right?

Nurse A engaged with the employer's investigation and disciplinary action throughout which suggests they have insight into the concerns and are willing to work with the employer's action plan to show that they will put things right.

Nurse A may not have fully admitted that they were wrong, and they may be appearing to 'excuse' their behaviour by saying it was a joke.

However, the final written warning, together with the action plan will be an opportunity for Nurse A to demonstrate that they have reflected and understood their actions were inappropriate. This is also an opportunity for Nurse A to show they will not repeat this behaviour and will behave both professionally and appropriately towards colleagues in future.