

## 6. Concerns about clinical competence – referral should be made before conclusion of local investigation.

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In this guide

[Background](#)

[What the employer did](#)

[What happened next](#)

[What should the employer have considered?](#)

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### Background

[Back to top](#)

Midwife A joined the community midwifery team two years ago. The employer gave a lot of support from the start as part of the usual induction process. This included regular supervision, peer support and a number of training courses.

Despite this, Midwife A has struggled to reach a point where they can practise safely and effectively.

The employer recently carried out a review of Midwife A's progress and discovered the following concerns:

- People who used services had been put at risk of harm on a number of occasions as Midwife A failed to consider their records when providing care and treatment.
- In the case of 15 people who used services, bloods hadn't been taken when necessary.
- 35 records of people who used services were found to either be incomplete or inaccurate, with a failure to recognise 3 'high risk' cases.

### What the employer did

[Back to top](#)

In response to the concerns, Midwife A's employer:

- held a meeting at which Midwife A was encouraged to speak openly and honestly about their progress and any challenges
- explained they had decided to carry out a local investigation to look into if (a) Midwife A has the necessary competence to fulfil the role, (b) if there are any factors affecting Midwife A's ability to practise effectively, for example, systems or personal difficulties, (c) what, if any more support can be provided
- removed Midwife A from clinical duties pending the outcome of the investigation to ensure the safety of people who use services.

Three weeks later and before the employer could conclude the local investigation, Midwife A resigned with immediate effect saying they weren't intending to continue to practise and were going to consider alternative career options.

### What happened next

[Back to top](#)

The employer made an immediate referral to us as soon as Midwife A resigned, and before they finished their internal investigation.

The employer's referral was supported with detailed information from their investigation. This gave us a full picture of the situation, the employer's efforts to manage the concerns up to the point of Midwife A's resignation and details of Midwife A's insight and engagement throughout.

With that information, we were quickly able to understand the concerns and to assess the risk that Midwife A might pose to people who use services if allowed to practice without any restrictions.

Due to the seriousness of the concerns in this case, and the risk to public safety, we imposed an interim conditions of practice order within 28 days of the referral being received. This ensured patient safety by allowing Midwife A to continue to practise, with supervision, while our investigation was carried out.

## What should the employer have considered?

[Back to top](#)

### 1. What's the risk?

We recognise that nurses, midwives and nursing associates can sometimes make mistakes or errors of judgement. Unless it was serious, a single isolated error wouldn't usually indicate a general lack of competence.

But, in this case, there are a series of concerns about Midwife A's clinical practice and judgement:

- Despite being given support over a lengthy period of time, Midwife A hasn't made the necessary improvements to demonstrate they are capable of safe and effective practice.
- Although there's been no actual patient harm, the errors and omissions were serious enough to put people at risk of harm.
- Midwife A hasn't fully engaged with the employer's support and hasn't successfully demonstrated they can make the necessary improvements to their practice to ensure patient safety.
- Although Midwife A says they are going to consider alternative career options, if they change their mind and choose to practise elsewhere, it's likely the errors will be repeated so the possibility of causing harm to people who use services is high.

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

Our [approach to fitness to practise](#) says:

“Employers should act first to deal with concerns about a registrant's fitness to practice, unless the risk to patients or the public is so serious that we need to take immediate action”.

In this case, the concerns about Midwife A's competence didn't need to be referred to us as they were being effectively managed by the employer.

The employer removed Midwife A from clinical duties pending the outcome of the local investigation. As Midwife A didn't work for any other employer, this meant any safety risks to people were being effectively managed while an investigation was done and consideration could be given to what further support Midwife A might need to improve their practice.

We say that except in the most serious cases, your investigation should be completed before you make a referral to us.

But our approach to fitness to practise also says:

“We always take regulatory action when there is a risk to patient safety that is not being effectively managed by an employer.”

If Midwife A hadn't resigned, the employer should have continued to manage the concerns while investigating. But, Midwife A's resignation meant they might choose to work elsewhere.

The risk can't now be managed by the employer, so a referral is necessary at the point Midwife A resigned. However, the employer should complete its investigation as much as possible.

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

By resigning before the investigation was completed, we don't know whether Midwife A had sufficient insight into the concerns and/or if there was a problem they hadn't shared.

The employer's investigation should consider what, if any, steps Midwife A might need to take to put things right – and we'll need to assess the extent to which Midwife A may be willing to take those steps.