Warnings

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What are warnings?

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A warning is issued to a professional to publicly mark that their conduct fell significantly below the standards and behaviours set out in The Code.

Warnings are appropriate for cases where the conduct is sufficiently serious to undermine public safety, public confidence and/or professional standards and so potentially impair current fitness to practise. However, because of the particular circumstances of the case, for example an insightful reflection from the professional involved, or a lengthy period of continued practice without any further concerns being raised, the case examiners consider that there is no realistic possibility of the professional's fitness to practise being found to be impaired, and that a warning would be sufficient to protect the public.

This is because the warning addresses any public confidence and/or professional standards concerns raised by the professional's conduct, without the need for further regulatory action.

A warning is a public record on a nurse, midwife or nursing associate's registration, noting that some aspect of their past practice or conduct was unacceptable and that they should not repeat it.

Their purpose is to maintain and declare professional standards by making it clear what standards of conduct and behaviour are expected of professionals on our register and to help prevent future breaches of the trust the public places in all the professionals on our register.

When warnings may be suitable

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Before our case examiners will issue a warning, they must be satisfied that:

- in principle, the concerns pose a risk either to public safety, the public's confidence in the professions generally or to professional standards that could be capable of impairing the nurse, midwife or nursing associate's fitness to practise, but,
- on the evidence available, including information provided by the professional, there is no realistic possibility of the Fitness to Practise Committee deciding that the nurse, midwife or nursing associate's fitness to practise is currently impaired.

This is more likely to occur in cases where the concerns raise issues about the nurse, midwife or nursing associate's attitudes, values or behaviours, but where factors which reduce the risks the professional poses, such as:

- the quality of their reflection and insight, or
- their conduct since the incident occurred and current practice

mean that despite the seriousness of the conduct there is no realistic possibility of a finding that the professional's fitness to practise is impaired.

As set out in our policy principles, fitness to practise is about managing the risk that a professional on our register poses to people receiving care or to members of the public in the future, or to the public's confidence and trust in the professions generally. It's not about punishing people for past events.

Where we're satisfied that there is no continuing risk to the safety of people receiving care and no requirement to

mpose restrictions on practice to maintain public confidence or professional standards, a warning can be imposed. It ndicates that, while there is no requirement to restrict the professional's practice, the conduct we're looking at is a erious departure from expected standards and should not be repeated. A warning will signal to the professional that if hey repeat the conduct that was the basis of the concern, this could raise more fundamental questions about their bility to uphold and maintain the standards expected from them as set out in the Code.

Warnings are unlikely to be suitable for cases where the concerns are about a lack of clinical skill or judgement.

However, warnings can be suitable for concerns about incidents that happened when the nurse, midwife or nursing associate was providing care to people, if our underlying concerns about those incidents are based on issues about their professionalism, attitudes, values or behaviours.

Warnings may also be suitable for some criminal convictions or cautions, where we're satisfied that the professional doesn't pose a risk to public safety or to the public's confidence in the professions generally but where the professional's conduct represents a serious departure from professional standards.

We do not issue warnings in relation to cases where the concern arose because of the professional's health.

Not currently impaired but some action still needed

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The kinds of concerns that could be capable of impairing someone's fitness to practise are set out in our screening guidance and impairment guidance.

As previously explained, warnings are generally more suitable for concerns about attitudes, values or behaviours.

Some examples of the kind of case where it's the nurse, midwife or nursing associate's attitude, values or behaviours that led to failures to provide safe and effective care might include:

- not following agreed clinical procedures, and adopting possibly unsafe 'workarounds' for tasks like drug administration such as pre-potting medications, because of a choice to put their own interests, or those of their team or unit, ahead of those of people in their care
- Some record-keeping failings, like a practice of only recording abnormal observations to save time
- not challenging practices or processes that could put people at risk of harm

Examples of concerns about attitudes, values and behaviours relating less directly to providing care might include:

- isolated, low-level, spontaneous or short-lived dishonesty
- failures to respect privacy or confidentiality
- poor communication, including not following our guidance on using social media responsibly

Warnings are appropriate where the concerns are serious enough to potentially impair fitness to practise but where factors which reduce the risk a professional poses to public safety or to the public's confidence in the professions or to professional standards, mean there's now no realistic possibility of the Fitness to Practise Committee finding current impairment.

These factors include things such as:

- the quality of the evidence the professional provides about their reflection and insight
- the professional's responses to the local investigation
- the length of time and the professional's conduct since the incident occurred and current practice
- any relevant contextual factors

As we explain in the guidance on how case examiners decide there is a case to answer, our case examiners will look carefully at the guidance on insight and strengthened practice when making decisions about these issues.

Example

> A referral is made by a care home that a nurse has been involved in medication administration concerns on three nightshifts. She signed the controlled drug book to indicate that she had administered medication to three residents when in fact a second checker had been required.
>
> The nurse was dismissed.

The nurse provided a reflective piece to the case examiners. She described relevant context that those shifts had been particularly stressful due to staff shortages. As a result she'd been unable to find a qualified nurse to act as a second checker. She recognised the gravity of what she had done and acknowledged the risk of harm posed to the residents. The nurse set out what she would do if she were in the same situation again.

Since the incident occurred, she also carried out medication training which addressed the concern referred to us about her practice. She has also been working with a new employer who has provided a positive reference, evidencing the nurse's safe clinical practice and the fact that she had been honest with them about the referral to the NMC.

This case is not about dishonesty but a failure to follow appropriate medication processes. The motive for the nurse's action was not because of a deliberate intent to harm, but appears to have arisen due to the context she had found herself in.

The quality of the insight and strengthened practice demonstrated by the professional means that the case examiners can be satisfied that the professional no longer poses a risk to patient safety or to the public's confidence in the professions. However, the conduct itself is a clear departure from professional standards and it would be appropriate for the case examiners to issue a warning in these circumstances.

Example

A referral is made by a Trust about a health visitor who had contacted a patient by telephone. The health visitor thought she'd ended the call and went on to make offensive and disparaging remarks about the individual. The call hadn't in fact ended and the individual heard the remarks and complained to the Trust.

At the local investigation, it was noted that the health visitor had been spoken to about her communication with colleagues and patients on two previous occasions. The health visitor apologised in course of the local investigation and explained that since the incident she'd been reflecting on how she communicated. She was dismissed from the Trust and began working elsewhere.

When the matter reaches the case examiners the health visitor's new employer confirms she has been working with them in a patient facing role for over a year. They confirm that she had reflected with her manager about the incidents and they had no concerns with her attitude or communication with patients and colleagues. She was considered a highly valued colleague.

In this case, looking holistically at the evidence before the case examiners, it doesn't indicate that the health visitor poses a risk to patient safety or to the public's confidence in the professions and a warning may be appropriate. However, the behaviour is a breach of professional standards and if repeated, would be likely to lead to the case examiners finding a case to answer on both facts and impairment.

Warnings may also be given where concerns about attitudes values and behaviours are not directly related to a professional's professional practice. These might include some criminal convictions or cautions.
Where we've investigated a concern and consider that it may be appropriate to issue a warning, we'll let the professional know that this may be a potential outcome.

Before issuing a warning case examiners must take into account any representations made by the professional and in some circumstances may issue a warning even where the professional has not responded to any notification that a warning may be a potential outcome and told us that they agree the factual basis of the allegations.[1]

However, case examiners will only issue warnings where the strength of the written evidence they are considering (which includes representations from the professional, if these have been received) means that they are confident that the facts underlying the concern occurred. If the case examiners are uncertain whether the facts underlying the alleged concern took place, they should not issue a warning.

Where there is a conflict in the evidence and the professional is denying the events occurred as alleged, it is unlikely that the case would be suitable for a warning.

Example

A referral is made about a midwife's behaviour. It is alleged by colleagues that the professional deliberately withheld

nformation on handovers and was rude and aggressive. Colleagues reported that this left people in her care at risk and nade working with the midwife impossible. The midwife denied the allegations and made representations to the case examiners that they were the subject of a malicious referral. The midwife went on to say that colleagues had taken a dislike to her and were the ones refusing to share patient information.

The case examiners note there is a disagreement between the midwife's account and the witness statements obtained as to what occurred. The case examiners are not able to resolve these kinds of factual disputes. This can only be done by the Fitness to Practise Committee and so the case examiners would not be able to issue a warning in this case.

When considering whether to issue a warning, case examiners must ensure they've fairly assessed the concerns raised n line with our culture of curiosity. This also means ensuring that they avoid making assumptions and take steps to ensure that bias (whether conscious or unconscious) doesn't impact their decision making. They will consider all the evidence without preconceived ideas of whose account is most likely to be accurate. They may need to scrutinise the conclusions others have reached. They will consider whether the context in which the referral was raised and what the mpact is of any linked cases on our decision making.

When warnings are less likely to be suitable

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t won't be appropriate to issue a warning if the concerns indicate an ongoing risk to the safety of those receiving care. f there are fundamental concerns about the professional's ability to uphold the standards and values set out in the Code, restrictive regulatory action may be needed to promote and maintain public confidence or professional standards and it would not be appropriate to issue a warning.

Case examiners generally won't issue warnings where the concerns are about a lack of clinical skill or judgement;

We won't issue warnings in cases where the concern arose because of the professional's ill health.

What we publish

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We'll publish the decision to issue a warning on our website seven days after notification of the decision has been sent to the professional and in line with our Fitness to Practise information handling guidance.

The record of the warning sets out the:

- statement of regulatory concern,
- relevant standards of practice and behaviour under the Code, and
- the reason for issuing the warning, including whether or not the professional accepted the facts of the case

The fact that warnings are only issued in cases where the nurse, midwife and nursing associate's practice does not present an ongoing risk to patients is clearly explained as part of the definition of a warning. This is accessible from the online record of the warning itself.

Warnings stay on the nurse, midwife or nursing associate's register entry for 12 months and may be taken into account by the case examiners if further concerns are received about a professional's conduct within three years of the decision to warn.

Reviewing warnings

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We can review decisions to issue warnings on the grounds that the decision may be materially flawed, or where there is new information which may have led to a different decision.

However, the Registrar (or one of our Assistant Registrars who also make decisions on behalf of the Registrar) must also decide that a review is in the public interest, or is necessary to prevent injustice to the nurse, midwife or nursing associate. Where these criteria are met, the public record of the warning will be amended to show that we're reviewing the decision.

Our guidance on reviewing case examiner decisions provides more information on this process.

Reconsideration of a warning by the case examiners in light of new fitness to practise allegations

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If we receive new concerns about a professional within three years of a previous decision to issue a warning, the case examiners can take the original concerns (which led to the warning being issued) into account when they consider the new case. The case examiners can also refer both the original concerns, and the new case, to the Fitness to Practise Committee.

The reconsideration of a previous no case to answer decision is explained in more detail in our guidance on reconsidering closed cases.

Lutton v GDC [2011] CSIH 62