

# Impairment

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## What do we mean by 'impaired' fitness to practise?

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A key focus of our fitness to practise process is deciding whether or not a professional's fitness to practise is currently impaired. We do this by assessing whether the professional would pose a risk to public safety, the public's confidence in their profession or professional standards if they were permitted to practise without restrictions. Being fit to practise is not defined in our legislation but for us it means that a professional on our register can practise as a nurse midwife or nursing associate safely and effectively without restriction.

Our legislation sets out the six types of concerns that can impair the fitness to practise of professionals on our register. These are set out in our guidance '[allegations we consider](#)'.

Determining whether someone is fit to practise means that we have to consider whether the charges about the professional's practice which have been found proved:

- engage one of these types of concerns and
- indicate a continuing risk to:
  - public safety,
  - public confidence in their profession
  - professional standards

## How do we decide if the charges found proved indicate a risk to public safety, public confidence or professional standards?

Our Fitness to Practise Committees take a staged approach to considering impairment.

Once panels have found the facts of a charge against the professional proved, they will go on to determine whether the facts found proved amount to conduct that falls within one of the allegations we consider. In lack of competence cases for example, this means determining whether the facts found proved amount to a [lack of competence](#). Similarly in misconduct cases this means considering whether the facts found proved amount to serious professional [misconduct](#).

If the facts proved amount to conduct that falls within one of the six types of concern that could impair a professional's fitness to practise, they will go on to consider whether those facts mean that there would be a current or ongoing risk of harm to:

- people in their care or the public
- to the public's confidence in the professions and/or
- professional standards

if they were permitted to practise without restrictions.

If there is no risk to public safety, public confidence or professional standards, there will be no impairment.

It is a matter for the panel to decide whether a professional is currently impaired i.e. whether they are capable of practising safely and effectively and without restriction. If the charges found proved indicate a continuing risk to public safety, public confidence in the professions or professional standards, then an impairment finding will be required.

However, just because a panel has found some or all of the charges proved, it doesn't follow that this will always result in a finding that the professional's fitness to practise is currently impaired.

To help determine if a professional's fitness to practise is currently impaired, panels should always ask themselves the following questions<sup>1</sup>:

1. has the professional in the past acted and/or is liable in the future to act as so to put those receiving care at unwarranted risk of harm; and/or
2. has the professional in the past brought and/or is liable in the future to bring the profession into disrepute; and/or
3. has the professional in the past committed a breach of one of the fundamental tenets of the [nursing/midwifery] profession and/or is liable to do so in the future and/or
4. has the professional in the past acted dishonestly and/or is liable to act dishonestly in the future.

They should also consider<sup>2</sup>:

- whether the concern can be addressed by taking steps to strengthen practice
- whether the concern has been addressed
- whether it is highly unlikely that the conduct will be repeated

Considering all the above questions will ensure that the panel considers:

- Public safety (any risk of harm to people in the professional's care or to their colleagues)
- Any risk to the public's confidence in the professions and/or to professional standards.

Further information can be found in our guidance on [Insight and strengthened practice](#).

## Basis of Impairment

It's important that our panels consider both the risk to public safety and to the public's confidence in the professions and/or professional standards.

In some cases, a professional will be impaired because of the risk they pose to public safety. In other cases, impairment will be based on the risk they pose to public confidence or professional standards. In some cases, impairment will be based on a risk to public safety, public confidence and professional standards. The panel should always consider all three elements (public safety, public confidence and professional standards) before making their decision.

It is important that panels are clear on what basis they have decided that a professional's fitness to practise is impaired because this will help to inform [what sanction is most appropriate](#).

## Public safety

A professional's fitness to practise will only be impaired on public safety grounds if they pose an ongoing risk of harm to those receiving care from the professional (and/or their families) and/or to colleagues. When deciding whether or not there is an ongoing risk of harm, the panel will need to consider:

- the [seriousness of the conduct](#) that gave rise to the concern
- how the professional responded to what happened. However, professionals, and all those engaging with the FtP process, come from a wide range of cultures and backgrounds, with different cultural norms and communication styles. These differences do not change the professional's obligations, but the panel should consider how they might affect the professional's presentation of personal factors, such as apologies and insight.
- the likelihood of the professional repeating this behaviour in the future,
- any relevant [contextual factors](#)

Concerns about lack of competence or clinical skill can more easily be addressed and remediated than those relating to deep seated attitudinal concerns.

Further information about this can be found in our guidance on [insight and strengthened practice](#).

It is important that we're aware of any relevant information as early as possible, so we're able to make the right decision on a case at the earliest opportunity. Where a professional has taken steps to address their behaviour, it's important that they engage with the regulatory process so that the Fitness to Practise Committee is aware of these steps.

Further guidance for professionals on how to do this is available in our guidance on [engaging with your case](#).

## Public confidence in the professions and/or professional standards

Our objectives of upholding public confidence in the professions and professional standards are often referred to more broadly as our public interest objectives.

A finding of impairment on the grounds that the professional's practice needs to be restricted or marked to maintain public confidence in the professions generally, or to uphold professional standards, requires panels to consider whether the substance of the charges found proved, (whether or not the conduct occurred within the professional's clinical practice), means that there would be a risk to the public's confidence in the professions or to professional standards if the professional was permitted to practise without restrictions.

This means that in some cases, a professional's fitness to practise may be impaired even though there is no ongoing risk to the safety of people receiving care from that individual. This is because the proven concerns about their conduct or professional practice by and of themselves, were so serious that a finding of impairment is necessary to maintain the public's confidence in the profession generally and to declare and maintain professional standards.

This will also include (but is not limited to), situations where the professional's conduct, whether inside or outside their professional practice demonstrates a deep-seated attitudinal issue that could put people receiving care at risk of harm or require action to uphold public confidence and professional standards.

Decision makers will therefore need to consider whether:

- The conduct or behaviour was by and of itself so serious that a finding of impairment is necessary to maintain the public's confidence and trust in the professions and to uphold, declare and maintain professional standards.
- The conduct or behaviour arose because of a deep seated attitudinal issue that places those receiving care at risk of harm or that undermines public confidence and professional standards.

Whether these questions are considered separately or together will depend on the particular circumstances of the case, but if either of the above points is met, that will be sufficient to require a finding of impairment.

A finding of impairment based on public confidence or maintaining professional standards is more likely to occur in cases where the conduct breaches a fundamental tenet of the profession as set out in the Code. The following list gives examples of conduct that would breach the fundamental tenets of the profession (whether or not it occurs within professional practice). It is not an exhaustive list but gives some examples of the types of conduct where a finding of impairment is likely to be required:

- Sexual misconduct
- [Sexual behaviour towards someone in the professional's care or their close family](#)
- Deliberately causing harm to vulnerable adults, children or to people receiving care or knowingly taking risks with their safety
- [Committing specified criminal offences](#) and other criminal offences that create risks to public confidence and professional standards
- [Discriminatory behaviour](#)
- Serious and sustained dishonesty
- Breach of the duty of candour
- Violent or coercive or predatory behaviour

These types of behaviour may be indicative of harmful attitudinal issues that are more difficult to address and put right, whether or not they occur within the individual's professional practice.

This does not mean that an impairment finding is automatic in every case.<sup>3</sup> Each case will turn on its own facts. Dishonest conduct, for example, can span a wide spectrum of behaviours<sup>4</sup> and a finding of impairment will not

necessarily follow upon a finding of dishonesty.<sup>5</sup> Our [Sanctions Guidance](#) contains more information about the range of dishonest conduct.

Similarly, panels should consider very carefully whether the professional has fully addressed the issues and whether an impairment finding is required in order to maintain public confidence and professional standards. In some cases the misconduct may be so serious that a finding of impairment will be required to maintain public confidence and uphold professional standards, notwithstanding evidence of substantial insight and remediation.

Conduct, such as for example, sexual misconduct, that represents a serious departure from professional standards is likely to pose an ongoing risk to public confidence and professional standards, even where the prospect of the conduct being repeated is low.<sup>6</sup>

It should also be noted that many of the types of conduct listed above are likely to create public safety risks to public confidence and professional standards. This underlines the importance of panels considering all three different forms of risk.

## What do we mean by a ‘deep seated attitudinal issue’?

Professionals on our register provide care and support to individuals who are often at their most vulnerable due to their health conditions or personal circumstances. It is therefore essential that these professionals consistently demonstrate behaviours that maintain public trust and ensure the safety and wellbeing of those receiving care.

Our Code outlines the values and behaviours expected of all registered professionals. These are not merely aspirational ideals, they form the fundamental tenets of the professions. They represent the core principles that underpin safe, effective, and compassionate care. Adherence to these principles also serves to maintain public confidence in the professions we regulate. These values and behaviours include, but are not limited to:

- Respect for others
- Treating others fairly
- Inclusion
- Openness
- Integrity
- Honesty
- Compassion
- Putting the needs of people receiving care first

A *deep-seated attitudinal issue* refers to an ingrained mindset or belief system that is contrary to these values and behaviours. Deep-seated attitudinal issues are resistant to change and pose risks to the safety and wellbeing of people receiving care and to the public’s confidence in the professions generally and to professional standards.

When a professional demonstrates behaviours contrary to the values and behaviours set out in the Code, this may reflect more than a single lapse in judgement. It may indicate an underlying attitude fundamentally incompatible with professional practice. Such conduct (whether it occurs within or outside professional practice) is not only a breach of the Code but may also constitute a serious risk to public safety, the public’s confidence in the professions and professional standards.

Examples of such behaviours might include (but are not limited to):

- Serious or sustained dishonesty
- Discrimination
- Abusive or degrading treatment of others
- Violence, particularly where it is premeditated
- Sexual misconduct (including sexual relationships with those receiving care or those close to them)
- Wilful neglect (whether this is towards those receiving care or occurs outside professional practice).
- Deliberate breaches of an interim or substantive order

As set out previously, a single incident involving such conduct may be serious enough, by and of itself to require a finding of impairment because of the risks to either public safety or to public confidence and professional standards. Although the existence of a deep-seated attitudinal issue may be an aggravating factor at sanctions stage, it should not be treated as a ‘threshold’ test for a finding of impairment. In some cases an impairment finding will be required even in the absence of evidence of a deep-seated attitudinal issue.

We also recognise that, while deep-seated attitudinal issues can be difficult to address, meaningful change is not impossible. There may be circumstances in which there is compelling evidence that a professional has genuinely reflected on their behaviour and attitudes, recognised the impact on those affected by it and the wider profession, and taken steps to effect genuine change. Where a professional can demonstrate insight, learning and development they may no longer pose a risk to public safety, public confidence in the professions and to professional standards.

## Examples of conduct that might lead to a finding of impairment

As explained above there are a number of factors that panels must consider in order to reach a finding of impairment such as context, how the professional responded to the concern, and the risk of any ongoing harm to public safety, public confidence or professional standards and seriousness of the conduct.

The examples below are indicative only, because each case will need to be considered on its own facts and merits and the panel may need to consider other factors that are relevant to the case they are considering. When assessing cases decision-makers should also take steps to ensure that bias (whether conscious or unconscious) doesn't impact their decision making, and that they consider all the facts of a case without preconceived ideas.

We've included some examples below of conduct, which might lead to impairment findings. In some instances, even when there's no evidence of an ongoing risk to public safety, an impairment finding may be required in order to maintain public confidence and professional standards.

### Example 1

A nurse is claiming wages for shifts that they didn't work over a sustained period of time including claiming for full shifts when they either attended very late or left very early. They have also falsified time sheets for a number of shifts they've claimed for but not worked by forging the signature of their authorising manager on time sheets. While there were no clinical issues with the nurse's conduct her employers dismissed her. The nurse is now working for an agency elsewhere and again there are no clinical concerns about her practice and she's provided positive testimonials from her colleagues relating to her clinical practice and demonstrated remorse. Deliberately and persistently forging colleagues' signatures could amount to evidence of dishonest conduct and could amount to a sustained, deliberate fraud against the nurse's previous employer over a lengthy period of time. Honesty and integrity are important cornerstones of the profession. If dishonesty of this kind is proved this would be a significant departure from expected standards. A finding of impairment will be necessary to maintain confidence in the profession and to maintain and uphold professional standards, even though there are no concerns with the nurse's professional practice.

### Example 2

A nursing associate is convicted of causing death by dangerous driving. This offence was unrelated to the nursing associate's professional practice, in that they weren't driving as part of their role as a nursing associate, nor were they driving to or from work. The nursing associate receives a custodial sentence. Such conduct will not necessarily raise risks to public safety in their role as a nursing associate for the panel to consider but will raise questions of whether there is a risk to public confidence in the profession and to professional standards.

In this case, the fact that the nursing associate has been convicted of causing death by dangerous driving and been given a custodial sentence is an indication of the seriousness of the matter which will need to be carefully assessed as to whether it is likely to undermine the public's confidence in the profession and professional standards. A finding of impairment is likely to be appropriate in this case in order to uphold public confidence and professional standards.

### Example 3

A nurse is providing 1:1 overnight care to a patient who is completely reliant on this care for all of their needs. The patient is considered highly vulnerable and at risk of aspirating, requiring almost constant attention. The nurse is found asleep, having rolled up blankets into pillows and positioned chairs into a makeshift bed. They're also found to have deliberately placed the patient's bed at a 45 degree angle so that their head is below their feet, heightening the risk of aspiration. On being discovered the nurse denies having been asleep and the patient is found to be hypoxic, although they are eventually stabilised. The actions of the nurse placed the patient at risk of harm. By rolling up blankets to use as pillows and positioning chairs to make up a bed, the nurse has acted deliberately and placed their needs above those of the patient. In these circumstances, where it would be clear to a reasonable and competent professional that the conduct could result in harm to the person receiving care, this could not only lead to a finding of impairment on public safety grounds but it could also undermine the public's

trust and confidence in the professions and amount to a departure from professional standards. Such conduct is likely to result in a finding of impairment on these grounds.

Example 4

A referral comes from coroner who was not only critical of care provided by a nurse but who also found that she had lied on oath to the coroner's court. The nurse, an advanced nurse prescriber with an unblemished 25 year career, is found by a panel to have falsified medical records to show that they had prescribed antibiotics to an elderly patient when they hadn't. The patient was also diagnosed as suffering from sepsis which lead to their death. When asked questions about the incident, whilst under oath at the subsequent coroner's inquest, the nurse persisted in this falsehood and her account was discredited by the coroner. The panel determined that the nurse had missed clear warning signs of infection and also the fact that the nurse had deliberately misled the coroner's court was found proved.

The nurse's conduct amounts to a serious breach of the code. Where professionals have deliberately breached the professional duty of candour by covering up when things have gone wrong, especially where it could cause harm to people receiving care a finding of impairment is likely to be made.

The actions of the nurse in failing to identify clear warning signs may be remediable, and may have been remediated through strengthened practice, but falsifying medical records and persisting with this falsehood by lying to the coroner's court increases the seriousness of the matter and could also amount to a breach of the duty of candour. The actions of the nurse undermine the public's trust and confidence in the profession and mean that a finding of impairment is likely to be required to uphold public confidence and professional standards.

Example 5

We receive a referral about an incident that occurred 8 years previously. The nurse was working in a prison when they were told a prisoner had ingested an unknown substance. The documentation from the incident is unclear, due to poor record keeping by the nurse. There is no evidence of her examining the prisoner, who was subsequently returned to his cell because of staffing pressures in prison. The documentation appears to indicate that the nurse stopped observations on this prisoner. However, she maintains she did examine the prisoner and told the prison officers to 'keep an eye' on him. Prisoner was found unconscious the next morning and required hospitalisation to stabilise his condition.

The matter is investigated by the NMC and progresses to a FtPC hearing.

At the FtPC the charges are found proved and to amount to serious professional misconduct. The nurse demonstrates insight into her past practice and recognises the gravity of what she did by failing to ensure further observations were carried out and by failing to keep clear accurate notes, as well as the harm it caused to the prisoner. She also acknowledges the risk of harm that would occur to prisoners generally through poor record keeping and clinical practices because of their vulnerability as prisoners and their dependence on clinicians to safeguard them and tells the panel that this now shapes her practice as a nurse. She provides testimonials from colleagues who know about the incident and have discussed it with her. She provides evidence of how she's strengthened her practice by taking courses directly relevant to the conduct. She provides evidence demonstrating what she's learned on these by providing examples of how she's incorporated what she's learned into her everyday practice.

The nurse provides insightful evidence and does not deflect responsibility for her actions, having engaged openly and honestly with the prison ombudsman enquiries and with the NMC. Evidence is also provided from witnesses who corroborate that they have discussed the incident with the nurse. Witnesses also attest to the fact that there were significant staffing shortages and systemic issues at the prison at the time of the incident that affected clinical practices. Her employer confirms that since the incident occurred, she's worked without any clinical concerns and is a valued and effective member of their team. They have no concerns about her record keeping or clinical practice.

Taking all the above factors into account, while the nature of the misconduct was serious the evidence of strengthened practice since the incident occurred, and contextual factors, suggests that the risk of the conduct being repeated in future is low and a finding of impairment to ensure the public's confidence in the professions may not be required in this instance.

Example 6

A community nurse is caring for a vulnerable patient at home. The patient lacks capacity. The nurse steals money from the patient and is subsequently arrested and charged by the police and is later convicted of theft although avoids a custodial sentence.

The conduct amounts to a serious breach of the code. Financial abuse of those receiving care, not only poses a risk of harm to them but it is also capable of significantly undermining the public's trust and confidence in the professions as well as professional standards. The professional's conduct brings the nursing profession into disrepute and amounts to a breach of the fundamental tenets of the profession. Conduct such as financial abuse of those receiving care by a professional will lead to a finding of impairment.

#### Example 7

Over the course of several months a nurse repeatedly makes sexualised comments to two health care assistants whom they line manage as well as often touching them on the legs and arms. The nurse often waits until the female staff members are alone and continues the conduct despite the staff members making it clear that this makes them feel uncomfortable.

The conduct of the professional amounts to a serious breach of the code. It not only poses a risk of serious harm to more junior and vulnerable colleagues due to the power imbalance in their relationships, but appears to be premeditated and related to a harmful deep seated attitudinal issue. While the conduct wasn't directed at people receiving care, it has placed colleagues at unwarranted risk of harm and may amount to a deep seated attitudinal issue that could pose a risk to the public in their professional practice. Not only may their conduct pose a risk of sexual misconduct towards those receiving care, sexual misconduct can also undermine relationships between professionals, which can impact on the standard of care they deliver. Such conduct is capable of undermining the public's trust and confidence in the professions and professional standards.<sup>7</sup>

#### Example 8

A midwife is investigated by their employer after being reported for having posted discriminatory comments on an open social media account. These comments are anti Muslim and openly label all Muslims as criminals and terrorists and call for all Muslims to be "kicked out of the country".

Whilst there may not be any direct evidence that the midwife has ever behaved in a discriminatory way towards those receiving care, and there may be no evidence of deficient clinical practice, the comments demonstrate a deep-seated attitudinal issue given the language used. In this example more weight will be given to the risk of harm to the public's confidence in the professions and the need to uphold professional standards.

## Providing reasons for a decision on impairment

Where the Fitness to Practise Committee reaches a decision on impairment, they should clearly articulate their reasons for coming to their decision. The reasons should include a comprehensive explanation of the factors they have considered and their conclusions in relation to those factors.

It is essential that the Fitness to Practise Committee demonstrates that they have considered the future risk that the professional poses to people receiving care and any risks to public confidence and professional standards. Where there is a finding of impairment, the reasons for that finding should be clear.

Likewise, where the Committee finds the allegations proven, but reaches a decision of no impairment, they will clearly need to explain why no finding of impairment is required, taking into account considerations of public safety, public confidence and professional standards.

1 CHRE v NMC and Grant - Paragraph 76 Mrs Justice Cox referring to Dame Janet Smith in her Fifth Report from The Shipman Enquiry

2 Cohen v GMC [2008] EWHC 581 (Admin) para 63

3 Professional Standards Authority for Health and Social Care v Health Care Professions Council (Roberts) [2020] EWHC 1906 (Admin)

4 Lusinga v NMC [2017] EWHC 1458 (Admin)

5 PSA v (1) GMC (2) Uppal [2015] 1304 (Admin)

6 Yeong v GMC [2009] EWHC 1923 (Admin)

7 PSA v Yong and HCPC [2021] EWHC 52 (Admin)