Stage Two: Is there evidence of a serious concern that could require us to take regulatory action to protect the public

Reference: SCR-1a-ii Last Updated: 10/05/2021

In this guide

Once we've confirmed that the nurse, midwife or nursing associate is on our register and understand what the complaint is about, we'll consider whether there's evidence of a serious concern that could require us to take regulatory action to protect the public.

We can carry out any investigations we consider are appropriate to help us with this consideration.

Evidence of a concern

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Before we consider whether a concern is serious enough to refer to the Case Examiners or the Fitness to Practise Committee, we'll need some evidence to support the concern, or be confident that we'll be able to obtain evidence to support the concern.

In some cases, the written account setting out the complaint might provide us with enough evidence to decide if the concern is serious enough to refer to the Case Examiners or the Fitness to Practise Committee. However, in other cases, it may be appropriate to look into what the referrer has told us to make sure we have sufficient evidence to proceed.

Verifying the facts

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Sometimes we receive complaints where a referrer may have misunderstood or made a mistake about the underlying facts. We can check the facts contained in the written account to make sure the concern is well founded. If our enquiries show the complaint isn't well founded, we won't consider the matter any further.

Example 1

It's alleged that a nurse was prescribing medication without the correct qualifications. We carry out enquiries to verify the allegation. Our investigation shows conclusively that the nurse did have the relevant prescribing rights at the time of the alleged incident.

In this scenario the referrer is mistaken about the nurse's qualifications, and we wouldn't need to consider the matter any further.

Example 2

A complaint is made about a nursing associate asking a member of the public for their personal telephone number. The nursing associate says they were instructed to do so by a doctor for medically justified reasons.

We check the medical records made at the time, which confirms the nursing associate's account.

In this scenario we wouldn't have any evidence of a concern, and wouldn't need to consider the matter any further.

Allegations without any supporting evidence

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Sometimes people can interpret events differently, particularly if a distressing or traumatic event has taken place. We'll always make an objective assessment of the evidence we've been given, rather than rely on an individual's interpretation of the evidence.

Where someone makes an allegation without any supporting evidence, we'll make further enquiries to establish whether there's any evidence to support the concern. We'll usually ask the person raising the concern for more information. If this isn't possible, for example, where we don't know the identity of the person raising the concern, we'll make whatever reasonable and proportionate enquiries we can to verify it.

Where we've carried out appropriate investigations but are left with a bare allegation, we won't be able to take the matter further.

Example 1

We receive a complaint that a nurse didn't carry out an assessment of a patient properly. Our enquiries suggest that an appropriate assessment was carried out but that the person making the complaint disagreed with the assessment outcome.

In this case we would not have any evidence of a concern, and wouldn't need to consider the matter further.

Example 2

We receive a complaint that a midwife has given the referrer a negative appraisal report because of their race. We make enquiries to see whether there is any evidence to support the allegation that the midwife discriminated against the referrer. Other than the referrer's assertion, our enquiries don't identify any evidence that could show there's a link between the appraisal and the referrer's race or any other evidence that could support a discrimination allegation.

In this case we would not have any evidence to support the concern, and wouldn't need to consider the matter further.

Anonymous referrals and people wishing to remain anonymous

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In some cases, we won't know the identity of the person raising the concern. This usually means that we won't be able to rely on their written account as evidence supporting the concern.

When a **referrer has asked us not to disclose their identity to the nurse, midwife or nursing associate who is the subject of the concern**, we'll always seek to address any concerns they have about taking part in our fitness to practise process.

We may engage our specialist Public Support Service for advice and support to help explain our processes and the additional measures we can offer to help witnesses through them.

We'll use the information we've been given to investigate the concern without disclosing the identity of the referrer. We'll make whatever enquiries we can to see if there's any other evidence to support the concern. If we find any other evidence of the concern (and it meets the stages of our screening process) we'll refer the matter to the Case Examiners or Fitness to Practise Committee ourselves.[1]

If we can't progress the concern without the referrer's evidence, then we won't be able to consider the matter any further.

Example 1

We receive an anonymous letter that an agency nurse harassed a patient in a hospital car park. No further details are provided, such as the name of the hospital or the identity of the patient. Without further information, we can't make any enquiries to ascertain whether there's any other evidence to support the concern and we

wouldn't be able to take the matter further.

Example 2

We receive a complaint that a midwife assaulted a patient during a medical procedure. There's no other evidence to suggest an assault took place and the patient wishes to remain anonymous. Without the evidence of the referrer who is the sole potential witness, we don't have any evidence to support the concern and wouldn't be able to take the matter further.

Context

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We'll take account of the **context** surrounding the concern to make sure we reach the right decision to protect the public.

We'll investigate the context of an incident where it helps us understand if there's evidence of a serious concern that could require us to take regulatory action.

If the evidence suggests that, in light of the context, there's no serious concern about the nurse, midwife or nursing associate's practice, then we won't need to refer the case to the Case Examiners or the Fitness to Practise Committee. However, we might need to take other steps, such as sharing information.

In other cases, it may be clear that based on the evidence we've received there's a serious concern that could require us to take regulatory action. For example, an allegation that someone on our register had a sexual relationship with a patient is unlikely to require us to investigate the incident's context. Provided the other stages of our screening test are met, this would amount to an allegation that should be referred to the Case Examiners or the Fitness to Practise Committee for further consideration of the context of the incident.

Example 1

A nurse is referred for repeatedly giving a patient the wrong dose of medication. Our enquiries show conclusively that a printing malfunction led to the wrong dose being written on the nurse's instructions.

The context in this scenario shows there's no evidence of a concern about the nurse's practice. While we don't need to take regulatory action, we would consider sharing this information with the employer and a system regulator to ensure such a mistake didn't happen again. We would do this in line with our **Information Handling Guidance,** which gives guidance on sharing information with employers and other outside agencies.

Example 2

We receive a referral that a nurse failed to respond to a medical emergency on a ward. There's clear evidence that the ward was short-staffed and the nurse escalated their concerns about this at the start of the shift. There's also evidence that there was another medical emergency that the nurse attended to at the same time. The nurse asked another member of staff to attend to the other emergency situation and made a clear record after the event explaining her decision-making.

In this scenario, the context suggests there's no evidence of a concern about the nurse's practice. However, we may need to take some other action to address the short-staffing issues, such as contacting the employer or a systems regulator.

Seriousness

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Where there's evidence of a concern about a nurse, midwife or nursing associate's practice, this won't necessarily mean it needs to be referred to the Case Examiners or the Fitness to Practise Committee.

We'll consider whether the concern is serious enough that it could require us to take regulatory action to protect the public, uphold public confidence in the professions or uphold professional standards. We have broad powers to investigate the seriousness of concerns we receive. When assessing whether a concern is serious, we look at what risks are likely to arise if the nurse, midwife or nursing associates doesn't remedy or put this concern right. This could be risks to patients or service users or, in some cases, to the public's confidence in all nurses, midwives and nursing associates.

Regulatory action includes imposing restrictions on a nurse, midwife or nursing associate's right to practise, or

removing their right to practise entirely. It can also include issuing a **warning.** If a concern isn't of the kind that could require us to take regulatory action, it won't impact the professional's fitness to practise and won't need our involvement.

Many of the concerns we receive are not serious enough to require regulatory action to protect the public. But this doesn't mean that these concerns shouldn't be looked at. In line with our **principles for fitness to practise,** we consider that these cases are often suitable for local investigation and resolution by employers.

When we decide that concerns aren't so serious that we need to take action to protect the public, but a local resolution may be appropriate, we might contact the employer and tell the person who raised the concerns with us that we've done this. We'll follow our **Information Handling Guidance** when sharing information with employers. We only need to become involved in something that happened in a nurse, midwife or nursing associate's private life if it could fundamentally call into question their trustworthiness and professionalism. Usually this will be when they've been convicted for **a serious criminal offence.** We won't investigate matters that the police have looked into but haven't led to a criminal conviction unless there's a connection with the nurse, midwife or nursing associate's practice as a registered professional.

Our **guidance on seriousness** explains how we view the seriousness of different kinds of concerns.

Factors that we'll take into account when assessing seriousness at the screening stage include:

- if the alleged conduct could have put a member of the public at serious risk of harm.
- if the concern relates to an isolated incident or a pattern of behaviour over time. We're more likely to refer to the Case Examiners where we receive multiple concerns of a similar nature.
- if the concern relates to dishonesty or breaches of the **duty of candour.** Allegations that a nurse, midwife or nursing associate has dishonestly sought to cover up clinical mistakes are particularly serious.
- concerns where there's evidence of bullying, discrimination or harassment of colleagues or members of the public. We usually regard these cases as being serious.
- if the alleged conduct could seriously damage public trust in nurses, midwives or nursing associates or undermine professional standards - for example, a conviction for a serious criminal offence.
- if the alleged conduct involves serious leadership or management failings on the part of professionals on our register where the public have been put at risk as a consequence.

Examples of concerns that are likely to be suitable for local investigation

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Here are some examples of concerns where local investigation and resolution is likely to be sufficient to protect the public. This is not intended to be an exhaustive list. Screening decisions will always need to be based on a careful consideration of each individual concern:

- concerns about the quality of treatment received where there is no indication of any serious risk to the public or that the nurse, midwife or nursing associate acted significantly below expected standards.
- one-off concerns about a nurse, midwife or nursing associate's poor attitude to patients or failing to take their preferences into account. These are more likely to be suitable for local investigation and resolution than allegations of a repeated pattern of behaviour suggestive of an underlying attitudinal concern placing members of the public at risk of harm. For example, a concern saying that a midwife was rude to a member of the public is likely to be suitable for local investigation. However, if we receive a series of concerns suggesting that a midwife has been rude to members of the public on numerous occasions, we are more likely to refer those concerns for investigation.
- concerns about conduct that may have been unprofessional but did not give rise to any risk of harm to the public. This could include concerns about the **inappropriate use of social media.**
- if our evidence of the **context** shows that the concern was caused by a problem with a system or process, rather than a problem with an individual nurse, midwife or nursing associate's practice, then the matter will usually be better dealt with locally (or by a systems regulator).

Incidents before the nurse, midwife or nursing associate was registered with us

We won't usually refer concerns or incidents which took place before the nurse, midwife or nursing associate was registered with us to the Case Examiners or Fitness to Practise Committee. There may be exceptional cases of conduct that occurred before a nurse, midwife or nursing associate registered with us which are so serious as to appear to be incompatible with continued registration. In these cases, we may refer the matter for further

consideration.

Where a nurse, midwife or nursing associate fails to declare a criminal conviction or caution to us prior to registration that may lead us to refer the matter as an allegation that an entry in the register has been **incorrectly made or fraudulently procured.**

1 Using our powers under Article 22(6) of the Nursing and Midwifery Order 2001