Identifying and explaining regulatory concerns

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Overview

At the screening stage (the earliest stage of the process) the regulatory concern will most likely be broad and set out the area that engages us as a regulator and why. This area of regulatory concern will form the basis and direction for the investigation.

For example, in a case involving a nurse or midwife who is alleged to have made dosing errors on five different occasions, in respect of medication administered by different means, the area of regulatory concern would be that the nurse or midwife is unable to administer medication safely.

Identifying areas of regulatory concern

One incident or series of incidents generally means one area of regulatory concern. However, a fitness to practise allegation can be made up of more than one area of regulatory concern.

Where the motivation for a nurse or midwife's alleged conduct could itself put patients at risk, or undermine public confidence in the professions, we will identify this as a separate area of regulatory concern. A good example of this is where a nurse or midwife has breached professional boundaries by personally contacting a patient in their care. Conduct of this nature would always be an area of regulatory concern, but if the nurse or midwife's attempts to contact the patient were sexually motivated, this would be identified as a separate area of concern.

As an illustration about how allegations can be made up of more than one area of concern, if a nurse or midwife made a series of infection control errors over a significant period of time, and was also responsible for the rough handling of a patient in their care, there would be one allegation that the nurse or midwife's fitness to practise is impaired, made up of two regulatory concerns.

If a nurse was responsible for repeated medication errors, including overdosing, failing to administer, and not observing patients who needed to be supervised when taking medication, and also a number of failings in record keeping, including not documenting the medication being given, and the pre-signing of records, this is likely to involve one area of regulatory concern focusing on an inability to manage the administration of medication. This is the case even with the pre-signing of records, as without evidence of a dishonest motive, the problems in the nurse or midwife's practice can be clearly expressed as one concern.

In contrast, a midwife who administered a controlled drug without a second checker, and then asked a colleague to sign as having been a second checker, there would be two separate concerns, first the failing in administering controlled drugs, and second the dishonest attempt to cover up the failing.
Evidence of regulatory concerns

In every case there must be evidence that there is a real risk to patients or the allegation is capable of undermining public confidence in the professions (to the extent that a public declaration about the conduct may need to be made). The way we express the area of regulatory concern should always make clear what the evidence is telling us in about risk or public confidence.

For example, in a case involving a nurse or midwife who has been sleeping on duty we cannot assume that such conduct automatically places patients at risk or is capable of undermining public confidence in the professions. In order to set out the area of regulatory concern (and make a decision on the case) we will need to carefully review the evidence and what it says about:

- what happened
- whether the nurse or midwife was negligent in their duty
- whether there was any patient harm as a result
- whether records were falsified or attempts made to conceal their actions
- the particular setting where the incident occurred
- whether it was an isolated incident or not
- whether it was a conscious decision or an accident.

Each of these things will impact on whether there is an area of regulatory concern and how that concern is expressed, and may help us to identify whether there is more than one area of regulatory concern which requires our attention.

Statements of regulatory concern

At the end of our investigation we will produce a statement of regulatory concern. A statement of regulatory concern is a concise explanation of what appears to have happened in a particular case. This does not need to be particularised into specific episodes on specific individual dates, but it should explain what happened, and over how long.

Case examiners cannot exercise their powers to dispose of cases by recommending undertakings, issuing warnings, or giving advice unless the nurse or midwife accepts that our regulatory concern is well founded. Therefore we must be able to articulate the regulatory concern in enough detail for the nurse or midwife to understand the scope of what is alleged against them at the conclusion of the investigation.

The area of regulatory concern together with the statement of regulatory concern should provide sufficient detail to explain why this set of facts justifies us taking regulatory action in the nurse or midwife’s practice. This will allow the nurse or midwife to indicate whether they accept that our regulatory concern is well founded and for case examiners to be able to determine whether or not the nurse or midwife has a case to answer in respect of an allegation of impaired fitness to practice.

During the investigation we sometimes receive new information which forms the basis of a further area of regulatory concern, separate from those previously identified at the screening stage. When this happens we will tell the nurse or midwife and invite them to respond.