Explaining how and why a nurse or midwife presents a regulatory concern

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As we explain **earlier in this section**, we use 'regulatory concerns' to identify and explain what it is about a nurse, midwife or nursing associate's conduct or practice that concerns us as a regulator. Because we may only have limited information when we are screening a case, or in the early part of our investigation, in those initial stages we usually explain regulatory concerns in fairly broad terms.

For example, if a nurse, midwife or nursing associate made a number of different kinds of dosing errors on different days, in the early stages of our fitness to practise process we would say our regulatory concern is that the nurse, midwife or nursing associate is unable to administer medication safely. We usually explain the concerns in more detail as we gather more information about what happened and how it could have put patients, members of the public, or public confidence in nurses, midwives or nursing associates at risk. Cases can be made up of more than one regulatory concern, and this can sometimes include concerns about the nurse, midwife or nursing associate's motivation, or reasons for doing or not doing something.

As the case passes through the further stages of our investigations process and is ready to be considered by case examiners, we prepare a formal statement of regulatory concern. This explains our concerns about the nurse, midwife or nursing associate's practice in more than detail than we will have given them when we were screening the case.

Identifying what causes us a regulatory concern

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A regulatory concern will usually focus on one incident, or one series of closely related incidents. Often, problems in the nurse, midwife or nursing associate's practice that might seem quite separate from each other can actually be explained as one concern. For example, if the nurse who made the series of dosing errors also failed to observe patients who needed to be supervised when taking their medication, and didn't keep proper records of what medicines had and hadn't been administered, there is still likely to be one regulatory concern about whether the nurse can safely manage how they administer medicines.

An allegation about a nurse, midwife or nursing associate's overall fitness to practise can be made up of more than one regulatory concern. So one fitness to practise allegation could, for example, be based on three regulatory concerns: one about poor record-keeping, a second about neglecting patients, and a third concern about dishonesty based on false expense claims. If we uncover new and separate regulatory concerns as we are investigating a case, we will tell the nurse, midwife or nursing associate about this, and ask them to respond if they wish to. The latest we do this will be when we send them the information we've gathered at the end of the investigation.

Analysing evidence of regulatory concerns

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Concerns about nurses, midwives and nursing associates need to be based on evidence. The way we describe the regulatory concern should always be informed by what the evidence we have tells us about possible risks to patients, or to the public's trust in nurses, midwives and nursing associates.

For example, if a nurse, midwife or nursing associate is alleged to have been sleeping on duty, we wouldn't simply assume doing this will automatically put patients at risk, or undermine public trust, and just describe the regulatory concern as 'sleeping on duty'.

Rather, to properly consider and explain what regulatory concern the nurse, midwife or nursing associate presents, and what decision or action we need to take to protect the public in any particular case, we will need to carefully review the evidence and what it says about:

- what happened
- the particular setting where the incident occurred
- whether it was an isolated incident
- whether it was a conscious decision or an accident
- whether the nurse, midwife or nursing associate failed in their duty
- whether any background context factors influenced what happened (see our guidance on **taking account of context**)
- whether there was a risk of patients or service users being harmed
- whether records were falsified or the nurse, midwife or nursing associate tried to cover up what happened

Each of these things will affect whether there is a regulatory concern about a nurse, midwife or nursing associate's practice, whether there may actually be more than one concern, and how we explain or describe what causes us concern.

Regulatory concerns about motivation or intent

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Sometimes, the reason why the nurse, midwife or nursing associate did or failed to do something might itself be a regulatory concern, because it could suggest a further risk to patients, or to the public's trust in nurses, midwives or nursing associates, over and above the risks the conduct itself involves.

A nurse, midwife or nursing associate who personally contacts a patient in their care will usually present a regulatory concern, because doing so will probably mean a breach of professional boundaries. However, if the nurse, midwife or nursing associate tried to contact the patient because they wanted to pursue a sexual relationship with them, we would need to address this kind of motivation as a separate regulatory concern in itself.

We need a clear foundation to suggest concerns about a nurse, midwife or nursing associate's motives. For example, if the nurse who made the series of medication administration errors also signed the records before they began the medication round, we would need clear evidence that they had a dishonest reason for doing this before we accused them of acting dishonestly. Otherwise the concern would really still be about the management of medicines administration.

In contrast, if a midwife administered a controlled drug without anyone to act as a second checker, and later asked another midwife to sign to say that they had checked the drugs, there would be two concerns. One about the failing in administering controlled drugs, and a second, separate concern about the dishonest attempt to cover up the failing. Unlike the pre-signing of records, there is no realistic possibility of an innocent explanation for this.

Statements of regulatory concern

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At the end of our investigation we will produce a statement of regulatory concern. This is a concise explanation of what we say has happened in a particular case. The statement of regulatory concern won't necessarily need to be broken down into specific episodes on specific individual dates, but it should explain what happened, and over how long.

It's important that the nurse, midwife or nursing associate is able to understand what we say happened, and why we say it means we may need to take regulatory action in their practice. The nurse, midwife or nursing associate needs to be able to tell us whether or not they accept that our concerns are well founded. Case examiners need enough detail for to make a clear and well reasoned decision about whether the nurse, midwife or nursing associate has a **case to answer**, and also whether they should use their **powers to dispose of cases** by recommending **undertakings**, issuing **warnings**, or giving **advice**.

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, midwife or nursing associate and invite them to respond.