Concerns outside professional practice

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In this guide

Professionals are expected to keep to the standards and values set out in the Code and "uphold the reputation of their profession at all times" to help maintain the public's trust and confidence.[1]

Outside professional practice, professionals should particularly consider the need to:

- act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment (20.2)
- be aware at all times of how their behaviour can affect and influence the behaviour of other people (20.3)
- keep to the laws of the country in which they are practising (20.4)
- treat people in a way that does not take advantage of their vulnerability or cause them upset or distress (20.5)

Sometimes a professional's actions outside professional practice can amount to misconduct and we will need to act. We will take action when a professional's conduct:

- could pose a risk to our public protection objectives, including risks to public safety, public confidence in the profession or professional standards, or
- raises fundamental questions about the professional's ability to uphold the values and standards set out in the Code.[2]

We would be unlikely to investigate low-level incidents, such as a nurse borrowing a small sum of money from a friend and failing to pay them back. However, we are more likely to take action if the scenario involved aggravating factors, such as exploitation of a vulnerable person or if the professional had committed a crime (for example, fraud).

We recognise that considering actions outside professional practice has the potential to engage a professional's right to respect for private and family life or their right to freedom of expression. However, these rights are not absolute, so some degree of interference can be justified by the public interest in the regulation of professionals.

Concerns outside professional practice can include a range of situations, including the relationship between a professional and their partner or child. For example, any form of domestic abuse is likely to raise fundamental questions about a professional's fitness to practise.

We will always consider whether any regulatory action or requests for information that may interfere with a professional's rights are strictly necessary and proportionate to our aims as a healthcare regulator.

Our Case Examiners will only refer a concern to a panel hearing where the evidence available means that there is a realistic possibility the Committee would find that the incidents did happen and that as a result the professionals' fitness to practise is impaired. More information about the different evidential tests that we apply throughout our FtP process can be found in our screening, case examiner, and our impairment guidance.

Risk of Harm

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In some circumstances, a professional's actions outside professional practice could indicate deep-seated attitudinal issues which could pose a risk to colleagues and people in the professional's care.

It's important to remember that although the way a professional conducts themselves may suggest that they have a deep-seated attitudinal problem that could mean they pose a risk of harm to the public or to confidence in the profession, this isn't the only reason we may need to take action. Sometimes what the professional did or said may not indicate a deep-seated attitudinal problem but could still be so serious that a finding of impairment may be necessary to protect the public and/or maintain the public's confidence and trust in the professions and to uphold the professional standards.

Professionals must be able to work with and care for the public, including those who are vulnerable. They exercise skills, have access to personal and sensitive information and materials, and undertake responsibilities that give them access to people who are vulnerable to abuse. Actions that call into question the trust people must be able to place in a professional will undermine their ability to provide care. It may also impact the professional's relationship with their colleagues, which may in turn negatively affect the care provided.
To determine whether conduct outside professional practice could impair FtP, we will consider all the facts involved. Examples of important factors include:

- the duration or frequency of the conduct in question
- the professional's relationship or position in relation to those involved
- the vulnerabilities of anyone subject to any alleged conduct.

Long-term or repeated misconduct is more likely to suggest risk of harm, as will conduct involving imbalances of power, cruelty, exploitation and predatory behaviour. We will assess how likely the professional is to repeat similar conduct or failings in the future, and if they do, if it is likely that people in their care could come to harm, and in what way.

We will also consider whether the conduct requires regulatory action by us in order to uphold public confidence and the standards set out in our Code.

Broadly speaking, the following behaviours are more likely to suggest a risk of harm to the public and impaired fitness to practise, regardless of where they take place (although this is not an exhaustive list):

- discrimination, bullying, harassment and victimisation
- sexual misconduct
- abuse or neglect of children or vulnerable people
- violence

Violent behaviour can be serious enough to indicate a risk to the public and seriously undermine public confidence in the professions we regulate. This could be the case wherever the violence occurs, including in a domestic setting. Factors to consider include (but are not limited to):

- the nature of the violence or abuse (for example discriminatory features or motivation)
- whether it was directed towards a child or vulnerable adult
- the harm caused
- its frequency.

Example

Example 1
We receive evidence that a professional on our register has been physically assaulting their spouse, causing serious injury and degrading her using sexist language.

Whilst the conduct occurred in a domestic setting, the professional's treatment of their spouse involves serious violence which suggests potential risk to those within their care or colleagues, as well as seriously undermining public confidence in the profession. Healthcare professionals are entrusted to safeguard others and evidence demonstrates that people directly affected by domestic abuse will often seek their support. In addition, the use of sexist language and discriminatory words could suggest a deep-seated attitudinal issue towards women and girls that could impact the standard of care provided. If proved, this concern is likely to amount to misconduct and a finding of impairment of fitness to practise, resulting in regulatory action.
Example 2
We receive a referral from the neighbour of a professional. They say that the professional was involved in a dispute over a parking space where an altercation developed with both parties pushing each other. The police take no action.

Whilst this is not behaviour we would condone, it is not the kind of behaviour that is likely to require us to take action to restrict someone's ability to practise. The situation could be different, for example, if serious injury was caused or there was a prolonged campaign of violence or intimidation against a vulnerable neighbour.

Public confidence

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Protecting people from harm, abuse and neglect goes to the heart of what professionals do. They are responsible for caring for and protecting people when they are at their most vulnerable, and for acting as an advocate on their behalf.

Due to their unique position, members of the public expect professionals to uphold the rights of those they care for and to act in their best interests at all times. Failure to uphold these expectations could seriously undermine the public's trust and confidence in the profession and could make the public reluctant to access health and care services.

We are likely to take action to uphold public confidence where a professional's conduct outside professional practice raises fundamental questions about their ability to uphold the standards and values set out in the Code.

Many behaviours which are likely to indicate a risk to people who use health and social care services are also likely to justify regulatory action on the grounds of upholding public confidence and maintaining professional standards. Examples might include (but are not limited to):

- expressing discriminatory views or behaviours,
- sexual misconduct (including assault or harassment),
- serious violence (including in a domestic setting) and
- abuse or neglect of children and/or vulnerable adults.

Example

Example 3
We receive a referral from a member of the public following proceedings in the Family Court against a professional on our register for failing to protect their four-year-old child from harm. The Family Court found that the nurse had failed to prevent their ex-partner from physically abusing the child on several occasions and did not inform the authorities or seek medical attention as necessary. This happened despite the professional observing occasions of physical abuse, and being told by their child about numerous other occasions of violence.

Professionals are responsible for the care and protection of vulnerable people, including children. The failure to protect a child, even outside professional practice, raises fundamental questions about their ability to uphold the Code and undermines public trust and confidence in the profession.

In situations such as this, we will always carefully consider the context to understand how it may have contributed towards the professional's behaviour – for example considering whether a professional was subject to coercive control by an abusive partner.
Example 4
We receive evidence that a professional on our register has been violent toward their partner repeatedly over several years, including in front of their child, resulting in trauma and multiple injuries. The partner does not want there to be criminal charges brought. They have, however, referred their concerns to us.

Serious and repeated violence raises fundamental questions about the ability of the nurse, midwife or nursing associate to uphold the standards and values set out in the Code. It is likely to amount to misconduct and a finding of impairment of fitness to practise, resulting in regulatory action.

Domestic abuse does not always involve violence. It can also take the form of controlling, coercive, threatening or degrading behaviour, including sexual misconduct. Depending on the facts, all of these behaviours are capable of undermining public confidence in the professions we regulate.
Example 5
We are informed that a nurse was referred to social services for inappropriate parenting techniques. The nurse has moved to the UK recently from a country where these techniques were considered normal and was not aware that the position was different in the UK. The nurse has engaged well with social services and participated fully in a parenting course. Social services are satisfied that there have been no further incidents, and have decided that any further involvement by social services, the Police or the Family Courts is unnecessary. Because the nurse works with children and vulnerable people, social services referred the matter to the LADO for safeguarding consideration. However the LADO considered that there was no transferrable risk given it appears to have been a one-off incident and the nurse has engaged with social services.

Given the nurse has engaged well with social services and there is no evidence of further incidents, we would not need to take further action. The nurse has shown insight into what happened and the authorities most closely involved in the case have decided that there is little to no further risk. As such, there is no public protection risk.

We are conscious that different nations in the UK have different legal positions relating to smacking, however it may be referred to social services in any part of the UK.

Misconduct that could also be a crime

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If an allegation has not been reported to the police or relevant third party, this will not prevent us from investigating it, provided it could also amount to serious professional misconduct.

We will be cautious when bringing such cases, particularly when the conduct occurred outside professional practice. It is not our role to fill any perceived gaps in the criminal justice system. When deciding whether to investigate concerns that could have been reported to the police, but have not, we will consider whether:

a) an investigation is necessary to fulfil our statutory duties; and
b) it would be more appropriate for the concerns to be considered first by the police or another organisation, such as the Family Court

Example

Example 6
We receive a referral from the ex-partner of a professional, stating that the professional has been physically abusive and had forced them into having sex on multiple occasions. The referrer has evidence to demonstrate the abuse, including past medical records, but they do not want to refer the matter to the police.

This could amount to sexual misconduct and potentially involves serious and repeated violence. As such it is likely to suggest a risk of harm to the public or is likely to undermine public trust and confidence in the professions. We would be likely to refer this matter for investigation and will consider carefully whether there is a realistic prospect of the allegations being proved at a panel hearing.
If the information we receive about a professional's conduct discloses a potential criminal offence or suggests a safeguarding risk to children or vulnerable people, we may determine that it is in the public interest to share information with the police or relevant third parties.This might include other organisations who are responsible for safeguarding, or who may be involved in safety investigations in preventing or detecting criminal activity. If the police or other organisations decide to investigate the relevant conduct, we will decide whether we need to delay our fitness to practise investigation until the conclusion of that investigation, and whether an interim order is necessary in the meantime.

If we decide that another organisation should investigate the concern, we will always let the referrer know this and why. We may do this if we consider that the other organisation:

- Is more closely connected to the type of concern. For example, if it relates to criminal activity the Police may be more appropriate, or if it relates to concerns about the professional's family then social services may be more appropriate;
- Has specialist knowledge of the relevant area, or a particular skillset, for example the National Crime Agency;
- Has powers to compel specific evidence that would be necessary for the investigation and is not otherwise available, for example the Police.

If the referrer does not wish to report the matter to the police or progress another organisation's investigation, we will decide whether to open our own investigation.

Where we feel we're able to progress with a case, we will explain to the referrer any potential issues we're likely to face taking the case forward. The referrer can then make an informed decision about whether they wish to continue assisting us. We will look at how we can support people through our processes, including the Public Support Service and identifying and signposting to external agencies when needed.

If we are told about a professional's actions that have been investigated by the police but have not resulted in a conviction, we will need to consider whether it is necessary for us to investigate as well, bearing in mind our overarching obligation to protect the public (including upholding public confidence and professional standards). We are more likely to investigate if the police were investigating events that took place in professional practice, because we may be able to take matters forward that were not criminal offences. We may also consider if events that took place outside professional practice have a particular impact on the protection of the public.

1. The NMC Code, Standard 20
2. Gleeson v Social Work England [2024] EWHC 3 (Admin) paragraph 101
3. Article 8 of the European Convention on Human Rights
4. R (Ngole) v University of Sheffield [2019] EWCA Civ 1127