Discrimination, bullying, harassment and victimisation

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The Code says that nurses, midwives and nursing associates must treat people fairly without discrimination, bullying or harassment. It also states that individuals should be aware of how their behaviour can affect and influence the behaviour of others, be sure not to express personal beliefs inappropriately and use all forms of communication responsibly.[1]

The NMC takes concerns about bullying, harassment, discrimination and victimisation very seriously.[2] Although bullying is not included as a prohibited behaviour under the Equality Act, it can have a serious effect on workplace culture, and therefore the safety of people receiving care, if it is not dealt with.

If found proved, concerns relating to discriminatory behaviour, are likely to be regarded as misconduct, and will very often result in a finding of impaired fitness to practise.[3]

To be satisfied that discriminatory conduct has been addressed, we'd expect to see comprehensive insight, remorse and strengthened practice from an early stage, which addresses the specific concerns that have been raised. In addition, we must be satisfied that discriminatory views and behaviours have been addressed and are not still present so that we and members of the public can be confident that there is no risk of repetition.

Not every finding of misconduct about these concerns will result in a finding of impaired fitness to practise, even though it will be likely with concerns relating to discrimination, such as racism, sexism, homophobia or other discriminatory behaviour. Conduct of these types can be more difficult to address as they suggest an attitudinal problem.

Discrimination

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A person discriminates against another person under the Equality Act 2010 if they treat them less favourably than they would treat others because of a protected characteristic[4] that is:

- age
- gender reassignment
- being married or in a civil partnership
- being pregnant or on maternity leave
- disability
- race including colour, nationality, ethnic or national origin
- religion or belief
- sex
- sexual orientation

We've made clear that no form of discrimination including, for example, racism, should be tolerated within healthcare. Discriminatory behaviours of any kind can negatively impact public protection and the trust and confidence the public places in nurses, midwives, and nursing associates. We therefore take concerns of this nature seriously regardless of whether they occur in or out of the workplace. These concerns may suggest a deep-seated problem with the nurse, midwife or nursing associate's attitude, even when there's only one reported complaint.

When a professional on the register engages in these types of behaviours, the possible consequences are far-reaching. Members of the public may experience less favourable treatment, or they may feel reluctant to access health and care services in the first place. We know that experiences of discrimination can have a profound effect on those who experience it[5] and that fair treatment of staff is linked to better care for people.[6]

Where a professional on our register displays discriminatory views and behaviours, this usually amounts to a serious departure from the NMC's professional standards.

In such cases where displaying discriminatory views and behaviours is proved, some level of sanction will likely be necessary unless there's been insight at the most fundamental level and the earliest stage. However, if a nurse, midwife or nursing associate denies the problem or fails to engage with the fitness to practise process, it's more likely that a significant sanction, such as removal from the register, will be necessary to maintain public trust and confidence.

The research conducted as part of our Ambitious for Change[7] work indicated that some groups with protected characteristics, such as black nurses and midwives, are more likely to be referred for fitness to practise concerns. As part of the work that we do to understand the wider context of a referral, we ask the person being referred whether they believe that a protected characteristic played a part in the referral. If someone who we are investigating tells us that they have been discriminated against, or discrimination has led to them being referred to us, we will take it very seriously. Where there is evidence to support this, we'll take this into account as set out in our guidance on context.

Bullying, harassment (including sexual harassment) and victimisation

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The environment that all health and social care professionals work in should be safe and free from bullying, harassing (including sexual harassment) and victimising behaviours, as well as any abuses of power to exploit, coerce or obtain a benefit (for example sexual or monetary) from people receiving care, colleagues or students.[8]

The Code sets out that nurses, midwives and nursing associates must maintain effective communication with colleagues and act with honesty and integrity at all times, treating people fairly and without discrimination, bullying and harassment. The presence of bullying, harassment (including sexual harassment) and victimisation in the workplace can have an extremely negative effect on the work environment, performance and attendance.[9] This in turn can have an effect on the delivery of care and if not dealt with can affect trust and confidence in the professions.

Even when they occur outside professional practice, such concerns can raise fundamental questions about the ability of a nurse, midwife or nursing associate to uphold the standards and values set out in the Code.

Bullying can be described as unwanted behaviour from a person or a group of people that is either offensive, intimidating, malicious or insulting. It can be an abuse or misuse of power that undermines, humiliates, or causes physical or emotional harm to someone. It can be a regular pattern of behaviour or a one-off incident and can happen face-to-face, on social media or over emails or telephone calls.[10] Usually bullying would be a pattern of behaviour, but an example of when it could be a one off incident could be if a member of the public felt that they had been bullied into agreeing to a do not resuscitate decision by a healthcare professional.

Victimisation is defined under the Equality Act 2010 as treating someone else less favourably because they have brought proceedings, given evidence in proceedings or done any other thing in relation to the Equality Act.[11] It will also be victimisation if someone is treated less favourably by a person for making an allegation that someone has broken the Equality Act. Giving false evidence or information or making a false allegation is not protected if it's done in bad faith.

Where bullying and victimisation has been raised as a concern in a professional context, in line with our principles for fitness to practise, we consider that employers should act first to deal with the issues, unless there is an immediate risk to public safety.

We will usually only get involved after there has been a local investigation into the nurse, midwife or nursing associate's behaviour and where we feel the nurse, midwife or nursing associate has not taken adequate steps to address the

ssues identified with their practice. This is more likely to be necessary where the individual has not reflected on their behaviour or taken steps to change their behaviours in the future.

Evidence of repeated poor behaviour which has not been adequately resolved following action at a local level is more likely to require regulatory action, than isolated instances of poor conduct which are unlikely to be repeated.

Example

Example 1
A number of complaints are made about a midwife shouting and using offensive language towards more junior members of staff over the course of several months. These issues are raised with the midwife and a local investigation is started. The midwife resigns before the conclusion of the local investigation. We'd need to seek assurance that the midwife has reflected and demonstrated they would not act in the same way again if they found themselves in a similar working environment. Without this evidence, regulatory action is likely to be required to stop the concern from happening again.

- Harassment (including sexual harassment)

  Harassment is defined by the Equality Act 2010 as someone engaging in unwanted conduct that's related to a protected characteristic or is of a sexual nature.[12] The behaviour has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. It's necessary to take the perception of the person who's the subject of the conduct and any other circumstances into account. As well as harassment linked to a protected characteristic as defined by the Equality Act, harassment can also be unwanted conduct that is unrelated to a protected characteristic which someone finds offensive or which makes someone feel intimidated or humiliated.

  We recognise that concerns of this nature can have a profound effect on those subjected to the behaviour and could negatively affect public protection and the trust and confidence that the public places in nurses, midwives and nursing associates, especially where it occurs within professional practice.

  We will always consider the seriousness of the individual concerns raised with us, but in circumstances where the concerns relate to sexual harassment we may need to take action when there has been just one reported incident.

Example

Example 2
A nursing associate sends a number of abusive and harassing text messages to a colleague and makes inappropriate comments at work following the breakup of their relationship. A complaint is made and the matter is raised with the nursing associate by their employer. The nursing associate acknowledges their behaviour was inappropriate and stops immediately. They are issued with a formal warning and there are no other incidents. The matter has been dealt with locally and there's no need for us to become involved unless there are further incidents.

Anti-Jewish and anti-Muslim hate

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Both anti-Jewish hate and anti-Muslim hate are types of racism, as well as religious discrimination. This means that individuals who identify as Jewish or Muslim, or who are perceived as Jewish or Muslim, can be discriminated against for either their race or religion or both. As with all forms of discrimination, they may raise questions about the ability of the perpetrator to treat people in their care with kindness, respect and compassion, and also pose risks to public confidence in the professions we regulate.

The right to engage in public debate about political and religious matters is part of the fundamental right to freedom of expression; when considering whether any particular conduct constitutes anti-Jewish or anti-Muslim hate, we will always consider our freedom of expression guidance and ensure that our decisions to do not unduly restrict legitimate freedom of expression.

Anti-Jewish hate

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We consider anti-Jewish hate to be a serious matter and likely to be a breach of the Code. When considering concerns about anti-Jewish hate our starting point will be the International Holocaust Remembrance Alliance [IHRA]'s working definition of antisemitism, as adopted by the Government,[13] which states that:

> "Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities."

IHRA's working definition of antisemitism is supported by contemporary examples of antisemitism (included in the link above), which may, "taking into account the overall context", constitute antisemitism. In the case of Husain v SRA, the High Court made clear that when considering actions that may fall within the scope of the contemporary examples listed by the IHRA, the decision-maker should consider the language used and the context of what was said, informed by a reasonable understanding of the main historical and cultural manifestations of antisemitism.[14] The fact that conduct falls within the scope of one of the contemporary examples does not mean that the conduct will automatically and necessarily be deemed antisemitic.

Example

Example 3

A nurse on a hospital ward identifies that one of the patients on the ward is wearing a Star of David. The nurse asks the patient if they are Jewish, and they confirm that they are. As a result, the nurse starts making comments loudly that are critical of the policies of the Israeli government, which are clearly directed at the Jewish patient. Targeting a Jewish patient in this way will clearly be antisemitic even if the actual comments made about the policies of the Israeli government might, in a different context, not be regarded as antisemitic. This is because the nurse is assuming that the Jewish person is in some way connected to or responsible for the actions and decisions of the State of Israel. This conduct falls squarely within one of the contemporary examples of antisemitism cited by the IHRA (namely "holding Jews collectively responsible for actions of the State of Israel").

The High Court's decision in Husain v SRA also emphasised that statements criticising the historic formation, existence or policies of the contemporary State of Israel will not, in and of themselves, be antisemitic. Whether or not such statements are antisemitic will depend on analysing the language used and the context in which the statement is made. For example, proposing a 'one-state solution' where Israelis and Palestinians share a unitary state is not necessarily antisemitic, because it does not necessarily imply hatred towards Jewish people.

Example

Example 4

A nursing associate is socialising with colleagues after work. The conversation turns to the situation in the Middle East. The nursing associate is highly critical of the policies and actions of the Israeli Government, but at no point does she attack Judaism or the Jewish community generally, either within or outside Israel. This would not be deemed antisemitic and, on its own, would not raise fitness to practise concerns, because she is not discussing Israel any differently than another state might be discussed. Such comments are within her right to freedom of expression.

Anti-Muslim hate

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As with anti-Jewish hate, we consider anti-Muslim hate to be a serious matter and likely to be a breach of the Code. When considering concerns about anti-Muslim hate, our starting point will be the UK Government's definition of anti-Muslim hostility:

> Anti-Muslim hostility is intentionally engaging in, assisting or encouraging criminal acts – including acts of violence, vandalism, harassment, or intimidation, whether physical, verbal, written or electronically communicated – that are directed at Muslims because of their religion or at those who are perceived to be Muslim, including where that perception is based on assumptions about ethnicity, race or appearance.
>
> It is also the prejudicial stereotyping of Muslims, or people perceived to be Muslim including because of their ethnic or racial backgrounds or their appearance, and treating them as a collective group defined by fixed and negative characteristics, with the intention of encouraging hatred against them, irrespective of their actual opinions, beliefs or actions as individuals.
>
> It is engaging in unlawful discrimination where the relevant conduct – including the creation or use of practices and biases within institutions – is intended to disadvantage Muslims in public and economic life."

The accompanying text emphasises that the definition is not statutory, should not be confused with legislation and must not be used in any way that is inconsistent with the law. It also explains how this definition fits into the context of the right to freedom of expression and in particular makes clear that criticism of any religion is, in and of itself, protected by law. We will also bear in mind any emerging caselaw relating to the new definition.

Example

Example 5

A nurse posts on social media calling for the deportation of "anyone who undermines British values and the British way of life". The post includes an image depicting women with headscarves, men with long beards and a mosque in the background. We would be likely to regard this as an example of anti-Muslim hate that would impair fitness to practise. The images are a stereotypical depiction of Muslims and, when combined with the text of the post, treat Muslims as a collective group defined by fixed characteristics with the intention of encouraging hatred against them (i.e. that Muslims undermine British values and the British way of life"). This would be in breach of paragraph 1.3 of the Code because the nurse has made assumptions and failed to recognise diversity.

Example 6

A community midwife complains that she is struggling to get to some appointments on Fridays because parking is difficult near the local mosque during prayer times. She is critical of the mosque for not having better provision in place for parking. However, her complaints are only about the parking and not the people praying, nor does she make any stereotypical or prejudicial comments about those attending the mosque. This would not amount to anti-Muslim hate and, on its own, would not raise fitness to practise concerns.

To be satisfied that discriminatory conduct has been addressed, we'd expect to see comprehensive insight, remorse and strengthened practice from an early stage, which addresses the specific concerns that have been raised. In addition, we must be satisfied that discriminatory views and behaviours have been addressed and are not still present so that we and members of the public can be confident that there is no risk of repetition.

Not every finding of misconduct about these concerns will result in a finding of impaired fitness to practise, even though it will be likely with concerns relating to discrimination, such as racism, sexism, homophobia or other discriminatory behaviour. Conduct of these types can be more difficult to address as they suggest an attitudinal problem.

To be satisfied that conduct of this nature has been addressed, we'd expect to see comprehensive insight, remorse and strengthened practice from an early stage, which addresses the specific concerns that have been raised. In addition, we must be satisfied that discriminatory views and behaviours have been addressed and are not still present so that we and members of the public can be confident that there is no risk of repetition.

1. The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates 20.2, 20.3, 20.7, 20.10
2. The Equality Act 2010 states that harassment, discrimination and victimisation is prohibited in respect of the listed protected characteristics, age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex and sexual orientation.
3. See PSA v HCPC and Roberts [2020] EWHC 1906 (Admin) for a case where the use of racist language did not lead to a finding of impairment. However, the Court emphasised that cases of this type will be 'rare'.
4. Equality Act 2010 s.13 - s.19.
5. Ross S, Jabbal J, Chauhan K, Maguire D, Randhawa M & Dahir S (2020) Workforce race inequalities and inclusion in NHS providers, The King's Fund.
6. West M, Dawson J, Admasachew L & Topakas A (2011) NHS Staff Management and Health Service Quality. Results from the NHS Staff Survey and Related Data.
7. Ambitious for change – research into NMC processes and people's protected characteristics, 20 October 2020
8. Harassment at work. A Unison Guide, December 2016
9. In addition to undermining public confidence, such concerns can also impact care. The Professional Standards Authority's September 2022 report Safer Care for All and its 2018 report Sexual behaviours between health and care practitioners: where does the boundary lie? highlight the impact that breaches of sexual boundaries between colleagues can have on the safety of people receiving care.
10. ACAS bullying definition
11. Equality Act 2010 s.27.
12. Equality Act 2010 s.26.
13. Government leads the way in tackling anti-Semitism - GOV.UK