Freedom of expression and Fitness to Practise

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> Following a number of reported cases around protected beliefs and freedom of expression, we have decided to provide consolidated guidance in these areas. To help nurses, midwives and nursing associates to practise and express themselves as professionals without issue, we have used examples based on real cases and set out the limited grounds on which we would consider taking action.

Everyone enjoys the right to freedom of thought, conscience and religion and freedom of expression.[1]

This includes:

- the freedom to share and receive information and ideas
- the freedom to express religious, political and philosophical beliefs.

It's unlawful to discriminate against someone because of their religion or belief or because they do not hold a belief.[2] These are called 'protected beliefs.'[3] In addition to religious beliefs, other examples of 'protected beliefs' are veganism and gender-critical beliefs.

Our role as a regulator

Everyone has the right to freedom of expression, but there may be some circumstances where what someone says or does could impact their fitness to practise.

We're not looking to regulate what professionals on our register say, particularly when they express protected beliefs. However, we may need to take action if the way someone expresses their belief means:

there is a risk to the public,
there is a risk to public confidence in the profession or,
we need to act to maintain proper professional standards and conduct.[4]

Nurses, midwives and nursing associates should always be guided by the Code.

The Code
When expressing your views you should be particularly mindful of the need to

- treat people with kindness, respect and compassion (1.1);
- listen to people and respond to their preferences and concerns (2);
- deal with differences of professional opinion with colleagues by discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times (9.3).
- 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 your behaviour can affect and influence the behaviour of other people (20.3);
- make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way (20.7);
- act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to (20.8);
- use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times (20.10).

We recognise that the use of online communications and social networking platforms raise particular questions so we have produced Guidance on Using Social Media Responsibly.

Our Approach

We respect the right to freedom of speech and will only interfere with its exercise when it is strictly necessary and proportionate to our aims as a healthcare regulator.

We will consider whether what a registered professional has said or done raises fundamental concerns about their practice or professionalism.

We will always have in mind our guidance on discrimination, bullying, harassment and victimisation.

It is particularly relevant to look at:

- where and to whom the comments were made
- whether there is a link to practice or status as a nurse, midwife or nursing associate and, if so, what this is
- the way in which the views or beliefs are expressed;

We take broadly different approaches where:

1. A professional makes comments outside work unrelated to their practice or registered status;

Nurses, midwives and nursing associates are free to express themselves and their protected beliefs outside of work. It is not our role to monitor what people say outside of, or unrelated to, professional practice. We won't take action simply because something a professional has said or done has shocked, disturbed or caused offence to someone. We will only do so in those rare cases where:

- the way a professional conducts themselves suggests they have a deep-seated attitudinal problem,
- what the professional did or said is 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 professional standards,
- what the professional did or said results in a criminal conviction[5] that could mean they pose a risk of harm to the public or undermine confidence in the profession.

So, for example, a professional might campaign for curbs to immigration or discuss online their religious belief (protected in law) that same sex marriage is sinful.[6] However, were they to use racist, homophobic, sexist or other discriminatory language, target people using health and care services or suggest that they would discriminate against others as a result of these views, especially in a professional context, their fitness to practise could be impaired. Professionals who share content from others or links to such content might reasonably appear to be supporting the views or language found there. When sharing, they should consider the Code and whether it would be appropriate to say they disagree with the content or explain their purpose for sharing it.

2. A professional makes comments outside work related to their practice or their position as a nurse, midwife or nursing associate;

Professionals can express opinions and ask challenging questions about their work and associated topics. These actions can strengthen our regulated professions. For example, provided they do not breach patient confidentiality, a registered nurse involved in end-of-life care might feature in a campaign for or against the legalisation of assisted dying, broadly sharing their experiences whilst doing so.

We won't take regulatory action just because a nurse, midwife or nursing associate has attended a lawful march or protest or is taking lawful industrial action. For example, a midwife might attend a rally opposing abortion without questions arising as to their fitness to practise. Professionals enjoy a right to protest and manifest their personal beliefs. However, if a professional assaulted someone at a rally or gave unsafe unsolicited clinical advice, we're likely to investigate the matter.

When a professional promotes a position on a medical or professional matter, especially where they rely on their registered status (for example, as a nurse) to do this, they should keep in mind the relevant provisions of the Code (for example para 20.3: "be aware at all times of how your behaviour can affect and influence the behaviour of other people"). Whilst we won't take action simply because they have expressed a controversial opinion on an issue relating to nursing or midwifery practice, professionals should be aware of how their behaviour can affect and influence the behaviour of others, as well as undermine public confidence in their profession.[7] They should consider if they may need to qualify what they say, for example by pointing out that it is just their opinion or setting out the limitations of their experience in an area.

Example 1

A midwife discusses their work with friends in a restaurant. They express very vocal support for a specific political party and claim that government action is destroying the service and profession they work in; they go on to criticise their line manager and say they are part of the problem.

Registered professionals are entitled to hold and express opinions about their work and politics, including in public,

provided they do not act contrary to the Code. Sometimes such expression can be heated and passionate. In this scenario there is no evidence of behaviour contrary to the Code, such as racism, discrimination, harassment or breach of confidentiality, so we won't take regulatory action here. Had the professional, for example, described their manager using a racial slur or indicated that they would treat patients differently based on their political views or other characteristics, then we would be likely to take action

Example 2

A registered nurse has a conversation with a member of the public they meet on the train. The member of the public mentions their cancer diagnosis. The nurse refers to their registered status, discourages the member of the public from seeking medical help and suggests that extensive prayer will assist.

We are likely to take regulatory action against this professional. Regardless of the nature of any underlying beliefs, the professional's words create risk to the public and are likely to fundamentally call into question their practice or the knowledge expected of a registered professional. The advice is public, given to someone aware of the nurse's registered status and there is no evidence that the nurse has made reasonable qualifications to what they have said.

Example 3

A registered nurse posts a public tweet comparing medical professionals delivering a vaccine to 'angels of death' and explaining that vaccination is 'a plan to kill off the elderly'.

We are likely to take regulatory action against this professional. A registered professional should be aware of how their behaviour can affect and influence the behaviour of others, as well as undermine public confidence in their registered profession. The language used is inflammatory and abusive, their speech is public and goes far beyond a reasoned debate on the pros and cons of vaccination.

3. A professional expresses themselves in the course of work or an activity related to their practice;

We don't expect professionals to conceal their personal beliefs at work. Yet, we may find their practice impaired, if they express a personal belief in a way that:

- constitutes discrimination, harassment, bullying or victimisation of others,
- means that they are not delivering the fundamentals of care effectively, or are not listening to people and responding to their preferences and concerns, or
- conflicts with the Code's requirement to treat patients and people who use services with 'kindness, respect and compassion'.

Nurses, midwives or nursing associates may practise in accordance with a protected belief, provided it is within the law and does not deny people who use services access to appropriate medical care or otherwise contravene the NMC Code. Please see our Guidance on Conscientious Objection for more information on this particular issue, including the statutory right of professionals to refuse to take part in procedures relating to both the achievement and termination of pregnancy.

Example 1

A nursing associate, knowing a colleague is transgender, persistently makes comments to them to "accept the body they are in" and recommends they should undertake therapy to deal with "their issue". They raise the subject persistently and make jokes about trans rights and transphobic slurs whenever there is the opportunity.

We are likely to take action against this professional. They have targeted their colleague in a discriminatory and harassing manner. Their conduct could undermine confidence in the profession as well as raise public protection concerns. Even if the nursing associate could demonstrate that the underlying beliefs that motivated their conduct are themselves protected, that protection does not give them licence to harass others or to discriminate against them.[8]

Example 2

A registered nurse deliberately misgenders a transgender person attending a diabetes clinic, despite that person repeatedly asking them to refer to them using the correct gender. The transgender person makes a

formal complaint to the nurse's employer. When challenged about her behaviour, the nurse says that she was acting in accordance with her belief that human beings cannot change their sex or gender.

We are likely to take action against this nurse. Persistently and deliberately misgendering a trans person is contrary to the requirements of the Code to treat people with kindness and respect. The nurse's beliefs do not justify a clear departure from the provisions of the Code. Although gender-critical beliefs are protected under the Equality Act, this does not mean that those with gender-critical beliefs can 'misgender' trans persons with impunity.[9]

Example 3

Whilst chatting during a lunch break, a midwife mentions to a colleague that they are opposed to recent proposals to reform legislation to make it easier for someone to change their legal gender. They believe that sex is binary and cannot be changed. They do not consider that the law should be changed to allow people to change their legal sex based solely on how they self-identify. The midwife's colleague disagrees with this stance and worries that it will impact the midwife's practice.

We are unlikely to take action on the basis of these facts alone. The Employment Appeal Tribunal has decided that Gender-critical views are capable of being protected beliefs.[10] We will not take action against professionals unless the way their beliefs are expressed fundamentally calls into question a nurse, midwife or nursing associate's practice or professionalism. Though the nurse's beliefs may cause offense to others, there is no evidence in this example that they have expressed them in a way that could undermine public confidence in the profession. Nor is there any indication that the professional's belief is affecting their ability to practise safely and according to the Code – for example, that the midwife in this example has failed to treat a transgender patient with kindness and respect or has harassed or discriminated against trans people.

Example 4

A nurse has doubts about the efficacy or safety of a vaccine that is being widely administered as part of a nationwide public health campaign. They refuse to be vaccinated on this basis and tell colleagues about their misgivings.

There is no evidence at any point that the nurse has acted contrary to the Code.

Example 5

While on duty a nurse tries to persuade parents to remove their consent to have their child vaccinated as child vaccination runs contrary to the nurse's ethical beliefs.

We are likely to take action in these circumstances. Even if the nurse's underlying beliefs were protected, by seeking to actively interfere with treatment on that basis they are acting contrary to the Code. This conduct is likely to impact on care and public health, as well as undermine confidence in the profession.
For details of how Freedom of Expression is considered in Interim Order applications, see our Guidance on Freedom of Expression and Interim Orders.

1 Article 9 and 10 of the European Convention on Human Rights, or 'ECHR'

2 Under the Equality Act 2010 in England, Wales and Scotland; under the Fair Employment and Treatment (Northern Ireland) Order 1998 in Northern Ireland

3 Examples of beliefs that courts or tribunals have found to be protected include religious beliefs and beliefs closely linked to or based on those beliefs, lack of religion, veganism and gender-critical beliefs (that is, a belief that sex is binary and cannot be changed, for example in Forstater v CGD Europe and others UKEAT 0105/20)

4 Our legal framework sets out our duty to pursue these aims. See article 3(4A) Nursing and Midwifery Order 2001

5 For more detailed guidance on which convictions would be relevant, please see our FTP guidance on Criminal Convictions and Cautions

6 See Ngole v The University of Sheffield [2019] EWCA Civ 1127

7 Mohammad Adil v General Medical Council [2023] EWCA Civ 1261

8 See Forstater v CGD Europe [2021] 6 WLUK 104 where a "gender-critical" belief that sex was biologically immutable, and that sex rather than gender identity was fundamentally important, was held to be a philosophical belief protected under s.10 of the Equality Act 2010. The Court stressed that such a finding does not amount to an expression of support for particular view in debates about transgender issues, nor does it mean that (i) those with gender-critical beliefs can 'misgender' trans persons with impunity', (ii) trans persons do not have the protections against discrimination and harassment conferred by the [Equality Act 2010]' or (iii) 'employers and service providers will not be able to provide a safe environment for trans persons'

9 See the case of Forstater, above.

10 See the case of Forstater, above.