How we determine seriousness

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What we mean by seriousness

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Seriousness is an important concept which informs various stages of our regulatory processes.

When assessing whether a concern is serious, we look at what risks are likely to arise if the nurse, midwife or nursing associate doesn't address or put the concern right. This could be risks to people receiving care or, in some cases, to the public's trust and confidence in all nurses, midwives and nursing associates. In some cases, both risks may be present.

We will consider each case on its facts in order to decide if a matter is serious enough to impair fitness to practise. Important factors will include the duration or frequency of the conduct in question, the professional's relationship with or position in relation to those involved, and the vulnerabilities of anyone subject to the alleged conduct.

Some behaviours are particularly serious as they suggest there may be a risk to people receiving care; examples include:

- conduct or poor practice which indicates a dangerous attitude to the safety of people receiving care,
- sexual misconduct,
- discrimination and harassment, and
- misconduct otherwise involving cruelty, exploitation or predatory behaviour, such as abuse or neglect of children and/or vulnerable adults.

We will always take into account evidence of any relevant contextual factors. For more information please see our guidance on taking account of context.

It's vitally important that we encourage nurses, midwives or nursing associates to try to put problems right where they can, because we want to promote a learning culture that keeps people receiving care and members of the public safe.

By focusing on how risks could arise if concerns aren't put right, we can see what the nurse, midwife or nursing associate may need to do to address the problems in their practice, or what action we may need to take if they don't.

When our decision makers are looking at overall fitness to practise, they'll always consider what the nurse, midwife or nursing associate has done to address the concerns.

The guidance below helps us assess the seriousness of concerns by looking at how easy they are to put right, what could happen if they aren't put right, and what the role of public confidence and professional standards is.

Factors that indicate the seriousness of a case

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Decision makers across our fitness to practise process look at factors of a case to identify the types of concern which, unless put right, will usually mean a nurse, midwife or nursing associate's right to practise needs to be restricted.

These factors indicate the seriousness of the case and we use these as a framework for the way we investigate cases and present cases before panels of the Fitness to Practise Committee.

The factors can be broken down into three broad categories:

- Serious concerns which are more difficult to put right
- Serious concerns which could result in harm if not put right
- Serious concerns based on the need to promote public confidence in nurses, midwives and nursing associates

Sexual misconduct

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Sexual misconduct is unwelcome behaviour of a sexual nature, or which can reasonably be interpreted as sexual, that degrades, harms, humiliates or intimidates another. It can be physical, verbal or visual. It could be a pattern of behaviour or a single incident.

Our Code is clear that nurses, midwives and nursing associates have a responsibility to "uphold the reputation of [their] profession". This involves demonstrating a personal and professional commitment to core values such as integrity and kindness, and protecting vulnerable people from any form of harm and abuse.[1]

Sexual misconduct can have a profound and long-lasting impact, on people, including causing physical, emotional and psychological harm. Acts of sexual misconduct directly conflict with the standards and values set out in the Code.

Sexual misconduct is likely to be serious enough to impair fitness to practise whether the conduct takes place in professional practice or outside professional practice. Sexual misconduct poses risks both to people receiving care and colleagues and can seriously undermine public trust and confidence in our professions.

See our sanctions guidance for our approach to sanctions in cases of sexual misconduct.

Abuse or neglect of children or vulnerable people

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Safeguarding and protecting people from harm, abuse and neglect is an integral part of providing safe and effective care. It is also a key principle embedded throughout our Code.

The Code says that nurses, midwives and nursing associates must 'take all reasonable steps to protect people who are vulnerable or at risk of harm, neglect or abuse'. Professionals are also expected to make sure that people's physical, social and psychological needs are assessed and responded to, which includes acting as advocates for the vulnerable and challenging poor practice and behaviour related to a person's care.

Protecting people from harm, abuse and neglect goes to the heart of what nurses, midwives and nursing associates do. Failure to do so, or intentionally causing a person harm, will always be treated very seriously due to the high risk of harm to those receiving care, if the behaviour is not put right. Where professionals are shown to be involved in serious neglect or abuse outside their professional practice, there is likely to be a risk of harm to people receiving care. Such behaviour also has the potential to seriously undermine the public's trust and confidence in the professions we regulate.

See our sanctions guidance for our approach to sanctions in cases involving abuse or neglect of children or vulnerable people.

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.[2]

The NMC takes concerns about bullying, harassment, discrimination and victimisation very seriously[3]. 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.

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,[4] 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.

Discrimination

A person against another person under the Equality Act 2010 if they treat them less favourably than they would treat others because of a protected characteristic[5] 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

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[6] and that fair treatment of staff is linked to better care for people.[7]

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[8] 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

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.[9]

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.[10] 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. Our guidance on Misconduct gives further detail on behaviours outside professional practice that could raise fundamental questions of this kind.

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.[11] 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.

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.[12] 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 issues identified with their practice. This is more likely to be necessary where the individual has not 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

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)

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.[13] 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

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.

Our Public Sector Equality Duty (PSED)

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Alongside our professional standards, as a public authority, we have wider legal obligations which ensure equality is at the heart of what we do. The public sector equality duty (PSED) was created by the Equality Act 2010 and requires us to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- Advance equality of opportunity between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not

When a concern is raised with us, and there's evidence that a professional on the register has engaged in harassing, discriminatory or victimising behaviours, we'll always thoroughly investigate, taking into account our professional standards and the aims of the public sector equality duty.

1 The Code: Professional Standards of behaviour for nurses, midwives and nursing associates; paras 1.1, 17.1, 20 and 20.2 are particularly relevant.
2 The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates 20.2, 20.3, 20.7, 20.10.
3 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.
4 PSA v HCPC and Roberts [2020] EWHC 1906 (Admin)
5 Equality Act 2010 s.13 - s.19.
6 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.
7 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.
8 Ambitious for change – research into NMC processes and people's protected characteristics, 20 October 2020
9 Harassment at work. A Unison Guide, December 2016
10 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.

11 ACAS bullying definition
12 Equality Act 2010 s.27.
13 Equality Act 2010 s.26.