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 this concern right. This could be risks to patients or service users or, in some cases, to the public's trust and confidence in all nurses, midwives and nursing associates.

When considering seriousness, we will 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 patients 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, 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 to patients if not put right**
- **Serious concerns based on the need to promote public confidence in nurses, midwives and nursing associates**

Harassment, discrimination and victimisation

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The NMC takes concerns about harassment, discrimination and victimisation very seriously[1], regardless of

whether they occur in or out of the workplace.

We've made clear that racism, for example should not be tolerated within healthcare. These types of behaviours can negatively impact public protection and the trust and confidence the public places in nurses, midwives, and nursing associates. They can also 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[2] and that fair treatment of staff is linked to better patient care.[3]

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

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.[4]

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

Discrimination[5], harassment[6] and victimisation[7] are defined in the Equality Act 2010 in the following way:

- **Discrimination:** a person discriminates against another person if they treat them less favourably than they would treat others because of a protected characteristic.
- **Harassment:** is defined as someone engaging in unwanted conduct that's related to a protected characteristic or is of a sexual nature. 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.
- **Victimisation:** is defined 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. 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.

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.

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 some types of concerns, such as racism[8]. 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.

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 FtP process, it's more likely that a significant sanction, such as removal from the register, will be necessary to maintain public trust and

confidence.

1 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.
2 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.
3 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.
4 The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates 20.2, 20.3, 20.7, 20.10.
5 Equality Act 2010 s.13 - s.19.
6 Equality Act 2010 s.26.
7 Equality Act 2010 s.27.
8 PSA v HCPC and Roberts [2020] EWHC 1906 (Admin)