Has the concern been addressed?

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Demonstrating insight

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Before effective steps can be taken to address concerns, the nurse, midwife or nursing associate must recognise the problem that needs to be addressed. Therefore insight on the part of the nurse, midwife or nursing associate is crucially important.

Where a nurse, midwife or nursing associate denies some or all of the facts alleged, this can be taken into account by decision-makers when assessing the quality of insight shown, but it is not necessarily a bar to demonstrating insight. A professional is, for example, entitled to say “I don’t accept that this incident took place in the manner alleged, but I understand why, if it had taken place, it would have been a serious departure from professional standards”.

A nurse, midwife or nursing associate who shows insight will usually be able to:

- step back from the situation and look at it objectively
- recognise what went wrong
- accept their role and responsibilities and how they are relevant to what happened (but decision-makers must recognise that denial of some or all of the facts alleged is not necessarily a bar to demonstrating insight)
- appreciate what could and should have been done differently
- understand how to act differently in the future to avoid similar problems happening.

Decision makers do more than simply look at whether a nurse, midwife or nursing associate has shown ‘any’ insight or not. They need to assess the quality and nature of the insight. There may still be a public interest in restricting a nurse, midwife or nursing associate’s right to practise, even if they have shown ‘some’ insight into what happened.

Where a nurse, midwife or nursing associate is alleged to be responsible for incidents that they denied (or continue to deny), this should not bar the nurse, midwife or nursing associate from being able to show insight. They may not accept that particular events have occurred, but they may still be able to show insight by having an understanding of the need to minimise the risk of similar events occurring in the future, and the steps that might be taken to achieve this. Panels facing this situation may also find our sanctions guidance “The purpose of and approach to sanctions” and “Sanctions for the highest risk cases” of assistance in this regard.

Assessing whether insight is sufficient

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It is important to carefully assess whether the insight shown by the nurse, midwife or nursing associate is enough to address the specific concerns that arise from their past conduct, rather than simply identifying whether ‘any’ or ‘some’ evidence of insight is present. What is sufficient insight will depend on the circumstances of the case.

Decision makers must always consider each case on its own facts and circumstances. However, the following factors may be useful when considering whether the evidence of insight is sufficient to address the concerns in the case.

- If they had the opportunity to do so, did the nurse, midwife or nursing associate cooperate with their employer's or any other local investigation into the concerns?
- Did the nurse, midwife or nursing associate accept the concerns against them when first raised by their employer?
- Did the nurse, midwife or nursing associate, voluntarily or without prompting, draw any failings or inappropriate conduct to the attention of their employer?
- Did the nurse, midwife or nursing associate ‘self-report’ to the NMC, when a referral might otherwise not have been made by someone else?
- Does the nurse, midwife or nursing associate accept the of our regulatory concern, and accept responsibility for any failings or inappropriate conduct?
- Has the nurse, midwife or nursing associate done so since the early stages of our investigation?
- Does the nurse, midwife or nursing associate demonstrate a comprehensive understanding of:
  - any harm or risk of harm, to patients presented by the concerns?
  - any damage to public confidence in the professions that the concerns could present? For example, does the professional show genuine insight into how the concerns may have had a wider impact on the specific patient in question, or other patients in their care, in respect of the trust they have in healthcare professionals? Do they show an understanding of how colleagues may have been affected by the concerns?
- Does the nurse, midwife or nursing associate acknowledge:
  - how far their conduct or practice fell short of professional standards? For example, do they demonstrate a clear understanding of how the concerns relate to their obligations under the Code.
  - their own responsibility for the problem, without seeking to blame others or excuse their actions?

The decision-maker should bear in mind that these factors are not an exhaustive list, and that presence or absence of any of these factors does not automatically mean that they should conclude insight is sufficient or not. As stated above, ultimately the sufficiency of the insight is likely to involve a judgement by the decision-maker based on the particular facts of each case.

If a nurse, midwife or nursing associate admits concerns that they had previously not accepted or had disputed, decision makers should consider this carefully. They should carefully assess the nature of what it was that was disputed or not accepted, and whether it was possible for the nurse, midwife or nursing associate to make admissions earlier on by considering the information that was given to the nurse, midwife or nursing associate during their employer's investigation, other earlier local investigations, or our own investigation:

> For example, we receive an allegation from Patient B that Nurse A slapped them. Initially the only witness to the incident appears to be Patient B, and Nurse A maintains during the local investigation and in her initial response to the NMC that Patient B is fabricating the allegation. Nurse A only changes her position and admits to slapping Patient B when Witness C comes forward with a video recording that they took of the incident, and which clearly shows Nurse A slapping the patient.
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> By contrast, the NMC receive a very general referral that Nurse B, the nurse in charge of a hospital ward, has been bullying more junior staff. Nurse B initially denies the allegations and in her response to the NMC says she doesn’t understand why colleagues would say this about her. The NMC takes detailed statements from the specific colleagues in question, and in which they explain how they considered they were being bullied. When Nurse B receives and reads these statements, it causes her to reflect and recognise how in fact her behaviour had impacted on colleagues. She provides a detailed reflection to the NMC in which she accepts the allegations and explains how the statements have helped her to understand what was being alleged.
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> Whilst the decision maker would need to take into consideration the initial denial/ lack of acceptance in respect of both examples, the initial denial in the first example is likely to be a more significant hurdle for the

> professional to overcome than the lack of acceptance in the second example.

The duty of candour

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All registered nurses, midwives or nursing associates must comply with the duty of candour guidance which arises from the requirements set out in the Code and Raising concerns: Guidance for nurses and midwives.

To comply with this professional duty, nurses, midwives or nursing associates must:

- Be honest, open and truthful in all their dealings with patients and the public.
- Never allow organisational or personal interests to outweigh the duty to be honest, open and truthful.
- Act with integrity and give a constructive and honest response to anyone who complains about the care they have received.
- Act without delay and raise concerns if they experience problems that prevent them from working within the Code. Also act without delay and raise concerns if they or a colleague, or any other problems in the care environment, are putting patients at risk of harm. 'Doing nothing' and failing to report concerns is unacceptable.
- Apologise and explain fully and promptly what has happened and the likely effects if someone in their care has suffered harm for any reason. 'Near misses', where a nurse's, midwife's or nursing associate's act or omission puts a patient at risk of harm, must also be escalated as a point of concern.
- Cooperate with internal and external investigations.

Decision makers should take into account whether the nurse, midwife or nursing associate has complied with the duty of candour and the requirements it places on professional practice when they consider issues of current impairment.

Apologies and insight

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Apologising for mistakes or failings should be encouraged. A decision maker may take an apology into account as evidence that the professional understands and has complied with the duty of candour, and may view an apology as evidence of insight.

An apology may be expected in certain circumstances, such as when something goes wrong with a patient's treatment or care that causes or has the potential to cause harm or distress. However, there may be circumstances that prevent a nurse, midwife or nursing associate from offering an apology.

For instance, some may be discouraged from apologising by their employer or be encouraged to express the apology in a certain way. The employer may be concerned that an apology could be perceived as an admission of guilt and that this could have implications for any separate legal proceedings[1]

This can affect what a nurse, midwife or nursing associate feels able to do. We will consider our context principles when deciding how to approach the employer's actions in these circumstances.

Cultural differences or English being a second language may also affect the nurse, midwife or nursing associate's ability to provide a reflective statement and how they express insight, including whether they offer an apology.

Decision makers should consider whether these factors might be relevant when a nurse, midwife or nursing associate has not offered an apology.

Sufficient steps to address the concern

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What is 'sufficient' to address the concern in a case will depend on the specific details, including the nature of the alleged failings or behaviour. The scale of the concerns will determine what steps are required. For example, the reassurance a decision maker will be looking for will be less for a single clinical incident in an otherwise unblemished career than it would be if a number of errors had taken place over a period of time, and they continued to happen after the nurse, midwife or nursing associate was made aware of the problem, or where other steps put in place to address the risks did not prevent problems from recurring.

Key considerations for decision makers in assessing the steps taken by a nurse, midwife or nursing associate to address concerns in their practice will be whether the steps taken are:

- relevant, in that they are directly linked to the nature of the concerns
- measurable (for example, where the nurse, midwife or nursing associate says they have been on a training course, information should be provided to help the decision maker understand the scope of the course, the topics covered and the results of any assessments)
- effective, addressing the concerns and clearly demonstrating that past failings have been objectively understood, appreciated and tackled.

Sufficient and appropriate steps may include the following.

- Attending a training course. Decision makers should assess whether the course content is relevant to the concerns in the case and whether the course was sufficiently comprehensive, ideally including a practical element and some form of assessment, with results available.
- Reflection. Reflective work by the nurse, midwife or nursing associates will be of more weight where they are able to give examples not only of what they have learned following the concerns being raised, but also how they have applied this learning in their practice.
- Developing and successfully completing an action plan.
- Successfully completing a period of supervised practice targeted at the concerns arising from the alleged behaviour.
- Periods of employment during which the nurse, midwife or nursing associate has practised in similar clinical fields, or carried out similar procedures to those where the original failings or concerns arose. Decision makers should look for clear evidence that the employer was aware of the areas of concern within the nurse, midwife or nursing associate's practice and what has been observed or assessed regarding these.
- Periods of unemployment (whether in the past or present) or periods working without having had the opportunity to demonstrate that the problematic task or tasks can be successfully completed without difficulty, will usually be of limited relevance.

Decision makers should only rely on the evidence that is actually available at the time they consider the case. They must not speculate about what other information might be available.

However, if a case is being considered before a final hearing or meeting, and the evidence of insight and the steps taken to address the concerns is insufficient, decision makers should consider whether further steps could be taken. For example, if a nurse, midwife or nursing associate has stated that they have attended a course or undertaken additional training, we could request evidence of this.

Assessing evidence

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Decision makers must consider how much weight to place upon any evidence a nurse, midwife or nursing associate provides. In particular:

- A reflective piece can be considered 'evidence', although the decision maker should consider at what stage in the proceedings it was produced.
- Testimonials from a manager or supervisor will usually carry more weight than those from friends or colleagues. References or testimonials should be signed by the author, dated, on letter-headed paper, and include contact details so we are able to verify the contents of the reference or testimonial.
- It should be clear that the author of the reference/testimonial is aware of the full details of the allegations against the nurse, midwife or nursing associate.
- The content of the reference or testimonial should be relevant to the issues being considered by the decision maker.
- Evidence of training courses should be carefully considered. Decision makers should look at the duration of the course and the amount of time or focus placed on topics which address the relevant concerns. Courses with a practical element and formal assessment (with results available), can carry more weight than courses completed online or those without any means for the nurse, midwife or nursing associate to demonstrate understanding.
- Little, if any, weight should be placed on character references and testimonials that do not provide informed comment on the nurse, midwife or nursing associate's clinical practice, skills or competence.

1 The NMC and GMG guidance on duty of candour says the following: "Apologising to a patient does not mean that you are admitting legal liability for what has happened. This is set out in legislation in parts of the UK (Section

2 of the Compensation Act 2006 (England and Wales)) and NHS Resolution also advises that saying sorry is the right thing to do".