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## Concerns you should refer to us

Last Updated: 10/01/2020

### In this guide

- [Overview](#)
- [The three types of concerns you should raise with us](#)
- [Important things to remember about Fitness to practise](#)

### Overview

Referring someone to their professional regulator is a significant step. When deciding whether to make a referral, you'll need to think about the types of allegations that we consider:

- allegations that a nurse, midwife or nursing associate has fraudulently or incorrectly joined our register. Or allegations about fitness to practise based on:
  - misconduct
  - lack of competence
  - criminal convictions and cautions;
  - health problems that impair the ability to practise safely
  - not having the necessary knowledge of English
  - determinations by other health or social care organisations.
- The nature and seriousness of the concern
- Were there any [contextual factors](#) or [health issues](#) that contributed to the concerns?
- Has the person shown insight into the problems in their practice and been supported to try to [put things right](#)?
- Can you be sure that your referral is [fair and unbiased](#)
- Do you have the [right information](#) to support the referral?

### The three types of concerns you should raise with us

1. [Concerns that pose a serious risk to people who use service and would be difficult to put right](#)
2. [Concerns where local action can't effectively manage any ongoing risks to people who use services](#)
3. [Concerns requiring us to take action to protect public confidence in the professions and uphold standards](#)

### Important things to remember about Fitness to practise

Bear in mind that our fitness to practise process is about managing any risk that a nurse, midwife or nursing associate poses to members of the public in the future. It isn't about punishing people for past events.

We may not need to take regulatory action for a clinical mistake if there's no longer a risk to members of the public and the person has been open about what went wrong and can demonstrate they've learned from it.

## Deciding to make a referral

After reading through this resource, you may find it would still be helpful to talk to us about whether a referral is necessary. You can call our [advice line](#) to talk to one of our experienced regulation advisers.

## Concerns that pose a serious risk to people who use services and would be difficult to put right

Last Updated: 02/02/2021

In this guide

- [Overview](#)
- [When to refer these concerns to us](#)

### Overview

A small number of concerns are so serious that it would be difficult for the nurse, midwife or nursing associate to put right the problems in their practice, the behaviours, or the aspect of their attitude which led to the incidents happening. These concerns may include:

- deliberate harm or prolonged neglect of people who use services
- exploiting people who use services for financial or personal gain, or engaging in relationships with patients in breach of guidance on clear sexual boundaries
- serious dishonesty, such as covering up mistakes, deliberately falsifying records, deliberately obstructing investigations, bullying colleagues who want to raise a concern, or otherwise engaging in activity that is intended to suppress openness about the safety of care
- deliberately using false qualifications or a false picture of employment history which hides patient safety incidents or restrictions on practice
- serious criminal activity, even when not related to care, such as sexual assault, child abuse, or using child pornography
- being directly responsible (such as through managing a service or setting) for exposing patients or people who use services to harm or neglect – especially where the evidence shows the individual put their own priorities, or those of the organisation they work for, before the safety and dignity of people who use services.

### When to refer these concerns to us

This category of concerns should almost always be referred to us as soon as evidence emerges to support the concern, even if this is before your full investigation takes place.

An immediate referral allows us to consider whether an interim order is necessary. This would restrict or suspend the individual's practice while we carry out our investigation.

It's important to note that we can only seek an interim order if the person who makes the referral permits us to disclose the information we've received to the nurse, midwife or nursing associate who has been referred.

If we do put an interim order in place, we'll still need you to complete your investigation and share your findings with us.

## Concerns where local action can't effectively manage any ongoing risks to people who use services

Last Updated: 02/02/2021

In this guide

- [Overview](#)
- [When to refer these concerns to us](#)

### Overview

Some serious concerns can be put right with reflection and action by the nurse, midwife or nursing associate, and support from an employer. Our fitness to practise process is about managing any risk that a nurse, midwife or nursing associate's practice poses in the future. It isn't about punishing people for past events.

We may not need to take regulatory action for a clinical mistake if there's no longer a risk to members of the public and the person has been open about what went wrong and can demonstrate they've learned from it. These types of concerns might include clinical errors, communication problems, and concerns related to an individual's physical or mental health.

Normally, you should be able to [manage these concerns locally](#) without making a referral. But if you can't, you may need to refer the case to us.

Below are some examples where you might not be able to effectively manage the concerns and may need to make a referral to us:

- The individual has resigned or otherwise disengaged as a direct response to questions about their practice or being informed of your investigation, without taking action to fully address the concerns.
- You've dismissed the individual due to serious concerns about their ability to practise safely and effectively.
- You've suspended the individual pending an investigation but are aware that they're working elsewhere and this may put people who use services at risk.
- The individual has refused to engage with an action plan, or has failed to pass or fully complete an action plan (for example, by resigning before completion).
- Previous support hasn't been effective in addressing the risk of the nurse, midwife, or nursing associate's practice. For example, there are continued errors in clinical practice after retraining, or a persistent significant lack of competence.
- Previous support hasn't been effective in addressing a risk associated with an individual's health condition. For instance, the individual has stopped managing the health condition or engaging with necessary adjustments and this puts either themselves, the public or colleagues at risk of harm.

[Read more about deciding whether to refer concerns about health.](#)

### When to refer these concerns to us

Usually, you should [complete a local investigation](#) before referring serious concerns that could be put right with reflection, insight and strengthened practice and support.

If you feel that there are risks to people who use services that can't be effectively managed while you do a local investigation, you should refer the concern to us.

## Concerns requiring us to take action to protect public confidence in the professions and uphold standards

Last Updated: 02/02/2021

In this guide

- [Overview](#)
- [When to refer these concerns to us](#)

### Overview

In rare cases, you may need to refer a nurse, midwife or nursing associate to us if their actions undermine public confidence in the professions, whether or not there is a risk to people who use services.

Conduct that could affect trust and confidence in nurses, midwives and nursing associates could include dishonesty, bullying and harassment related to professional practice. Within a nurse, midwife or nursing associate's private life, criminal convictions that relate to specified offences or result in custodial sentences are also likely to undermine public confidence in the professions.

This would also apply where clinical failings are so serious that, even if put right, they could affect the public's trust in nurses, midwives and nursing associates if action isn't taken.

There is generally a high threshold for this type of referral. You should make a referral where the nature of concerns suggests that members of the public might take risks with their own health and wellbeing by avoiding treatment or care from nurses, midwives and nursing associates.

### When to refer these concerns to us

You should refer these cases at the point where you (or the police or other investigating body) have sufficient evidence to indicate serious wrong-doing. This might include police charging someone with a crime, for example, or evidence of social media activity indicating bullying, harassment or discriminatory conduct. Without some evidence, it's unlikely that we would be able to take regulatory action.

## Considering evidence of insight and remediation

Last Updated: 02/02/2021

We want to assure nurses, midwives and nursing associates that our role isn't to punish people for mistakes.

This will support them to be open and honest when something goes wrong and help to promote a culture that supports learning, not blame. This is more likely to lead to safe care.

As an employer, you should take into account any evidence of the person's insight and actions taken to put things right when deciding whether to make a referral to us.

You may not need to refer a concern related to clinical errors or other mistakes made in someone's practice if the individual has demonstrated insight and is willing to take steps, or has taken steps, to fully address the concern. This will mean:

- there's no longer a risk to the public and people who use services (for example, where the individual has undertaken retraining and has demonstrated competence)
- the individual has been open about what went wrong
- the individual can show what they've learned from it.

To learn more about how we consider insight and strengthened practice in fitness to practise cases, see our [guidance on insight and strengthened practice](#).

## Deciding whether to refer concerns related to health

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You may have concerns that someone's physical or mental health is impacting (or could impact) their ability to provide safe care. Usually, these concerns can best be managed with your support, as an employer, to safely reduce any risk to people who use services.

You won't need to make a referral if:

- the nurse, midwife or nursing associate has demonstrated good insight into the extent and effect of their condition
- the nurse, midwife or nursing associate is taking appropriate steps to access treatment and is following any advice from their health professionals
- occupational health (where available) is providing support through the employer
- the nurse, midwife or nursing associate is managing his or her practice appropriately, for example by taking sickness absence.

Referrals aren't necessary when a nurse, midwife or nursing associate has a disability or long-term health condition but is able to practise with or without adjustments to support their practice. Equally, a nurse, midwife or nursing associate may be signed off as 'unfit for work' due to ill health, but this does not necessarily mean their fitness to practise is impaired.

You should make a referral when someone's health condition presents a risk of harm to the public that you're unable to manage, or a risk to public confidence in the profession.

This may be, for example, where someone has a long-term physical or mental health condition that is untreated (or unsuccessfully treated) and could affect their ability to provide safe care. Or it may be where the nurse, midwife or nursing associate has not acknowledged the health condition that's affecting their practice.



## Ensuring your decisions to refer are fair and unbiased

Last Updated: 02/02/2021

We want to support you to only make appropriate referrals. Our data shows that nurses and midwives from ethnic minority groups and male nurses are disproportionately referred to fitness to practise processes.

Our study, [Ambitious for Change](#), published in October 2020, found that nurses and midwives from a Black and minority ethnic background are more likely to be referred to us by employers, while White professionals are more likely to be referred by the public.

The study also examined NMC processes - including education, overseas registration, revalidation and fitness to practise - and identified disparities in people's experience and outcomes, depending on who they are.

Data reported in our [2018–2019 annual equality, diversity and inclusion report](#) also showed that men are disproportionately referred to us: overall, 24 percent of concerns were for men, compared with being 11 percent of the register.

Your decision to refer needs to be free from bias and discrimination (as defined in the Equality Act 2010 and other relevant legislation). If we find evidence of bias or discrimination in a referral it would be a very serious concern which we'd need to look into.

## Who should approve and make the referral

Last Updated: 02/02/2021

We've found that we can more quickly and efficiently reach decisions about referrals when an employer has a clear internal process in place for escalating concerns to their senior leadership and clear governance arrangements for completing and submitting referrals to us.

Some principles to consider are:

- Assign one senior person, such as the person responsible for nursing and midwifery staff, to have oversight and responsibility for signing-off on referrals.
- Provide us with the name of one person within your organisation who can respond to our requests for information about referrals. This could be the person (mentioned above) who has oversight and responsibility for referrals. Alternatively, it may be a senior person who is responsible for submitting referrals along with supporting documentation.
- Try to be sure that the person who makes or signs-off on a referral is not the same person who investigated the concerns. That way the person making the referral can review what has been done so far. They can decide whether to refer the case to us, taking account of their own processes and policies, this resource, and, when necessary, advice provided through our advice line.

## How to make a referral

Last Updated: 02/02/2021

If you decide that you need to make a referral (or have consulted our advice line and been advised to refer), [take a look at our guidance](#). This explains how to complete our online referral form.

We can only investigate and reach a decision in a case if we have sufficient evidence of the concerns. You'll need to submit all relevant information when you make the referral.

This may include patient records, investigation reports, decision letters and any action plans put in place for an individual. Providing as much information as possible from the outset will help avoid delays and will reduce the need for us to repeatedly seek further information from you.

When conducting a local investigation, you should make sure all evidence and decisions are well-documented. If a referral is made, this documentation will be important information for us to consider.

We have powers under [Article 25\(1\) of the Nursing and Midwifery Order 2001](#) to require employers to provide information and documents which appear relevant to our investigation.

If we do ask you for further information, we may ask you to provide this quickly, particularly if we need to seek an interim order to prevent any immediate risks to people who use services.

Your swift response will enable us to reach a decision as quickly as possible for the nurse, midwife or nursing associate and all others involved in the fitness to practise process.

Our [Employer Link Service](#) is available to help you decide whether to make a referral and provide further guidance about what you need to submit.