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Overview

Last Updated: 02/02/2021

When a concern is raised about someone's practice, it's important for you to respond in a way that promotes learning and openness. We know that fear of being blamed or punished can stop people from speaking up and learning from mistakes.

Nursing and midwifery professionals will value being treated fairly and being supported to put things right. And people who use services will value being listened to and having open and honest communications.

We value and recognise that your approach to local investigations is an important part of establishing a just culture in your organisation. We believe a just culture is one that balances fairness, learning, and accountability. It also makes sure that all nursing and midwifery colleagues are treated equally.

Based on our collaboration with employers, professionals, our regulatory partners and representatives of people who use services across the UK, and drawing on our own experiences in fitness to practise cases, we've set out things we think are important for you to consider when conducting a local investigation into concerns about a nurse, midwife or nursing associate's practice.

They're also based on our work with wider professionals, partners and representatives of people who use services to identify best practice. We thought you might find it helpful to have some principles to support you in managing concerns about agency and bank staff, so we've included some information on that.

This isn't a guide about how to do an investigation. Instead, it sets out high level principles that you might want to consider along side your own local processes and policies, or national requirements (including any relevant requirements under employment or data protection laws).

Using this resource will help you give us relevant information if you need to make a referral to us. It will also help us to respond quickly and proportionately.

Dealing with concerns involving agency staff

Last Updated: 02/02/2021

In this guide

- [Overview](#)
- [Sharing information with the agency](#)
- [Employers and agencies working together](#)

Overview

Some organisations use staff retained through agencies (or a third-party provider of bank staff).

If there's a concern about the practice of an agency nurse or midwife, the organisation in which the incident occurred or where the concerns were identified should work closely with the agency to decide:

- how to investigate the concern (if necessary)
- how to prevent risks to people who use services
- whether the person needs health and wellbeing support and whether it can be offered or signposted.

Sharing information with the agency

Normally the organisation in which an incident happened, or where concerns were raised, will have relevant information about:

- what happened or what concerns were raised about the person's behaviour
- any systems issues or workplace pressures at the time
- any witnesses to the incident or the concerns.

Sharing information (while complying with relevant data protection legislation) means you can work together to respond to the concerns effectively (see next section).

Employers and agencies working together

When an organisation has concerns about an agency member of staff, they might be inclined not to offer them any more shifts. While this approach might address the immediate risks for the organisation, it doesn't help the agency understand them. Nor does it give the professional the chance to address the concerns.

So it's better to work together if there's a patient safety incident and/or concerns about an agency nurse or midwife's practice. Working together can include:

- clearly identifying who'll lead an investigation into the concerns, and which process will apply
- identifying who'll be a point of contact and make sure that the member of the public and/or family is involved in any investigation where relevant
- keeping in close contact during an investigation, to share updates and information, and manage any risks related to someone's practice
- the agency checking records of any history of concerns, or information about other agencies or employers that the professional works for – this should inform any decision about how to respond
- agreeing next steps after an investigation ends, which might include supporting the professional to address any concerns, or the organisation or the agency making a regulatory referral.

There are other opportunities for organisations and agencies to work together. For example, an agency might decide to make a referral to us based on concerns across different organisations. They may need the

Conducting a local investigation

organisations to collaborate on supporting information for the referral.

Sometimes we ask for information from both the organisations and agencies when we respond to referrals from people using services or members of the public.

Guiding principles of a good local investigation into concerns about someone's practice

Last Updated: 27/12/2019

With the help of our professionals, regulatory partners and patient representatives, we've identified 10 guiding principles of a good investigation into concerns about a nurse, midwife, or nursing associate's practice. You might find these useful if you have determined that a formal investigation is necessary.

These principles aren't meant to tell you how to do an investigation. They're high level principles for you to consider alongside your own local processes and policies (including any relevant requirements under employment or data protection laws).

- Promote a just culture
- Have clear policies and procedures and follow best practice guidance
- Have a clear plan and terms of reference
- Start as early as possible
- Be objective
- Listen to people who use services and families, keep them informed, and take their information and views into account
- Support staff and encourage openness without blame
- Take equality, diversity and inclusion into account
- Keep records of all evidence and decisions
- Avoid delays and stick to a reasonable timeframe

If you need to [refer a concern to us](#), following these principles will help to make sure that your investigation will give us the information we need to reach a decision more quickly.

It's important to note that not all concerns about someone's practice will need to be investigated formally. Your organisation's processes should determine when to start an investigation. Clear and transparent processes will help make sure that any decision to investigate is fair, proportionate and justified.

Promote a just culture

Last Updated: 02/02/2021

We believe a 'just culture' is one that balances fairness, learning and accountability. There are different ways to embed a just culture. They'll help make sure that all of the contributing factors in a person's actions, inactions or behaviours are considered.

Using tools and processes that promote a just culture will help you look at concerns in a way that avoids fear and blame. It will also help professionals and people who use services to feel confident about speaking up, knowing they'll be supported and treated fairly.

For example, the approach as outlined in NHS England's [A Just Culture Guide](#) can be used as soon as concerns arise or when a patient safety incident suggests that there may be concerns about someone's practice. The just culture guide uses a series of questions to help you understand whether someone's practice may be putting people who use services at risk.

With this approach, you'll be able to take into account any relevant contextual factors that may need to be addressed separately from concerns about a professional. For example, contextual factors may include:

- staffing levels, skill mix and workload at the time of the incident
- a constantly changing environment presenting new challenges
- unusual expectations for staffing levels and workload pressures
- distractions
- management pressure or poor management
- physical environment
- device, equipment or product design
- working practices, social norms or organisational/team culture
- history of bullying, harassment or discrimination in the team
- personal stress, health problems.

This approach can help you understand whether someone else with similar experience and qualifications would have acted in the same way or made the same decisions in the same circumstances. If they would, there are likely to be wider issues that need to be addressed.

A just culture approach also will help you decide the best course of action for people using services and for the professional involved.

If you do make a referral to us, we'll ask you for documentation showing any contextual factors that you found to be relevant to the concerns, such as those listed above.

Have clear policies and procedures and follow best practice guidance

Last Updated: 02/02/2021

Your organisation's own policies and procedures should outline how to do a good local investigation into concerns. You may want to review them to make sure there's a consistent approach that applies to everyone, whenever concerns are raised.

Here's some best practice guidance that you might want to take into account:

- [Acas guidance](#)
- [NHS Improvement, A Just Culture Guide](#)
- [NHS Resolution, Being Fair.](#)

We recognise that both trade unions and professional associations play a vital role in offering local support, representation and guidance to staff.

When concerns arise in relation to a nurse, midwife or nursing associate's practice, we would encourage you to work with any elected representatives to ensure that staff are fully supported.

Have a clear plan and terms of reference

Last Updated: 02/02/2021

It's best practice to have a carefully considered plan for an investigation, with clear terms of reference.

A good plan would include all relevant information needed to ensure a fair and thorough investigation, including clearly defined and framed allegations or descriptions of the concerns.

The plan will help the investigator know what is expected of them. It will help to make sure steps are taken to communicate openly, sensitively, and compassionately with the person who is the subject of the investigation, people who use services and their family members, and any staff members involved.

A clear plan and terms of reference also will help to avoid delays.

Start as early as possible

Last Updated: 02/02/2021

Starting your investigation as soon as possible will help prevent risks to people using services.

Starting early means you'll be able to gather detailed evidence while it's still available, and take statements from people while their recollections are still fresh.

You may need to take immediate steps to ensure safe care for people using services before or [while you conduct the investigation](#).

Sometimes the start of your investigation may depend on the outcome of a third party investigation, such as a police investigation. In these cases, it's important to manage any risks while you wait for an outcome. Also consider whether it's appropriate to keep the professional involved regularly informed about timescales and progress.

Be objective

Last Updated: 02/02/2021

It's important that people who are investigating and making decisions about concerns have no biases or conflicts of interest. Wherever possible, they should have no involvement with the team, events or concerns under investigation.

For example, consider whether the lead person(s) investigating the concerns has previously worked with the professional, and the impact that might have on their objectivity, and on the staff member involved.

If prior involvement or possible conflicts can't be avoided, it's good practice to declare them in advance and make sure they're stated in the investigation report.

Investigators will need to be experienced and skilled in classifying, evaluating and weighing evidence objectively. They should be able to take a range of factors into account, including equality, diversity and inclusion. Training will help to ensure that an investigator is competent and confident in their fact finding and analysis.

Good investigators ask appropriate non-leading questions. They know how to handle sensitive issues and topics, treating people with dignity and respect at all times.

You may want to consider how to balance the protected time for investigations against demands on services and the impact on other colleagues.

Listen to people who use services, keep them informed, and take their information and views into account

Last Updated: 02/02/2021

When investigating concerns about a professional's practice, think about the members of the public who may have been affected, physically and/or emotionally. It will be important to listen to their concerns, communicate openly and honestly and keep them well informed about the progress of an investigation. How will they be involved in the investigation, and how can you support them?

Consider, for example:

- whether they'll be asked to contribute to the terms of reference or investigation plan
- how and when will you update them on your progress and actions? And does this meet their needs?
- how, when and where will they be able to contribute their views and experience in a way that's supportive and encourages openness?

It's important to keep people who use services and families informed, and to be compassionate and honest. This includes managing people's expectations about how their input will be taken into account. Also think about how to balance transparency with confidentiality, considering relevant data protection legislation.

Support staff and encourage openness without blame

Last Updated: 02/02/2021

The Code is clear that nursing and midwifery professionals must raise and, if necessary, escalate any concerns they may have about public safety, or the level of care people are receiving.

It's supportive to reassure anyone raising concerns that they'll be taken seriously and treated fairly, and that their concerns will be escalated appropriately. This includes keeping them up to date about how you're responding to their concerns.

If there are concerns about an professional's practice, let them know as soon as possible (unless this wouldn't be appropriate, for example if police advise against it).

The professional will need a clear explanation of the concerns and the next steps. They'll also need the chance to give an open and honest account of their actions. A person-centred approach will help make sure they're treated with respect and dignity throughout the process.

If you decide an investigation is needed, you might consider giving the professional a single point of contact to liaise with the investigation.

Health problems can sometimes appear to have caused the concerns about a nursing or midwifery professional's practice. If so, it will be important to document when you became aware of the health issues, your understanding of the issues, what actions you took to support your employee and keep their practice safe, and how they responded or engaged with that support.

When you're investigating concerns about professionals, they can feel vulnerable, stressed and in need of support and reassurance.

Discuss with the professional how you can support them throughout the process. This may include professional support, emotional support, or support for their physical health and wellbeing. It may be helpful to encourage staff to find support outside work, for example from friends or family.

We recognise that both trade unions and professional associations play a vital role in offering local support, representation and guidance to staff.

When concerns arise in relation to a nurse, midwife or nursing associate's practice, we would encourage you to work with any elected representatives to ensure that staff are fully supported.

[Find out more about supporting your employee.](#)

Take equality, diversity and inclusion into account

Last Updated: 02/02/2021

We know that employers can respond to concerns about people in different ways. Ethnic minority staff members can experience discrimination, unfairness and disproportionate disciplinary action.

[See our University of Greenwich literature review.](#)

All nursing and midwifery professionals have the right to be treated fairly and proportionately, not treated less favourably because of a protected characteristic. Consider equalities and human rights law, including the public sector equality duty to eliminate discrimination (where it applies to your organisation), advance equality of opportunity and foster good relations between different groups.

When reviewing decisions and actions, look for areas where bias or discrimination may have been a factor in an incident, concern, investigation or disciplinary action and take action to address this.

Keep records of all evidence and decisions

Last Updated: 02/02/2021

A good investigation will document all evidence and a clear rationale for decisions. If a referral to us is needed at any stage, well-documented evidence and rationales will help us understand the concerns and any action you've taken. This can include:

- Statements from people who saw the events taking place or can explain directly what happened (whether staff, people who use services, or relatives). Make sure they're typed, signed and dated. They should also include confirmation that the person making the statement believes the content is true to the best of their knowledge and recollection. We know that workforce changes can happen during the course of an investigation and would recommend that you take personal contact details for all witnesses. This means you can keep in touch with them and can pass their details on to us if a referral is needed later.
- Clear copies of relevant records. This could include patient notes, care plans, and medication administration records.
- Evidence of staffing levels at the relevant time and what the expected staffing level was, including rotas and details of handovers.
- Evidence of how busy the setting was, whether this was normal, and whether there were any people using services with unusually challenging or complex needs at the time.
- Relevant policies or standards in place at the time.
- Any evidence from the nursing or midwifery professionals involved about their own health and wellbeing at the time, as well as any statements about how they've reflected on their practice and made improvements.
- Records of your attempts to work with the professional to address the concerns (see more on [managing concerns locally](#)).
- Documented evidence of any action plans put in place, such as supervision or guidance for the professional. Explain how this compared to supervision or guidance you'd normally expect to give those with similar experience and qualifications. Also give details of any further training they've done (referencing the course provider, for example online tuition, or class based/practical learning).
- Documented decisions, such as correspondence with the professional about the outcome of an investigation or disciplinary proceeding.

It would be helpful if from the outset, investigators are familiar with [the types of evidence and documentation we need for a fitness to practise referral](#).

Avoid delays and stick to a reasonable timeframe

Last Updated: 02/02/2021

Delays in the process can increase stress, frustration and isolation for those involved. So it's helpful to give people involved a clear, reasonable and proportionate timeframe in advance.

If delays can't be avoided, it's important to communicate openly, honestly and often with the professional about the reasons why. Professionals may also welcome any ongoing emotional support.

During your investigation

Last Updated: 02/02/2021

In this guide

- [Reviewing information throughout](#)
- [Managing risks](#)
- [If your employee leaves or may be working elsewhere](#)

Reviewing information throughout

New information will come to light while you're examining concerns about someone's practice. So we'd advise that managers regularly review the investigation's progress against local policies, relevant guidance, and the principles in this resource.

Serious concerns might emerge as your investigation progresses. These might need referring to an external organisation, even before your investigation is complete.

This may include a referral to a local safeguarding team, the police or a systems or professional regulator.

Reviewing information throughout the process will help to make sure that nothing is missed and concerns are referred as soon as possible, if necessary.

Managing risks

At the outset, you as the employer are best placed to assess any risks that a nurse, midwife, or nursing associate may present if they keep practising, without restriction or supervision, during your investigation.

It's your responsibility to take immediate steps that may be needed to address any risks to people who use services.

In many cases, you'll be able to manage these risks during the investigation, while supporting the professional and keeping them in work. Measures might include moving a nurse, midwife or nursing associate out of a public-facing role, restricting some duties, or providing close supervision.

If your employee leaves or may be working elsewhere

If the nurse, midwife or nursing associate leaves your employment before an investigation is complete, consider whether they might present a risk to people using services at a new organisation.

If you think they'll pose a risk, [consider making a referral to us](#) or call our [advice line](#).

Wherever possible, you should continue with and complete your investigation. That way it will be available to us in the event of a referral.

We encourage employers to work together to manage risks associated with someone's practice. For example, where it's consistent with their policies about references, former employers can work with prospective employers to share information about concerns, including how to address them. This approach can also help when employers are aware of concerns about someone's practice, and know the person works for an agency/bank or another employer as well.

Concluding your investigation

Last Updated: 02/02/2021

In this guide

- Making sure your response is fair and proportionate
- Developing an action plan

A good investigation ends with a report giving clearly-stated findings of fact.

As far as possible, the report should show that all relevant evidence has been considered thoroughly and fairly. The factual findings are the basis for an action plan.

Making sure your response is fair and proportionate

In some cases, your investigation may lead to a disciplinary process, possibly with formal actions. We know that disciplinary actions can take a toll on a person's mental health, particularly if they're not fair and proportionate.

You'll want to reflect on whether the proposed disciplinary action is a proportionate and justifiable response. Sanctions shouldn't be decided by one person alone, or by anyone who may have an actual or perceived conflict of interest.

Developing an action plan

The factual findings of your investigation are the basis for an action plan.

In developing an action plan, consider if:

- you can manage any concerns locally
- you need to make a referral to us (or other regulatory body)