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Key considerations before making a possible referral

Last Updated: 12/12/2024

In this guide

Key considerations before making a possible referral

When deciding whether to make a referral, you'll need to think about the types of allegations that we consider:

- allegations that a professional has fraudulently or incorrectly joined our register.
- Or allegations about fitness to practise based on:
  - misconduct
  - lack of competence
  - criminal convictions and cautions;
  - Physical or mental health that impairs the ability to practise safely
  - not having the necessary knowledge of English
  - determinations by other health or social care organisations.

You'll also need to consider the points below:

- The nature and seriousness of the concern
- Were there any contextual factors that contributed to the concerns?
- Were there any health issues that contributed to the concerns?
- Has the professional shown insight into the concerns?
- Have they been supported to try to put things right?
- Have you taken steps to ensure that your referral is fair and unbiased?
- Do you have the right information and evidence to support the referral?

Ensuring your decisions to refer are fair and unbiased

Last Updated: 12/12/2024

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

Our study, Ambitious for Change, published in October 2020, found that professionals 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 and people who use services.

Most of the professionals who spoke to us as part of the second phase of our research felt one or more of their diversity characteristics, such as their ethnicity and/or gender, played a part in their referral from their employer and said an 'insider/outsider' culture left them feeling unsupported.

We also found that the setting where someone works, and the type of work someone does, can influence a person's experience of revalidation or fitness to practise. Those working in care homes, GP practices or for providers which employ a lot of bank and agency staff are particularly affected. We know that certain groups, such as Black and overseas-trained professionals, are over-represented in these settings.

We're committed to working with employers and our partners across health and social care to address the longstanding, systemic inequalities across health and social care that perpetuate the disparities we're seeing.

Your decision to refer needs to be free from bias and discrimination (as defined in the Equality Act 2010 and other relevant legislation). Should there be evidence of bias or discrimination within a referral, this may require further investigation by us, in compliance with the legislation mentioned above.

Concerns you should refer to us

Last Updated: 12/12/2024

Referring someone to their professional regulator is a significant step. You should read this resource to make sure you're clear on making a possible referral to us.

We know there will always be times when you want to talk things through. You might think a possible referral is ‘borderline’ and that a little more guidance would be helpful. Or you may just want us to confirm your own conclusions. Whatever the situation, we strongly encourage you to always speak with one of our experienced Regulation Advisers before making a referral to us.

Before you call us check if the professional works for you, for an agency or other provider. This will help inform our discussion and the decision-making process.

Please get in touch with us by either calling on 020 7462 8850 (phone line open between: 9:00 - 17:00) or by email: employerlinkservice@nmc-uk.org
Somebody in our team will ask you for:

- your name, job title, place of work, phone number and email address
- details about the issue and your reasons for seeking advice from us
- the name and PIN of the professional.

Our Employer Link Service works with employers across health and social care in England, Scotland, Northern Ireland and Wales. You can find your local Regulation Adviser on the table below:

Northern Ireland	Pamela Craig	pamela.craig@nmc-uk.org
Scotland	Linda Martin	linda.martin@nmc-uk.org
Wales	Sharon Clement-Thomas	sharon.clement-thomas@nmc-uk.org
North West and Isle of Man	Paula Palmer-Charlery	paula.palmer-charlery@nmc-uk.org
North East	Kristian Garsed	kristian.garsed@nmc-uk.org
East of England	Kate Lettin	kate.lettin@nmc-uk.org
Midlands	Tony Newman	tony.newman@nmc-uk.org
London	David Taylor	david.taylor@nmc-uk.org
South East	Nicola Moreton David Porter	nicola.moreton@nmc-uk.org david.porter@nmc-uk.org
South West, Jersey and Guernsey	Michele Harrison	michele.harrison@nmc-uk.org
Independent Health and Care	Loucia Kyprianou	loucia.kyprianou@nmc-uk.org
Principal Regulation Adviser	Linda Kenward	linda.kenward@nmc-uk.org
Principal Regulation Adviser	Mark Brooke	mark.brooke@nmc-uk.org

Take equality, diversity and inclusion into account

Last Updated: 12/12/2024

We know that employers can respond to concerns about people in different ways. Professionals from a Black and minority ethnic background can experience discrimination, unfairness and disproportionate disciplinary action. Professionals may be treated differently as a result of any protected characteristic.

See our University of Greenwich literature review.

All nursing and midwifery professionals have the right to be treated fairly and proportionately, and not be 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 you should always look for areas where bias or discrimination may have been a factor in an incident, concern, investigation or disciplinary action and take steps to address this.

Promote a culture of openness and learning

Last Updated: 12/12/2024

We believe that promoting a culture that balances fairness, learning and accountability is essential. There are different ways to embed principles that support a culture of fairness, openness and learning.

Where a concern about a professional's practise is linked to a , your organisation will have systems and processes for responding to those for the purpose of learning and improving patient safety.

For NHS commissioned services in England, there is an expectation that the NHSE Patient Safety Incident Response Framework (PSIRF) be used as the tool sets out the NHS's approach for responding to patient safety incidents.

If during those processes, concerns about a professional's fitness to practise are identified an additional response will be required and a separate investigation should be undertaken applying just culture principles.

For example, NHS England's A Just Culture Guide, or similar, can be used to support a conversation between managers about whether a professional involved in a patient safety incident requires specific professional support or intervention to work safely.

The 'Just Culture' guide, was developed in consultation with various partners and many employers in health and care outside the NHS who also use, or reference this tool as good practice, across the four countries of the UK.

It is considered best practice that just culture principles be applied before considering making a referral. These ensure that all concerns about a professional's fitness to practise are considered fairly.

Using tools and processes that are appropriate for your setting along with local policies that promote a culture of openness and learning 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.

Any approach will need to take into account 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
- third party pressures for example from families or carers
- 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.

Deciding to make a referral

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.

Considering evidence of insight and remediation

Last Updated: 12/12/2024

We want to assure professionals that our role isn't to punish people for past mistakes.

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

As an employer, you should take into account any evidence of the professional's insight and steps 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 professional 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 professional has undertaken retraining and has demonstrated competence)
- the professional has been open about what went wrong
- the professional 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.

The three types of concerns you should raise with us

Last Updated: 12/12/2024

1. Concerns requiring us to take action to promote public confidence in the professions and uphold standards

In some cases, you may need to refer a professional to us if their actions undermine public confidence in the profession, or where their actions raise fundamental questions about their ability to uphold the standards and values set out in the Code, whether or not there is a risk to people who use services.

Concerns that someone has, for example, displayed discriminatory views and behaviours, engaged in sexual misconduct, behaved violently (including in a domestic setting), abused a child or vulnerable adult, or committed a serious crime either in practice or outside professional practice, could have a particularly negative impact on public confidence.

Outside professional practice, 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 the professions if action isn't taken.

You should make a referral where the concerns could have a serious impact on public confidence in the professions we regulate.

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 some evidence to indicate serious wrong doing. For example, this might include the police charging someone with a crime, written account(s) about concerns raised, video footage relevant to the alleged incident, 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.

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

Not all breaches of the Code or issues with practice will require regulatory action by us. Bear in mind that our fitness to practise process is about managing any risk that a professional poses to people receiving care or 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. These types of concerns might include clinical errors, communication problems, and concerns related to a professional's physical or mental health.

Normally, you should be able to manage these concerns locally without making a referral, for example through a probationary period, and/or through additional management support and training. But if you can't, you may need to refer the concern 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 professional has resigned or otherwise disengaged as a direct response to questions about their

practice or being informed of your investigation, without taking steps to fully address the concerns.
- You've dismissed the professional due to serious concerns about their ability to practise safely and effectively.
- You've suspended the professional pending an investigation but are aware that they're working elsewhere and this may put people who use services at risk.
- The professional 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 professional'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 a professional's health condition. For instance, they have 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, proactive management and support.

If you feel that there are risks to people who use services that can't be effectively managed while you carry out a local investigation, we strongly encourage you to always speak with one of our experienced Regulation Advisers before making a referral to us.

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

A small number of concerns are so serious that it would be difficult for the professional to put right the problems in their practice, their 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 supress openness about the safety of care and is not in keeping with the Code.
- 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 downloading/accessing 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 professional 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 professional'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 professional 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.

Deciding whether to refer concerns related to health

You may have concerns that a professional'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 professional has demonstrated good insight into the extent and effect of their condition
- the professional 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 professional is managing their practice appropriately, for example by taking sickness absence.

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

Generally, there needs to be a clear link between a health condition and a risk to people receiving care or a related risk to public confidence in the profession. You should only make a referral when there is clear evidence of this risk to people receiving care that you're unable to manage, or a risk to public confidence in the profession.

This may be, for example, where a professional has a long-term physical or mental health condition that is untreated (or unsuccessfully treated), or where they haven't acknowledged the health condition that's affecting their practice, or where a professional who suffers from a dependence on alcohol or medication attends work whilst under the influence. These situations are suggestive of a risk to people receiving care.

Who should approve and make the referral

Through our work with employers we're aware that every employer aims to keep a central record of all referrals concerning their staff and/or professionals who were working in their organisation when concerns arose.
We've also found that we can more quickly and efficiently reach decisions about referrals when an employer follows their own processes they may have in place for escalating concerns internally and then completing and submitting referrals to us.
Depending on the size and type of organisation, 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 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.
- Where possible, try to be sure that the person who makes or signs off referrals 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: 12/12/2024

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 unredacted care records, investigation reports complete with all appendices, decision letters and any action plans put in place for the professional. 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 professional 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.

When a concern is raised about a professional'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.

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 communication.

We recognise that your approach to local investigations is an important part of establishing a just and learning 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 professional'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 alongside 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. It will also help us to respond quickly and proportionately.