

# Employer Link Service

## Joint Regulator Workshop for Managers of Regulated Services

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**7<sup>th</sup> March 2018**

# What we aim to cover

## Part 1

- Who are the Employer Link Service?
- NMC – its roles and responsibilities
- The NMC's Fitness to Practise (FtP) process
- Making a referral to the NMC:

## Part 2

- Putting learning into practice – scenarios for discussion

# Employer Link Service (ELS):



- **Recommendation 232** *The Nursing and Midwifery Council could consider a concept of employment liaison officers, similar to that of the General Medical Council, to provide support to directors of nursing.*

The Employer Link Service is designed to:

- encourage robust local investigation, performance management and clinical governance
- ensure that we are receiving the right referrals at the right time
- improve our ability to access and share data and intelligence between employers, the NMC and other regulators
- communicate key regulatory messages

# Regulation Advisers – Key roles and responsibilities

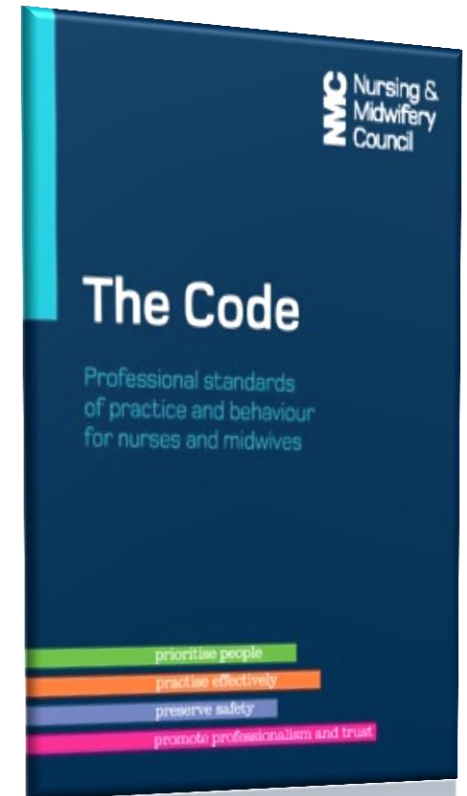
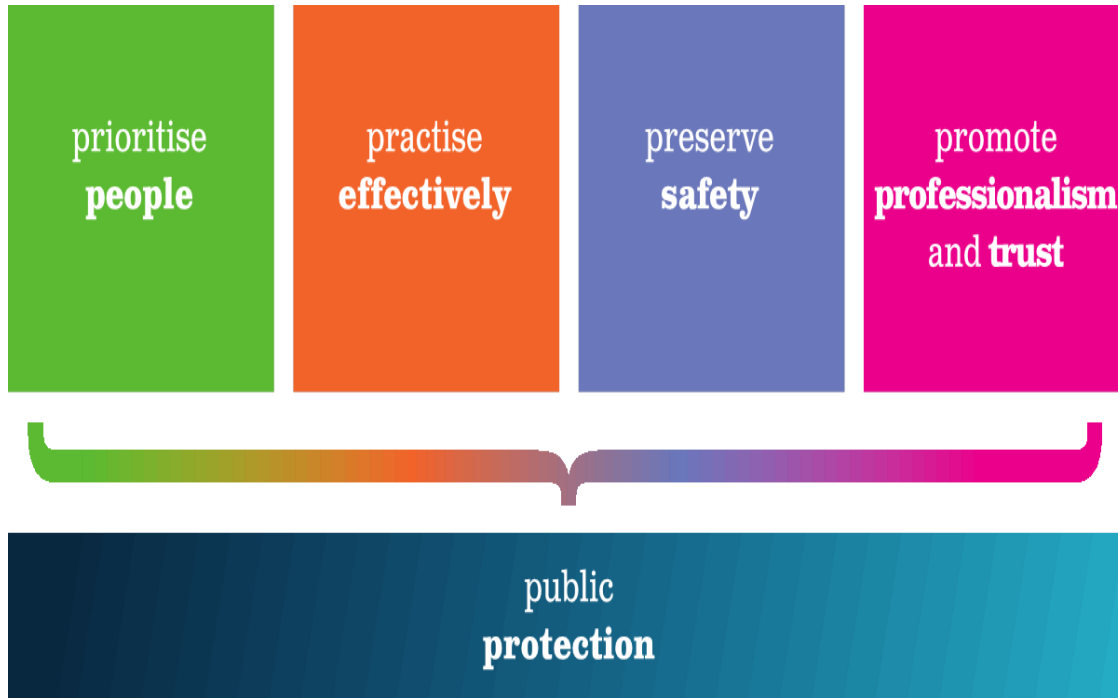
- **Providing advice and guidance;**
  - Advising public and independent sector employers re making referrals (telephone advisory service and in person).
  - Inducting new Directors of Nursing and delivering learning sessions.
- **Supporting functions across the NMC;**
  - Helping to progress FtP cases.
  - Delivering key messages and updates and gathering feedback from employers.
  - Contributing to the NMC's programme of continual improvement.
- **Improving patient safety and public protection;**
  - Responding to data and trends and highlighting these to employers.
  - Sharing information and intelligence with the Disclosure & Barring Service (DBS) and other healthcare regulators.

# NMC Core functions

The Nursing and Midwifery Council is the professional regulatory body for nurses and midwives in the UK. **Our role is to protect patients and the public through efficient and effective regulation by:**

- Setting and promoting standards and guidance for the professions
- Setting standards for and quality assuring the provision of education and training
- Maintaining a register of professionals
- Taking action where a professional's fitness to practise may be impaired

# The NMC Code



“...commitment to professional standards is fundamental to being part of a profession...”

*revised March 2015*



## Enabling professionalism

- We supported the four Chief Nursing Officers to develop Enabling professionalism.
- It is a framework to describe and demonstrate what professionalism looks like in everyday practice when you apply the Code.
- Enabling professionalism was launched on Nurses' Day 2017.
- [www.nmc.org.uk/professionalism](http://www.nmc.org.uk/professionalism)

# Fitness to practise allegations

The NMC's statutory powers enables it to carry out investigations in relation to:

- Allegations about whether the entry of an individual nurse or midwife on our register may be incorrect, or may have been made as a result of fraud.
- Allegations about the fitness to practise of nurses or midwives:
  - Misconduct
  - Lack of competence
  - Convictions or cautions in the UK or abroad
  - Physical or mental health
  - Not having the necessary knowledge of English
  - Determinations by other health or care professional bodies in the UK or licensing bodies elsewhere



# Misconduct

**Behaviour which falls seriously short of the standards of behaviour which can reasonably be expected of a nurse or midwife in the particular circumstances e.g.;**

- Physical or verbal abuse of patients or colleagues
- Dishonesty, including theft of medication
- Significant failure to deliver adequate care and/ or keep proper records
- Grossly uncaring attitude
- Failure to raise a concern about a colleague's fitness to practise
- Failure to inform the NMC of a conviction, caution or charge

**Issues which are unlikely to be considered to amount to misconduct:**

- Breaches of discipline between an employer and employee e.g. poor timekeeping or failures to follow local policy
- An isolated clinical error or incident unless it is particularly serious

# Lack of competence

**A lack of knowledge, skill or judgement that makes the nurse or midwife not fit to practise safely without supervision.**

Over a prolonged period of time a nurse or midwife makes continuing errors or demonstrates poor practice, despite having been made aware of the deficiencies and despite being given an opportunity to improve, including;

- A lack of knowledge and/ or poor judgement
- An inability to work as part of a team
- Difficulty communicating with colleagues or people in their care
- Persistent lack of ability in correctly dealing with medicines, in identifying care needs and subsequently planning and delivering appropriate care

**Issues which are unlikely to be considered to amount to a lack of competence:**

- A single instance of substandard care with a low risk of harm / no harm caused
- Issues which have been resolved through local action and remediation

# Convictions / Cautions

Criminal convictions and cautions are considered where the conviction raises a risk to patients or the reputation of the professions.

- The NMC will only need to prove that the person has been convicted or received a caution.
- It is not necessary to prove the event giving rise to the conviction or caution.

## **The Code (May 2015). Paragraph 23.2:**

*“tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction)”*

# Physical or mental health

This needs to be a recognised physical or mental health condition which gives rise to a risk of harm to patients and a related risk to public confidence in the profession, or where continuing to practise exposes the registrant to a risk of harm:

## **Examples:**

- A long term, untreated (or unsuccessfully treated) or unacknowledged physical or mental health condition.
- A health condition which may be well managed but where the individual is at significant risk of relapse.

## **Issues which are unlikely to lead to a finding of impairment on the basis of ill-health:**

- A registrant's disability or long term health condition with adjustments made to support their practice
- A registrant signed off as unfit for work due to ill health

# Lack of proficiency in English

**A lack of fluency in reading, writing, speaking or listening in the English language which could place patients at potential or actual risk of harm**

## **Examples:**

- Incomprehensible or incorrect handover of essential information about patient treatment or care to other health professionals – **inability to speak English**
- Serious record keeping errors or patterns of poor record keeping – **inability to write English**
- Serious failure(s) to provide appropriate care to patients – **inability to understand verbal or written communications** from other health professionals or patients themselves.
- Drug errors – **failure to understand or inability to read** prescriptions in English

**Issues which are unlikely to lead to a finding of impairment on the basis of a lack of proficiency in the English language:**

- Poor spelling without any suggestion of clinical impact.
- Difficulty in understanding regional slang or English colloquialisms.

# Determinations by other health and social care bodies

Nurses and midwives may also be registered members of other health and social care professions, which are regulated by different statutory bodies in the UK, or may be registered with licensing bodies overseas.

Again, the NMC will only need to prove that the registrant has been made the subject of the determination. It is not necessary to prove the issues underpinning the determination.

The NMC will consider whether that determination, impairs their nursing or midwifery practice in the UK, considering:

- The closeness of any connection between their nursing and midwifery practice and the underlying facts or issues of the determination.
- Whether the finding suggests the nurse/ midwife presents a risk to members of the public or affects public confidence in the profession.

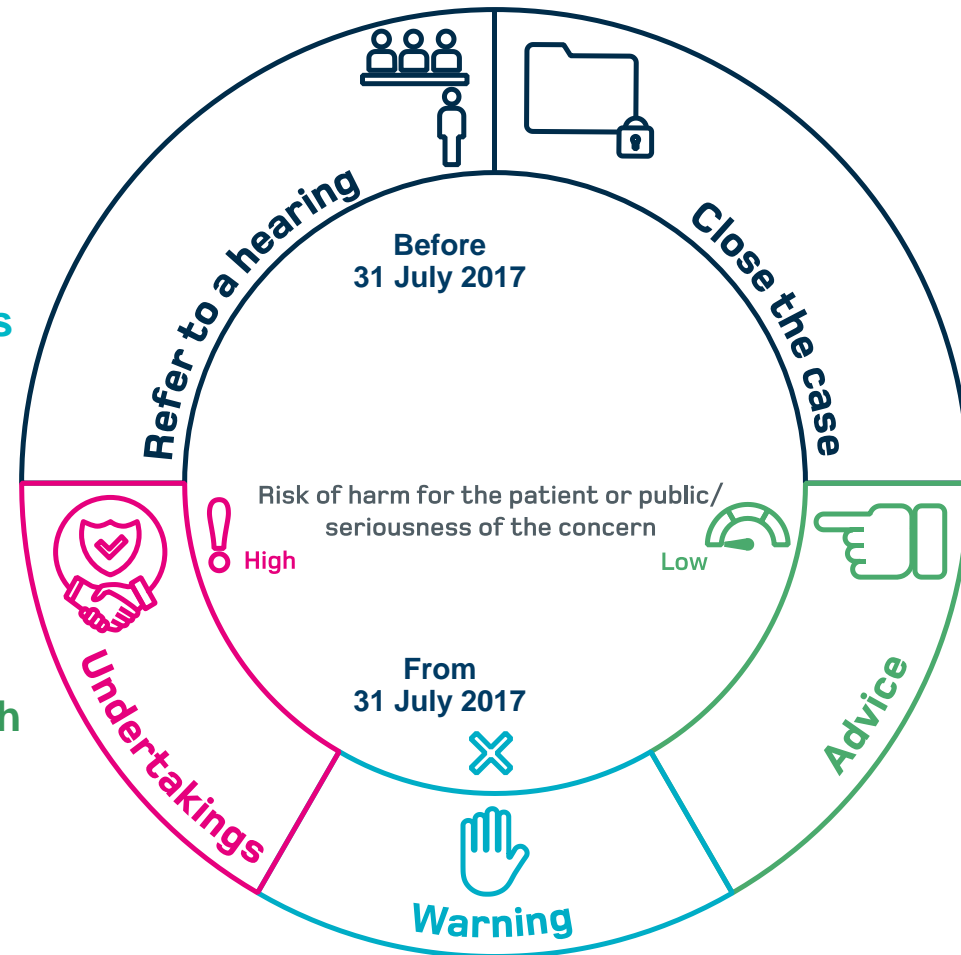
# Stages of a fitness to practise case

- **Screening**
  - Prioritise those cases which most need our involvement
- **Investigation**
  - Enables the NMC to understand the full extent of the regulatory concerns and establish the facts by undertaking reasonable lines of enquiry
- **Case Examiners**
- **Adjudication – Fitness to Practise Committee**
  - Are the facts proven or not?
  - Is the fitness to practise of the nurse and midwife currently impaired?
  - What sanctions (restrictions) are required?

# New Case Examiner powers

From 31 July 2017 new powers for Case Examiners:

- **Undertakings = Agreed measures to address areas of practice which cause a current clinical risk to patients**
- **Warnings = Public marking of serious concerns without a hearing, where the nurse or midwife shows insight and remediation and there is no risk to patients**
- **Advice = Private guidance to assist a nurse or midwife in keeping their practice safe following an acknowledged relatively minor breach of the Code**

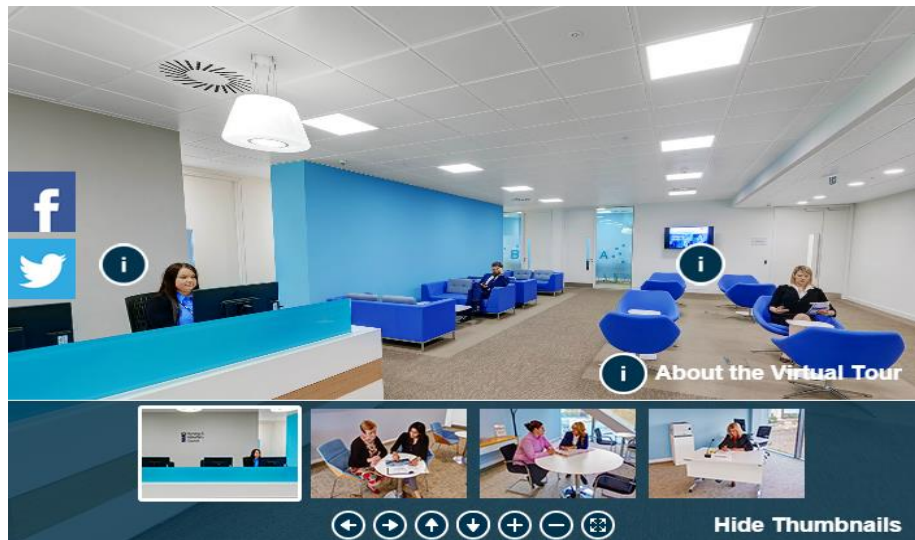




# Witness Liaison team

- **Act as a a single point of contact for information and support:**
- explain what to expect during an NMC investigation
- explain what to expect at an NMC hearing
- arrange for you to visit the hearing room
- support you on the day of the hearing
- assist with any arrangements needed for witnesses
- tell you about other organisations which can provide further support.

# Virtual Hearings Centre



Other NMC resources available:

**Being a witness: Your part in an NMC investigation** - includes further information about what to expect during the course of the investigation.

**Being a witness: Attending an NMC hearing** - includes further information on being called to give live evidence at a FtP hearing.

# Referrals – points to consider

- Are the facts of the case serious enough to suggest impairment?
- Is the case so serious that an interim order may be required?
- Could the issues identified be managed locally?
- Has any local disciplinary action been undertaken and/ or completed?
- Are you able to provide the NMC with the necessary information to support the referral?
- To what extent has the registrant engaged with the process/shown insight/remediation?

**If you are not sure call the Employer Link Service advice line**

**020 74628850 Monday to Friday 09:00 to 17:00**

**[employerlinkservice@nmc-uk.org](mailto:employerlinkservice@nmc-uk.org)**

# ELS – accessing the advice line

## **Initial call;**

- Name and PIN number of the individual(s) concerned
- Your contact details
- An overview of the issue

## **Discussion with a regulation adviser;**

- Length of time in employment, current role and any previous issues identified and action taken
- Chronology of events – the issue, outcome (risk to patients), who was involved and action taken
- Local action being considered or undertaken
- Other parties involved – e.g. police, counter fraud, safeguarding, dependency services

# Referrals – supporting information

- Clear and logical narrative explaining the alleged conduct
- Dates of the incident(s) including exact times and dates
- Locations where the incident(s) took place
- Details of who was present
- Contemporaneous notes and witness statements
- Copies of relevant medical records, MAR charts and prescriptions
- Local policies
- Details or documentary records of any admissions made by the registrant
- Details of other sources of evidence to support the allegation if not held by the referrer

# Responsibilities of an Employer

**Safe Recruitment** - Checking references and registration (employer confirmation service), Identity checks and robust recruitment processes

**Induction** - to area of work, training & supervision, appropriate support & mentoring, ongoing access to professional development, clinical supervision

**Monitoring performance** - appraisals and performance management

**Employee and employer responsibility** - working within capability

**Raising concerns/giving early feedback**

<https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/advice-for-employers.pdf>

# Why are some cases closed?

- Not on the register
- Lapsed registrant
- Not serious enough to raise concern that FtP is currently impaired
- Concern could have already been remedied
- Does not meet the NMC's formal requirements
- Insufficient credible evidence to support the concern

# CASE SCENARIOS



# Scenario 1

- Information emerged that Nurse S had been convicted of driving a motor vehicle with excess alcohol, having been arrested on her way to work.
- Her employers had no concerns with regards to her current or previous clinical practice.
- She apologised to her employing Trust and stated this would have no bearing on her practice and assured her line manager that it wouldn't happen again.
- Is it necessary to refer this incident to the NMC?

# Scenario 1 - answer

- **Yes** – there are serious allegations regarding the registrant's conduct
- This case would be considered for an interim order to restrict the registrant's practice on the grounds of public protection, public interest, and in the registrants own interests.
- Nurse S has been convicted of a criminal offence and there is a concern raised about her use of alcohol and the potential impact on her practice.
- She was on her way to work when she was arrested, and had the intention of caring for patients whilst under the influence – this is likely to have increased the risk of harm to the patients for whom she was responsible.

## Scenario 2

- A registered nurse has worked since qualification in April 2016 in a nursing home. He worked well without incident until December 2016 when he was involved in a number of medication and record keeping errors including:
  - administering a second dose of PRN paracetamol to an elderly resident within four hours of the first dose and not recording this administration
  - allowing a 96 year old resident without capacity, to self-administer cyclizine, no harm was caused
  - administering insulin prescribed for one resident to a non-diabetic resident as they had similar names, again no harm was caused
- Following the last incident, he was made subject to a capability programme. He is due to undertake a medicines competency assessment after three months of working only under supervision.

# Scenario 2 - answer

- Not at this stage – this needs to be addressed locally first.
- The individual incidents are all relatively serious as they all carried a risk of harm to elderly patients (who are particularly vulnerable). However, the registrant had been working well up until December 2016 when these incidents occurred within a short space of time.
- Despite the fact that there were three errors and there is a risk of repetition, that risk is being guarded against by the support of the employer and by the measures being taken to address these mistakes.
- It is therefore appropriate for these concerns to continue to be managed and addressed locally and a referral not made subject to completion of the capability programme.

## Scenario 3

- Patient B was admitted to a ward in a very unstable state with a mental health disorder. She didn't trust staff and found it hard to accept their intervention or support.
- After some time, Nurse A gained patient B's trust and persuaded her to engage with her treatment plan.
- When patient B was ready to be discharged, she told Nurse A that she was really worried about relapsing.
- In breach of the Trust's policy, Nurse A gave patient B a personal mobile number and encouraged her to call any time so that they could chat and/or meet for a cup of coffee.
- Is it necessary to refer Nurse A to the NMC?

## Scenario 3 - answer

- No – at this stage it would be appropriate for the employer to investigate this matter locally.
- *The Code at para 20.6 requires registrants to “stay objective and have clear professional boundaries at all times with people in your care [including those who have been in your care in the past], their families and carers”.*
- Nurse A has acted in breach of the Code. However, if the internal investigation concludes this was an isolated incident, and the nurse has sufficient insight, this could be managed locally.
- **BUT**
- If the employer is concerned that either (a) this isn't the first time this has happened and/or (b) the nurse hasn't demonstrated insight into the need to maintain appropriate professional boundaries, then this would amount to a regulatory concern which should be referred to the NMC.

# Scenario 4

Nurse B has worked for a hospice for 11 years without any previous clinical concerns. However he has recently made two drug errors:

- 1) gave a drug to the wrong patient, concealed the error and admitted it the next day-given a final written warning
- 2) gave a drug via a sub-cutaneous route instead of oral-error was picked up by Nurse A later in the day.

Both were serious errors but caused no ill-effects for the patients. Disciplinary hearing was arranged but he went off sick and then resigned and the hearing did not conclude.

## Scenario 4 - answer

**Yes** - the concerns amount to a regulatory concern which should be referred to the NMC:

- the errors are serious
- it is not known if he is working or where.
- there is an element of dishonesty in the first error as he concealed it initially.
- the registrant has left the employer raising the risk to other patients

What information do we have about this registrant's propensity for dishonesty, insight, remediation and potential for capable safe practice?



## Scenario 5

- Nurse H has recently given birth and has been referred to a community mental health team as she has been suffering with post-natal depression.
- She's agitated during an appointment and discloses she has been alcohol dependent since about a year ago, including during her pregnancy, as she was stressed and unable to cope. She further discloses that since giving birth she has occasionally used cocaine and cannabis to alleviate her depression.
- Nurse H says she's been engaging in treatment for her alcohol dependency but does not believe her drug use is problematic.
- Trust A is concerned about patient confidentiality as it doesn't employ Nurse H – she's employed by, and is on maternity leave from, Trust B.

## Scenario 5 - answer

- Yes - Trust A should refer Nurse H to the NMC
- Nurse H's extended alcohol dependency and recent illicit drug use, indicates her FtP may be significantly impaired and this needs to be considered and responded to by the NMC. This would be considered by the NMC for an interim order to restrict her practice on the grounds of public protection, public interest and in her own interests. Being on maternity leave from her employment is not an adequate safeguard.
- Schedules 2 and 3 DPA 1998 allow the Trust to disclose information (including "sensitive personal data") which is necessary to enable the NMC to carry out its statutory function in the public interest.
- The Code, para 5.4 allows disclosure to Trust B of "necessary information.....only when the interests of patient safety and public protection override the need for confidentiality".

# Anything else?

## Contact ELS for advice!!

Tel: 020 7462 8850

Email: [employerlinkservice@nmc-uk.org](mailto:employerlinkservice@nmc-uk.org)

- **ELS Information:** [www.nmc.org.uk/concerns-nurses-midwives/what-we-do/services-employers](http://www.nmc.org.uk/concerns-nurses-midwives/what-we-do/services-employers)
- **Making a referral:** [www.nmc.org.uk/concerns-nurses-midwives/concerns-complaints-and-referrals/make-a-referral](http://www.nmc.org.uk/concerns-nurses-midwives/concerns-complaints-and-referrals/make-a-referral)
- **Employers Guidance:** [www.nmc.org.uk/registration/guidance-for-employers](http://www.nmc.org.uk/registration/guidance-for-employers)

**ANY QUESTIONS?**

Thank you

Contact details:

Tel: **020 7462 8850**

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