

NMC response to Social Work England's draft fitness to practise guidance documents

Introduction

- 1 We are the independent regulator for nurses, midwives and nursing associates. We hold a register of the 690,000 nurses, midwives and nursing associates who can practise in the UK.
- 2 Better and safer care for people is at the heart of what we do, supporting the healthcare professionals on our register to deliver the highest standards of care.
- 3 We make sure nurses, midwives and nursing associates have the skills they need to care for people safely, with integrity, expertise, respect and compassion, from the moment they step into their first job.
- 4 We want to encourage openness and learning among health and care professions to improve care and keep the public safe. On the occasions when something goes wrong and people are at risk, we can step in to investigate and take action, giving people affected, patients and families a voice as we do so.
- 5 Our new approach to fitness to practise builds on improvements we have already made to the way we investigate concerns about the people on our register, which we believe will help us to protect the public in a fairer, more effective, proportionate and consistent way. Alongside a focus on keeping people safe, we are committed to putting patients and families at the heart of everything we do.
- 6 We welcome the opportunity to comment on SWE's draft fitness to practise guidance documents. In this response we make some general observations about all three guidance documents.

Public protection

- 7 We consider that the documents are inconsistent in terms of how they articulate the purpose behind fitness to practise. In particular, the sub-objectives of public safety, public confidence and professional standards are at times mistakenly described as 'overarching.' The overarching objective in the legislation is actually public protection. This is important as there is a danger of unnecessary fitness to practise activity being undertaken for purely 'declaratory' public confidence reasons when there are no wider concerns about a registrant.
- 8 Our new approach to fitness to practise has moved our focus away from 'declaratory' activity as we recognise that this can actually have a negative impact on the wider health and social care culture.

Taking a person-centred approach

9 We consider that in all three documents there is potential for a greater emphasis on a person-centred approach to fitness to practise. Our new person-centred approach puts patients, families and the public at the heart of what we do. What patients, their families and loved ones tell us about their experiences helps us understand what may have gone wrong in the past and how this may impact on a registrant's fitness to practise. Sometimes, they provide vital information that shows we need to scrutinise the conclusions others have reached. Some patients and members of the public haven't felt supported or listened to in our fitness to practise proceedings. We think that if all health and social care regulators take a person-centred approach to fitness to practise it will help make sure concerns raised by patients and families are properly listened to and addressed. This is in the interests of patient safety.

Considering the context

10 We felt that some reference should be made to the importance of recognising the wider context in which health and social care professionals work. Health and social care professionals are increasingly asked to work in challenging and difficult conditions. When incidents of poor practice actually happen because of underlying system failures, taking regulatory action against a health or social care professional may not stop similar incidents happening again in the future. Regulatory action against an individual registrant may give false assurance, direct focus away from a wider problem and cause a future public protection gap. We therefore think it is important for all health and social care regulators to take account of the context within which a registrant was practising when deciding whether to take fitness to practise action.

Being transparent about fitness to practise outcomes

11 We recognise that transparency is crucial to an effective fitness to practise process. All the people involved in a case, including patients, members of the public and registrants, expect fitness to practise processes to be efficient and joined up. They need to understand clearly and as quickly as possible what we have done about the concerns, and the reasons for our decisions. Those reasons may help others in similar situations make decisions that will help keep patients and members of the public safe. We believe that transparency is achieved by publishing the outcomes of all fitness to practise cases where we've taken action.

12 We recognise that in your legislation 'the public interest' can itself be a reason for case examiners to send concerns to a public hearing, so your guidance will need to help people identify when this might be the case. We think that hearings best protect patients and members of the public by resolving central aspects of a case that we and the registrant don't agree on. Full public hearings are not always required to reach a decision that protects the public. Their adversarial nature often has a negative impact on people, and they are slow and resource intensive. We think the public interest is best met by making final fitness to practise decisions swiftly and, when action is taken against a registrant, publishing the reasons openly. This doesn't always need to be done through a full public hearing as long as the decision and reasons are transparent.