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Reference Number: STP08

Version Number: V1

Date of next review: December 2025

Procedure for Notifying and Reporting Possible Fitness to Practise Concerns for Health Professionals Regulated by the Health and Care Professions Council (HCPC) and Nursing and Midwifery Council (NMC)

Introduction and Aim

This document describes the processes for determining when, and to whom, any concerns around Fitness to Practise (FtP) should be reported. It explains key terms and concepts, outlines the responsibilities of staff, and details the arrangements for timely referral of any concerns, and how these will be managed.

Linked Policies, Procedures and Written Control Documents

[All corporate policies and procedures are available on the Public Health Wales website](#)

All Wales Disciplinary Policy and Procedure

Nursing and Midwifery Council [Managing Concerns; a resource for employers](#)

Health and Care Professionals Council Standards of conduct, performance and ethics

<https://www.hcpc-uk.org/standards/standards-of-conduct-performance-and-ethics/>

Nursing and Midwifery Council. The code. Professional standards of Practice and behaviour for nurses, midwives and nursing associates

<https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf>

Scope

The procedure will apply to the management of any concerns around Fitness to Practise for all staff across the organisation regulated by either Health and Care Professions Council (HCPC) and Nursing and Midwifery Council (NMC). Responsibilities are clearly set out in the document and supplement, but do not supersede those found in the All Wales Disciplinary Policy and Procedure.

General Medical and General Dental Registrants are not currently within the scope of this procedure. Further consideration for inclusion at a future date may be required and the procedure will then be updated.

Equality and Health Impact Assessment

An Equality, Welsh Language and Health Impact Assessment has been completed and can be viewed on the policy webpages.

Approved by

Leadership Team

Approval Date

08 December 2022

Review Date

08 December 2025

Date of Publication:	21 December 2022
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Disclaimer

If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author

Summary of reviews/amendments				
Version number	Date of Review	Date of Approval	Date published	Summary of Amendments
1	2022	08.12.22	21.12.22	First Procedure

1. Introduction

Professional regulation is intended to protect the public, making sure that those who practise as a health professional are doing so safely. It is therefore a contractual condition of employment that a Health Professional maintains their registration throughout their employment with Public Health Wales, and it is their personal responsibility to keep their professional registration up to date.

In addition, Public Health Wales has a responsibility to ensure that recruitment and ongoing processes are in place to ensure Professional Registration compliance and protection of the public. It does this via a broad range of organisational arrangements designed to support multi-disciplinary Registered Healthcare Professionals in performing their role as a Professional Practitioners, safely and effectively. Public Health Wales delivers these commitments through:

- Processes to safely recruit and induct new employees
- Performance and Appraisal processes (presently provided through 'My Contribution')
- Monthly Registration Audit
- Annual Audit verifying active professional registration with the Nursing and Midwifery Council (NMC) and Health and Care Professions Council (HCPC).

However, in the case of concerns being raised about the professional practice of Registered Healthcare staff hereby referred to as Fitness to Practise (FtP), then Public Health Wales will ensure a fair, consistent and robust process is in place to respond quickly and effectively to address these concerns in order to protect the public and support the member of staff.

The purpose of this document is to describe the process and procedures in place to review and assess Fitness to Practise concerns in accordance with the Regulatory Body's thresholds and requirements for referral to them. If, as part of initial enquiries any such concern also requires investigation to be carried out under the '*All Wales Disciplinary Policy and Procedure*', the evidence from the latter will be used to inform the Fitness to Practise review. Thus, in such cases where there is a Fitness to Practise concern raised as part of the Disciplinary Policy, these two processes will work in a complementary manner.

2. Summary of Responsibilities

This document sets out specific responsibilities for individuals. These are detailed in the main text of the document but the table below summarises those responsibilities.

Role	Responsibilities
Executive Director Quality Nursing and Allied Health professionals*	<p>Overarching executive professional responsibility for, and oversight of, any case where there is a concern over FtP for Nursing and Midwifery professionals registered with the Nursing and Midwifery Council (NMC) and Health and Care Practitioners registered with the Health and Care Professions Council (HCPC)</p> <p>Decision on behalf of Public Health Wales as to whether the threshold for referral to Regulatory body has been met and is appropriate. Where appropriate, delegate responsibility to the designated lead professional to act on behalf of the Executive Director for Quality, Nursing and Allied Health Professionals.</p>
Professional Lead for Healthcare Sciences and Allied Healthcare Professions	<p>Delegated responsibility on request (as above) to engage with Regulatory body to seek advice and guidance where appropriate to support internal FtP review process involving practitioners regulated by HCPC.</p> <p>Provide profession-specific advice and guidance into internal FtP review.</p> <p>Undertake referral to Regulatory Body on behalf of the organisation where instructed to do so by Executive Director Quality, Nursing and Allied Health Professionals, following outcome of FtP review.</p>
Professional Lead for Nursing, Midwifery and Standards Manager	<p>Delegated responsibility on request (as above) to engage with Regulatory Body to seek advice and guidance where appropriate to support internal FtP review process involving practitioners regulated by NMC.</p> <p>Provide profession-specific advice and guidance into internal FtP review.</p> <p>Undertake referral to Regulatory Body on behalf of the organisation where instructed to do so by Executive Director Quality, Nursing and Allied Health Professionals, following outcome of FtP review.</p>
Relevant Executive Director	Identify most appropriate Divisional Investigating Officer (appropriate senior staff member) and People and OD Advisor, to support internal FtP review.

Divisional Investigating Officer	Collection of evidence relevant to concerns over FtP.
Line Manager	Line Manager of Practitioner, or other manager receiving notification of FtP concern must immediately notify Relevant Executive Director and Executive Director of Quality, Nursing and Allied Healthcare Professionals.

* In addition to any responsibilities assigned as risk owners

Section 1 – Guidance

3. What is Fitness to Practise?

Being Fit to Practise requires Registered Healthcare Professionals to have the skills, knowledge, health and character to do their job safely and effectively. This may include conduct outside of the working environment if this might affect or undermine public confidence.

The Health Professions Order 2001 sets out that a registrant's fitness to Practise may be impaired for one or more of the following five reasons:

- Misconduct
- Lack of competence
- Conviction or caution for a criminal offence
- Physical or mental health
- A determination by another health or social care Regulatory or licensing body

3.1 When should concerns be escalated?

If any concern regarding a Registered Healthcare Professional is raised that is relevant to any of the five criteria for impaired Fitness to Practise detailed in the Health Professions Order 2001 (see 'What is Fitness to Practise?' section above), Public Health Wales has a responsibility, as the employer, to ensure the concerns are escalated through the appropriate Professional Lead with a view to informing the Regulatory Body if deemed appropriate, following further investigation.

This referral to the Regulatory Body must be made at the earliest opportunity, including prior to the outcome of any disciplinary process that may be undertaken as part of the All Wales Disciplinary Policy and Procedure.

Prior to Regulatory Body notification and upon discovery of any evidence relevant to a Registered Healthcare Professional's Fitness to Practise, the Executive Director for Quality, Nursing and Allied Health Professionals must be notified. This notification should be made during initial review of a concern or complaint by the line manager according to their responsibilities as described in the All Wales Disciplinary Policy and Procedure (AWDPP), but may occur during any subsequent and more detailed formal investigation stage undertaken as part of the AWDPP, should relevant evidence come to light for the first time at that stage. A summary of the information required by the Nursing Midwifery Council (NMC) and Health and Care Professions Council (HCPC) including evidence or circumstances relevant to referral decision is included at Appendix A.

3.2 Alert Notification

Public Health Wales can be made aware of a Registered Healthcare Professional whose performance or conduct could place service users and or staff at risk of harm, through the receipt of an alert letter.

Section 2 – Ownership of the Fitness to Practise Process

4. Fitness to Practise (FtP) review structure

The FtP review is the structure within which the organisation manages concerns over FtP. The process for managing concerns over FtP in Public Health Wales is shown at Appendix B.

4.1 Procedure for undertaking FtP review

Roles and responsibilities (Figure 1)

Line Manager

- The Registered Healthcare Professional's Line Manager or other manager receiving notification of FtP concern must immediately notify the relevant Executive Director and Executive Director of Quality, Nursing and Allied Healthcare Professionals

Divisional Investigating Officer

- Appointed by the manager in conjunction with the Executive Director (within their own Directorate) Investigation and collation of evidence relevant to any professional practice concerns and submission of an investigation report

Relevant Executive Director

- Ensure Executive Director of Quality, Nursing and Allied Healthcare Professionals (QNAHP) is immediately notified by e-mail and receipt of confirmation received.
- Identify Divisional Investigating Officer (appropriate trained senior staff member) from discussion with the line manager and if required with advice from Executive Director of QNAHPs
- Directorate to notify the People and OD Partner for their Directorate, to support internal FtP review procedure

Relevant Professional Lead

- Engage with Regulatory Body to seek advice and guidance where appropriate to support internal FtP review process
- Provide profession-specific advice and guidance into internal FtP review
- Undertake referral to Regulatory Body on behalf of the organisation where instructed by Executive Director of Quality, Nursing and Allied Health Professionals following outcome of FtP review

Executive Director of Quality, Nursing and Allied Healthcare Professionals

- Overarching responsibility for, and oversight of, any case where there is a concern over Fitness to Practise (FtP)
- Decision on behalf of the Board as to whether referral to Regulatory Body is appropriate and made

People and Organisational Development Partner or People and OD Advisor

- To support and guide the process
- Ensure that the person under scrutiny receives appropriate provision as part of the ongoing investigation process
- If further disciplinary action is required, they are to inform and support the process

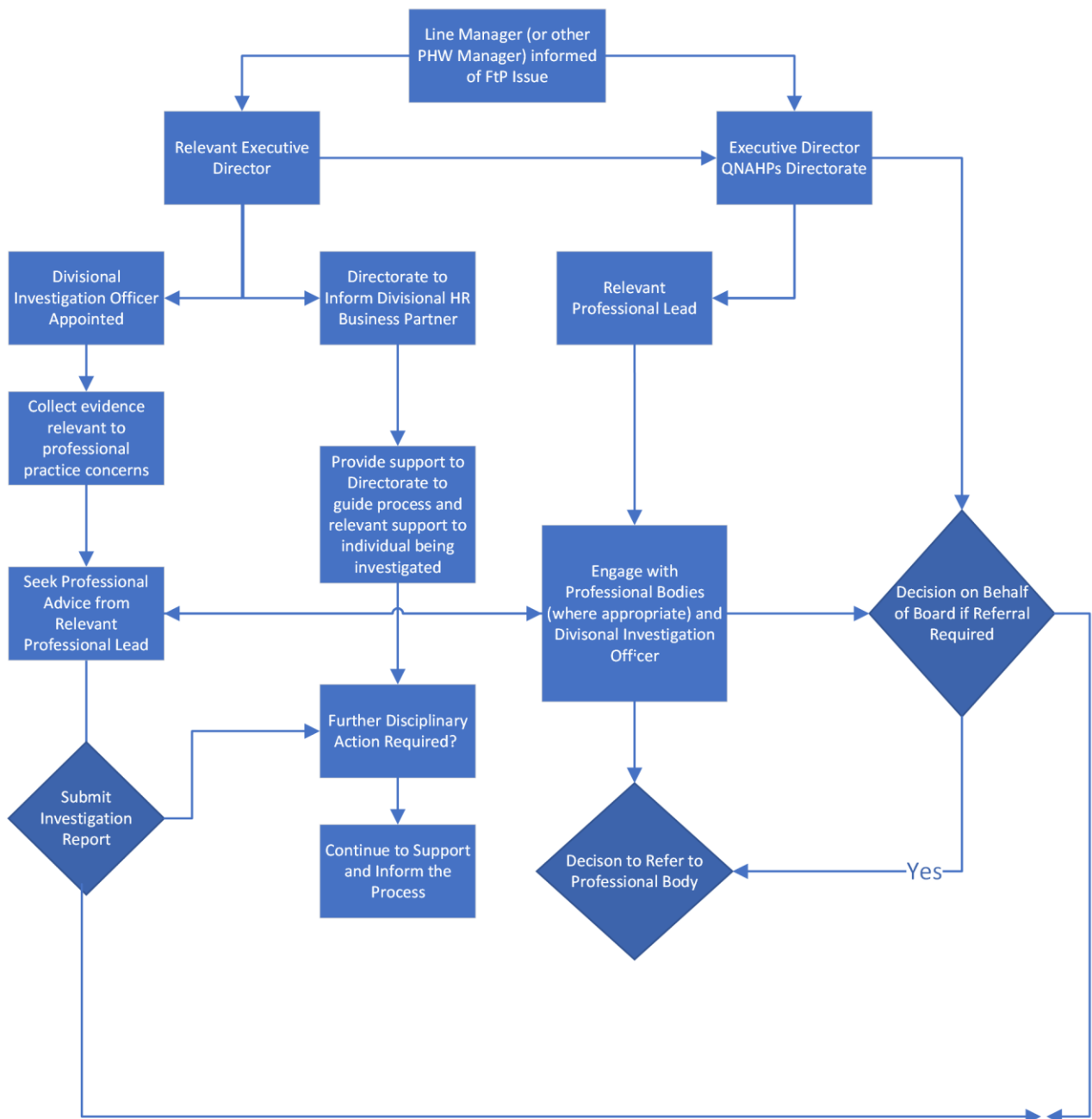


Figure 1-Reporting Flow Chart

Section 3 – Management of Public Health Wales Fitness to Practise Process

5. Escalation Process

The final decision on referral to the Regulatory Body on behalf of Public Health Wales, must be made by the Executive Director for Quality, Nursing and Allied Health Professionals. Such a decision may be made by the Executive Director after wider consultation, and the process of referral may subsequently be delegated to an appropriate other person, e.g. the relevant Professional Lead or an appropriate Senior Manager.

It is imperative, therefore, that the Executive Director is informed immediately if there is any question regarding impaired Fitness to Practise. This will ensure that:

- Professional advice and support can be given to the investigating team to inform any further investigations under the All Wales Disciplinary Policy and Procedure
- Any additional information can be collected, that is required to provide a full evidence-based referral to the Regulatory Body and in line with submission requirements to ensure a fair process

5.1 Key stages in Escalation process

Key stages in this process are described below, and a flowchart detailing relevant steps is shown in Appendix B.

In summary, any concern or question (Trigger Event) around FtP of an individual registered Healthcare Professional should be communicated immediately to Executive Director (QNAHP) by e-mail. An urgent review of the nature of the concern and any initial evidence will be undertaken and a decision made as to whether a Fitness to Practise review should be undertaken, or whether this decision should be deferred until further investigation for example, as prescribed within the All-Wales Disciplinary Policy has been progressed.

Key stages in this process are described below, and a flowchart detailing relevant steps is shown in Appendix B.

5.2 Trigger Event

This may be (but is not limited to) a concern raised over the health and wellbeing or conduct of a Registered Healthcare Professional colleague, an allegation, or an incident or clinical concern. In addition to internal incident review processes, a concern may be communicated to Public Health Wales by a non-employee (for example, a member of the public, a patient or relative, or an external organisation), or by another employee of the organisation.

In any such case where a question around Fitness to Practise concern is raised, both the Executive Director (QNAHP) and relevant Professional Lead, must be informed immediately and documented.

Following initial investigations if the professional practise concern relates to staff health and wellbeing, the Registered Healthcare Professional should be referred to the Occupational Health Service as part of the ongoing Fitness review.

6. Assessment and Investigation under the All-Wales Disciplinary Policy and Procedure

If the trigger event relates to any concern over staff conduct, as identified within the All-Wales Disciplinary Policy and Procedure, the steps mandated in that procedure should be followed and the Executive Director (QNAHP) kept informed of any findings or evidence that may raise concerns or questions.

7. Fitness to Practise review

If any concerns around FtP cannot be unequivocally excluded, any findings or evidence will need to be reviewed by Executive Director (QNAHP), the relevant Professional Lead, and an appropriate Senior Manager of the relevant Directorate (advised by People and Organisational Development (POD)).

Depending upon the nature of the information or evidence, a decision may be made whereby either:

- No referral to the Regulatory Body is required
- Advice should be sought from the Regulatory Body
- Immediate referral to the Regulatory Body should be undertaken

The member of staff concerned will then be informed by their line manager of any decision or outcome.

Appendix A

Impaired fitness to Practise

The Health Professions Order 2001 sets out that a registrant's Fitness to Practise may be impaired for one or more of the following five reasons:

- Misconduct.
- Lack of competence.
- Conviction or caution for a criminal offence.
- Physical or mental health.
- A determination by another health or social care Regulatory or licensing body.

[Guidance on Referral – from Health and Care Professions Council \(HCPC\) website](#)

The types of issues that are likely to raise a concern about a registrant's fitness to Practise include, but are not limited to:

- Dishonesty, fraud or abuse of trust or position, including not maintaining professional boundaries with a service user;
- Exploitation of a vulnerable person;
- Failure to act in the best interests of service users;
- Serious breaches of a service user's confidentiality or data protection requirements;
- Committing reckless or deliberately harmful acts;
- Hiding mistakes or blocking an investigation;
- Serious or repeated failings in service user care;
- Where a registrant's performance in their role has harmed service users or put them at risk of harm;
- Violence, sexual misconduct or indecent behaviour;
- A caution or conviction for a criminal offence;
- Health concerns that are not being managed and may affect the safety of service users or colleagues, including substance abuse or misuse;
- An adverse finding by another Regulatory Body;
- Fraudulent or incorrect entry onto the HCPC Register;
- Other serious actions or behaviours which affect public confidence in the profession

These types of issues should be referred regardless of the outcome of any disciplinary, performance or other process.

[Guidance on Referral – from Nursing and Midwifery Council \(NMC\) website](#)

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 Practise, 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 Practise
- 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

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 Practise 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.

Procedure for Fitness to Practise Review of Evidence and Notification of Findings

