

# **The Nursing and Midwifery Council**

**Fitness to Practise Annual Report**

**1 April 2005 to 31 March 2006**

## **New allegations against nurses and midwives**

This year we were alerted to 1,378 potential new cases against nurses and midwives, slightly lower than 1,389 complaints received during the previous year. These complaints represent just 0.2% of the total number of people on our register.

Anyone can make a complaint, but in practice just under 50% come from employers, usually in association with disciplinary proceedings at the workplace. Just over 20% of complaints come directly from members of the public. We receive slightly fewer complaints from the police, who inform us of the criminal convictions of nurses and midwives. Many of the convictions relate to minor matters unlikely to lead to any further action. Some are serious convictions for rape, violent crime, internet pornography and dishonesty. A small number of cases are self referrals, particularly if a nurse or midwife believes their health is affecting their fitness to practise.

We can also decide to act independently if we discover information, for example in media coverage, which may call into question a nurse or midwife's fitness to practise.

### Sources of new allegations, 2005-2006

Source	Percentage
Employers	49.08%
Members of the public	21.92%
Police	19.02%
Self referral	1.63%
CSCI (NCSC)	0.85%
Other	7.50%

## Dealing with allegations

### Old rules, new rules

On 1 August 2004, we started using a new set of rules for dealing with fitness to practise cases. If a case was reported before that date, we use our 1993 Professional Conduct Rules. After that date, we have used the new 2004 Fitness to Practise Rules.

Because of the number of old cases that are still being heard, this means we use two sets of rules.

	Old rules	New rules
Case first considered by	Preliminary proceedings committee	Investigating committee
Basis for deciding to continue	Is the allegation sufficiently serious, if proven, to lead to removal from the register?	Is there a case to answer? This test applies to both the allegations and the impairment of a registrant's fitness to practise
Case heard by	Professional conduct committee	Conduct and competence committee

Lowering the threshold for deciding to continue a case after the initial investigation has led to a 125% increase in cases over the last year. We heard our first case under the new rules on 9 January 2006.

### **Preliminary proceedings committee (old rules)**

The preliminary proceedings committee continues to consider complaints received under the old rules. In 2005-2006 they sat 38 times and heard 823 cases.

The number of cases considered is decreasing as this committee hears the remaining cases received before the new rules came into operation. There were 79 outstanding cases still to be heard by the preliminary proceedings committee on 31 March 2006.

#### **Preliminary proceedings committee decisions, 2003-2006**

	<b>2003-2004</b>	<b>2004-2005</b>	<b>2005-2006</b>
Case closed	875	615	251
Further investigation*	393	514	295
Referred to professional screeners for consideration of health issues	53	43	12
Cautioned	30	41	25
Referred to the professional conduct committee	160	190	240

*Includes some cases that may have been considered more than once.*

### **Professional conduct committee (old rules)**

The professional conduct committee heard 252 cases during 2005-06. Of these, 188 were completed rather than being adjourned.

#### **Outcomes of the cases, 2003-2006**

	<b>2003-2004</b>	<b>2004-2005</b>	<b>2005-2006</b>
Removed	127	106	128
Cautioned	45	35	48
Conditions of practice	0	0	2
No further action	15	9	10
Adjourned	74	63	64

*Includes cases that have been considered more than once following adjournments*

### Investigating committee (new rules)

Panels of the investigating committee are responsible for considering all new allegations. The committee can order a further investigation, refer the case on to the conduct and competence committee or health committee, consider an allegation of fraudulent entry to the register or decide there is no case to answer.

If the panel finds there is no case to answer it will close the case. Many complaints are closed at an early stage because there is insufficient evidence, or because the matter would not call the nurse or midwife's fitness to practise into question, such as minor motoring offences.

During 2005-2006 the investigating committee met 71 times and considered 1830 cases. Just over 35% of cases were closed because the committee found no case to answer. It referred 201 cases to the conduct and competence committee.

#### Investigating committee decisions, 2004-2006

	2004-2005	2005-2006
Further investigation*	244	971
Refer to conduct and competence committee regarding conduct, a caution or a conviction	5	197
Refer to conduct and competence committee regarding lack of competence	2	4
No case to answer	157	645
Refer to health committee	1	13
Consideration of fraudulent entry on the register	1	1

*\*Includes some cases that have been considered more than once*

### Conduct and competence committee (new rules)

The range of sanctions available to the conduct and competence committee is more varied than options available under the old rules. It can vary the length of time it wishes some sanctions to remain and can now implement conditions of practice orders. Between 9 January and 31 March 2006, the committee dealt with 31 hearings over 49 days.

#### Outcomes of the cases, 2005-2006

	2005-2006
Caution order	3
Conditions of practice order	1
Striking off order	16
No further action	1
Restored to the register	1
Pre-meetings	4
Adjourned	5

*Includes cases that have been considered more than once following adjournments.*

## Understanding complaints against nurses and midwives

Of the incidents dealt with in the cases heard in 2005-2006, just over 45% occurred in the NHS.

NHS	41.09%
Residential or nursing home	36.73%
Mental health NHS	5.82%
Other	16.36%

Other settings included private healthcare, general practice and independent practice.

Allegations directly involving patients accounted for nearly 17% of allegations heard by the two committees. Administration of drugs allegations represented 13.31% and record keeping 11.09% of other charges that also influence patient care.

It should be noted that most cases usually contain allegations from a number of different categories.

Unsafe clinical practice	8.27%
Neglect of basic care	9.27%
Abuse of a patient or client	12.30%
Maladministration of drugs	9.68%
Failure to maintain adequate records	9.27%
Sleeping on duty	2.62%
Child pornography	1.61%
Abuse of colleagues	5.04%
Other	41.94%

Other allegations range from failure to maintain adequate staffing levels to convictions for drink driving.

## Cases of ill health

Allegations of unfitness to practise due to ill health are considered by the health committee.

A nurse or midwife can be referred to the health committee in one of two ways, either direct referral by their employer or by self-referral. In addition, the four other fitness to practise committees can refer a case to the health committee at any time. The committee meets in private because of the confidential nature of medical evidence involved.

The committee met 44 times during 2005-2006 and considered 178 cases of impairment to fitness to practise due to ill health. Out of those cases, 145 were heard under the old rules and 33 were heard under the new rules.

### Outcomes of the cases considered, 2003-2006

Decisions	2003-2004	2004-2005	2005-2006
Fitness not impaired	63	62	52
Suspended	46	42	44
Removed	13	2	5
Referred back to preliminary proceedings committee	6	1	2
Conditions of practice order	0	3	5
Interim suspension order	0	3	2
Interim suspension continued	0	0	8
Interim suspension terminated	0	0	1
Application to terminate suspension	14	13	5
Adjourned	54	36	31
Others	41	31	23

*Includes cases withdrawn from schedule, notice of referrals, cases not heard and postponed judgement (sanction only available before 1 August 2004).*

Allegations considered by the health committee are grouped into three major categories. These are substance abuse, mental health and physical illness. The majority of the cases heard involved allegations of substance abuse.

### Allegations considered, 2003-2006

	2003-2004	2004-2005	2005-2006
Alcohol abuse	32%	39.06%	28.06%
Drug abuse	23%	20.32%	22.62%
Depressive illness	21.5%	21.35%	16.34%
Other mental illness	19%	18.23%	27.24%
Physical illness	4.5%	1.04%	5.72%

## Restorations to the register

Under the new rules, applications for restoration cannot be made before a period of five years has elapsed. However, applicants whose names were removed from the register before 1 August 2004 are permitted to make an application for restoration at any time.

Restoration applications heard, 2003-2006

	2003-04	2004-05	2005-06
Restored	2	4	4
Restored with conditions of practice orders	-	0	2
Rejected	16	3	11

The conduct and competence committee now deals with all applications for restoration to the register. The applicant must attend and will be questioned by a panel. Two references must be supplied, one of which must come from an employer who is fully aware of the circumstances that led to the applicant's removal from the register.

The onus is on the applicant seeking restoration to demonstrate that, having been removed, they are a fit and proper person to be restored. The committee will take into account whether or not the applicant

- accepts that removal from the register was justified
- has addressed the issues that led to removal and changed their behaviour or attitude
- shows genuine regret, or
- has made amends

The committee must also consider whether public confidence in the professions is likely to be maintained if the applicant were to be restored to the register. If an applicant is restored to the register their previous removal will be disclosed to those inquiring about the practitioner's registered status for a period of five years from the date of their restoration.

## **Appeals and judicial reviews**

There was one judicial review of a decision made by a fitness to practise committee last year. The court, after consideration of the case, replaced the committee's removal order with a caution.

## **Council for Healthcare and Regulatory Excellence**

The Council for Healthcare and Regulatory Excellence has the power to appeal against decisions we make, if they feel the outcome is too lenient. All decisions made by our committees are automatically referred for their consideration. In October 2005, they successfully appealed a decision made in December 2004 to take no further action in a case where misconduct had been proved. The High Court of Justice in Northern Ireland ordered that the case be re-heard from the stage before a sanction was previously decided on. The re-hearing of this case is scheduled for June 2006.