

# **The Nursing and Midwifery Council**

## **Fitness to Practise Annual Report**

**1 April 2006 to 31 March 2007**

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

This year we were alerted to 1,624 potential new cases against nurses and midwives, considerably higher than 1,378 referrals received during the previous year (an increase of 17.8%). These referrals represent just 0.2% of the total number of people on our register.

Anyone can make a complaint, but in practice just over 50% come from employers, usually in association with disciplinary proceedings at the workplace. Just over 15% of referrals come directly from members of the public, while 23% of the referrals were received 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, 2006-2007**

<b>Source</b>	<b>Percentage</b>
Employer	50.25%
Police	22.91%
Member of the public	15.02%
Other health professionals	5.42%
Others	6.40%

The majority of referrals come from England where most nurses and midwives are registered. Just over 6% of the referrals came from Scotland, 4.6% came from Wales and less than 1% came from Northern Ireland.

### **Source country of the referrals**

<b>Source country</b>	<b>Percentage</b>
England	88.18%
Scotland	6.03%
Wales	4.68%
Northern Ireland	0.80%
Overseas	0.31%

### 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. If a case was reported after that date, we use the new 2004 Fitness to Practise Rules.

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

	<b>Old rules</b>	<b>New rules</b>
<b>Case first considered by</b>	Preliminary Proceedings Committee	Investigating Committee
<b>Basis for deciding to continue</b>	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
<b>Case heard by</b>	Professional Conduct Committee	Conduct and Competence Committee

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

The preliminary proceedings committee continues to consider complaints received under the old rules. In 2006-2007 it sat 28 times and heard 100 cases. The number of cases considered is decreasing as this committee deals with the remaining cases received before the new rules came into operation. In comparison, in 2005-2006 it sat 38 times and considered 823 cases.

#### **Preliminary proceedings committee decisions\*, 2004-2007\***

	<b>2004-2005</b>	<b>2005-2006</b>	<b>2006-2007</b>
Case closed	615	251	26
Further investigation	514	295	31
Referred to professional screeners for consideration of health issues	43	12	1
Cautioned	41	25	7
Referred to the professional conduct committee	190	240	35

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

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

The professional conduct committee sat for 188 days and considered 135 cases during 2006-07. Of these, 105 were completed rather than adjourned.

#### **Professional conduct committee outcomes\*, 2004-2007\***

	<b>2004-2005</b>	<b>2005-2006</b>	<b>2006-2007</b>
Removed	106	128	67
Cautioned	35	48	23
Conditions of practice order**	0	2	1
No further action	9	10	13
Adjourned	63	64	30

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

*\*\*Conditions of practice orders are a sanction created under the new legislation. However, in certain circumstances, transitional provisions allow professional conduct committees dealing with cases under the old rules to make conditions of practice orders.*

### Investigating committee panels (new rules)

Panels of the investigating committee are responsible for considering nearly all new allegations of impairment of fitness to practise. The panels may require further investigations to be made, refer the case on to the conduct and competence committee or health committee, or decide there is no case to answer. As a separate strand of work, the panels also deal with allegations of fraudulent or incorrect entry to the register

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 2006-2007 investigating committee panels met 72 times and considered 2287 cases. Just over 35% of cases were closed because the panels found no case to answer. They referred 315 cases to the conduct and competence committee.

### Investigating committee panel decisions\*, 2004-2007\*

	2004-2005	2005-2006	2006-2007
Further investigation	244	971	1126
Refer to conduct and competence committee	7	201	315
No case to answer	157	645	808
Refer to health committee	1	13	32
Consideration of fraudulent entry on the register	1	1	6

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

### Conduct and competence committee panels (new rules)

The range of sanctions available to conduct and competence committee panels is more varied than the options available under the old rules. Panels can also vary the length of time that some sanctions remain in place. Conditions of practice orders can be made for between one to three years; suspension orders can be made for up to one year.

During 2006-2007 the panel sat for 191 days and considered 144 cases.

### Conduct and competence committee outcomes\*, 2005-2007\*

	2005-2006	2006-2007
Striking off order	16	75
Caution order	3	17
Conditions of practice order	1	6
No further action	1	13
Suspension order	0	4
Adjourned	5	29

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

### Professional conduct / conduct and competence committee cases

Of the incidents dealt with in the cases heard in 2006-2007, just over 46% occurred in the NHS sector.

2006-2007	
NHS	46.67%
Residential or nursing home	25.81%
Unknown*	15.32%
Private hospital or company	5.24%
Other	6.85%
Agency	3.23%

\* In conviction or caution cases we do not always know about the work setting of the registrants.

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. Maladministration of drugs allegations represented 10.47% and allegations relating to dishonesty represented just over 19% of the allegations.

Most cases usually concern allegations concerning a number of different issues.

2006-2007	
Dishonesty*	19.23%
Patient abuse (physical, sexual, verbal, inappropriate relationship)	17.09%
Maladministration of drugs	10.47%
Neglect of basic care	10.04%
Failure to maintain adequate records	7.48%
Unsafe clinical practice	7.48%
Colleague abuse (physical, sexual, verbal, inappropriate relationship)	4.27%
Failure to collaborate with colleagues	4.06%
Failure to report incidents	3.42%
Failure to act in an emergency	3.21%
Pornography - adult	2.35%
Violence (harassment, assault)	1.92%
Other**	8.98%

\* Dishonesty includes theft, fraud, and false claim to registration, claiming sick pay fraudulently, falsification of records and dishonesty about previous employment and misappropriation of drugs.

\*\* Other includes absence without leave, motoring offences, drink and drugs related offences (other than maladministration), breach of confidentiality, bullying, manslaughter and unfit for duty due to influence of drinks or drugs.

### Cases of ill health

Both the old and new rules provide for a health committee (or panels) to handle allegations of unfitness to practise due to ill health. Under the old rules, health committees can remove or suspend a registrant. Suspension can be for a definite or indefinite period. Under the new rules, striking-off orders are available only if the registrant has been continuously suspended or subject to a conditions of practice order for two years immediately before the striking-order.

Referrals are made to the NMC by employers, the registrants themselves or other health professionals.

Under the old rules, professional screeners decide whether the case should be heard by the health committee. Under the new rules, investigating committee panels decide whether the case should be dealt with by a panel of the health committee. Both the professional screeners (old rules) and the investigating committee can ask the registrant to undergo medical examination to inform this decision. Additionally, both the professional conduct committee (old rules) and a panel of the conduct and competence committee (new rules) can refer a case to the health committee.

Health committees and panels meet in private because of the confidential nature of medical evidence involved. The registrant has right to attend their hearing and be represented and may call witnesses.

Health committees or panels met 20 times during 2006-2007 and considered 43 cases of impairment to fitness to practise due to ill health.

### Health committee and panel outcomes\*, 2005-2007

	2005-2006	2006-2007
Suspension	44	10
Case closed	52	8
Conditions of practice	5	5
Suspension order continued	0	3
Referral to PPC	2	0
Withdrawn	0	1
Adjourned	31	10
Suspension terminated	5	2
Conditions of practice continued	0	2
Removed	5	2

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

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.

	2004-2005	2005-2006	2006-2007
Alcohol abuse	39.06%	28.06%	22.89%
Drug Abuse	20.32%	22.62%	19.28%
Depressive illness	21.35%	16.34%	6.02%
Other mental illness	18.23%	27.24%	37.35%
Physical illness	1.04%	5.72%	14.46%

### **Restoration to the register (professional conduct committee / conduct and competence committee panels)**

Following removal under the new rules, applications for restoration cannot be made before five years. 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, 2004-2007**

	<b>2004-2005</b>	<b>2005-2006</b>	<b>2006-2007</b>
Restored	4	4	1
Restored with conditions of practice order	0	2	1
Rejected	3	11	4

The conduct and competence committee now deals with all applications for restoration to the register. Applicants are expected to attend a hearing and will be questioned by a panel. As a minimum, at least 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 applicant is required to demonstrate that they are a fit and proper person to be restored. The committee will take into account whether or not the applicant:

- accepts that removal or striking-off was justified
- has addressed the issues that led to striking-off and changed their behaviour or attitude
- shows genuine regret
- has made amends (where possible)

The panel must also consider whether public confidence in the professions is likely to be maintained if the applicant were to be restored.

If an applicant is restored to the register their previous removal or striking-off will be disclosed in the register and to those enquiring about the registrant's status for five years from the date of restoration.

### **Appeals**

Under the Nursing and Midwifery Order 2001, an appeal can be made against any order or decision made by the panel of the health committee, conduct and competence committee or investigating committee (in cases of fraudulent or incorrect entry). Appeals must be made within 28 days of notification of the panel order or decision.

### **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 unduly lenient. Currently, all professional conduct committee / conduct and competence committee panel decisions are automatically referred for their consideration. In the future, the CHRE's powers will extend to all health committee panel decisions and samples of investigating committee panel 'no case to answer' decisions.