

The Nursing and Midwifery Council



Fitness to Practise Annual Report

1 April 2007 to 31 March 2008

New allegations against nurses and midwives

This year we were alerted to 1,487 potential new cases against nurses and midwives, compared to 1,624 referrals received during the previous year (a decrease of 8.4%) and 1,378 in 2005/6. These referrals represent just 0.2% of the total number of people on our register.

Anyone can make a complaint, but in practice over 50% come from employers, many in association with disciplinary proceedings at the workplace. Just over 8% of referrals come directly from members of the public, while almost 29% of referrals were received from the police, who inform us of cautions and criminal convictions of nurses and midwives. Many of the convictions relate to minor matters unlikely to lead to any further action by the NMC. 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, 2005-2008

Source	2005-06		2006-2007		2007-2008	
Employer	736	53.41%	816	50.25%	790	53.13%
Police	270	19.59%	372	22.91%	430	28.92%
Member of the public	308	22.35%	244	15.02%	131	8.81%
Other health professionals	11	0.80%	88	5.42%	33	2.22%
Others	53	3.85%	104	6.40%	103	6.92%

The majority of referrals come from England where most nurses and midwives are registered. Just over 8% of the referrals came from Scotland, 4.17% came from Wales and 2.49% came from Northern Ireland.

Source country of the referrals

Country	2006-2007	2007-2008
England	88.18%	84.94%
Scotland	6.03%	8.33%
Wales	4.68%	4.17%
Northern Ireland	0.80%	2.49%
Overseas	0.31%	0.07%

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.

	Old rules	New rules
Case first considered by	Preliminary Proceedings Committee (PPC)	Investigating Committee (IC)
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 (PCC) or Health Committee (HC)	Conduct and Competence Committee Panel (CCC) or Health Committee Panel (HC)

The panels have a range of sanctions and disposal options available to them when dealing with the cases:

	Old rules			New rules		
	PPC	PCC	HC	IC	CCC	HC
Striking off order					✓	✓
Removal - incorrect or fraudulent entry				✓		
Removal		✓	✓			
Suspension order (up to 12 months)					✓	✓
Suspension (can be indefinitely)			✓			
Interim suspension order (up to 18 months)				✓	✓	✓
Interim suspension (no time limit)	✓	✓	✓			
Conditions of practice order (up to 3 years)*		✓	✓		✓	✓
Interim conditions of practice order (up to 18 months)				✓	✓	✓
Caution order (1 to 5 years)					✓	✓
Caution (for five years)	✓	✓	✓			

* Under certain circumstances, transitional provisions allow professional conduct committee and health committee dealing with cases under the old rules to make conditions of practice orders.

Preliminary proceedings committee (old rules)

The preliminary proceedings committee continues to consider complaints received under the old rules. In 2007-2008 it sat 8 times and considered 12 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 2006-2007 it sat 28 times and considered 100 cases.

Many of the cases related to matters investigated by the police during which period we can take no action other than to consider interim suspension from the register in order to protect the public.

Under the old rules the PPC may itself issue a caution for 5 years.

Preliminary proceedings committee decisions, 2005-2008*

	2005-2006		2006-2007		2007-2008	
Further investigation	295	36%	31	31%	4	33%
Case closed	251	30%	26	26%	0	0%
Referred to the professional conduct committee	240	29%	35	35%	7	59%
Cautioned	25	3.5%	7	7%	1	8%
Referred to professional screeners for consideration of health issues	12	1.5%	1	1%	0	0%

*Includes cases that have been considered more than once.

Cases considered for interim suspension by extraordinary preliminary proceedings committee

		2007-2008	
New	Interim suspension	1	4%
Reviews	Interim suspension continued	27	96%

Professional conduct committee (old rules)

The professional conduct committee sat for 217 days and considered 130 cases during 2007-08. Of these, 89 were completed rather than adjourned. 40 hearings were adjourned one or more times during the course of the year.

Professional conduct committee outcomes, 2005-2008*

	2005-2006		2006-2007		2007 - 2008	
No further action	10	4%	13	10%	12	9%
Cautioned	48	19%	23	17%	19	15%
Conditions of practice order	2	1%	1	1%	0	0%
Removed	128	51%	67	50%	58	45%
Referred to Screeners	0	0%	0	0%	1	1%
Adjourned	64	25%	30	22%	40	30%

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

Investigating committee panels (new rules)

Panels of the investigating committee are responsible for considering all new allegations of impairment of fitness to practise received since August 2004 irrespective of the date of the alleged incidents or events. We have no time limit on referral to the NMC.

The IC 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 2007-2008 investigating committee panels met 83 times and considered 2688 cases*. Just fewer than 35% of cases were closed because the panels found no case to answer. They referred 441 cases to the conduct and competence committee and 56 to the health committee.

Investigating committee panel decisions, 2005-2008

	2005-2006		2006-2007		2007-2008	
Further investigation	971	53%	1126	49%	1253	47%
No case to answer	645	35%	808	35%	937	35%
Refer to conduct and competence committee	201	11%	315	15%	441	16%
Refer to health committee	13	1%	32	1%	56	2%
Consideration of fraudulent entry on the register	1	0%	6	0%	1	0%

*Includes 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, cautions can be issued for periods between one and five years

During 2007-2008 the panels sat for 615 days and considered 482* cases. Of these 360 were closed rather than adjourned.

Conduct and competence committee outcomes, 2005-2008

	2005-6		2006-2007		2007-2008	
Striking off order	16	62%	75	52%	214	44%
Caution order	3	12%	17	12%	92	19%
Conditions of practice order	1	4%	6	4%	6	1%
Suspension order	0	0%	4	3%	27	6%
No further action	1	4%	13	9%	30	7%
Adjourned	5	18%	29	20%	113	23%

*Includes 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 2007-2008, just over 42% occurred in the NHS.

	2006-2007	2007-2008
NHS	46.67%	42.48%
Residential or nursing home	25.81%	30.07%
Unknown*	15.32%	13.89%
Other**	3.58%	8.58%
Private hospital or company	5.39%	3.84%
Agency	3.23%	1.14%

* In conviction or caution cases the work setting of the registrant is not always known or relevant.

**Other settings included general practice and independent practice.

Allegations directly involving patients accounted for just over 14% of allegations heard by the two committees. Maladministration of drugs allegations represented 9.87% and allegations relating to dishonesty represented just over 17% of the allegations.

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

	2006-2007	2007-2008
Dishonesty*	19.23%	17.32%
Patient abuse (physical, sexual, verbal, inappropriate relationship)	17.09%	14.30%
Failure to maintain adequate records	7.48%	10.37%
Maladministration of drugs	10.47%	9.87%
Neglect of basic care	10.04%	9.16%
Unsafe clinical practice	7.48%	7.75%
Failure to collaborate with colleagues	4.06%	6.95%
Colleague abuse (physical, sexual, verbal, inappropriate relationship)	4.27%	2.72%
Failure to report incidents	3.42%	2.62%
Failure to act in an emergency	3.21%	1.91%
Pornography - adult	2.35%	1.01%
Violence (harassment, assault)	1.92%	1.41%
Other**	8.98%	14.61%

* 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 off 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. A case may not be considered by the health committee if it is considered likely that the allegations may lead to a striking-off.

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 28 times during 2007-2008 and considered 41* cases of impairment to fitness to practise due to ill health. By the nature of the issues the cases are considered on a number of occasions during their lifetime.

Health committee and panel outcomes, 2005-2008

	2005-2006		2006-2007		2007-2008	
Suspension	44	31%	10	23%	13	32%
Adjourned	31	22%	10	23%	10	24%
Conditions of practice	5	3.5%	5	12%	7	16%
Conditions of practice continued	0	0%	2	5%	2	5%
Case closed	52	36%	8	19%	2	5%
Removed	5	3.5%	2	5%	2	5%
Suspension order continued	0	0%	3	7%	2	5%
Referral to PPC	2	1%	0	0%	1	2%
Withdrawn	0	0%	1	2%	1	2%
Suspension terminated	5	3%	2	4%	1	2%

*Includes cases that 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 (drugs and/or alcohol).

	2005-2006	2006-2007	2007-2008
Other mental illness	27.24%	37.35%	32.63%
Physical illness	5.72%	14.46%	23.16%
Drug Abuse	22.62%	19.28%	18.95%
Alcohol abuse	28.06%	22.89%	16.84%
Depressive illness	16.36%	6.02%	8.42%

Interim Orders

Panels of the Investigating Committee (IC), Conduct and Competence Committee (CCC) or Health Committee (HC) can issue an interim order if they consider a nurse or midwife to be a risk to the public or to themselves if they continue to practise during the investigation, e.g. cases involving rape or assault or issues of great clinical concern. Interim orders can be made for a maximum period of 18 months. After that time the NMC must apply to the High Court for an extension for a further period of up to 12 months.

Interim order hearings are arranged as soon as possible after a referral or at any point during life of the case should information comes to light that such an order may be required. Respondents are encouraged to attend the proceedings or submit documents in their absence. Reasons for an order are presented by a NMC case presenter. The respondent or their representative can comment on any suggested order. Interim orders of any sort must be reviewed at specified intervals.

Investigating committee

		2007-2008	
New	Interim suspension order	149	32%
	Interim conditions of practice order	20	4%
	Interim order not necessary	31	7%
Reviews*	Interim suspension order continued	229	50%
	Interim suspension order replaced by interim conditions of practice order	4	1%
	Interim conditions of practice order continued	19	4%
	Interim conditions of practice replaced by interim suspension order	2	0.5%
	Interim order revoked	8	1.5%

Conduct and competence committee

		2007-2008	
New	Interim suspension order	25	10%
	Interim conditions of practice order	4	2%
	Interim order not necessary	8	3%
Reviews*	Interim suspension order continued	202	81.5%
	Interim suspension order replaced by interim conditions of practice order	1	0.5%
	Interim conditions of practice order continued	6	2%
	Interim conditions of practice replaced by interim suspension	1	0.5%
	Interim order revoked	1	0.5%

Health committee

		2007-2008	
New	Interim conditions of practice order	1	2%
Reviews*	Interim suspension order continued	53	94%
	Interim conditions of practice order continued	1	2%
	Interim order revoked	1	2%

*Includes cases that have been reviewed more than once.

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

Following removal, applicants whose names were removed from the register before 1st August 2004 are permitted to make an application for restoration at any time. However, under the new rules, applications for restoration cannot be made before five years has elapsed since striking-off.

The conduct and competence committee now deals with all applications for restoration to the register following removal or striking-off by the professional conduct committee or conduct and competence committee. 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.

Restoration applications heard, 2005-2008

	2005-2006		2006-2007		2007-2008	
Restored	4	24%	1	17%	0	
Restored with conditions of practice order	2	12%	1	17%	0	
Rejected	11	64%	4	66%	10	100%

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 (CHRE) has the power to appeal against any of the decisions the panels make if they feel the outcome is unduly lenient. All professional conduct committee / conduct and competence committee panel decisions are automatically referred for their consideration. In 2007-08 two cases were referred under s29 by the CHRE.