

Complaints about unfitness to practise: A guide for members of the public

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Protecting the public through professional standards

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Complaints about unfitness to practise: A guide for members of the public has replaced the NMC publication *Complaints about professional conduct*. This booklet has been updated and renamed to take account of changes to our procedures following the introduction of new legislation in August 2004.

The Nursing and Midwifery Council (NMC) is the regulatory body for nurses, midwives and specialist community public health nurses* and our primary aim is to protect the public. We do this through setting and maintaining standards of education, training, conduct and performance.

Fitness to practise is a registrant's suitability to be on the register without restrictions. One of our most important tasks is to deal with allegations that a registrant's fitness to practise is impaired due to:

- ▶ misconduct
- ▶ lack of competence
- ▶ a conviction or caution (including a finding of guilt by a court martial)
- ▶ physical or mental ill health
- ▶ a finding by any other health or social care regulator or licensing body that a registrant's fitness to practise is impaired
- ▶ a fraudulent or incorrect entry in the NMC's register.

This booklet explains our process for handling these complaints and the powers we have to protect the public.

Who can complain?

Anyone has the right to make a complaint to the NMC about a registrant. The NMC receives complaints from fellow registrants, colleagues in other health care professions, patients and their families, employers, managers and the police. You need to tell us the name of the registrant involved, the dates of the alleged incidents or patterns of behaviour and an outline of the allegation(s). We will send a copy of your complaint to the registrant so that they have the opportunity to comment. There is no time limit within which a complaint has

*Nurses, midwives and specialist community public health nurses are collectively referred to as registrants throughout this booklet.

to be referred to the NMC, although it is more difficult to investigate incidents that happened a number of years ago. The complaint must be sent in writing to the Department Manager (Investigations), Fitness to Practise Directorate, NMC, 23 Portland Place, London W1B 1PZ.

If you are an employer or manager and you wish to make a complaint, you will need to provide much more detailed information. Our requirements are set out in Reporting unfitness to practise: A guide for employers and managers. Copies can be downloaded from our website at www.nmc-uk.org or ordered from the Publications Department on e-mail publications@nmc-uk.org or by fax on 020 7436 2924.

What type of complaints should be forwarded to the NMC?

The NMC's role is to protect the public from registrants whose fitness to practise is impaired and whose situation cannot be managed locally. In these circumstances NMC committees can restrict or remove a practitioner's registration.

We would not, for example, deal with a complaint about a breach of an employment contract (such as poor time-keeping or absenteeism) unless this impacted directly on the quality of care provided to patients. The purpose of NMC proceedings is to protect the public, rather than to punish registrants.

The standards which the NMC requires of registrants, and which the public is entitled to expect, are set out in the *NMC code of professional conduct: Standards for conduct, performance and ethics* (the Code), copies of which are also available from our Publications Department or our website. Registrants who appear before panels of the NMC's fitness to practise committees are judged against those standards. In applying the standards, the panels look for the level of conduct and competence expected of the average registrant, not for the highest possible level of practice. Even if there has been a breach of a standard set out in the Code, it does not automatically follow that a registrant's fitness to practise is impaired. That is a separate judgement for the panel to make. It would be impossible to compile a definitive list of the types of complaints that the NMC investigates. However, the following are examples of some of the issues we are regularly asked to consider:

- ▶ physical, sexual or verbal abuse

- ▶ theft
- ▶ failure to provide adequate care (for registrants who are employers and managers this can include failing to maintain an acceptable environment of care)
- ▶ failure to keep proper records
- ▶ failure to administer medicines safely
- ▶ deliberately concealing unsafe practice
- ▶ committing criminal offences
- ▶ continued lack of competence despite opportunities to improve.

Examples of impairment of fitness to practise due to physical or mental ill health that should be reported to the NMC include:

- ▶ alcohol or drug dependence
- ▶ untreated serious mental illness.

The above examples are not an exhaustive list of the types of complaints we investigate. If you are uncertain about what you can report to the NMC, please e-mail or ask us for advice at the contacts listed on page 11.

What happens next?

The NMC has three committees that handle all the allegations of unfitness to practise that are made against registrants. They are:

- ▶ the Investigating Committee (IC)
- ▶ the Conduct and Competence Committee (CCC)
- ▶ the Health Committee (HC).

Each committee is made up of a number of panels that carry out the specific functions and responsibilities of that committee. When the NMC receives a complaint that constitutes an allegation of unfitness to practise, it goes first to a panel of the IC.

If the registrant involved is subject to a criminal investigation in relation to the allegations made against them, we wait for the outcome of that investigation. When it has been completed we forward the details of any caution or conviction directly to the IC. Similarly, the police are required to notify the

NMC of any registrant who has been convicted of a criminal offence. Again, this information is forwarded directly to the IC.

Investigating Committee

Panels of the IC are responsible for considering all allegations made to the NMC about unfitness to practise.

The IC can best be described as a screening process. An IC panel usually comprises one NMC Council member (who may be a registrant or lay person) and members of the NMC's registrant and lay panels. There will also be a registered medical practitioner for cases where the registrant's health may have a bearing on proceedings. IC proceedings are held in private. It would not be fair to registrants who had unjustly been reported to the NMC if their names were publicised at this stage.

Once it has considered all the available evidence, the IC panel has a range of powers. It can:

- ▶ close the case with no further action taken
- ▶ refer the case to a panel of the CCC (see page 7)
- ▶ in cases about alleged impairment of fitness to practise for reasons of ill health, refer the case to a panel of the HC (see pages 8–9).

Interim orders

The NMC's fitness to practise procedures work on the principle that an individual is innocent until proven guilty. This means that, technically, a registrant who has been referred to the NMC can continue to practise up to the point where a judgement is made by the CCC or the HC.

However, in circumstances where it is evident that clients, patients or the public might be exposed to a clear and unacceptably high level of risk if a registrant continues to practise unrestricted, the IC, CCC and HC all have the power to take immediate interim action. They can either impose conditions that the registrant must comply with, or they can order an immediate interim suspension of the individual's name from the register. Alternatively, it may be in the registrant's own interest or in the wider public interest for an interim order to be imposed. An interim order is made for a maximum period of 18 months

and must be reviewed for the first time within six months of being made. After that, it must be reviewed every three months until the case is finally concluded or the interim order is revoked.

Conduct and Competence Committee

Panels of the CCC consider allegations that have been referred to them by the IC or the HC. Each CCC panel usually consists of three people. One of these will be an NMC Council member (who might be a registrant or lay person). The other members will be drawn from the NMC's registrant and lay panels. In selecting members for the CCC panel, close attention is paid to the legal requirement for due regard. This means, in the interests of a fair hearing, that at least one member of the panel must have expertise in the same area of practice as the person who is appearing before it and must be registered on the same part of the register.

CCC hearings are generally held in public; the openness of the proceedings reflects the NMC's public accountability. The CCC panel may agree to parts of the case being held in private if by doing so it protects the anonymity of the person who is the alleged victim, or if disclosure of confidential medical evidence is involved.

One of the NMC's legal assessors, who are all experienced lawyers, will attend the hearing to advise on points of law and the admissibility of evidence. The registrant is often represented by a trades union officer, by a solicitor or by a barrister. If the registrant chooses not to attend and not to be represented, the case can proceed without them.

The CCC panel will only consider evidence relating to the formal charges made against the registrant. In considering an allegation, the panel must decide if it is well founded.

The CCC currently operates to the same high standard of proof as is required in a criminal court. The facts of the case must be proven 'beyond reasonable doubt', not simply 'on the balance of probabilities' as is the case in, for example, an employment tribunal. Information about the previous history of the registrant is extremely important and the panel will also consider all the circumstances surrounding the allegations. The CCC panel has a range of powers. It can:

- ▶ conclude that the case is not well founded and therefore take no further action.
- ▶ If the panel concludes the case is well founded, it can:
- ▶ decide, taking into account all the circumstances of the case, it is not appropriate to take any further action
- ▶ remove the person from the register
- ▶ suspend the person's registration for a specified period not to exceed one year
- ▶ impose conditions of practice for a specified period not to exceed three years
- ▶ issue a caution (see below for an explanation of what this means) for a specified period of between one and five years.

When a CCC panel removes a registrant from the register, they may not apply for restoration to the register until at least five years from the date of removal.

In cases of lack of competence, a registrant cannot be removed from the register unless they have been continuously suspended or subject to a conditions of practice order for a minimum of two years.

Caution

A caution is not a token 'slap on the wrist' and it does not represent someone being 'let off'. A caution may be issued only when the facts of the case have been proven and the panel finds the case well founded but there are strong mitigating circumstances. These mitigating circumstances could mean that, in this instance, removal from the register would not be appropriate. A caution is retained on a person's entry on the NMC register for a period of between one and five years, as specified by the panel. It is automatically disclosed whenever a potential employer or a member of the public contacts the NMC to check the registration details of the individual.

Health Committee

Panels of the HC decide whether or not a registrant's fitness to practise is impaired by physical or mental ill health and, if so, whether or not they represent a danger to the public.

Because of the confidential nature of the medical evidence being considered,

HC proceedings are generally held in private. Each HC panel usually comprises one NMC member (who may be a registrant or lay person) and members of the NMC's registrant or lay panels. There will also be a registered medical practitioner. The HC panel is supported by a legal assessor and attended by the medical examiner who prepared the medical report about the registrant's state of health. Those who wish to challenge it can call witnesses to speak on their behalf and can call for the person who made the complaint to give evidence under oath.

The HC panel can:

- ▶ conclude that the case is not well founded and therefore take no further action.
- ▶ If the panel concludes the case is well founded, it can:
- ▶ decide, taking into account all the circumstances of the case, it is not appropriate to take any further action
- ▶ remove the person from the register, but only if they have been continuously suspended or subject to a conditions of practice order for two years
- ▶ suspend registration for a specified period not to exceed one year
- ▶ impose conditions of practice for a specified period not to exceed three years
- ▶ issue a caution (see page 8 for an explanation of what this means) for a specified period of between one and five years.

When an HC panel removes a registrant's name from the register, they may not apply for restoration to the register until at least five years from the date of removal.

Restoration to the register

Anyone who has been removed from the register has the right to apply to be restored to it. Restoration cases are considered by panels of either the CCC or the HC, as appropriate. Those who have been removed following a conviction for a serious criminal offence such as murder, rape, child abuse and serious physical assault will not be restored to the register if this is likely to undermine public confidence in the nursing and midwifery professions.

In order to be restored to the register, applicants must, as a minimum, be able to demonstrate that:

- ▶ they understand and accept the reason for their removal
- ▶ they have taken appropriate action to address the problems that led to their removal
- ▶ they have been working in a related field of care for a significant period of time and have demonstrated exemplary standards of conduct during that time
- ▶ their application is supported by impeccable references from their current employer and, if appropriate, by a medical practitioner.

Being able to demonstrate all the above does not automatically mean a registrant will be restored to the register.

If a registrant has been restored to the NMC's register and is subsequently required to appear before a CCC or HC panel again, the fact that they have previously been removed from the register will be made known to the panel considering the new allegations. The NMC retains a record of the restoration for the lifetime of the registrant.

Further information

We hope that you have found this booklet helpful. Further information about the NMC's fitness to practise work is available in the publications referred to below, which you can obtain free of charge by writing to the Publications Department, NMC, 23 Portland Place, London W1B 1PZ or by e-mailing publications@nmc-uk.org. All are available on our website at www.nmc-uk.org. If you would like to attend a hearing of the CCC, please call the Fitness to Practise Directorate on 020 7333 6572 for details of dates, venues and availability of places.

Relevant NMC publications

The standards that the NMC requires of every registered nurse, midwife and specialist community public health nurse are set out in the *NMC code of professional conduct: Standards for conduct, performance and ethics*. Advice for employers and managers about what should be reported to the NMC and what information we need to know is contained in our booklet *Reporting lack of competence: A guide for employers and managers* and *Reporting unfitness to practise: A guide for employers and managers*. Examples of some of the issues that feature in our Conduct and Competence and Health Committee work are set out in the Council's professional conduct annual reports. For a full list of current NMC publications, please visit our website at www.nmc-uk.org or write to our Publications Department at the contact details set out above.

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