
STATUTORY INSTRUMENTS

2002 No. 253

The Nursing and Midwifery Order 2001

PART V

FITNESS TO PRACTISE

The Investigating Committee

26.—(1) The Investigating Committee shall investigate any allegation which is referred to it in accordance with article 22 or 24.

(2) Where an allegation is referred to the Investigating Committee, it shall—

- (a) notify without delay the person concerned of the allegation and invite him to submit written representations within a prescribed period;
- (b) where it sees fit, notify the person making the allegation of the representations mentioned in sub-paragraph (a) and invite him to deal within a specified period with any points raised by the Committee in respect of those representations;
- (c) take such other steps as are reasonably practicable to obtain as much information as possible about the case;
- (d) consider, in the light of the information which it has been able to obtain and any representations or other observations made to it under sub-paragraph (a) or (b), whether in its opinion—
 - (i) in respect of an allegation of the kind mentioned in article 22(1)(a), there is a case to answer, and
 - (ii) in respect of an allegation of the kind mentioned in article 22(1)(b), whether the entry concerned has been fraudulently procured or incorrectly made.

(3) The Council shall by rules make provision as to the procedure to be followed by the Investigating Committee in any investigation carried out by it under this article.

(4) In the case of an allegation of the kind mentioned in article 22(1)(b) the rules shall, in particular, make similar provision to that made by virtue of article 32(2)(b), (f), (g), (h), (i), (j), (m), (n), (o) and (p) and may provide for the Registrar to be made a party to the proceedings.

(5) When the Investigating Committee reaches a decision under paragraph (2) as to whether—

- (a) there is a case to answer; or
- (b) an entry in the register has been fraudulently procured or incorrectly made,

it shall notify in writing both the person concerned and the person making the allegation, if any, of its decision, giving its reasons.

(6) Where the Investigating Committee concludes that there is a case to answer under paragraph (2)(d)(i), it shall—

- (a) undertake mediation; or
- (b) refer the case—

- (i) to Screeners for them to undertake mediation,
- (ii) to the Health Committee in the case of an allegation of a kind mentioned in article 22(1)(a)(iv), or
- (iii) to the Conduct and Competence Committee, in the case of any other allegation.

(7) In the case of an allegation of a kind mentioned in article 22(1)(b), if the Investigating Committee is satisfied that an entry in the register has been fraudulently procured or incorrectly made, it may make an order that the Registrar remove or amend the entry and shall notify the person concerned of his right of appeal under article 38.

(8) If the Investigating Committee concludes that there is no case to answer or that the relevant entry was not fraudulently procured or incorrectly made—

- (a) where requested to do so by the person concerned, it shall make a declaration to that effect, giving its reasons; and
- (b) in any other case and with the consent of the person concerned, may make such a declaration.

(9) For the purposes of paragraph (8), the publication of the decision mentioned in paragraph (5) together with the reasons for it may constitute such a declaration.

(10) No order made under paragraph (7) shall have effect—

- (a) before the expiry of the period within which an appeal against the order may be made; or
- (b) where an appeal against the order has been made, before the appeal is withdrawn or otherwise finally disposed of.

(11) The Investigating Committee may make an interim order in accordance with article 31 at the same time as making an order under paragraph (7) or at any time before referring a case to the Health Committee or Conduct and Competence Committee under paragraph (6).

(12) The Investigating Committee may review an order made under paragraph (7) if new evidence relevant to the order becomes available after the order has been made and may revoke that order if it considers that it should not have been made.

(13) Where the Investigating Committee makes an order under paragraph (7) or decides not to review such an order under paragraph (12) the person concerned may appeal to the appropriate Court and the provisions of article 38 shall apply to the appeal.

(14) Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the order or decision appealed against is served on the person concerned.

(15) On an appeal under this article, the Council shall be the respondent.

(16) An entry which has been restored to the register on an application for readmission or restoration being granted may be treated for the purposes of this article as having been fraudulently procured or incorrectly made if any previous entry from which the restored entry is derived was fraudulently procured or incorrectly made.