

2004 No. 1761

**HEALTH CARE AND ASSOCIATED PROFESSIONS
NURSES AND MIDWIVES**

**The Nursing and Midwifery Council (Fitness to Practise)
Rules Order of Council 2004**

Made - - - - - 7th July 2004

Laid before Parliament 9th July 2004

Coming into force - - - 1st August 2004

At the Court Council Chamber, Whitehall, the 7th day of July 2004

By the Lords of Her Majesty's Most Honourable Privy Council

Whereas in exercise of the powers conferred on it by articles 22(4), 26(2), 26(3), 26(4), [26(2) to (4)] 30(9), 32, 33(4) and 47(2) of the Nursing and Midwifery Order 2001^(a), and of all other powers enabling it in that behalf, the Nursing and Midwifery Council has made the Nursing and Midwifery (Fitness to Practise) Rules 2004 as set out in the Schedule to this Order:

And whereas by articles 47(1) and 48 of the Nursing and Midwifery Order 2001 such Rules shall not come into force until approved by order of the Privy Council:

Now, therefore, Their Lordships, having taken the Rules into consideration, are pleased to, and do hereby, approve them.

This Order may be cited as the Nursing and Midwifery (Fitness to Practise) Rules 2004 Order of Council 2004 and shall come into force on 1st August 2004.

A. K. Galloway
Clerk of the Council

(a) S.I. 2002/253.

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The Nursing and Midwifery Council, in exercise of its powers under articles 22(4), 26(2), 26(3), 26(4), 30(9), 32, 33(4) and 47(2) of the Nursing and Midwifery Order 2001^(a) and of all other powers enabling it in that behalf, and after consulting in accordance with article 47(3) of that Order, hereby makes the following Rules:

PART 1

Preliminaries

Citation and commencement

1. These Rules may be cited as the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, and shall come into force on 1st August 2004.

Interpretation

2. In these Rules—
 - “allegation” means any allegation of a kind mentioned in article 22(1)(a) or 22(1)(b) of the Order or any matter which is treated as an allegation by virtue of article 22(6) of the Order;
 - “Chair” means the Chair of a Practice Committee considering an allegation, or, in relation to any proceedings conducted by a panel appointed by the Practice Committee in accordance with paragraph 18(6) of Schedule 1 to the Order, the Chair of that panel;
 - “the Code” means the code of professional conduct, which includes standards of conduct, performance and ethics, established by the Council under article 21(1)(a) of the Order;
 - “initial hearing” means the first substantive hearing of an allegation;
 - “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind;
 - “the Order” means the Nursing and Midwifery Order 2001;
 - “the presenter” means the representative of the Council presenting the case on its behalf (who may be a solicitor or Counsel);
 - “review hearing” means a hearing for the purpose of reviewing orders made by the Conduct and Competence Committee or the Health Committee; and
 - “restoration hearing” means a hearing to consider an application for restoration to the register.

PART 2

Investigating Committee

Notice provisions

- 3.—(1) The Investigating Committee shall, in accordance with article 26(2)(a) of the Order, notify the registrant of any allegation referred to it, by serving a notice of referral upon her.
- (2) The notice of referral shall—
 - (a) particularise the allegation;

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- (b) state that any written representations must be submitted by the registrant to the Investigating Committee no later than 28 days after service of the notice;
- (c) inform the registrant that any representations, or extracts of any representations received from her may be shown to the person making the allegation, for comment; and
- (d) inform the registrant that the Investigating Committee may seek such further information as it considers necessary for the purposes of carrying out its functions in investigating the allegation from the registrant's employer (if any), or any other source (other than the registrant).

Procedure of the Investigating Committee where the allegation relates to impairment of fitness to practise

4.—(1) The Investigating Committee shall meet in private to consider an allegation of a kind referred to in article 22(1)(a) of the Order.

(2) Before deciding whether or not there is a case to answer in respect of such an allegation, the Investigating Committee—

- (a) shall send any information or documents obtained pursuant to article 26(2)(c) of the Order to the registrant for comment, and shall consider any comments subsequently received from her;
- (b) may, in the case of an allegation of lack of competence, invite the registrant to submit to an assessment; and
- (c) may, in the case of an allegation that the registrant's fitness to practise is impaired by reason of her physical or mental health, invite her to submit to medical examination by experts appointed by the Council.

(3) The Investigating Committee may adjourn its consideration of such an allegation until such time as any further information has been obtained, or where the registrant has undertaken an assessment or medical examination, a report on her has been prepared.

Procedure of the Investigating Committee where the allegation relates to a fraudulent or incorrect entry in the register

5.—(1) The Investigating Committee shall meet in private for the initial consideration of an allegation of a kind referred to in article 22(1)(b) of the Order.

(2) Before deciding whether or not there is a case to answer in respect of such an allegation, the Investigating Committee shall send any information or documents obtained pursuant to article 26(2)(c) of the Order to the registrant for comment, and shall consider any comments subsequently received from her.

(3) The Registrar may, and at the direction of the Investigating Committee shall, be a party to any proceedings.

(4) The Investigating Committee may adjourn its consideration of such an allegation at any time.

(5) Where the Investigating Committee considers that there is a case to answer, it shall notify the registrant and require her to inform the Investigating Committee, no later than 28 days after service of the notification, if she wishes the allegation to be considered at a hearing.

(6) Where—

- (a) the registrant asks for a hearing within the period specified in paragraph (5); or
 - (b) the Investigating Committee considers that a hearing is desirable,
- the Investigating Committee shall refer the allegation to a differently constituted Investigating Committee for a hearing.

(7) The Council shall give notice of the referral to the Investigating Committee to the following—

- (a) where known, the employer of the registrant or any other person with whom she has an arrangement to provide professional services;
- (b) where known, any other body by which the registrant is authorised to practise a health or social care profession;

- (c) the Secretary of State, the Scottish Ministers, the National Assembly for Wales and the Department of Health, Social Services and Public Safety in Northern Ireland; and
- (d) where the registrant is a practising midwife, her local supervising authority.

(8) Where a hearing is to be held pursuant to paragraph (6), the Investigating Committee shall send a notice of hearing to the registrant no later than 28 days before the date fixed for the hearing.

- (9) The notice of hearing shall—
- (a) inform the registrant of the date, time and venue of the hearing;
 - (b) contain a charge particularising the allegation, and the alleged facts upon which the allegation is based;
 - (c) inform the registrant of her right to attend, and to be represented at, the hearing in accordance with rule 20;
 - (d) inform the registrant of the Committee’s power to proceed with the hearing in her absence;
 - (e) inform the registrant of her right to adduce evidence in accordance with rule 31;
 - (f) inform the registrant of her right to call witnesses, and to cross examine any witnesses called by the Council or by the Committee;
 - (g) require the registrant to inform the Council, within 14 days receipt of the notice, whether she intends to—
 - (i) attend the hearing,
 - (ii) be represented at the hearing;
 - (h) be accompanied by a copy of these Rules where they have not previously been sent to the registrant;
 - (i) inform the registrant of the Committee’s power to impose an interim order under article 26(11) of the Order; and
 - (j) inform the registrant of the action the Committee may take under article 26(2)(d)(ii), (7) and (8) of the Order.

(10) Where a hearing is to be held pursuant to paragraph (6), the differently constituted Investigating Committee—

- (a) may hold a preliminary meeting in accordance with rule 18; and
- (b) shall determine the matter in accordance with the procedure set out in Part 5 of these Rules, and shall dispose of the matter in accordance with article 26(2)(d)(ii), (7), (8) and (11) of the Order.

(11) Where the registrant has not requested a hearing, and the Investigating Committee considers that no hearing is necessary, it shall—

- (a) invite any person who, in its opinion, has an interest in the proceedings to submit written representations within such time as the Committee may direct; and
- (b) meet in private and, notwithstanding the absence of any representations invited in accordance with sub-paragraph (a), dispose of the matter in accordance with article 26(2)(d)(ii), (7), (8) and (11) of the Order.

Notice of decision

6.—(1) The notice of the Investigating Committee’s decision to be sent under article 26(5) of the Order shall be sent without delay.

(2) Where the Investigating Committee has decided that there is no case to answer, the notice of decision may inform the registrant that the allegation may be taken into account in the consideration of any further allegation about her, received by the Council within three years from the date of service of the notice.

Reconsideration of allegation after a finding of no case to answer

- 7.—**(1) This rule applies where—
- (a) the Investigating Committee has considered an allegation that the registrant’s fitness to practise is impaired and decided that there is no case to answer in respect of that allegation; and

- (b) at any time within three years from service of the notice of decision, the Council receives a fresh allegation about the registrant.
- (2) Where this rule applies, the Investigating Committee may—
 - (a) when considering whether or not there is a case to answer in respect of a fresh allegation, take account of the original allegation; and
 - (b) may refer both the original allegation and the new allegation to the Conduct and Competence Committee or Health Committee.

PART 3

Interim Orders

Notice and procedure

8.—(1) Subject to paragraph (2), where a Practice Committee proposes to consider whether to make, revoke, confirm, vary or replace an interim order under article 31 of the Order, it shall serve the registrant with an interim order notice.

- (2) Where a Practice Committee—
 - (a) has made an order under article 26(7) or under article 29(5)(a) to (c) of the Order; and
 - (b) at the same hearing, subsequently proposes to consider whether to make an interim order under article 31 of the Order,
 it shall not be required to serve an interim order notice on the registrant.

- (3) The interim order notice shall—
 - (a) invite the registrant to attend a hearing before the Practice Committee;
 - (b) invite the registrant, in the event that she does not wish to attend the hearing, to submit written representations to the Practice Committee before the date of the hearing;
 - (c) contain the matters set out in rule 5(9)(a), (c) to (f) and (h); and
 - (d) state the reasons why an interim order may be necessary for the protection of members of the public, or is otherwise in the public interest, or is in the interest of the registrant.

(4) The interim order notice shall be served on the registrant in such time in advance of the hearing as may be reasonable in all the circumstances of the case.

(5) In considering whether to make, revoke, confirm, vary or replace an interim order under, or in accordance with, article 31 of the Order, a Practice Committee shall follow the procedures set out in Part 5 of these Rules.

- (6) Where the Practice Committee is satisfied that—
 - (a) all reasonable efforts have been made, in accordance with these Rules, to serve the registrant with the interim order notice, or in a case to which paragraph (2) applies, the notice of hearing; or
 - (b) the registrant has informed the Council that she does not wish to attend the hearing, it may make an interim order, notwithstanding the absence of the registrant at the hearing or the absence of any written representations from the registrant on whether or not an interim order should be made.

PART 4

Conduct and Competence Committee and Health Committee

Action upon referral of an allegation

9.—(1) Upon referral of an allegation to the Conduct and Competence Committee or to the Health Committee, that Committee shall send a notice of referral to the registrant.

- (2) The notice of referral shall—
 - (a) particularise the allegation, and—
 - (i) where it is alleged that the registrant has committed misconduct or received a criminal conviction, particularise the alleged facts upon which the allegation is based, or
 - (ii) in any other case, set out the grounds or alleged facts in support of the allegation;

- (b) invite the registrant to submit written representations to the Conduct and Competence Committee or the Health Committee and inform her that any such representations must be sent to the Committee no later than 28 days after service of the notice;
 - (c) inform the registrant that any representations received from her may be shown to the maker of the allegation, for comment; and
 - (d) require the registrant to inform the Committee no later than 28 days after service of the notice, if she would like the allegation to be considered at a hearing.
- (3) The Council shall give notice of the referral to—
- (a) where known, the employer of the registrant or any other person with whom she has an arrangement to provide professional services;
 - (b) where known, any other body by which the registrant is authorised to practise a health or social care profession;
 - (c) the Secretary of State, the Scottish Ministers, the National Assembly for Wales and the Department of Health, Social Services and Public Safety in Northern Ireland; and
 - (d) where the registrant is a practising midwife, her local supervising authority.
- (4) Upon referral of an allegation to the Conduct and Competence Committee or the Health Committee—
- (a) in the case of an allegation of lack of competence, the Conduct and Competence Committee, may invite the registrant to submit to assessment; and
 - (b) in the case of an allegation that the practitioner’s fitness to practise is impaired by reason of physical or mental health, the Health Committee may invite the registrant to submit to medical examination by a registered medical practitioner nominated by the Council.
- (5) Where any written representations are made to the Conduct and Competence Committee or the Health Committee under paragraph (2)(b), that Committee—
- (a) may, if it sees fit, send a notice to the maker of the allegation—
 - (i) notifying her of such representations,
 - (ii) inviting her to deal with any points raised by the Committee in respect of those representations, and
 - (iii) requiring her to send any response to the Committee no later than 28 days after service of the notice upon her; and
 - (b) shall take into account all representations received before making its decision in respect of the allegation.

Meetings and hearings

- 10.—(1) Where the Conduct and Competence Committee or Health Committee is to—
- (a) consider an allegation that a registrant’s fitness to practise is impaired;
 - (b) review any order previously made by it; or
 - (c) consider an application for restoration to the register,
- it shall decide whether to hold a hearing in accordance with paragraph (2).
- (2) The Conduct and Competence Committee or Health Committee shall hold a hearing where—
- (a) the registrant asks for a hearing within the period specified in rule 9(2)(d); or
 - (b) the Committee considers that a hearing would be desirable.
- (3) Where no hearing is to be held, the Conduct and Competence Committee or the Health Committee shall—
- (a) consider an allegation that the registrant’s fitness to practise is impaired;
 - (b) review any order previously made by it; or
 - (c) consider an application for restoration to the register,
- at a meeting, and the Conduct and Competence Committee or the Health Committee shall decide the procedure to be employed at that meeting.

Notice of hearing

11.—(1) Where a hearing is to be held in accordance with rule 10(2), the Conduct and Competence Committee or Health Committee shall send a notice of hearing to the registrant.

- (2) The notice of hearing shall be sent to the registrant—
 - (a) where a preliminary meeting has been held in accordance with rule 18, as soon as practicable after that meeting; and
 - (b) in every case, no later than 28 days before the date fixed for the hearing.
- (3) The notice of hearing shall—
 - (a) inform the registrant of the date, time and venue of the hearing;
 - (b) where the Committee is to consider the allegation at an initial hearing, contain a charge particularising the allegation, and—
 - (i) where it is alleged that the registrant has committed misconduct or received a criminal conviction, particularising the alleged facts upon which the allegation is based, or
 - (ii) in any other case, setting out the grounds or alleged facts in support of the allegation;
 - (c) where the Committee is to review an order previously made or consider an application for restoration to the register, contain a copy of the order or striking-off order previously made, and the Committee's reasons for making that order;
 - (d) inform the registrant of her right to attend, and to be represented at, the hearing in accordance with rule 20;
 - (e) inform the registrant of the Committee's power to proceed with the hearing in her absence;
 - (f) inform the registrant of her right to adduce evidence in accordance with rule 31;
 - (g) inform the registrant of her right to call witnesses, and to cross examine any witnesses called by the Council or by the Committee;
 - (h) require the registrant to inform the Council, within 14 days of receipt of the notice, whether she intends to—
 - (i) attend the hearing,
 - (ii) be represented at the hearing;
 - (i) be accompanied by a copy of these Rules where they have not previously been sent to the registrant;
 - (j) inform the registrant of the Committee's power to make an interim order under article 31(2) of the Order;
 - (k) where the Committee is to consider an allegation at an initial hearing, inform the registrant of the action the Committee may take under article 29 of the Order;
 - (l) where the Committee is to consider an allegation at an initial hearing, invite the registrant to indicate whether any admissions are made in respect of the allegation, and inform her that any admissions made will be taken into account by the Committee; and
 - (m) where the allegation, previous order or application for restoration is to be considered by the Health Committee, invite the registrant to inform the Committee if she wishes the hearing to be conducted in public.

Procedure of the Conduct and Competence Committee and the Health Committee

12.—(1) When considering any allegation referred to it at a hearing, the Conduct and Competence Committee or the Health Committee shall act in accordance with the procedure set out in Part 5 of these Rules, and shall dispose of the allegation in accordance with articles 22(4) and 29(4) to (8) of the Order.

(2) When reviewing an order made by it at a previous hearing, or considering an application for restoration to the register, the Conduct and Competence Committee shall act in accordance with the procedure set out in Part 5 of these Rules, and shall dispose of the matter in accordance with article 30 or 33(5) to (7) of the Order.

Notice of decision

13.—(1) As soon as practicable after the conclusion of the hearing, the Conduct and Competence Committee or the Health Committee, shall give notice of its decision to—

- (a) the registrant; and
 - (b) the maker of the allegation (if any).
- (2) The notice of decision shall—
- (a) set out the decision of the Committee;
 - (b) set out the reasons for the Committee’s decision; and
 - (c) inform the registrant of her rights of appeal under article 38 of the Order.

Referral of allegation from the Conduct and Competence Committee to the Health Committee

14.—(1) Where an allegation is being considered by the Conduct and Competence Committee and—

- (a) at a preliminary meeting held in accordance with rule 18;
 - (b) at the commencement of the hearing of the allegation by the Committee; or
 - (c) during the course of the hearing of the allegation by the Committee,
- it appears that the allegation would be better dealt with by the Health Committee, the Conduct and Competence Committee may refer the allegation to the Health Committee and shall suspend its consideration of the allegation.

(2) The Conduct and Competence Committee shall not transfer an allegation to the Health Committee unless it is satisfied that, if the registrant’s fitness to practise were found to be impaired, it would not make a striking-off order.

- (3) Where—
- (a) the Conduct and Competence Committee refers an allegation to the Health Committee under paragraph (1); and
 - (b) the Health Committee certifies to the Conduct and Competence Committee that the registrant’s fitness to practise is not impaired by reason of her physical or mental health,
- the Conduct and Competence Committee shall resume its consideration of the allegation.

- (4) Where—
- (a) the Conduct and Competence Committee refers an allegation to the Health Committee under paragraph (1); and
 - (b) the Health Committee certifies that the registrant’s fitness to practise is impaired by reason of her physical or mental health,
- the Conduct and Competence Committee shall have no further function in relation to the allegation.

Referral of allegation from the Health Committee to the Conduct and Competence Committee

15.—(1) Where an allegation is being considered by the Health Committee and—

- (a) at a preliminary meeting held in accordance with rule 18;
 - (b) at the commencement of the hearing of the allegation by the Committee; or
 - (c) during the course of the hearing of the allegation by the Committee,
- it appears that the allegation would be better dealt with by the Conduct and Competence Committee, the Health Committee may refer the allegation to the Conduct and Competence Committee, and shall suspend its consideration of the allegation.

- (2) Where—
- (a) the Health Committee refers an allegation to the Conduct and Competence Committee under paragraph (1); and
 - (b) the Conduct and Competence Committee determines, after the close of the Council’s case, that the allegation is not well founded, or that the allegation has not been proved to the requisite standard,
- the Health Committee may resume its consideration of the allegation.

- (3) Subject to paragraph (2), where—
 - (a) the Health Committee refers an allegation to the Conduct and Competence Committee under paragraph (1); and
 - (b) the Conduct and Competence Committee—
 - (i) makes an order in accordance with article 29(5) of the Order, or
 - (ii) determines that the registrant’s fitness to practise is not impaired,
- the Health Committee shall have no further function in relation to the allegation.

PART 5

Procedure at hearings

Application of Part 5

- 16.** This part shall apply to—
 - (a) the Investigating Committee, when considering—
 - (i) an allegation which relates to a fraudulent or incorrect entry in the register at a hearing, or
 - (ii) whether to make, revoke, confirm, vary or replace an interim order; and
 - (b) the Conduct and Competence Committee or the Health Committee when considering—
 - (i) an allegation that the registrant’s fitness to practise is impaired at a hearing,
 - (ii) whether to make, revoke, confirm, vary or replace an interim order,
 - (iii) an order previously made by it, at a review hearing, or
 - (iv) an application for restoration to the register.

Interpretation

- 17.** In this part, “Committee” means—
 - (a) the Investigating Committee considering an allegation which relates to a fraudulent or incorrect entry in the register, or considering whether to make, revoke, confirm, vary or replace an interim order;
 - (b) the Conduct and Competence Committee; or
 - (c) the Health Committee.

Preliminary meetings

18.—(1) Before any allegation is considered by a Committee at a hearing in accordance with the provisions of this Part, that Committee or the Chair of the Committee may hold a preliminary meeting if such a meeting would, in its or her opinion, assist the Committee to perform its functions.

- (2) A preliminary meeting referred to in paragraph (1) shall be—
 - (a) chaired by the Chair of the Committee considering the allegation;
 - (b) held with a legal assessor in attendance; and
 - (c) held in private with the parties, their representatives and any person the Chair or Committee considers appropriate.

(3) The Chair of the preliminary meeting may give the directions mentioned in article 32(3) of the Order.

(4) The Chair of the preliminary meeting shall give the parties not less than 14 days notice of any preliminary meeting.

(5) Directions given by the Chair of the preliminary meeting may include, but shall not be limited to—

- (a) time limits for the service of evidence and disclosure of expert evidence (if any);
- (b) a requirement that each party provide an estimate as to the length of the hearing and any dates on which they or any witnesses would not be able to attend the hearing;
- (c) where facts are not in dispute, or the issue of misconduct is admitted, a requirement that the parties produce a statement of agreed facts;

- (d) save in the case of an allegation of a kind referred to in article 22(1)(a)(iv) of the Order, a requirement that the parties state whether or not the health of the practitioner will be raised as an issue in the proceedings, and if so, whether, in their view, medical reports should be obtained and the case considered by the Health Committee;
 - (e) a requirement that a party call the author of any expert report;
 - (f) where agreed between the parties, a direction that the witness statement of a witness shall stand as the evidence in chief of that witness;
 - (g) where the Committee is considering—
 - (i) an allegation that the registrant’s fitness to practise is impaired by reason of her physical or mental health, or
 - (ii) whether to make, revoke, confirm, vary or replace an interim order, whether the proceedings should be held in public or private;
 - (h) special measures to be put in place at the hearing for vulnerable witnesses; and
 - (i) a direction for an adjournment of the preliminary meeting or that a further preliminary meeting should be held.
- (6) At the preliminary meeting, the legal assessor may give a preliminary opinion for the purpose of resolving questions of law or admissibility of evidence.
- (7) Notwithstanding paragraph (6), decisions as to whether or not any evidence is to be admitted at the hearing shall be taken by the Committee considering the allegation.
- (8) The Chair of the preliminary meeting shall keep a record of the directions given and shall send written confirmation of such directions to the parties promptly.

Public and private hearings

- 19.—(1) Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.
- (2) A hearing before the Health Committee shall be conducted in private unless the Committee is satisfied—
- (a) having given the parties, and any third party from whom the Health Committee considers it appropriate to hear, an opportunity to make representations; and
 - (b) having obtained the advice of the legal assessor,
- that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant, and require all or part of the hearing to be held in public.
- (3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—
- (a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and
 - (b) having obtained the advice of the legal assessor,
- that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.
- (4) In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

Representation and entitlement to be heard

- 20.—(1) The presenter and the registrant shall be entitled to be heard by the Committee.
- (2) The registrant may be represented by—
- (a) solicitor or Counsel;
 - (b) a representative from her professional body or trade union; or
 - (c) subject to paragraph (4), any other person.

(3) Where the registrant is not represented, she may be accompanied and advised by any person, provided that such person shall not be entitled to address the Committee without its permission.

(4) A person who represents or accompanies the registrant shall not be called as a witness at the hearing.

(5) The Committee may exclude from the whole or part of the hearing, any person whose conduct, in its opinion, has disrupted or is likely to disrupt the proceedings.

Absence of the practitioner

21.—(1) This rule shall not apply to hearings at which the Committee is considering whether to make, revoke, confirm, vary or replace an interim order.

(2) Where the registrant fails to attend and is not represented at the hearing, the Committee—

- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
- (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
- (c) may adjourn the hearing and issue directions.

Witnesses

22.—(1) Witnesses shall be required to take an oath, or to affirm, before giving evidence at any hearing.

(2) The Committee may, upon the application of the party calling the witness, direct that any details which may identify that witness should not be revealed in public.

(3) Witnesses—

- (a) shall first be examined by the party calling them;
- (b) subject to rule 23(4) and (5), may then be cross examined by the opposing party;
- (c) may then be re-examined by the party calling them; and
- (d) may then be questioned by the Committee.

(4) Any further questioning of the witnesses shall be at the discretion of the Committee.

(5) The Committee may of its own motion require a person to attend the hearing to give evidence, or to produce relevant documents.

(6) No witness as to fact may observe the proceedings until she has given evidence or been formally released by the Committee.

Vulnerable witnesses

23.—(1) In proceedings before the Conduct and Competence Committee or the Health Committee, the following may be treated as vulnerable witnesses—

- (a) any witness under the age of 18;
- (b) any witness with a mental disorder;
- (c) any witness who is significantly impaired in relation to intelligence or social functioning;
- (d) any witness with physical disabilities who requires assistance to give evidence;
- (e) any witness, where the allegation against the registrant is of a sexual nature and the witness was the alleged victim; or
- (f) any witness who complains of intimidation.

(2) After seeking the advice of the legal assessor, and upon hearing representations from the parties, the Committee may adopt such measures as it considers necessary to enable it to receive evidence from a vulnerable witness.

(3) Measures adopted by the Committee may include, but shall not be limited to—

- (a) use of video links;

- (b) subject to paragraph (4), use of pre-recorded evidence as the evidence in chief of a witness, provided always that such witness is available at the hearing for cross-examination and questioning;
 - (c) use of interpreters (including signers and translators); and
 - (d) the hearing of evidence by the Committee in private.
- (4) Where—
- (a) the allegation against a registrant is sexual in nature;
 - (b) a witness is the alleged victim; and
 - (c) the registrant is not represented,
- she shall not be allowed to cross-examine the witness directly in person.
- (5) In the circumstances set out in paragraph (4), any questioning of the witness shall be undertaken by such person as the Committee considers appropriate.
- (6) In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

Order of proceedings at initial hearing

24.—(1) Unless the Committee determines otherwise, the order of proceedings at the initial hearing of an allegation shall be as follows—

- (a) the Chair shall require the registrant to confirm her name and personal identification number;
- (b) the Chair shall cause the charge to be read out;
- (c) the Chair shall—
 - (i) inquire whether the registrant wishes to make any objections to the charge on a point of law, and
 - (ii) inquire whether the registrant wishes to make any admissions;
- (d) where facts have been admitted by the registrant, the Chair shall announce that such facts have been found proved;
- (e) where in respect of an allegation of a kind referred to in article 22(1)(a) of the Order the registrant admits that her fitness to practise is impaired—
 - (i) the Chair shall announce that the registrant’s fitness to practise is impaired,
 - (ii) the procedure in sub-paragraphs (f) to (l) shall not apply, and
 - (iii) the procedure in sub-paragraphs (m) to (o) shall apply;
- (f) where facts remain in dispute, the presenter shall adduce evidence in support of the Council’s case;
- (g) except on the hearing of an allegation by the Health Committee or the hearing of an allegation of lack of competence, upon the close of the Council’s case and—
 - (i) upon the application of the registrant, or
 - (ii) of its own volition,
 the Committee may determine that the allegation is not well founded;
- (h) except where the Committee has determined that the allegation is not well founded under sub-paragraph (g), the registrant may adduce evidence in support of her case;
- (i) the Committee shall deliberate in private in order to make its findings on the facts and shall then announce the findings it has made;
- (j) save in exceptional circumstances, the Committee shall not be required to give reasons for its findings of fact;
- (k) where the allegation is of a kind referred to in article 22(1)(a) of the Order, the Committee shall invite representations from the parties as to whether, on the basis of any facts found proved, the registrant’s fitness to practise is impaired;
- (l) in such a case, the Committee shall deliberate in private, and then in the presence of the parties (if present), shall—
 - (i) announce its decision as to whether the registrant’s fitness to practise is impaired, and
 - (ii) give reasons for its decision;
- (m) in all cases the Committee—

- (i) may invite any person who, in its opinion, has an interest in the proceedings to submit written representations within such time as the Committee may direct, and
 - (ii) shall invite representations from the registrant as to any mitigating circumstances which may affect the Committee's decision on the sanction, if any, to be imposed,
- and shall take any representations received into account before making its decision on sanction;
- (n) the Committee shall deliberate in private and shall then in the presence of the parties (where present)—
 - (i) announce its decision on sanction, and
 - (ii) give reasons for its decision; and
 - (o) where, after announcing its decision on sanction, the Committee considers that it may be appropriate to make an interim order pending the outcome of any appeal, it shall—
 - (i) invite representations from the parties (where present) on whether or not an interim order should be made,
 - (ii) shall take any representations received into account before deciding whether or not to make an interim order,
 - (iii) shall deliberate in private, and
 - (iv) shall announce its decision in the presence of the parties (where present), and shall give reasons for its decision.

(2) Notwithstanding the order set out in paragraph (1), the Committee may allow the parties to make additional submissions.

Order of proceedings at a review or restoration hearing

25.—(1) This rule shall not apply to an interim orders hearing.

(2) Unless the Committee determines otherwise, the order of proceedings at a review hearing or a restoration hearing shall be as follows—

- (a) the presenter shall—
 - (i) inform the Committee of the background to the case, and the sanctions previously imposed on the registrant, and
 - (ii) direct the attention of the Committee to any relevant evidence including transcripts of previous hearings;
- (b) the registrant may adduce any relevant evidence on which she intends to rely;
- (c) the Committee shall deliberate in private and shall dispose of the case in accordance with article 30 or 33(5) to (7) of the Order; and
- (d) the Committee shall give reasons for its decision.

Order of proceedings at an interim orders hearing

26.—(1) Except where rule 24(1)(o) applies, this rule shall apply to any hearing at which the Committee is considering whether to make, revoke, confirm, vary or replace an interim order.

(2) Unless the Committee determines otherwise, the order of proceedings at an interim orders hearing shall be as follows—

- (a) the presenter shall inform the Committee of the reasons why it may be necessary to make an interim order on the registrant, or to revoke, confirm, vary or replace any order previously made, and may adduce any relevant evidence in this regard;
- (b) the registrant may make representations as to why an interim order should not be made, or should be revoked or not confirmed, varied or replaced, and may adduce any relevant evidence, including oral testimony, in support of her case; and
- (c) the Committee shall deliberate in private and shall then announce its decision, together with the reasons for its decision, in the presence of the parties (where present).

Notes and transcript of proceedings

27.—(1) The Council shall arrange for all hearings and preliminary meetings held by a Practice Committee, to be recorded in writing or electronic form.

(2) Any party to the proceedings shall, on application to the Council, be furnished with a transcript of the record of any part of the hearing or preliminary meeting at which she was entitled to be present.

(3) Paragraphs (1) and (2) shall not apply to the private deliberations of any Practice Committee.

PART 6

General

Amendment of the charge

28.—(1) At any stage before making its findings of fact, in accordance with rule 24(1)(d) or (i), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Conduct and Competence Committee, may amend—

- (a) the charge set out in the notice of hearing; or
- (b) the facts set out in the charge, on which the allegation is based, unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

(2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.

Joinder

29.—(1) Unless of the view that there is a risk of prejudice to the fairness of the proceedings, and upon taking the advice of the legal assessor, the Conduct and Competence Committee may consider an allegation against two or more registrants at the same hearing where—

- (a) the allegation against each registrant arises out of the same circumstances; or
- (b) in the view of the Committee, a joint hearing is necessary.

(2) The Conduct and Competence Committee may consider one or more categories of allegation against a registrant provided always that an allegation relating to a conviction or caution is heard after any allegation of misconduct has been heard and determined.

(3) Where—

- (a) an allegation has been referred to the Conduct and Competence Committee;
- (b) that allegation has not yet been heard; and
- (c) a new allegation which is of a similar kind or is founded on the same facts is received by the Council,

that Committee may consider the new allegation at the same time as the original allegation, notwithstanding that such new allegation has not been included in the notice of hearing.

(4) Where it is proposed that a new allegation should be heard by the Conduct and Competence Committee, it shall—

- (a) inform the registrant of the new allegation, and the alleged facts on which is based; and
- (b) afford her the opportunity to make written representations on the new allegation and require any such representations to be received within 28 days of notification of the new allegations or within such period of time as is otherwise agreed by the parties.

Burden of proof

30. Where facts relating to an allegation are in dispute, the burden of proving such facts shall rest on the Council.

Evidence

31.—(1) Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings (in the appropriate Court in that part of the United Kingdom in which the hearing takes place).

(2) Where a registrant has been convicted of a criminal offence—

- (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and
- (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.

(3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.

(4) A certificate as to a determination about a registrant's fitness to practise made by—

- (a) a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession; or
 - (b) a licensing body elsewhere,
- signed by an officer authorised by the body to sign such certificates shall be admissible as prima facie evidence of the facts referred to in the determination.

(5) In determining whether a registrant's fitness to practise is impaired by reason of physical or mental health, the Health Committee may take into account, amongst other matters—

- (a) a refusal by the registrant to submit to medical examination;
- (b) the registrant's current physical or mental condition;
- (c) any continuing or episodic condition suffered by the registrant; and
- (d) a condition suffered by the registrant which, although currently in remission, may be expected to cause a recurrence of the impairment of the practitioner's fitness to practise.

(6) In determining whether a registrant's fitness to practise is impaired by reason of lack of competence, the Conduct and Competence Committee may take into account any refusal by the registrant to submit to an assessment.

(7) Where the Conduct and Competence Committee finds that a registrant has failed to comply with the standards established by the Council under article 21(1)(a) of the Order and set out in the Code, such failure—

- (a) may be taken into account by the Committee in determining whether or not that registrant's fitness to practise is impaired; and
- (b) shall not, of itself, be taken to establish that the registrant's fitness to practise is impaired.

(8) Where a party has—

- (a) failed to comply with any directions for service of evidence given at a preliminary meeting under rule 18, including service of expert reports;
- (b) shown no good cause for failure to comply with the directions given; and
- (c) seeks to adduce such evidence at the hearing,

a Practice Committee may refuse to allow that party to admit the evidence in question.

Postponements and adjournments

32.—(1) The Chair of the Practice Committee may, of her own motion, or upon the application of a party, postpone any hearing of which notice has been given under these Rules before the hearing begins.

(2) A Practice Committee considering an allegation may, of its own motion or upon the application of a party, adjourn the proceedings at any stage, provided that—

- (a) no injustice is caused to the parties; and

- (b) the decision is made after hearing representations from the parties (where present) and taking advice from the legal assessor.
- (3) Where the proceedings have been adjourned, the Practice Committee shall, as soon as practicable, notify the parties of the date, time and venue of the resumed hearing.
- (4) In considering whether or not to grant a request for postponement or adjournment, the Chair or Practice Committee shall, amongst other matters, have regard to—
 - (a) the public interest in the expeditious disposal of the case;
 - (b) the potential inconvenience caused to a party or any witnesses to be called by that party; and
 - (c) fairness to the registrant.
- (5) Before adjourning the proceedings, the Practice Committee shall consider whether or not to make an interim order and shall—
 - (a) invite representations from the parties (where present) on this issue;
 - (b) deliberate in private;
 - (c) announce its decision in the presence of the parties (where present);
 - (d) give reasons for its decision; and
 - (e) notify the registrant of its decision in accordance with article 31(14) of the Order.

Cancellation of hearing

- 33.**—(1) Where—
- (a) an allegation has been referred to a Practice Committee for consideration at a hearing; and
 - (b) the presenter considers that, on the evidence available, the hearing should not be held, the presenter shall inform the Practice Committee of his opinion, forthwith, and of the reasons for such opinion.
- (2) Upon receipt of the presenter’s reasoned opinion, pursuant to paragraph (1), the Practice Committee shall convene a preliminary meeting in accordance with article 32(2)(b) of the Order.
- (3) At the preliminary meeting referred to in paragraph (2), the Chair of the Practice Committee may, in accordance with articles 32(3) and 32(4) of the Order, give a direction that the hearing should not be held and that the matter should be closed.
- (4) Notwithstanding paragraph (3), the Chair of the Practice Committee shall not give a direction to cancel a hearing without first giving the maker of the allegation (if any) a reasonable opportunity to comment, and taking into account any comments received from her.

Service of documents

- 34.**—(1) Any notice of hearing required to be served upon the registrant shall be delivered by sending it by a postal service or other delivery service in which delivery or receipt is recorded to, or by leaving it at—
- (a) where the practitioner is represented by a solicitor, the solicitor’s practising address;
 - (b) where the practitioner is represented by a professional body or trade union, at the business address of that professional body or trade union; or
 - (c) in any other case—
 - (i) her address in the register, or
 - (ii) where this differs, and it appears more likely to reach her at her last known address, the registrant’s last known address.
- (2) Any other notice or document to be served on a person under these Rules may be sent by ordinary post.
- (3) The service of any notice under these Rules may be proved by—
- (a) a confirmation of posting issued by or on behalf of the Post Office, or other postal operator or delivery service; or
 - (b) a signed statement from the person leaving the notice in accordance with paragraph (1) above.

(4) Where any notice is sent under these Rules, it shall be treated as having been served on the day after it was sent by delivery service or, where the notice has been left at an address, on the day on which it was left at that address.

Given under the official seal of the Nursing and Midwifery Council on 18th June 2004.

Jonathan Asbridge
President

Sarah Thewlis
Chief Executive and Registrar

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which is made under the Nursing and Midwifery Order 2001, approves Rules made by the Nursing and Midwifery Council which set out the procedures to be followed by the Investigating Committee, Health Committee and Conduct and Competence Committee (the “Practice Committees”) of the Council in investigating allegations made against a nurse or midwife that:

- (a) her fitness to practise is impaired by reason of misconduct, health, lack of competence, a conviction or caution for a criminal offence or a determination by another body which regulates a health or social care profession; or
- (b) an entry on the register relating to her is has been fraudulently procured or incorrectly made.

The rules also relate to the procedure to be followed by a Practice Committee which is: considering making an interim order to suspend a nurse or midwife or to impose conditions of practice on her; reviewing an order made by a Practice Committee; or dealing with an application for restoration to the register.

Part 1 relates to the date the Rules are to come into force and to interpretation of them; Part 2 relates to the Investigating Committee; Part 3 to interim orders; Part 4 to the Conduct and Competence Committee and Health Committee; Part 5 to procedure at hearings; and Part 6 contains general provisions.

Part 1

Rule 1 provides for the Rules to come into force on 1st August 2004.

Rule 2 sets out the definitions of terms used in the Rules.

Part 2

Rule 3 provides for notification of a registrant of any allegation made against her.

Rule 4 relates to the procedure of the Investigating Committee where the allegation relates to impairment of fitness to practise on the basis of misconduct, health etc. The Investigating Committee will meet in private, obtain as much information as possible in connection with the consideration of the allegation and offer the registrant the opportunity to comment on information received.

Rule 5 relates to the procedure of the Investigating Committee where the allegation relates to a fraudulent or incorrect entry in the register. The Investigating Committee will meet in private to give initial consideration to the allegation and shall obtain information in connection with the consideration of the allegation.

Where the registrant asks for a hearing or the Investigating Committee considers that a hearing is desirable it will refer the allegation to a differently constituted Investigating Committee for a hearing.

The rule provides for notice of the referral to be given to the registrant’s employer, other regulatory body by whom the registrant is authorised to practise and other specified persons. A notice of hearing is to be sent to the registrant setting out information specified in rule 5 such as the date, time and venue of the hearing, the Committee’s power to proceed with the hearing in the absence of the registrant and the registrant’s right to call witnesses. A preliminary meeting may be held where the Committee is of the opinion that it would assist it to perform its functions. Directions may be given.

Where the registrant has not requested a hearing and the Committee does not consider that a hearing is necessary it may determine the matter on the basis of written representations in private.

Rule 6 provides for the Committee to give notice of its decision.

Rule 7 provides that, where the Investigating Committee decides that there is no case to answer, it may, if it receives a fresh allegation about the registrant within three years, take the earlier allegation into account in dealing with the later one.

Part 3

Rule 8 provides for notice to be served on a registrant where a Practice Committee proposes to consider whether to make, revoke, confirm, vary or replace an interim order under article 31 of the Nursing and Midwifery Order except where consideration is to be given at the same hearing at one at which an order has already been made under article 26(7) or article 29(5)(a) to (c) of the Nursing and Midwifery Order. The notice must inform the registrant of such matters as the date, time and venue of the hearing, her right to attend and be represented, her right to call witnesses and state the reasons why an interim order may be necessary. A Practice Committee must follow the procedure set out in Part 5 of the Rules in making its decision about an interim order.

Part 4

Rule 9 provides for notice of the referral of an allegation to the Conduct and Competence Committee or the Health Committee to be given to the registrant inviting her to submit written representations within 28 days and asking if she would like to have a hearing. The Council is required to give notice to persons specified in rule 9(3) including the registrant's employer and any other body by whom the registrant is authorised to practise a health or social care profession. The rule provides that a registrant may be invited to submit to assessment in the case of an allegation of lack of competence or to medical examination in a case where it is said that the registrant's fitness to practise is impaired by reason of physical or mental health. The Committee may notify the person who has made the allegation of the registrant's written representations and ask for comments on them.

Rule 10 provides that a hearing shall be held where the registrant asks for one within the specified time or the Committee considers that a hearing would be desirable. Where no hearing is to be held, the Committee may make a determination on an allegation at a meeting and the Committee shall decide the procedure to be followed.

Rule 11 provides for a notice of a hearing to be sent to the registrant informing her of the date, time and venue of the hearing, setting out the allegation, and, among other matters, informing the registrant of her right to attend and be represented at the hearing and of the Committee's power to proceed in her absence. Where the Committee is reviewing an order or dealing with an application for restoration, the notice must contain a copy of the relevant order.

Rule 12 provides for the Conduct and Competence Committee and the Health Committee in considering an allegation at a hearing to follow the procedure as set out in Part 5 of the Rules.

Rule 13 provides for the Committee to give notice of its decision to the registrant and to the person who has made the allegation.

Rules 14 and 15 provide for the Conduct and Competence Committee and Health Committee to refer to each other an allegation which it appears would be better dealt with by the other Committee.

Part 5

Part 5 relates to the procedure to be followed at hearings. Rule 16 provides that it applies to the Investigating Committee when it is considering an allegation which relates to a fraudulent or incorrect entry in the register or when its consideration relates to an interim order. It also applies to the Conduct and Competence Committee or the Health Committee when it is considering an allegation that a registrant's fitness to practice is impaired; when it is considering making, or it is reviewing, an interim order; when it is reviewing an order which it has made; or when it is considering an application for restoration to the register.

Rule 17 defines the meaning of "Committee" in Part 5.

Rule 18 enables a Committee to hold a preliminary meeting if, in its opinion, it would assist the Committee to perform its functions. It provides that the meeting will be chaired by the Chair of the Committee and will be held in private with the parties, representatives and any person the Chair or Committee considers appropriate. Directions may be given. Notice is to be given of a preliminary meeting.

Rule 18(5) sets out examples of the directions which may be given at a preliminary meeting which include time limits for the service of evidence and disclosure of expert evidence; a requirement that, where facts are not in dispute, or the issue of misconduct is admitted, the parties produce a statement of agreed facts; and directions relating to witnesses.

Rule 19 provides that hearings will be conducted in public except where, on the basis of criteria set out in paragraphs (2) or (3), the Committee is satisfied that it is appropriate to hold all or part of the hearing in private.

Rule 20 provides that a registrant may be represented and accompanied but that a person who accompanies the registrant shall not be called as a witness.

Rule 21 provides that, where the Committee is satisfied that notice of the hearing has been served, the hearing may proceed in the absence of the registrant. A hearing may be adjourned.

Rule 22 contains provisions relating to the examination of witnesses.

Rule 23 sets out provisions relating to vulnerable witness and to the adoption of the Committee of such measures as it considers necessary to enable it to receive evidence from a vulnerable witness including a witness under the age of 18 or a witness with a mental disorder. The rule also relates to cases where the allegation against a registrant is sexual in nature, a witness is the alleged victim and the registrant is not represented.

Rule 24 sets out, except where the Committee decides otherwise, the order of proceedings. Where the facts remain in dispute the Committee will hear evidence and then deliberate in private in order to make its findings on the facts. It will announce its findings. Once the facts are established, the Committee will go on to consider whether the registrant's fitness to practise is impaired and, if it decides that it is, will make a decision on the sanction, if any, to be imposed. It may then consider whether it is appropriate to make an interim order pending the outcome of any appeal.

Rule 25 sets out the order of proceedings to be followed, unless the Committee determines otherwise, at a hearing to review an order which has already been made or whether to restore an applicant to the register.

Rule 26 sets out the order of proceedings to be followed where the Committee is considering whether to make, revoke, confirm, vary or replace an interim order except in circumstances covered by rule 24.

Rule 27 provides for hearings and preliminary meetings to be recorded and for parties, on application, to be furnished with a transcript.

Part 6

Rule 28 provides that a charge, or the facts set out in a charge, may be amended unless, having regard to the merits of the case and the fairness of the proceedings, the amendment cannot be made without injustice.

Rule 29 provides the circumstances in which the Conduct and Competence Committee may consider an allegation against two or more registrants at the same hearing or one or more categories of allegation against a registrant.

Rule 30 provides that where facts relating to an allegation are in dispute the burden of proving those facts rests on the Council.

Rule 31 relates to the evidence which may be considered by a Practice Committee. Among other things it provides that a Health Committee may take into account a refusal by a registrant to submit to medical examination and any continuing or episodic conditions suffered by a registrant; and, where the Conduct and Competence Committee finds that a registrant has failed to comply with standards of conduct, performance and ethics, the Committee may take that failure into account in determining whether or not the registrant's fitness to practise is impaired.

Rule 32 provides that a Practice Committee may (having heard representations from the parties and taken advice from the Legal Assessor) adjourn proceedings on its own motion or on the application of a party provided that no injustice is caused to a party. The rule sets out what the

Committee should consider in deciding whether to postpone or adjourn proceedings and that before adjourning proceedings it should consider whether or not to make an interim order.

Rule 33 provides that where an allegation has been referred to a Practice Committee for consideration at a hearing but the presenter considers that, on the evidence available, the hearing should not be held, the presenter shall give reasons for this opinion and the Practice Committee shall determine (at a preliminary meeting) whether to direct that the hearing should not be held and the matter closed.

Rule 34 relates to the method of service of documents.

2004 No. 1761

**HEALTH CARE AND ASSOCIATED PROFESSIONS
NURSES AND MIDWIVES**

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