What to do if you are referred to the NMC

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Abstract
Barker J (2014) What to do if you are referred to the NMC. Nursing Times; 110: 17, 10-12.

If you are subject to an investigation by a professional regulator, you need to be informed about the process and act quickly. This article outlines the process and offers some advice on how best to navigate it.

All nurses and midwives are regulated by the Nursing and Midwifery Council. The role of this professional body is to uphold standards of practice and, therefore, public safety and confidence in the profession.

When registered practitioners are referred to the NMC, this can result in an investigation and a hearing to decide whether their fitness to practise is impaired. The NMC will investigate allegations about:
- Misconduct – behaviour that falls short of what can be reasonably expected of a nurse or midwife;
- Lack of competence – lack of knowledge, skills or judgement that means a practitioner is unfit to practise;
- Character issues – usually some form of criminal behaviour;
- Serious ill health – long-term, untreated or unacknowledged health conditions that negatively affect professional performance.

Being the subject of any professional regulator’s investigation can be a daunting experience. Many people in this situation feel caught up in a hostile mechanism where the regulator’s only concern seems to be achieving what may appear to be an already-decided outcome. This may be because the regulator is not only responsible for prosecuting but also for putting together the case, funding it, organising the investigation and hearings, and appointing the committees that will determine the outcome of the complaint.

Accused practitioners can take steps to help deal with this unfamiliar and unpleasant experience.

First steps
Practitioners usually hear they have been referred when they receive a letter of notification, which sets out how they will be expected to respond. Investigations and hearings should be approached with as much information as possible; this will make a satisfactory outcome more likely and help to reduce the stress of the experience.

A useful starting point for anyone who has received a letter of notification is to check the NMC website for information on the powers and procedures that are likely to be used (Box 1). The rules governing NMC fitness-to-practise procedures are listed in the Nursing and Midwifery Order (HM Government, 2002) and the Nursing and Midwifery Council (Fitness to Practise) Rules (NMC, 2004). Guidance notes are also provided on the same webpage, which are written in a more accessible way and the Health and Care Professions Council also provides an accessible general guide on fitness-to-practise proceedings (Box 2).

What triggers disciplinary proceedings?
Fitness-to-practise proceedings are triggered by complaints or allegations referred
to the NMC. Complaints can come from a report from another regulator or an investigat-
ing authority such as the police, from the monitoring arm of the regulator itself, or directly from a patient, client or employer. However, “self-referrals” are also common; this is when registrants inform the NMC that they have had a crimi-
nal conviction or caution. Not doing so results in extra charges and can even be con-
verted by the regulator as more serious than the original offence.

Once a referral has been received, it is screened to check that it is covered by the regula-
tory process – for example, that the subject of the referral is registered with the NMC. If the referral is not covered the sub-
ject may not even know that a referral has been made.

If it is covered by the regulatory pro-
cess, the NMC screening team sends the practitioner a copy of the referral and asks for information on their employment status. In some cases the screening team will decide the practitioner is more appropriate for an employer to deal with a referral through its own disciplinary process, and will refer it back to the employer.

If the NMC continues with the investi-
gation, the practitioner will be sent a notice of referral giving details of the alle-
gation, along with any relevant docu-
ments. He or she has 28 days in which to provide a response.

Interim hearings

The screening team also carries out a risk assessment on each referral. If particular risk factors are identified cases can be referred to an interim order hearing. These are only considered when it is necessary to protect the public, is in the public interest or in the practitioner’s interest.

Interim hearings are arranged as soon as possible and practitioners or their rep-
resentatives are encouraged to attend or submit documents responding to the alle-
gations. These hearings can impose an interim suspension from the register for up to 18 months, or conditions of practice to address the identified risks while allowing the practitioner to practise in a safe manner. Conditions can include the requirement to work under supervision or not to engage with a particular area of practice, type of case or patient.

Any condition that limits the extent to which a professional can practise is serious and it is always advisable to have representation at an interim hearing where these issues are decided. The invest-
igation continues while an interim order is in place.

Responding to the referral

It is essential to respond to any corre-
spondence from the regulator. Any delay can lead to further allegations or charges of failing to cooperate; even if a delay does not lead to further charges, it may reduce mitigation if the case goes against the practitioner.

Dealing with the referral in a profes-
sional and appropriate manner can help to

strengthen the defence case, as can demonstrat-
ing insight into the fault or behav-

iour that has resulted in the complaint or

allegation.

It is important not to rush into responding without preparation. Practitioners should always take advice on setting out the initial response; a response that is hastily drafted or badly thought through can have serious consequences.

Advice can come from a union or pro-

fessional body, or a regulatory solicitor with a solid background in healthcare fit-

ness-to-practise law. Union stewards or representatives are a good first port of call for advice; they can refer practitioners to someone with specialist knowledge.

Regulatory law can be complex, and getting the best advice can save time, anx-

iety and, ultimately, money. The person giving advice should be sympathetic as well as sufficiently knowledgeable and experienced to get the best possible result.

What happens next?

Review and referral

Once the practitioner has been informed of the referral it is passed to an investigating committee, which will look at whether there is a case to answer. The committee reviews all the information available, including the response of the practitioner against whom the complaint had been made. It does not judge the arguments between the two sides, but determines whether the case should be taken further.

The practitioner being investigated is not permitted to attend this meeting, so the importance of providing a careful, written response for the committee to consider cannot be overstated.

If the investigating committee decides there is no case to answer, the practitioner will be informed in writing; if the case is referred or “sent up”, the practitioner will be sent a notice of referral to the Conduct and Competence Committee or the Health Committee.

Hearing and adjudication

If the committee decides the case is strong enough, it is referred to the Conduct and Competence Committee or the Health Committee for a hearing and final adjudication. Hearings take place all over the UK, but most are held in London; they are similar to a trial although legal profes-
sionals are not required to wear formal court dress and proceedings are as informal as possible. Evidence can include witness testimony or statements, relevant documents and information, and can also include evidence from experts. Practitioners are encouraged to have rep-

resentation and to present evidence in their defence.

The evidence called by the registrar at the hearing is usually presented to the committee by a prosecutor engaged by the NMC; this is normally a lawyer who is familiar with this area of law. It is not unus-
ual for fitness-to-practise committees to also have a legal assessor or adviser assisting the committee in points of law and procedure.

The sanctions available to the Conduct and Competence Committee in the event of a finding against the registrant include:

» Caution order (1-5 years);

» Suspension order;

» Conditions of practice order;

» Striking-off order.
Committee members
The investigation committee and the adjudication committees (the Conduct and Competence Committee and the Health Committee) are made up of professional members and lay members (people from outside the profession). They usually have support from the administrative staff who work for the registrar. The investigating committee has different members from the adjudication-stage committees; for reasons of fairness, these are kept separate.

Appeals
Practitioners can appeal against committee decisions or any sanctions that are imposed. This involves going to the High Court and appeals must be lodged within 28 days. In addition, the Professional Standards Authority is able to appeal against any decisions if it believes they are too lenient.

Conclusion
Becoming the subject of regulatory proceedings is something any professional hopes to avoid but it is not as rare as might be thought – in 2012-13 there were 4,106 referrals to the NMC. The journey from receiving the initial letter of notification through to disposal of the case is likely to be lengthy – in 2012-13 the average time from conclusion of an investigation to adjudication hearing was 8.4 months. However, the NMC is committed to reducing this to six months by December 2014.

If you are referred to the NMC, there are two golden rules to ensure you receive a fair hearing and decision:
» No matter how frustrating it seems, engage with the process in a professional manner;
» Ensure you have advice and representation from someone with sound knowledge of the area and in whom you have complete confidence.

References

BOX 2. USEFUL LINKS
Health and Care Professions Council www.hpc-uk.org
Health and Care Professions Council guide to fitness-to-practise hearings www.hpc-uk.org/complaints/
Nursing and Midwifery Council www.nmc-uk.org
Nursing and Midwifery Council fitness-to-practise legislation guidance notes tinyurl.com/NMCF2Pguidance

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