

**Conduct and Competence Committee Annual Report for presentation to the Council  
on 8 June 2006**

	Conduct and Competence Committee (CCC): strategic & operational
	Liz McAnulty, Director of Fitness to Practise
	1 April 2005 – 31 March 2006
	4 plus 1 extraordinary meeting.
	5
	3 meetings have been arranged: 27 April, 19 July and 24 October. A fourth will be arranged in due course.

Jonathan Asbridge - Chair - 5 meetings

Reverend William Buxton - 3 meetings

Marianne Cowpe - 5 meetings

Jill Crawford - 5 meetings

Cathy Gritzner - Vice Chair - 3 meetings

Sharon Hall - 1 meeting. Resigned from Council and Committee in early 2006.

Professor Paul Lewis – 2 meetings

The remit of the Conduct and Competence Committee is set out in Article 27 of the Nursing and Midwifery Order and states:

"The Conduct and Competence Committee shall -

(a) having consulted the other Practice Committees as it thinks appropriate, advise the Council (whether on the Council's request or otherwise) on -

(i) the performance of the Council's functions in relation to standards of conduct, performance and ethics expected of registrants and prospective registrants,

(ii) requirements as to good character and good health to be met by registrants and prospective registrants, and

(iii) the protection of the public from people whose fitness to practise is impaired.

## Legislation, Policy and Procedures

The following work was undertaken:

1. drafting the new substantive Constitution Rules for Practice Committees which will supersede the Interim rules.
2. recommendation to Council on the definition of "mainly engaged in the practice, teaching or management or in research" in respect of a part of the register in preparation for the election of the new Council.
3. compiled new guidance for pre-hearings and conditions of practice.
4. compiled new restoration procedures and guidelines.
5. agreed a procedure for appointment of panellists, registered medical practitioners and legal assessors.
6. reviewed the complaints procedure and re-circulated this to all members and panellists.
7. recommended that student indexing be re-introduced and the recommendation was forwarded for inclusion in the Fitness for Practice at the Point of Registration project.
8. considered the requirements in relation to good health and good character and recommended to Council the establishment of a Good Health and Good Character Panel.
9. approved criteria for the appointment of chairs and deputy chairs.
10. approved the matters to be considered during case management review (CMR) meetings.

## Financial situation

At its July meeting the CCC considered a paper outlining the financial situation and approved a number of key measures needed to balance the budget by the year end and noted the implications of these measures for the Council's public protection remit.

## Fitness to Practise hearings - outcomes

The Committee received a summary of every case heard by the Professional Conduct Committees (PCC) in which there is a finding of misconduct but no action was taken or a caution was imposed. The summaries are anonymised in order to facilitate maximum learning in relation to decision making and reasons given for each decision.

## Chairs reports

At each meeting the Committee considered a summary of all of the chairs reports provided since the previous meeting. The reports themselves have been modified by the Committee to enhance the value of the information provided.

## Operational activity of PCC/CCC

For analysis of the operational activity of PCC/CCC panels please refer to Annexe 1: PCC/CCC Activity for the periods April 2004 to March 2005 and April 2005 to March 2006.

Please note that a change in legislation took place on 1 August 2004. At this point the

panels of the Conduct and Competence Committee were established to hear cases under the new rules. The same members sit on the Professional Conduct Committees which hear cases under the old rules. Because of transitional arrangements, panels of both Committees continue to meet to consider allegations.

At its meeting in April 2006 the Committee acknowledged with regret that due to budgetary constraints, a backlog of cases awaiting a hearing had built up.

This committee has the widest remit of all the statutory committees. It impacts therefore not just on Fitness to Practise but on the work of other directorates including Standards and Registrations and Finance. Aspects of FtP work which have an impact on Standards and Registrations Directorate work are fed back regularly.

#### Financial

The impact of the new legislation had a much greater than expected impact on expenditure in the first quarter of the financial year resulting in an overspend for the first quarter of £485,824.

The controls which were implemented included:

- Informing all members at the earliest opportunity and agreeing control measures
- Reducing the number of cases being forwarded to external firms of solicitors
- Expanding the in-house legal team to enable more cases to be retained by them
- Stopping any further scheduling of cases within the financial year.

These measures were effective and enabled the Directorate to come back within budget by the end of the year.

Some additional funding was provided in October/November: £300K for general cases; and £350K ringfenced for new Rules cases. Given the complexities of scheduling and the lead-in time needed to select and plan the number of cases to be heard, it was not possible to spend all of this within the financial year and this resulted in a 2% underspend (£206K).

#### Legal

A significant legal risk was posed as a result of a challenge in relation to the use of our in-house lawyers (and other non Scottish lawyers) as case presenters in Scotland. Within one week we had sought senior Counsel's written advice which confirmed that our approach was acceptable under the law. We are currently working closely with our Legal Assessors in Scotland in order to pre-empt any further problems which may arise from the new legislation.

Our system of obtaining the services of Legal Assessors was not as open and transparent as it should be. This meant that some of the approved Legal Assessors were being used a lot and others only rarely. This created a risk to the Council particularly in cases being considered under the new Rules. Council approved an

initiative to tender for an external mechanism for obtaining these services. This involved interviewing all potential Legal Assessors and attendance at a training day is compulsory for inclusion on the new panel. The service will come into operation fully on 3 July 2006.

### Reputational

The need to stop scheduling cases has led to a significant backlog of more than 300 cases awaiting a hearing. This inevitably has an adverse impact on Council's reputation as Council is not complying with its statutory requirement that cases "shall be dealt with expeditiously.." (Art 32 (3)).

Consequently, the public is not being protected from those individuals who, but for the delay, would be removed from the register or be subject to some other sanction. Registrants' human rights are compromised by having to wait longer to have their case heard. There is a risk of witnesses' memories fading leading to the integrity of the hearing being compromised. Employers and other complainants may question the value of referring cases for investigation.

Efforts to mitigate risks to the Council's reputation have included scrutiny of each case awaiting a hearing to re-prioritise, using a scoring system approved by the President, and ensuring that savings are realised throughout the directorate (including holding hearings in the Blue Room, DCH etc) to maximise the number of hearings within the resource available.

A number of the issues outlined above will be standing items on the CCC agenda for the year commencing 1 April 2006.

The CCC will meet 4 times between April 2006 and March 2007. In addition, of major significance for this and all the statutory Practice Committees will be the publication of the recommendations from the Review of Non-medical Professional Regulation (Foster Review), currently expected in the Summer, and depending upon the outcome of the NMC's decision on separation of functions being considered in April 2006. Regardless of the outcome, the CCC will have a robust work plan. The Committee will continue to monitor the activity and outcomes of the panels of the CCC and the PCC. The Committee will also be reviewing the impact of operationalising the new legislation.

Top Ten Risks for the year ahead (in no particular order)

1. Inadequate resources to progress the growing number of cases in accordance with our standards
2. Further significant increase in backlog of cases requiring a hearing
3. Risk of appeals and Judicial Review arising from delays at hearings stage
4. Inadequate working environment for staff leading to health and safety and morale problems
5. Planned move to 180 Oxford Street is delayed
6. New premises not fit for purpose especially in relation to security of staff and case files
7. Financial information not sufficiently timely or accurate to enable effective planning and reforecasting
8. Inadequate case management information to keep Council and other stakeholders informed and to enable effective management of workload
9. Break in continuity for FtP work due to change in membership of Strategic Committees
10. Inability to retain good staff.

Every effort is being made to mitigate these risks and regular updates will be provided to the relevant Committees including the Audit and Risk Committee.

Financial

It is acknowledged that the budget allocated to FtP for the year 2006-07 will allow a maximum of 200 cases to be heard. At current rate of referral this will mean a backlog of 500+ cases awaiting a hearing at the end of the financial year. The Performance and Business Planning Committee has agreed a programme of early reforecasting to ensure that any underspends are vired to FtP.

In the longer term the fee increase will be necessary to ensure proper funding of this increased activity.

**Activity for the PCC/CCC for the two years 2004-5 to 2005-6**

	April 2004 - March 2005	April 2005 - March 2006	% change 2005 - 2006 (decrease)
Number of days sat	350	480	37.14%
Number of substantive cases heard	232	391	68.53%
Number of NOR1 & NOR2 cases heard	0	209	0%
Number of cases completed	169	224	32.54%
Removed	103	126	
Striking off order		15 141	36.89%
Cautions issued	35	53	51.43%
Cases adjourned	63	64	1.59%
Facts/misconduct proved - no further action (nfa)	3	2	(33.33%)
Facts/misconduct not proved - nfa	4	4	0%
Facts proved/misconduct not proved - nfa	2	2	0%

The position in relation to the hearings caseload at 31 March 2006 is as follows:

Total cases waiting for a hearing = 321 (345 respondents) of which 154 are old rules (PCC) cases and 167 are new rules (CCC) cases.

Minutes of the meeting of the Open Session of the Nursing and Midwifery Council  
held on Thursday 8 June 2006 in the Council Chamber

**Minute 06/131**      **Annual Report of the Conduct and Competence Committee 1 April  
2005 – 31 March 2006**

- Received**      (i)    **Paper C/06/80.**
- Noted**          (i)    the content of the report.