

## **The Regulation of Nurses, Midwives and Health Visitors**

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these cases - particularly conditional registration. It would also be helpful to state clearly the Council's duty to deal with cases of poor performance, as well as of misconduct and health.

4.69 Given the size of the Register, and the difficulty in establishing hard measures of 'good' performance, proceedings would need to be designed to ensure that the system was not too costly or cumbersome, but met the overall requirement of protection of the public. Recognition by employers of their initial responsibility for poor performance would be a necessary part of this.

### **Decisions and sanctions**

4.70 There have been too many high profile cases that, reported by the media, have led to a perception that the UKCC is not providing the protection it should - cases of inappropriate restoration to the Register, no action in cases of misconduct, no proceedings initiated on complaints. There is a serious mis-match between what Council is seen to be doing and what others think it should be doing.

4.71 Some of the problems arise from the inflexibility of the legislation and what Council can and cannot do. Sanctions are limited to issuing a caution (at Preliminary Proceedings Committee - PPC, if facts are proven and misconduct admitted) and removal from the Register. For many cases which come before the Council, neither of these is appropriate, although some action could be said to be necessary in the interests of public safety and protection. Powers of reprimand and conditional registration would give Council the ability to apply more relevant sanctions and deal more satisfactorily with a wider range of cases.

4.72 A reprimand or formal admonishment could be applied where misconduct is not proven (using the criminal standard of proof: "beyond reasonable doubt") but there is a case to answer (using a lower level of proof: "balance of probabilities"). This sanction could have cumulative effect.

4.73 Conditional registration would allow rehabilitation, remedial training or supervised practice in appropriate cases.

4.74 Two additional sanctions have been suggested: fines and life bans. We do not support the introduction of these. UKCC has received legal advice that life bans (the permanent withholding of the right to apply for restoration) cannot be introduced. A 'blanket ban' is not possible as the Council must retain discretionary power not to impose bans in exceptional cases. The need to consider whether each case is discretionary would leave each case open to scrutiny as currently. It would also be contrary to elementary principles of public law - that the Council had decided action before hearing the case. In practice the UKCC can use other methods to ensure that no inappropriate persons can re-enter the Register.

4.75 Fines could undermine the status of the UKCC in contrast to its powers of suspension and caution; and attempts to set a tariff may be derisory (this is a problem in some other professions). Financial penalties are appropriate to criminal courts, and compensation to the civil courts or alternative dispute resolution.

4.76 The ultimate sanction is erasure (removal) from a Part, or Parts, of the Register. There should be an additional sanction of the removal of marks or records against the Register (e.g. those denoting a higher level of practice). In certain circumstances individuals should be able voluntarily to remove themselves from the Register (e.g. for some health problems).