

Cancelling hearings

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Our rules allow us to apply to cancel a hearing where we consider that a hearing should not be held¹. Whether to cancel will be assessed on a case-by-case basis depending on the particular facts. The final decision will always be made by a panel chair.

Nurses, midwives and nursing associates are also able to apply for [agreed removal](#). This can bring a professional's registration to an end without their case going to a final adjudication, and in the majority of cases will be a quicker and more appropriate route than an application to cancel a hearing.

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Circumstances where cancellation may be appropriate include, but are not limited to, where:

- the professional has a terminal illness;
- the professional suffers from a health condition, which means that they are unlikely to work as a registered professional again;
- the professional does not have mental capacity to engage in proceedings and is unlikely to do so soon

Terminal illness

A terminal illness is a progressive disease which cannot be cured and is expected to lead to the professional's death.

Health (the ability to work)

Sometimes we may investigate concerns that a professional's health impacts on their ability to practise safely or at all, or we may find out about a health condition we weren't aware of during the course of the case, or a new condition may arise or worsen before the case has been considered at a hearing. For example, a professional might suffer a debilitating stroke, or be showing signs of progressive dementia we were previously unaware of.

Capacity to engage in proceedings

Sometimes questions are raised about a professional's capacity to engage in regulatory proceedings. This could lead to the introduction of supportive measures where possible.

When the panel is asked to consider cancellation, it will have to weigh up the overall public interest in going to hearing against the professional's right to a fair hearing² and any evidence of the impact of a hearing on the professional's health and wellbeing.

In its assessment of the public interest, the panel Chair must also consider factors which support the case for proceeding. For example, a professional might state a firm desire for the hearing to go ahead or the case might involve [conviction for a specified offence](#), where the public interest in regulatory action will be particularly strong.

Our rules require the Chair to give the person who made the allegation a reasonable opportunity to comment on what we propose to do, and to take any comments into account. Our general position, though, is that because information about a nurse, midwife or nursing associate's health is sensitive and confidential, it is generally not necessary to our statutory role for us to share this information.

In some limited circumstances we may consider cancelling a hearing where the professional's registration would remain effective after cancellation. To make this decision we'll need clear evidence that their medical condition will in all likelihood prevent them from ever working again.

In deciding whether to cancel a hearing due to lack of capacity we will consider:

- the extent to which, if any, the professional has the mental capacity to make their own decisions and both understand and engage in the hearing process
- whether supportive measures can be put in place which will assist the professional to engage in proceedings
- whether their lack of capacity to engage is likely to be permanent

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Our case presenter will prepare a document, called a 'reasoned opinion' that sets the background to the case, and explains the nurse, midwife or nursing associate's health condition. This will be shared with the professional in advance of the Chair's decision.

The Chair will then decide whether to direct that the case should be closed.

Our rules require the Chair to give the person who made the allegation a reasonable opportunity to comment on what we propose to do, and to take any comments into account.

Our case presenter will always consider what a reasonable opportunity is in every case that they prepare a reasoned opinion.

This means that a reasonable opportunity to comment will usually not involve us sharing information about the nurse, midwife or nursing associate's health condition with the person who made the allegation.

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Once a panel closes a case, if the nurse, midwife or nursing associate is subject to an [interim suspension order or interim conditions of practice order](#), this will need to be revoked by the same panel immediately following their decision to close the case³.

A decision to close a case is not a 'final determination', because the panel has not made a fully reasoned decision about the substance of the case, the evidence, or the nurse, midwife or nursing associate's fitness to practise. Should the professional apply to rejoin the register, the registrar will be able to take into consideration previous fitness to practise concerns which have been raised but not been decided on, or any health conditions that formed the basis for the cancellation decision.

1 Rule 33 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004

2 ECHR Article 6: Right to a fair trial

3 Article 31(7) Nursing and Midwifery Order 2001