Constitution of panels

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Who sits on our practice committee panels?

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The panels of our Fitness to Practise Committee or Investigating Committee are made up of three people.[1]

One of the three people must be a nurse, midwife or nursing associate, and one of them must be a member of the public who is not a registered nurse, midwife and nursing associate (that is, a lay person). The Chair of the panel can be a nurse, midwife or, nursing associate or a lay person.[2]

If the hearing is about a midwife, there will be a midwife on the panel. If the hearing is about a nurse, there will be a nurse on the panel. If the hearing is about a nursing associate, there will be a nursing associate on the panel.[3] There are two exceptions to this: interim orders, and some substantive order reviews.

Panels that decide on interim orders

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If the panel has been asked to consider making or reviewing an interim order, one of the members of the panel must be a registered nurse, midwife or nursing associate.

However, the nurse, midwife or nursing associate on the panel doesn't necessarily have to be from the same part of the register as the person whose fitness to practise, or entry in the register, we are investigating.[4]

Panels that decide on particular substantive order reviews

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At reviews of substantive orders, one of the members of the panel must be a registered nurse, midwife or nursing associate. However, we do not require the nurse or midwife to be from the same part of the register as the person whose sanction the panel is reviewing, so long as the following conditions are met:

- the panel decided that the nurse, midwife or nursing associate's fitness to practise was impaired because of their health or lack of competence at the initial substantive hearing
- the nurse, midwife or nursing associate has been continuously subject to a suspension order, a conditions of practice order, or a combination of periods of suspension and conditions, for at least two years, and
- the nurse, midwife or nursing associate has never engaged with our proceedings, has told us they no longer want to engage in our proceedings, or have stated that they wish to be removed from the register.[5]

What happens if a panel member cannot continue to sit?

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Sometimes a panel member becomes unavailable or no longer eligible[6] to sit on our panel during the course of a hearing.

If this happens, rather than start the hearing again, we are able to substitute a new panel member for the person who is no longer able to sit.[7] The panel will still need to be made up of the same types of members identified above.

When we decide that substituting a new panel member is the best way to proceed, we will explain to the nurse, midwife or nursing associate, in advance of the hearing continuing with the new panel member, why we think it is in the

nterests of justice to do this.

We will give the nurse, midwife or nursing associate the chance to tell us whether they agree with a new panel member being substituted.

After we have substituted a new panel member the hearing can resume.

At this point, the panel members are able to decide for themselves whether:

- the substitution is for a proper purpose
- proper procedures have been followed
- it is in the interests of justice for the substituted panel member to participate.[8]

If the panel members decide to carry out this assessment, they should consider any previous correspondence between us and the nurse, midwife or nursing associate, and any representations the parties make.[9]

1 The Nursing and Midwifery Council (Practice Committees) (Constitution) Rules 2008 (as amended by SI 2020/821) gives us the power to hold hearings with two members rather than three. We will not use this power to hold a hearing without a nurse, midwife or nursing associate panellist being present outside of a national emergency. We will not use panels of two members rather than three members unless rare and exceptional circumstances apply and we have sought the views of the nurse, midwife or nursing associate whose case is being considered.

2 Rule 6(10) of the Nursing and Midwifery Council (Practice Committees) (Constitution) Rules 2008.

3 Our Council adopted this requirement to take effect from April 2011.

4 Our Council agreed the exception for interim orders in February 2013

5 The Director of Fitness to Practise issued this guidance on behalf of Council in December 2014.

6 This could include a panel member who is a lay person becoming registered as a nurse or midwife during the hearing, or the registration of a member who is a nurse, midwife or nursing associate lapsing during the hearing.

7 R (on the application of Michalak) v General Medical Council [2011] EWHC 2307 (Admin)

8 Michalak, cited above, paragraph 12.

9 Previous correspondence will be particularly relevant to the question of proper procedures, which are not set out in our legislation. A key consideration is whether the nurse, midwife or nursing associate has been given a fair chance to have their views taken into account.