Proceeding with hearings when the nurse, midwife or nursing associate is absent

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Overview

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There is a difference between criminal proceedings and regulatory proceedings and, as a regulatory body, we do not have the power to enforce attendance at our hearings.

A nurse, midwife or nursing associate is still entitled to be represented, either by a legally qualified person or by someone else.[1]

If the nurse, midwife or nursing associate is unwilling or unable to attend, a panel can choose to proceed with the hearing and impose an interim order or final sanction in their absence.[2]

This underpins our aim to protect the public, by dealing with allegations of impaired fitness to practise at the earliest opportunity by making sure that decisions are not unduly delayed.

Starting final hearings when the nurse, midwife or nursing associate doesn't attend

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When deciding whether to proceed with a final hearing in the nurse, midwife or nursing associate's absence, the panel must exercise care and caution.

Fairness to the nurse, midwife or nursing associate is a prime consideration.

However, fairness to the regulator and the interest of the public is another important consideration to be taken into account.

Because of this, the panel will first consider whether all reasonable efforts have been made to serve the notice of hearing on the nurse, midwife or nursing associate. This should be considered alongside the nurse, midwife or nursing associate's duty to cooperate with our investigation and provide us with an address for correspondence.

The panel should consider all of the known circumstances, and be guided by the following principles:[3]

- the public interest in the expeditious disposal of the case
- the inconvenience to any witnesses that have attended or due to attend
- whether the nurse, midwife or nursing associate has engaged with the proceedings and their reasons for non-attendance (this should include whether the reason for non-attendance is supported by independent evidence)
- the unfairness to the nurse, midwife or nursing associate if the proceedings were to continue, for example, they will not have the opportunity to question evidence or provide their own evidence to the panel in person
- whether it is fair, appropriate and proportionate to proceed in the nurse, midwife or nursing associate's absence.

If the panel decides not to proceed in the absence of a nurse, midwife or nursing associate, they will consider whether to postpone the hearing.

If the panel does proceed with the hearing, and the nurse, midwife or nursing associate remains absent throughout the hearing, there's no general obligation for the panel to consider adjourning or providing a further opportunity for the nurse, midwife or nursing associate to make submissions before progressing onto later stages such as impairment and sanction.[4]

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When it comes to interim order hearings, different issues will apply when deciding whether to proceed in the absence of a nurse, midwife or nursing associate.

This is because, in contrast with final hearings where a panel makes findings of fact based on the evidence, interim order hearings require panels to conduct an immediate risk assessment.

To proceed in the absence of a nurse, midwife or nursing associate, an interim order panel must be satisfied that all reasonable efforts have been made to serve the nurse, midwife or nursing associate with notice of the hearing.[5]

If the nurse, midwife or nursing associate has informed us that they do not wish to attend the hearing, the panel should proceed with the consideration of the interim order.[6]

When a nurse, midwife or nursing associate has told us that they are unable to attend the hearing for a particular reason, or they have asked for further time to secure representation or to prepare for the hearing, the panel should still go on to consider the merits of the application for the interim order.

This is because of the urgent nature of the application and the risks that have been identified. If the panel decides that one or more of the legal grounds for imposing an interim order have been satisfied, the panel should proceed to impose an interim order and direct that it is listed for a review hearing within the next 14 days to give the nurse, midwife or nursing associate a further opportunity to attend. The review hearing will reconsider the interim order in full.

If the nurse, midwife or nursing associate has not attended nor given us any representations, we will generally still ask a panel to consider imposing an interim order.

This is because we have identified risks that suggest that an order is necessary for the protection of members of the public, or may otherwise be in the public interest, or the nurse, midwife or nursing associate's own interests. Referring a case for interim order consideration as soon as possible makes sure that we are properly fulfilling our legal duty.

When considering whether to proceed in the absence of the nurse, midwife or nursing associate, the panel should consider the nature of the allegation and our primary function of protecting the public and balance this with whether reasonable efforts have been made to serve the notice on the nurse, midwife or nursing associate.

1 Article 31(16) of the Order
2 Rules 8(6) and 21(2)(b) Nursing and Midwifery Council (Fitness to Practise) Rules 2004
3 R. v Jones (No.2) [2002] UKHL 5 and more recently GMC v Adeogba; and GMC v Visvardis [2016] EWCA Civ 162
4 Sanusi v GMC [2019] EWCA Civ 1172
5 Rule 8(6)(a) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules')
6 Rule 8(6)(c) of the Rules