The process

Reference: DMA-2b Last Updated: 27/02/2024

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Agreeing a consensual panel determination

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We first consider if the nurse, midwife or nursing associate has met the essential criteria. If they meet the criteria, we consider if the nurse, midwife or nursing associate has legal advice or representation.

If there are concerns about the nurse, midwife or nursing associate's ability to understand the effects of seeking a consensual panel determination, we'll try to resolve them, and may recommend that they seek legal advice. If it's not possible to resolve those concerns, it might not be possible to pursue a consensual panel determination.

If the case is suitable to be resolved by a consensual panel determination agreement, we'll reach a provisional view on the appropriate sanction level.

We do this by assessing all the circumstances of the case with reference to our sanctions guidance. We'll share our view on the sanction with the nurse, midwife or nursing associate, including if we think an interim order is necessary.

If, after discussing the sanction with the nurse, midwife or nursing associate we can't agree on the appropriate level of sanction, the case will proceed to a meeting or hearing without any consensual panel determination agreement.

If we're able to agree on the appropriate level of sanction, we'll then prepare a provisional agreement. This will include a statement of the facts, why we consider that their fitness to practise is impaired, the proposed sanction and any interim order that may be required. The nurse, midwife or nursing associate must confirm that they agree the contents of the provisional agreement.

Either party can decide they no longer want to resolve the case with a consensual panel determination agreement at any time before it's taken to a meeting or hearing.

If this happens, the case will proceed to a meeting or hearing, which will take place without any consensual panel determination agreement in place. The panel won't have sight of the draft agreement.

Comments from the referrer

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We'll always let the person who referred the case and any interested parties (such as family members) know what we've provisionally agreed with the nurse, midwife or nursing associate. We'll usually share the entire agreement unless there's any private or confidential information that would be considered by the panel in private, in which case, we'd redact that information in line with our Information Handling guidance.

We'll ask the person who referred the case to send us any comments they might have about the proposed agreement so that we can consider their views. We might also ask the person who's been affected by the case to send any comments they have about the proposed agreement so that we can consider their views too.

We don't ask for comments where the referrer is the police force referring a conviction or caution unless the force or its personnel have had significant and ongoing involvement in the case.

We will always carefully consider any comments provided by a referrer. This can sometimes lead us to reconsider our view of the case. If that happens, we'll try to reach a new agreement with the nurse, midwife or nursing associate. If we can't reach a new agreement, the case will go to a meeting or hearing without any consensual panel determination agreement.

f we can reach an agreement, then the case, including the revised proposed agreement, will be considered by the anel. This will usually be at a meeting but can be at a hearing if the nurse, midwife or nursing associate asks for a earing.

t the meeting or hearing, we'll usually provide the panel with any comments from the referrer so the panel can take hose comments into account in reaching its decision.

f there are comments from the referrer we don't think are fair or relevant for the panel to see, we may not provide them o the panel. For example, if the referrer makes new allegations that weren't part of the allegations which form the basis f the proposed agreement, we wouldn't share that information with the panel. Instead, we'd consider treating the new llegations as a new referral.

We'll let the referrer know if we don't think we can share some or all of their comments with the panel, and we'll explain vhy.

f we're sharing the referrer's comments with the panel, we'll always share them with the nurse, midwife, or nursing ssociate first so they can raise any concerns or objections.

f a referrer insists that their comments aren't shared with the nurse, midwife or nursing associate, we won't be able to hare those comments with the panel or the nurse, midwife or nursing associate.

What happens at the meeting or hearing?

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The provisional agreement will usually be considered by a panel at a meeting, but can be considered at a hearing if the urse, midwife or nursing associate asks for one.

t a meeting, the nurse, midwife or nursing associate won't be in attendance, and there won't be a case presenter.

Where a panel considers the agreement at a hearing, the nurse, midwife or nursing associate will be able to attend, nd our case presenter will be in attendance.

t the meeting (or hearing), the panel will be provided with the consensual panel determination agreement and should onsider all aspects of it.

When the panel considers the agreed statement of facts, it will need to be satisfied that it has a clear picture of the actual background. The panel might request more information if it thinks our agreed statement of facts hasn't made lear, or covered sufficiently, the substance and details of what went wrong.[1]

The panel should exercise its own independent judgement to decide whether the nurse, midwife or nursing associate's itness to practise is impaired (including the reason for impairment, for example, whether their behaviour amounted to nisconduct), what sanction, if any, to impose using our sanctions guidance, and whether it's necessary to impose an nterim order. The panel isn't bound by the agreement, but it must consider the agreement carefully when reaching its ecision.

We'll only put forward a provisional agreement for consideration where we consider that it sets out a reasonable, roportionate and fair outcome.

The panel can decide to:

- accept the provisional agreement, or
- reject the provisional agreement.

Accepting the provisional agreement

Before the panel accepts the provisional agreement it should be satisfied that:

- the facts are found proved by admission, (or at a hearing, announce that the allegation is proved by admission) and,
- the nurse, midwife or nursing associate's fitness to practise is impaired by reason of the relevant ground of impairment.

The panel should also impose the sanction and any interim order as set out in the provisional agreement

Rejecting the provisional agreement

The panel may make a different decision about whether the nurse, midwife or nursing associate is impaired, what sanction to impose, and what interim order to impose. However, the provisional agreement should always form the starting point for the panel's decision-making. Where the panel reaches a different conclusion, it must provide clear reasons for doing so.

Where the panel disagrees with the conclusions set out in the provisional agreement, the outcome will depend on the nature of the disagreement and if the matter is being considered at a meeting or a hearing.

Based on the admitted facts, if the panel decides that the nurse, midwife or nursing associate's fitness to practise isn't impaired, it should make that finding and close the case. The panel is free to decide to impose a less restrictive sanction than proposed in the provisional agreement. They can do this without any adjournment being necessary (this applies to both meetings and hearings).

If the panel is considering the matter at a meeting and wishes to impose a more restrictive sanction than the one proposed, it should adjourn the matter. The case will then be considered by another panel at a hearing. The nurse, midwife or nursing associate should then be advised of the reasons given by the first panel about why they consider a more restrictive sanction might be required.

When the second panel considers the matter following an adjournment at a meeting, the nurse, midwife or nursing associate will have the opportunity to make any further submissions in writing or in person. The second panel must consider the terms of the provisional agreement afresh and shouldn't be influenced by any views expressed by the first panel. The panel should consider any further views expressed by us, the nurse, midwife or nursing associate and/or their representative.

If the panel is considering the matter at a hearing and wants to impose a sanction that is more restrictive than the one proposed in the provisional agreement, it must:

- first indicate that it is considering a more restrictive sanction, and
- give both our case presenter and the nurse, midwife, nursing associate and/or their representative the opportunity to comment.

If the nurse, midwife, nursing associate or their representative agrees to the more restrictive sanction, the panel can continue to impose the sanction. The CPD will count as being rejected, and the matter adjourned to a full hearing if the nurse, midwife, nursing associate, or representative don't agree to a more restrictive sanction. This includes if they aren't in attendance and can't be contacted to ask for their consent.

We would encourage the nurse, midwife or nursing associate or their representative to attend any CPD hearing. If they don't attend the hearing, they should be contactable by phone or video link to address anything that may arise on the day of the hearing. These arrangements should be made ahead of the hearing.

The panel's reasoning

The panel should provide clear reasoning for its decisions on why the nurse, midwife or nursing associate is impaired (including the reason for impairment, for example, why their behaviour amounted to misconduct), the appropriate sanction, and whether an interim order is necessary. This should include how the outcome protects the public and satisfies any public interest.

The panel may adopt the agreement's reasoning, and should explain which parts of the agreement it accepts and why. If it disagrees with any part of the agreement, the panel should explain which parts it disagrees with and identify clear reasoning and justification for doing so.

If the panel has had sight of comments from the referrer, then it should explain in its reasoning how the panel has considered these comments as part of its decision making process.

The panel should include the full consensual panel determination agreement in its decision document, even in cases where it disagrees with the conclusions reached. As that agreement reflects what's been agreed between the parties, it's better practice for the panel to express its decision and views separately after the text of the agreement, rather than altering the original agreement. The panel may correct typographical or spelling errors within the agreement.

Where the panel decides that the nurse, midwife or nursing associate's fitness to practise is impaired and imposes a

anction, we'll publish the panel's reasons, including the consensual panel determination agreement, in line with our Fitness to Practise Publication Guidance.

Requests for further information

Consensual panel determinations will usually be considered at meetings unless the registrant has specifically equested a hearing. If the panel decides it needs clarification or further information on an issue, it should consider postponing or adjourning the meeting with directions. This is so that the matter can be looked into, and if necessary urther submissions, documents or evidence can be sent to the panel.

Taking such a step is more proportionate than referring the case to a hearing when it might not be needed to resolve he issue.[2]

At a hearing, if the panel decides that it needs clarification or further information on an issue, it should raise this with the parties before deciding to accept or reject the provisional agreement. Our case presenter and the nurse, midwife or nursing associate can then address the panel on the points raised.

Professional Standards Authority v (1) Nursing and Midwifery Council (2) Jozi [2015] EWHC 764 (Admin) at [22] and 33].

2 At a meeting, the panel has the power to determine its own procedure under Rule 10(4) Fitness to Practise Rules 2004