Early review of a substantive order

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In this guide

- Overview
- When we schedule early reviews
- What happens when we schedule an early review
- What power does the panel have

Overview

Back to top

A nurse, midwife or nursing associate can ask for a panel to review a substantive order (caution, conditions of practice and suspension) at any time during the life of the order.[1]

We may also decide to carry out an early review of an order if we receive new information about the current fitness to practise of a nurse, midwife or nursing associate, and we consider that a different order, or that no order is required as a result of that information.

When we schedule early reviews

Back to top

In general, when we receive requests for an early review from a nurse, midwife or nursing associate we will arrange a review hearing,[2] except in the following circumstances:

- The nurse, midwife or nursing associate has requested a review because they are generally dissatisfied with the outcome of a previous hearing. Where this is the case, the nurse, midwife or nursing associate can appeal to the High Court (in England and Wales), the Court of Session in Scotland, or the High Court of Justice in Northern Ireland.[3]
- There does not appear to be any relevant new information for the panel to consider.

If we receive information that seems to show that the original order is not appropriate then we will schedule a review. This might be the case if we receive information that shows a less restrictive, or a more restrictive order is needed to manage any risk to patients or public confidence in the professions, or to promote and maintain proper professional standards.

Examples of cases where we are likely to schedule such a review include:

- We receive information which suggests that the nurse, midwife or nursing associate is acting in breach of the order.
- Problems in the nurse, midwife or nursing associate's practice which led to the order being imposed have recurred, worsened, or the nurse, midwife or nursing associate's fitness to practise appears to have got worse
- Conditions of practice have become unworkable and a review is required to allow the nurse, midwife or nursing associate to continue to practice while ensuring ongoing public protection.
- The nurse, midwife or nursing associate has complied with all conditions in the order, and/or has taken effective steps to address the problems in their practice which led to the order being imposed.

Early reviews of a substantive order following an appeal

When a Fitness to Practice Committee gives a nurse, midwife or nursing associate a substantive order, they may also have put that person on an interim order to cover the period before the sanction came into effect.

Suppose a nurse, midwife or nursing associate appealed against the decision of the Committee to the Court. In this case, this might mean that they spent a long time on that interim order before a decision was made by the Court (or the appeal was abandoned) and before their substantive order started.

If this is the case, then the time spent on the interim order is not simply deducted from the sanction. However, a nurse, midwife or nursing associate can ask for an early review of their substantive order so that a panel can consider what effect the time spent on an interim order might have had on their fitness to practise. A Panel might consider this in their overall assessment of what order is now appropriate and proportionate.

Find out about how the panel reaches a decision.

What happens when we schedule an early review

Back to top

If an early review hearing is scheduled, we will send the nurse, midwife or nursing associate a letter of 'notice' which explains that the hearing is being held under the powers of early review, and what the panel has the power to impose.

Generally, any change to the order on an 'early' review can only have effect for the time remaining before the order expires.[4]

So, if a nurse, midwife or nursing associate requests a review shortly before the order is due to expire (less than three months before the expiry of the order), we will treat the resulting hearing as a 'standard' review. We will usually schedule standard reviews within eight weeks of the date of expiry of the order. This allows us time to reschedule the hearing if anything prevents the review from going ahead.

What power does the panel have

Back to top

When holding an early review, the panel has the power to:

- confirm the order
- extend, or further extend, the period for which the order will be in place
- reduce the period for which the order will be in place, except for in the case of a caution order, when the panel can't reduce the effective length of a caution order to less than one year.
- replace the order with a striking-off order (where permissible), a suspension order, a conditions of practice order, or a caution order. Any replacement order will normally be in place for the remainder of the term of the order being reviewed.

  This means that where a caution order replaces a suspension or conditions of practice order, the caution order may have effect for less than a year.

  However, when the panel at an early review hearing is considering replacing an existing order with a conditions of practice or suspension order, the replacement order shouldn't last longer than the maximum period specified in Article 29(5) (one year in the case of a suspension order or three years in the case of a conditions of practice order).
- revoke the order or revoke any condition imposed by the order
- change any condition imposed by the order
- change any condition imposed by the order, and extend, or further extend, the period for which the order is in place.

The crucial differences between the panel's powers with regard to an early review and a standard review are:

- Any change made to an order on an early review takes effect immediately, rather than when the current order expires.
- When replacing one kind of order with another, for example, conditions of practice with suspension, the replacement order will only have effect for the remaining period of the order being reviewed.[5]

Article 30(2) of the Order. Striking off orders can be reviewed under Article 30(7) or the Order
Article 30(2) provides that the relevant practice committee 'may' review the order on the application of the person concerned, or otherwise
Article 30(10) of the Order
Article 30(4)(d) of the Order
Article 30(4)(d)