

Removal from the register when there is a substantive order in place

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This guidance is intended to help substantive order review panels decide what action to take where

- a professional hasn't addressed outstanding fitness to practise concerns, and
- the professional is unlikely to return to safe unrestricted practice within a reasonable period of time

There is a persuasive burden on the professional at a substantive order review to demonstrate that they have fully acknowledged why past professional performance was deficient and through insight, application, education, supervision or other achievement sufficiently addressed the past impairments¹.

While Suspension Orders and Conditions of Practice Orders can be varied or extended,

. In time the professional must be allowed to practise without restriction or they should be removed from the register. It is neither in the interests of the public nor the professional's own interests that they are kept in limbo².

Professionals who are not subject to fitness to practise proceedings have to revalidate every three years to stay on the register. In many cases it will be more appropriate for a professional to leave the register if they have been on a substantive order for this period of time and remain impaired.

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Panel considerations

Panels and professionals should bear in mind that:

- It is not in the public interest or a professional's interests to remain on the register indefinitely when they are not fit to practise;
- public confidence in the professions is more important than the fortunes of any individual professional. Panels should explain how they have taken this into account and how public confidence will be upheld when deciding whether to allow someone to lapse with impairment³.

- there are advantages to all parties in setting time limits to conditions; those time limits are set for a reason and should be respected;
- if a professional believes that the conditions they are subject to are or have become unworkable, they should consider applying for an early review to seek to vary the order, rather than waiting for the next substantive review;
- sometimes a conditions of practice order will no longer be workable and there are no alternative conditions that will ensure the public is safe and maintain confidence in the professions we regulate;
- a professional who is struck off can only apply to be restored to the Register after a period of five years has elapsed⁴; by contrast, professionals who leave the register by way of agreed removal or lapse while impaired can apply for readmission⁵ at any time if they consider they are no longer impaired – for example, their health or language skills have demonstrably improved. When deciding whether or not to strike someone off or to allow them to lapse while impaired, it is essential that panels bear this distinction in mind. The importance of this point was emphasised by the High Court in the case of ⁶ a case where an NMC panel allowed a professional to ‘lapse while impaired’. The Court criticised the panel for failing to give any adequate consideration to the seriousness of the misconduct and other relevant issues in that case (including the registrant’s lack of meaningful engagement since the last hearing). Nor did the Panel in that case take into account the very significant practical differences between the routes back to registration following a striking off decision as opposed to allowing someone to lapse while impaired and the difference in the level of assessment at each of these stages in order to provide adequate safeguards for public protection. This is an issue that is particularly important in cases that involve serious misconduct. The panel had also focused on the registrant’s desire to leave the nursing profession without properly engaging with the purpose of professional regulation and the public protection objectives of the NMC. Public protection includes maintaining public confidence and upholding standards in our professions.
- a panel has to take into consideration the case before them as it currently stands, bearing in mind our overarching objective of public protection (which will include consideration of public safety, public confidence and the need to uphold professional standards) and the purpose of professional regulation. Panels should not base their decision whether strike off or lapse with impairment is appropriate solely upon the nature of the allegations as proven by the original panel. Although the seriousness of the original allegations is a relevant factor, what is also important is whether or not the registrant has meaningfully engaged since the substantive decision, any conduct and progress since the last panel determination, any attitudinal concerns present, and the current overall circumstances of the case.
- in any application for readmission the decision maker will be aware of the concerns that led to the original substantive finding of impairment, and that the professional left the register while impaired.

1. Striking off

In most cases, striking someone off the register will be the appropriate means for them to leave the register if they remain impaired in respect of misconduct, or a caution or conviction. Although there are other means of leaving the register (agreed removal and lapsing with impairment, discussed below) these will be appropriate in specific circumstances as outlined in this guidance.

When someone is struck off the Register, they cannot apply for restoration for five years. This is an important public protection safeguard that does not apply where people leave the Register through agreed removal, or lapsing while impaired. A striking off decision may, in some cases, also serve an important purpose in relation to upholding public confidence and professional standards. In particular, striking off will be appropriate in most cases relating to:

- misconduct
- criminal convictions and cautions

Two possible exceptions to the general approach in these cases will be situations

- where the professional’s inability to address the misconduct / criminal conduct is clearly related to a health condition - in these situations there must be independent, contemporaneous medical evidence of the relevant health condition and that this is impacting on their ability to address the concerns
- situations where the professional has retired and made it clear through engagement with the NMC that they do not intend to return to practice, providing evidence of this.

In some cases (where the misconduct, or the offence for which the criminal conviction or caution was imposed was particularly serious,) striking off will still be appropriate even where there are relevant health issues or the professional has made it clear that they intend to retire. Panels should refer to our guidance on _____

Our guidance on conditions of practice orders sets out that a nurse, midwife or nursing associate must comply with the conditions of a conditions of practice order. A deliberate failure to comply with a conditions of practice order is likely to be proper grounds for making a striking off order.

Similarly, when imposing a suspension order a panel might set a number of expectations it has, or actions the nurse, midwife or nursing associate could take that would help a future Committee reviewing the order before it expires. It is appropriate for a reviewing panel to look at those requirements and consider whether they have been met when determining what action to take in future. As with conditions of practice, where there has been a failure to satisfy those expectations or a lack of meaningful engagement, then strike off is likely to be the appropriate sanction.

Professionals whose fitness to practise is impaired for reasons of _____ cannot be struck off unless they have been continuously subject to a conditions of practice order for at least two years⁷. No such limitation exists in respect of other cases, such as misconduct.

Case Study

A nurse is found to have engaged in inappropriate conduct / breach of professional boundaries towards a former patient (contacting her by text messages and sending photographs after she had left hospital; trying to initiate a sexual relationship with the former patient). The nurse is initially suspended. If the panel concludes that the nurse remains impaired, and is unlikely to return to safe, unrestricted practice within a reasonable period of time, the nurse should be struck off the Register. The misconduct found proved is a particularly serious and prolonged breach of professional boundaries, involving attitudinal concerns.

2. Lapse with impairment

Where the professional would no longer be on the register but for the order in place, a reviewing panel can allow the order to expire or, at an early review, revoke the order. Professionals in these circumstances will automatically be removed from the register, or lapse, upon expiry or revocation of the order. The panel will record that the professional remains impaired.

A panel should consider allowing a professional to lapse with impairment only in cases where the following factors are present:

- the professional would no longer be on the register but for the order in place⁸;
- the panel concludes that the professional is unlikely to return to safe unrestricted practice within a reasonable period of time;
- The case relates solely to health or English language is one where the professional has retired and has made it clear through engagement with the NMC and evidence that they do not intend to return to practice situations where a professional's inability to address impairment not related to health (for example misconduct or lack of competence) is clearly related to a health condition;
- The case doesn't involve concerns of the kind referred to in our guidance on _____

Circumstances where a health condition may justify allowing the professional to lapse with impairment, even though the underlying impairment does not relate to health, include (but are not limited to) circumstances where⁹:

- 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 within a reasonable timeframe.

The existence of any relevant health condition or lack of mental capacity must be supported by independent, contemporaneous evidence.

Case Studies

A midwife is suspended on the grounds of insufficient English Language skills. When the suspension order is reviewed, the midwife indicates that she is now practising in a country where English language skills are not required. It is therefore unlikely that she will be able to improve her English Language skills within a reasonable period of time. In these circumstances allowing the professional to lapse with impairment will be an appropriate decision.

A nurse is found impaired on the basis of a health condition (alcohol dependency) and is suspended for 12 months. When the suspension order is reviewed, the nurse indicates that she is still struggling with her health condition and has made a settled decision to retire from the profession. The registrant has provided evidence of this. In these circumstances allowing the professional to lapse with impairment will be an appropriate decision.

3. Agreed removal

Please note that situations where an agreed removal application needs to be considered following a substantive order are likely to arise relatively infrequently. This section should be read alongside our more detailed guidance on [Agreed Removal](#).

- Sometimes a professional who is subject to a substantive suspension or conditions of practice order will tell us that they want to leave the Register in circumstances where lifting the substantive order will automatically lead to the professional leaving the Register. Where this is the situation, the professional can make an application for agreed removal. If the Assistant Registrar agrees removal, a panel will be asked at an early review to revoke the order. Once the substantive order is revoked the agreed removal decision can then take effect and the professional will be removed from the register. Where a substantive finding of impairment has been made, agreed removal will usually only be appropriate in cases relating solely to health or English language or where the professional has retired and has made it clear through engagement with the NMC and evidence that they do not intend to return to practice (provided the case doesn't involve concerns of the kind referred to in our guidance on [sanctions for the highest risk cases](#)).
- Agreed removal may also be appropriate where a professional's inability to address impairment not related to health (for example misconduct or lack of competence) is clearly related to a health condition (provided the case doesn't involve concerns of the kind referred to in our guidance on [sanctions for the highest risk cases](#)).

Circumstances where a health condition may justify agreed removal, even though the underlying impairment does not relate to health, include (but are not limited to) circumstances where¹⁰:

- 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 within a reasonable timeframe.

The existence of any relevant health condition or lack of mental capacity must be supported by independent, contemporaneous evidence.

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Before allowing a professional to leave the register by lifting a substantive order or allowing it to expire, the panel should make it clear whether they consider the professional's fitness to practise to be currently impaired.

This is because nurses, midwives or nursing associates, whose registration lapses or are removed from the register after a suspension or conditions of practice order expires or is lifted, can apply for readmission.

In looking at any application in the future, and deciding whether the nurse, midwife or nursing associate is capable of safe and effective practice and meets the requirements for health and character, the Registrar (or one of our

Assistant Registrars who also make decisions on behalf of the Registrar) would be able to take account of the panel's decision that the nurse, midwife or nursing associate's fitness to practise was still impaired when they were removed from the register.

1 *Abrahaem v NMC* [2008] EWHC 183 (Admin) at [23]

2 *Annon v NMC* [2017] EWHC 1879 (Admin)

3 *Bolton v Law Society* [1994] 1 W.L.R. 512 and *PSA v NMC & Graham* [2025] EWHC 3132 (Admin) [60]

4 Article 33(2)(a) of the Order

5 For readmission following Agreed Removal, see [Readmission to the Register](#)

6 see *PSA v NMC & Graham* [2025] EWHC 3132 (Admin), paras 53 and 56 - 61

7 Art 29(6) of the Nursing and Midwifery Order 2001

8 Even if they haven't revalidated, professionals cannot be removed from the register while a substantive suspension or conditions of practice order is in place. See Art 12(3)(b) of the Nursing and Midwifery Order 2001; Rule 14(4)(b) of the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004

9 See [Cancelling hearings](#) for guidance on these circumstances.

10 As above