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Reviewing case examiner decisions

Reference: REV-1 Last Updated: 12/10/2018

The Registrar is able to review the following decisions¹ made by case examiners (or, where they didn't agree, determinations by the Investigating Committee):

- A no case to answer decision.
- A no case to answer decision where they have given [advice](#) or issued a [warning](#).
- A recommendation that [undertakings](#) are agreed with the nurse or midwife.
- A decision that undertakings should no longer apply and that the allegation against the nurse or midwife should not be considered further.

At the end of our investigation case examiners or the Investigating Committee consider the evidence and decide if there is a case to answer or if there is no case to answer.

A 'no case to answer decision' is when case examiners or the Investigating Committee consider that the facts of the case or the finding of impairment are not capable of being proved, and they either close all of the concerns which have been referred or some of the concerns.

Find out how we [check if we can start a review](#) and [what happens during the review process](#).

¹ Rule 7A(1)(a-c)

Stage one: should we start a review?

Reference: REV-1a Last Updated: 12/10/2018

In this guide

- What we're able to review
- Time limit for starting a review
- Who can request a review
- Grounds for a review
- Deciding if a review would be in the public interest or necessary to prevent injustice to the nurse or midwife
- Letting people know there will be a review
- Deciding if further investigation is needed

What we're able to review

The Registrar is able to review and reopen a no case to answer decision as long as it was made after 9 March 2015. The Registrar is also able to review:

- a decision to impose undertakings
- a decision to remove undertakings and not to consider the allegations any further.

A request can be made to review the whole of a decision or part of a decision. The whole of the decision does not have to be called into question for a review to take place.

The Registrar is not able to review a decision when a nurse or midwife is not on our register.

When we receive a request to review, we will check that the nurse or midwife is still on our register. If the nurse or midwife has lapsed from our register between the time that the decision was made and the power to review request was received, we cannot review the decision and the reviewable decision will remain in place. We'll make a note of the request against the lapsed registration on our register in case the nurse or midwife applies to be readmitted in the future.

Time limit for starting a review

The Registrar cannot start a review of a decision more than one year after the date of that decision, unless there are exceptional circumstances.¹

When the Registrar is assessing whether there are exceptional circumstances, they should consider:

- the seriousness of the allegationthe period of time since the one year time limit expired
- the reasons (if any are provided) why the review request was not made sooner.
- if it's likely that relevant evidence will no longer be available,
- if the allegations relate to a single incident or a wider pattern of behaviour
- the continuing risk to the public and/or public interest, and
- if the allegations raise an important/new/developing area of practice or principle of law

Exceptional circumstances should not be defined too narrowly. This allows for each case to be considered fairly and with flexibility. The Courts have held that exceptional... "describes a circumstance which is such to inform an exception, which is out of the ordinary course, or unprecedented, or very rare but it cannot be one which is regularly or routinely encountered".²

Who can request a review

Anyone can request a review, but generally requests come from:

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- the person or organisation who originally referred the allegation
- the nurse or midwife themselves
- a third party who was somehow connected with the events that led to the referral (for example, a patient, colleague or an employer)
- a member of our staff.

Grounds for a review

The Registrar can review all of or part of the decision if they have reason to believe:³

- the decision may be **materially flawed**, or
- there is **new information** which the decision makers did not have which may have meant a different decision was made.

In both cases, the Registrar will only review the decision if they think it is in the public interest or is necessary to prevent unfairness to the nurse or midwife.

The relatively low threshold applied for deciding to review reflects that the Registrar may not have much information to assist them at this stage as they will not have representations from all parties nor will they have had the chance to carry out any further investigation.

The request to review the decision must specify if the request is made on the grounds of new information or material flaw and provide detail to the Registrar in support of this. We will not refer requests to review a case to the Registrar if the review request is only an expression of general unhappiness with the decision. This is because the Registrar can only decide to review decisions if the grounds for review have been satisfied.

Material flaw

A decision can be flawed⁴ in its reasoning or content, or as a result of the process that was followed in the decision being made. For example, a decision could be flawed by:

- applying the wrong legal test
- reaching a conclusion that the available evidence does not support or relying on evidence which is not relevant or failing to take account of relevant evidence
- not carrying out an investigation properly
- all relevant evidence not being supplied to the decision maker
- inaccurate information being supplied to the decision maker
- failing to give adequate reasons
- failing to comply with certain procedural requirements.

The whole decision does not need to be flawed, just an element of it. The Registrar will need to look at what happened during the investigation and how the decision makers came to their decision.

If the Registrar decides that the decision may be flawed, they will then consider if the flaw is a material one.

The Registrar will consider how the flaw may have affected the decision in order to decide if the flaw is material. If the flaw could have led to a different outcome, then it is likely that the flaw is a material flaw.

New information

New information⁵ is any information that we did not have when the case examiners or Investigating Committee made a decision. The Registrar should consider if the new information could have affected the decision if it had been available at that stage.

This ground raises two questions.

- Has any new information been supplied or identified?
- If the information was available at the time of the decision, could it have made a difference to the decision?

The person requesting the review should explain what the new information is and why the new information is likely to change the decision. If the person requesting the review has the new information then they should provide this. If they don't provide the new information they need to explain why and what steps they have taken to obtain this. New information which amounts to a new allegation is usually treated as a new referral.

Deciding if a review would be in the public interest or necessary to prevent injustice to the nurse or midwife

If either one or both of the grounds for review (see above) are met, the Registrar will consider whether it is in the public interest for there to be a review or if a review is necessary to prevent injustice (unfairness) to the nurse or midwife. At this stage the Registrar does not need to consider the possible outcome of the review of the decision.

Public interest

Our focus is to protect the public. When the Registrar is thinking about the wider public interest, they will consider how the decision will impact on public protection, maintaining public confidence and upholding standards of conduct and behaviour.

In considering this, the Registrar will take into account the following points:

- Would a failure to review the decision leave the public at real risk of harm from the nurse or midwife?
- Does the nurse or midwife currently pose a risk to the health, safety or wellbeing of the public, which requires some form of restriction on their registration?
- Is the regulatory concern about clinical issues which are so serious that they can't be remedied, meaning we need to take action to uphold public confidence?
- If the regulatory concern is not about clinical practice, has the nurse or midwife done something that raises fundamental questions about their trustworthiness as a registered professional, meaning we need to take action to uphold standards and confidence?

Necessary to prevent injustice to the nurse or midwife

This consideration is only likely to be relevant where a nurse or midwife has been given advice or issued with a warning as part of the case examiners no case to answer decision or undertakings have been recommended which the nurse or midwife cannot accept.

The Registrar will consider:

- the seriousness of the regulatory concern, and
- the need to promote and maintain public confidence and proper professional standards and conduct.

They will then assess whether the decision is proportionate to these factors.

The Registrar may identify grounds for a review which have not been identified by the person requesting the review. The Registrar is not limited to the scope of the request and could find a case to answer in a case where a nurse or midwife is requesting a review of the decision to impose a warning or advice.

Once a case has met the criteria in stage one, we count the review as having started.

Letting people know there will be a review

The Registrar must⁶ notify the following parties of any decision taken to review a decision.

- The nurse or midwife
- The referrer (person who originally referred the concerns to us)
- Any other person who the Registrar thinks has an interest in being informed, such as the person requesting the review.

The Registrar should provide the above parties with any new information⁷ that has been obtained, if it's appropriate to disclose this to them. In practice, there could be sensitive information that is not appropriate to disclose to anyone other than the nurse or midwife. The Registrar must be careful as to what information in particular is appropriate to be disclosed to the referrer.

The Registrar must also seek representations from the parties.⁸ Therefore, when we write to inform the parties of the review we invite them to send us written representations about this by a set date; 21 days are usually allowed for representations. Therefore, when we write to inform the parties of the review we invite them to send us written representations about this by a set date; 21 days are usually allowed for representations.

Reviews

If the Registrar decides not to review a decision, we will inform the person who requested the review that the decision will remain in place.

Deciding if further investigation is needed

Once the Registrar decides to review a decision, we are able to carry out any investigative work that the Registrar feels is necessary to help them decide if a fresh decision is necessary.⁹ No investigative work should be carried out before this decision is taken.

The Registrar may have to deal with new information which comes to light during the further investigation. The Registrar's powers to investigate as part of a review are not intended to be used for a case to be reinvestigated. The Registrar will decide at the end of the further investigation if they have sufficient information to start stage two of the review.¹⁰

We will complete our further investigation in cases where this has been identified as necessary before asking for parties to make any representations. We will disclose any new information obtained to the nurse or midwife whose case is being reviewed and will consider if it is appropriate to disclose this to other parties (as outlined above under "letting people know there will be a review").

1 Rule 7A(10)

2 Lord Bingham CJ in *R v Kelly (Edward)* (No.2) (2001) EWCA 1751

3 Rule 7A(2)(a-b)

4 Rule 7A(2)(a)

5 Rule 7A(2)(b)

6 Rule 7A(3)(a)

7 Rule 7A(3)(b)

8 Rule 7A(3)(c)

9 Rule 7A(5)

10 Rule 7A(6)(a-b)

Stage two: what happens during the review process?

Reference: REV-1b Last Updated: 12/10/2018

In this guide

- Considering the outcome of the review
- If a fresh decision is not required
- If a fresh decision is required
- Communicating the outcome of the review
- Challenging a decision

Considering the outcome of the review

At this stage (stage two)¹ the Registrar considers if

- all or part of the decision was materially flawed, or
- any new information would probably have led to a different decision.

If either or both of the above apply, they must then decide if a fresh decision is required because:

- it is in the public interest, or
- it is necessary to prevent injustice (unfairness) to the nurse or midwife.

This is a different test to the [initial stage](#) where the Registrar only decides if it is possible that the grounds are met. At this stage, the Registrar decides on the merit of the request and if a fresh decision is necessary.

Factors that may have led to a review being in the public interest will not necessarily mean that there is a public interest in a case being reopened, even if one of the grounds has been met. It may be that the review of the case has satisfied the public interest.

If a fresh decision is not required

If the Registrar decides it is not in the public interest nor necessary for fairness to the nurse or midwife for the case to be re-opened, then the decision stands.

We will write to the nurse or midwife, referrer and other relevant people with the Registrar's decision and their reasons for this (see below).

If a fresh decision is required

If the Registrar decides that it's in the public interest or is necessary to ensure fairness to the nurse or midwife that the case is re-opened and a fresh decision is made, they can:

- refer the decision back to the case examiners for reconsideration²
- substitute a new decision.³

The Registrar might take into account the following considerations in deciding which of the options to choose:

- Is a total re-examination of the evidence required, or is it a narrower issue on which the Registrar is able to take a decision?
- Is the specialist clinical knowledge of a registered case examiner (i.e. a registered nurse or midwife) required to assess the case?
- Delay to the progress of the case and how this affects the interests of the nurse or midwife and the wider public interest in concluding cases expeditiously.
- Do the case examiners have outcomes available to them that the Registrar does not have if substituting their own decision? For example, where the powers to impose a warning, advice or undertakings are not available

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to the Registrar but would be if the case was sent to the case examiners.

The Registrar cannot refer a case involving undertakings to the case examiners. They must make the decision in these cases themselves.

Communicating the outcome of the review

The Registrar must notify the following parties of the decision they have made on their review:

- The nurse or midwife.
- The referrer (the person who originally referred the allegation).
- Any other person who the Registrar thinks has an interest in being informed, such as the person who requested the review.

Challenging a decision

We cannot review the Registrar's decision at either stage one or stage two of the process. The only way the Registrar's decision can be challenged is by applying to the courts for judicial review.

¹ Rule 7A(6)

² Rule 7A(7)(a)(i)

³ Rule 7A(7)(a)(ii)

Interim order reviews

Reference: REV-2 Last Updated: 26/11/2018

An [interim order](#) will usually be reviewed every six months. This can happen either at a hearing or a meeting. We will invite the nurse or midwife to attend the review hearing, or to send in representations if the order is being reviewed at a meeting.

Review meetings are held in private and the panel will be invited to confirm the interim order currently in place.

Find out more about what happens at an interim order review hearing.

What happens at an interim order review?

Reference: REV-2a Last Updated: 28/07/2017

In this guide

- How does a panel make a decision?
- A panel's powers
- Reviewing interim suspension orders
- Reviewing interim conditions of practice orders

How does a panel make a decision?

The panel must make sure that it thoroughly considers the initial interim order in the light of all the circumstances that are now before the review hearing.

Some of the factors the panel will consider include:

- the circumstances at the time the interim order was made, summarised in the decision of the panel
- any other relevant documentation, and
- any change of circumstances since then.

If the panel wishes, it can see the transcript of the first full interim order hearing where the nurse or midwife made representations. Previous transcripts can be made available to panels sitting on later interim order review hearings if necessary, but they are not provided as standard.

If the nurse or midwife has never attended in person or via a representative and made representations, future panels will not need a transcript and the previous decision notice will suffice.

A panel's powers

A panel can review the interim order at either a private meeting or a public hearing. The panel then may:

- revoke the interim order or revoke any condition imposed by the interim order
- confirm the interim order
- vary any condition imposed by the interim order
- replace an interim conditions of practice order with an interim suspension order for the remainder of the duration of the interim order
- replace an interim suspension order with an interim conditions of practice order for the remainder of the duration of the interim order.

Reviewing interim suspension orders

Interim suspension orders will usually be reviewed at meetings unless there has been a material change of circumstances, or unless the nurse or midwife requests a review hearing.

Reviewing interim conditions of practice orders

Interim conditions of practice orders will usually be reviewed at hearings unless a full consideration of all the information before us suggests that the order can be confirmed at a review meeting.

Early reviews of interim orders

Reference: REV-2b Last Updated: 12/10/2018

When we impose an interim order we continually risk-assess any new information and will refer a case for an early review if needed.

In general, when we receive requests for an early review from a nurse or midwife we'll arrange a review hearing.

However, there are cases when we won't accept such requests.

When we don't accept a request for an early review:

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

When we will review interim orders

If we receive information that shows the original interim order may not be appropriate, we'll schedule a review.

For example, we might receive information that suggests a more restrictive, or conversely, a less restrictive measure is needed to manage any risk to patients or the wider public interest.

In these cases where new, relevant evidence becomes available after an interim order has been imposed, it must be reviewed by a panel at an early review hearing, before the usual six month review date.

Examples of cases where we would schedule an early review are:

- when we receive information that suggests that conditions imposed as part of an interim order are unworkable
- when the nurse or midwife was unable to attend the initial interim order hearing or provide detailed submissions to the panel, and is now in a position to do so
- when we receive information that suggests that the interim order has been breached
- when we receive new information, that affects the previously identified risk. For example multiple referrals.

When we give notice of an early review

We try to give 14 days' notice for review hearings but there will be times when we need to provide a shorter timeframe.

For instance, if we feel there are urgent public protection needs that are not addressed by the current interim order, we can send the notice less than seven days before the hearing.

If we do this we'll explain our reasons in the notice of hearing.

If the panel at an early review is being asked to consider imposing a more restrictive interim order than the one already in place, the notice should clearly set out the reasons for this request. The reasons should make reference to one or more of the three legal grounds that an interim order can be made on.

At an early review hearing, the panel will consider the grounds for an interim order in full. The panel will hear full representations and will undertake a full reconsideration of the grounds for an interim order, ensuring that all relevant matters are taken into account.

Notice

Reference: REV-2c Last Updated: 28/07/2017

We try to give 14 days' notice for review hearings but there may be instances where we provide a shorter timeframe. For instance, if we feel there are urgent public protection needs that are not addressed by the current interim order then we can send the notice less than seven days before the hearing. If we do this we will provide reasons for this in the notice of hearing.

If the panel at an early review is being asked to consider imposing a more restrictive interim order than the one already in place, the notice should clearly set out the reasons for this request. The reasons should make reference to one or more of the three legal grounds that an interim order can be made on.

At an early review hearing, the panel will consider the grounds for an interim order in full. The panel will hear full representations and will undertake a full reconsideration of the grounds for an interim order, ensuring that all relevant matters are taken into account.

Substantive order reviews

Reference: REV-3 Last Updated: 28/07/2017

A substantive order review is where a panel of the Fitness to Practise Committee (panel) meets to review a sanction order made at a final (or substantive) [hearing or meeting](#). A panel considers whether the substantive order currently in place, or a different order, is needed to:

- protect the public from a risk of harm presented by the nurse or midwife
- maintain public confidence in the nursing and midwifery professions
- declare and uphold proper standards of conduct and behaviour.

This makes sure that nurses and midwives who are subject to these orders are only allowed to return to unrestricted practice if a panel finds that their fitness to practise is no longer impaired for any of these reasons.

[Suspension orders](#) and [conditions of practice orders](#) must be reviewed before they expire,¹ unless the panel that makes the order also directs that a review is not needed.²

The nurse or midwife who is subject to a [caution order](#), [conditions of practice order](#) or [suspension order](#) can request that an early review of the order takes place before a panel. We may also apply for an early review because we have decided that new information means that it would be in the public interest for a panel to review the existing order³. In certain circumstances it may be appropriate to review a striking off order where new evidence becomes available⁴.

¹Article 30(1) of the Nursing and Midwifery Order 2001 ('the Order')

²Article 29(8A) of the Order

³Article 30(2) of the Order

⁴Article 30(7) of the Order

Standard reviews of substantive orders before they expire

Reference: REV-3a Last Updated: 12/10/2018

In this guide

- Overview
- How the panel reaches a decision
- What powers does the panel have?

Overview

When a conditions of practice or suspension order has been imposed, we are legally bound¹ to review the order before it expires (unless the panel making the original order expressly decided that a review was not necessary).

We'll usually schedule the review to take place eight weeks before the order is due to expire, which allows us time to reschedule the review if for any reason the review can't go ahead.

How the panel reaches a decision

At the review, we will ask the panel to consider whether the nurse or midwife's fitness to practise remains impaired in light of any **new** facts or information about the issue of impairment. The nurse or midwife is also able to put new information before the panel. At a review hearing, if anyone (either us or the nurse or midwife) wants to establish that a fact happened, they will need to prove this on the balance of probabilities.

The panel will then go on to consider what has happened in the nurse or midwife's practice since the last hearing or meeting, and will take into account the following factors:

- Has the nurse or midwife complied with any conditions imposed? What evidence has the nurse or midwife provided to demonstrate this? What is the quality of that evidence and where does it come from?
- Does the nurse or midwife show insight into their failings or the seriousness of any past misconduct? Has their level of insight improved, or got worse, since the last hearing?
- Has the nurse or midwife taken effective steps to maintain their skills and knowledge?
- Does the nurse or midwife have a record of safe practice without further incident since the last hearing?
- Does compliance with conditions or the completion of required steps demonstrate that the nurse or midwife is now safe to practise unrestricted, or does any risk to patient safety still remain?

If the panel decides that the nurse or midwife's fitness to practise is no longer impaired and no further restrictions on their practice are needed, they can allow the existing order to expire and the case will conclude.

However, if the panel decides that some restriction on the nurse or midwife's practice remains necessary, because their fitness to practise is still currently impaired, they will decide what sanction, if any, to impose.

What powers does the panel have?

A panel can:

- extend the existing order
- make a new order
- allow the existing order to expire.

When extending the duration of the existing order, a panel cannot extend a conditions of practice order by more than three years at a time, or a suspension order by more than one year at a time.²

When replacing one order with another in a case based on health, lack of competence, or not having the necessary knowledge of English, a panel cannot make a striking-off order unless the nurse or midwife has been

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on a substantive conditions of practice order, a substantive suspension order, or a combination of the two, for more than two years.

Any time spent on an interim order does not count towards the two year period.

For example, if a nurse or midwife has been subject to two 12 month suspension orders (one following on immediately from the first), a panel cannot make a striking-off order at the second standard review.

This is because the nurse or midwife will not have been on a substantive order for a total period of two years when the panel is carrying out the review hearing, as the review hearing takes place before expiry of the second 12 month suspension order.

Any change to the order, or extension of the order, does not take effect until the existing order expires.

Making an immediate change to the order, rather than waiting for the change to happen once the existing order has expired, is only necessary in exceptional cases.

¹ Article 30(1) of the Order

² Article 30(5) of the Order

Early review of a substantive order

Reference: REV-3b Last Updated: 12/10/2018

In this guide

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

Overview

A nurse or midwife 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 or midwife, and we consider that a different order, or that no order is required as a result of that information.

When we schedule early reviews

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

- The nurse or midwife has requested a review because they are generally dissatisfied with the outcome of a previous hearing. Where this is the case, the nurse or midwife 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 serious, or a more serious 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 or midwife is acting in breach of the order.
- Problems in the nurse or midwife's practice which led to the order being imposed have recurred, worsened, or the nurse or midwife's fitness to practise appears to have got worse
- Conditions of practice have become unworkable and a review is required to allow the nurse or midwife to continue to practice while ensuring ongoing public protection.
- The nurse or midwife 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.

What happens when we schedule an early review

If an early review hearing is scheduled, we will send the nurse or midwife 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 or midwife 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

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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

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 be in place for the remainder of the term of the order being reviewed.
- 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

¹ Article 30(2) of the Order. Striking off orders can be reviewed under Article 30(7) or the Order

² Article 30(2) provides that the relevant practice committee 'may' review the order on the application of the person concerned, or otherwise

³ Article 30(10) of the Order

⁴ Article 30(4)(d) of the Order

⁵ Article 30(4)(d)

Exceptional cases: changing orders with immediate effect at a standard review

Reference: REV-3c Last Updated: 28/07/2017

In this guide

- [Overview](#)
- [Cases that could require immediate action](#)
- [A panel's powers](#)

Overview

Sometimes, during the course of a standard review of a substantive order new information comes to light that indicates a significant and immediate risk to the public, or a need to act to protect the interests of the nurse or midwife. In these circumstances, a panel may consider replacing the existing order with a different one that starts immediately, rather than when the current order expires. While this is a course of action that a panel may take, it is only appropriate in exceptional cases.

This guidance explains when it is appropriate to change an order with immediate effect, and the powers available to a panel in such circumstances.

Cases that could require immediate action

Exceptional cases will involve a **significant** and **immediate** risk to the public, or it will be proportionate to act in the interests of the nurse or midwife. For example:

- A nurse or midwife, states that they have been practising in breach of conditions, or their insight into former behaviour has drastically deteriorated.
- A nurse or midwife, who had previously been suspended, demonstrates to the panel that they are now able to practice with restriction. They have been offered a job to start the next day, but cannot accept employment while their registration is suspended.

If a nurse or midwife's concern is that the current order is too restrictive, the panel should consider the public interest in allowing the order to reach an end, to properly mark the misconduct, or to address the risks identified.

Where a panel has identified significant public protection concerns, it should assess what the real and immediate risk is, and whether the public is adequately protected for the few weeks left to run. For example, where a nurse or midwife is on a conditions of practice order, but the public is adequately protected because the nurse or midwife is not currently employed and is subject to stringent conditions, such as direct supervision, there is no need for an immediate change to a suspension order.

A panel's powers

Given that exceptional cases begin as standard reviews, there will only be a short period of time left on the order before it expires, as we will usually schedule standard reviews before expiry within eight weeks of the date of expiry of the order. Any change to the order will take effect immediately. However, the change will only apply to the remainder of time left on the order being reviewed. This is why the power to change orders with immediate effect is generally limited to an early review, where the remainder of the term is long enough for the change of order to have an impact.

In the majority of exceptional cases, a significant and immediate risk to the public will have been identified, and given this, a panel may want the new order to continue for longer than the remainder of time left on the order. In these circumstances a panel has the following powers:

Reviews

- change any condition imposed by the order¹ and extend, or further extend the period for which the order is in place under its powers of early review²
- replace the order with a caution order, a conditions of practice order, a suspension order or a striking-off order.³ Then, extend the order using its powers under the standard review procedure.⁴

Under the powers of an early review a panel may change any conditions of an existing order and then extend the life of that order. In an early review, a panel may also decide to replace the existing order with a completely new one. However, any new order imposed at an early review will only be effective for the remaining length of time of the original order and it cannot be extended beyond this time using the powers of early review.⁵

To extend the order, a panel should then use its powers under the standard review procedure. By using its powers this way a panel can make sure that a nurse or midwife is not placed on an order for longer than allowed. If a panel used its powers of early review to replace the existing order with a new one and then extend the order for the maximum period using its powers of early review, the order would run for longer than intended or allowed. This is because substantive orders are not reviewed on the day they are due to expire, they are normally reviewed six weeks before they expire. The time left before the order expires would be added on to the length of the new order.⁶

If a panel decides to use its powers of early review during a standard review hearing, that is to take immediate action, it should:

- begin by noting that the review hearing was started as a standard review before expiry
- decide, and explain clearly, the exceptional circumstances which require them to take immediate action using their powers of early review
- produce a clear record of its reasoning to be available as part of the written decision.

1 Article 30(4)(f) of the Order

2 Article 30(4)(b) of the Order

3 Article 30(4)(d) of the Order

4 Article 30(1)(a) of the Order

5 See Article 30(4)(d) of the Order: shall have effect for the remainder of the term of the order it replaces.

6 Also, in such circumstances, the next reviewing panel may question whether the order is still in force, as the wording of article 30(2)(4)(d) states that any replacement order shall only have effect for the remainder of the term of the order it replaces. In such cases panels should still conduct a review of the substantive order where it is clear that the intention of the previous panel was for the replacement order to run for longer than the period left before the expiry of the original order.

Review of striking-off orders

Reference: REV-3d Last Updated: 12/10/2018

A striking-off order lasts at least five years, during which time a nurse or midwife who's been struck off the register, may not apply to go back on, also known as applying for restoration .

An exception to this rule is when a panel carries out a review of the striking-off order because new, relevant evidence has become available since the order was made.

An application for a review of a striking-off order can be made at any time during the life of an order.

It is important to note that the right to request a review of a striking-off order should not be confused with the right to [appeal](#) within 28 days of receiving the panel's decision.

When we receive an application to review a striking-off order, we carefully consider the merits of the application.

If the evidence submitted as part of this application is evidence that was not available at the time of the original hearing, and could have made a real difference to the panel's final decision, then we will refer the application to the Fitness to Practise Committee.

Applications referred for review will follow the same procedure as set out for restoration hearings, meaning reviews will be considered in a meeting unless the nurse or midwife has indicated that they would like to appear before the panel.

New allegations

Reference: REV-3e Last Updated: 12/10/2018

If we receive information about the practice of a nurse or midwife which suggests that there has been further misconduct, poor practice or difficulties caused by health or lack of knowledge of English, since a substantive order was put in place, we have to decide whether a panel should be made aware of the new allegation as part of the review process, or whether we should treat the information as a new referral.

Generally, we would make the reviewing panel aware of the new information when:

- it relates to the existing order, for example it suggests that there may have been a breach of conditions of practice
- the original case arose due to clinical or competence concerns, and the new information suggests that similar poor practice to those previously proved have occurred again
- it relates to health, for example it suggests that the nurse or midwife's health condition (already established before a practice committee) has deteriorated.

If we decide not inform the reviewing panel of the new information, but to treat the information as a new referral, we will refer it to our screening team.

They will decide whether there should be a new investigation into the nurse or midwife's fitness to practise.

Reviewing orders when there may have been a breach

Reference: REV-3f Last Updated: 12/10/2018

If we receive information that shows the nurse or midwife may be in breach of their substantive order, we will arrange an early review.

Where a nurse or midwife accepts the breach and the facts of the breach, the panel will record this and review the substantive order in light of the new information.

Where the breach is not accepted, the panel will conduct a fact finding exercise at the early review hearing to decide whether or not there has been a breach of the order.

The panel will then conduct a review of the order once they have decided whether the order has been breached.

Where a breach is so serious we will treat the new information as a new referral, taking into account the wider public interest concerns. However, in most cases, substantive order review panels are equipped to deal with any breach of a substantive order.¹

¹ See paragraph 25.328 of [The Fifth Report to the Shipman Inquiry](#), where Dame Janet Smith referred to review hearings as, "extremely important, as they are the 'teeth' behind the sanctions other than erasure."

Reviews where an interim order is in place

Reference: REV-3g Last Updated: 12/10/2018

If we receive new information which has led to a new referral and an interim order has been put in place, we'll tell the substantive order review panel about the interim order.

Putting all appropriate information before substantive order review panels ensures that the public, and the wider public interest, are protected.

Where the new matters are not admitted, the panel will have to be careful in how it considers those matters in the review.

Difficulties may arise where the interim order is more restrictive than the substantive order being reviewed.

A panel will still undertake a full review of the substantive order and the nurse or midwife's current fitness to practise, so that the public, and the wider public interest, are protected. In such cases the panel should not change a substantive order just to mirror the interim order.

Allowing orders to expire when a nurse or midwife's registration will lapse

Reference: REV-3h Last Updated: 09/04/2018

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Overview

In certain circumstances allowing a suspension or conditions of practice order to expire following a finding of current impairment may actually be the best way to protect the public from concerns about a nurse or midwife's practice.

Taking this option is likely to be appropriate if:

- the nurse or midwife's registration is only active because of the substantive order being in place,
- the nurse or midwife doesn't want to continue practising, and
- the public are protected because the panel have made a clear finding that the nurse or midwife's fitness to practise is currently impaired so that this can be drawn to the attention of any future decision-maker if the nurse or midwife attempts to re-join the register.

It is important that panels remember that the above factors are important in deciding whether to take no further action, and they should consider these against the general circumstances of the case in deciding what action to take. At this stage, all options are open to them, and the usual factors in making sanction decisions will still apply. They may need to impose a more restrictive order (including striking-off) if they decide it is necessary in the circumstances, including if the nurse or midwife has not engaged with the process, which will always be one of the important factors to consider.

Nurses or midwife only still registered because of the order

If nurses and midwives don't pay their fee and complete revalidation, their registration would usually lapse. However, if a nurse or midwife is on a conditions of practice order, or a suspension order, their registration cannot lapse because of the existence of the order. If the panel decide to allow the order to expire, the nurse or midwife who has not paid their fee or completed revalidation would no longer be registered with us, and would not be able to practise.

Nurse or midwife doesn't want to continue practising

Because nurses and midwives can apply for readmission to the register as soon as their registration lapses, it is important that the panel is sure that the nurse or midwife no longer wants to practise before it decides to let an order expire. This is because if the panel has found the nurse or midwife's fitness to practise to be currently impaired, the nurse or midwife will not have addressed the concerns about their practice, and will not have shown the panel that they do not present a risk to patients. The nurse or midwife will need to give the panel a clear explanation of their plans for the future away from nursing or midwifery. Such information is only likely to be available if the nurse or midwife is in contact with us, so it will be important for panels to consider if the nurse or midwife is fully engaging with the process before deciding to take this option.

Public protected by finding of impairment

Before making a decision about whether to extend the existing order, make a new order or allow the existing order to expire, the panel will have already decided that the nurse or midwife's fitness to practise is impaired. In this situation, a finding of current impairment will be essential to protect the public in the future, so it should be expressed clearly.

This is because nurses and midwives whose registration lapses after a suspension or conditions of practice order expires can apply for readmission. In looking at any application in the future, and deciding whether the nurse or midwife is capable of safe and effective practice and meets the requirements for health and character, the Registrar would be able to take account of the panel's decision that the nurse or midwife's fitness to practise was still impaired.

A clear explanation about the nurse or midwife's fitness to practise at the point of their departure from the register will make sure that the Registrar is aware of how the nurse or midwife's practice caused a risk to patients. In such circumstances the Registrar can ask the nurse or midwife to show what they have done to improve their practice and reduce any outstanding risk.