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Factors to consider before deciding on sanctions

Reference: SAN-1 Last Updated: 31/08/2018

In this guide

- Proportionality
- Aggravating features
- Mitigating features
- Previous interim orders and their effect on sanctions
- Previous fitness to practise history

Proportionality

Being proportionate means finding a fair balance between the nurse or midwife's rights and our **overarching objective of public protection**.¹ We need to choose a sanction that doesn't go further than we need to meet this objective. This reflects the idea of right-touch regulation², where the right amount of 'regulatory force' is applied to deal with the target risk, but no more.

The Fitness to Practise Committee has to be proportionate when making decisions about sanctions. It's under a legal duty to make sure that any decisions to restrict a nurse or midwife's right to practise as a registered professional are justified.

To be proportionate, and not go further than it needs to, the Committee should think about what action it needs to take to tackle the reasons why the nurse or midwife is not currently fit to practise.

They should consider whether the sanction with the least impact on the nurse or midwife's practise would be enough to achieve public protection, looking at the reasons why the nurse or midwife isn't currently fit to practise and any aggravating or mitigating features.

If this sanction isn't enough to achieve public protection, they should consider the next most serious sanction. When the Committee finds the sanction that is enough to achieve public protection, then it has gone far enough.

They need to explain why the following most serious sanction is not necessary as it would be going further than is needed to achieve public protection – simply saying that it would be disproportionate isn't enough.

Aggravating features

Aggravating features are aspects of the case that make it more serious. They might mean that the Fitness to Practise Committee needs to order a sanction that has a greater impact on the nurse or midwife's practice.

Some possible aggravating features are:

- any previous regulatory or disciplinary findings
- abuse of a position of trust
- lack of insight into failings
- a pattern of misconduct over a period of time
- conduct which put patients at risk of suffering harm.

If a nurse or midwife's actions put people at risk of being harmed, this risk makes their case more serious. However, keeping patients safe also includes avoiding a culture of blame or cover up, so we do not want to punish nurses and midwives for making genuine clinical mistakes.

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Generally, whether or not harm did happen is less important than whether the nurse or midwife's actions caused a risk of harm. We explain why this is in our guidance on [investigating what caused the death or serious harm of a patient](#). It confirms that the fact that someone did suffer harm will only make a nurse or midwife's conduct or failings more serious if they deliberately chose to take an unreasonable risk with the safety of patients or service users in their care.

Mitigating features

Mitigating features are aspects of the case that show it is less serious, and point towards a sanction with less impact on the nurse or midwife's practice being appropriate. The Fitness to Practise Committee will always look carefully at any evidence about mitigation when they are deciding which sanction, if any, to impose.

Mitigation can be considered in three categories.

- Evidence of the nurse or midwife's insight and understanding of the problem, and their attempts to address it. This may include early admission of the facts, apologies to anyone affected, any efforts to prevent similar things happening again, or any efforts to put problems right.
- Evidence of that the nurse or midwife's has followed the principles of good practice. This may include them showing they have kept up to date with their area of practice, or their previous good character or history.
- Personal mitigation, such as periods of stress or illness, personal and financial hardship, level of experience at the time in question, and the level of support in the workplace.

In regulatory proceedings, where the purpose of sanctions is to protect the public and not to punish nurses and midwives, personal mitigation is usually less relevant than it would be to punishing offenders in the criminal justice system. In some cases, sanctions might have an effect that could be described as being punitive, but this is not their purpose.

As we explained in the section about aggravating factors, we take patient harm extremely seriously. Putting patients at risk of harm makes a nurse or midwife's failings more serious. If the nurse or midwife's actions put patients or members of the public at a real risk of suffering harm, and the reason they did not suffer harm was down to chance, the fact that nobody suffered actual harm is generally not a good mitigating factor.

Nurses and midwives can submit references and testimonials as mitigation evidence. The Fitness to Practise Committee will use our guidance on [remediation and insight](#) when weighing up how useful these documents are to their decision making in each case.

Previous interim orders and their effect on sanctions

Interim orders have a separate and different purpose from final sanctions.

The purpose of [interim orders](#) is to tackle risks while a case is being investigated and prepared, and before the Committee decides whether the nurse or midwife is fit to practise.

When making their decision on sanction, the Fitness to Practise Committee may be told that the nurse or midwife was under an interim order before they started deciding the case. The panel should consider the effect this might have.

Effects on which sanction to impose

If a nurse or midwife has been under an interim order they may have only had a limited chance to remedy the risks in their practice by working as a nurse or midwife.

If the nurse or midwife has followed the terms of the interim order, and made good progress under it, this can be relevant to questions about how much insight the nurse or midwife has shown, and how much of a risk they may present to the public in the future.

Equally, any evidence that the nurse or midwife did not fully comply with an interim order may be relevant to questions about insight, their attitude towards professionalism, and whether they are likely to comply with any order the Fitness to Practise Committee might make.

Effects on length of sanction

The fact that a nurse or midwife was previously under an interim order, and for how long, are relevant background factors in deciding on what a proportionate length of sanction might be.

However, it would usually be wrong to simply deduct or discount the length of time for which the nurse or midwife was previously restricted or suspended under an interim order from the sanction order the panel is thinking about making.

If a panel refers to a current risk to public protection as part of their decision about the nurse or midwife's fitness to practise, and has first decided on the appropriate period of suspension or conditions of practice to protect patients, then patients may be put at risk of suffering harm if the 'time served' under an interim order was simply taken off the original period of sanction. This decision could mean the order is not likely to be sufficient to achieve its purpose of public protection.

Previous fitness to practise history

The nurse or midwife's fitness to practise history with us can be relevant to a decision on sanction. It's most likely to be useful in cases about similar kinds of concerns. If problems seem to be repeating themselves, this may mean that previous orders were not effective to help the nurse or midwife address them. If the panel is considering making a similar order to those made by previous panels, it may need to take this factor into account and reconsider if necessary.

The fact that a nurse or midwife does not have a past fitness to practise history is not generally a relevant consideration to the decision on sanction. Unlike a criminal court, the panel is not punishing the nurse or midwife. Its role is to decide which sanction is needed to achieve public protection. This includes protecting patients, maintaining public confidence and upholding the standards we expect of nurses and midwives.

Panels making sanction decisions will already have decided that the nurse or midwife's fitness to practise is impaired. It may already be clear that they need to take restrictive action to protect patients from harm. The fact that the nurse or midwife has not previously received a fitness to practise sanction is unlikely to be a relevant consideration in deciding which order is needed to achieve public protection.

Sometimes, panels will have to make decisions on sanction in cases where the nurse or midwife's conduct is so serious that it is fundamentally incompatible with continuing to be a registered professional. If this is the case, the fact that the nurse or midwife does not have any fitness to practise history cannot change the fact that what they have done cannot sit with them remaining on our register.

For these reasons, panels should bear in mind there will be usually be only extremely limited circumstances where the concept of a 'previously unblemished career'³ will be a relevant consideration when they are deciding which sanction is needed, or in giving their reasons.

¹ See the balance between the individual's rights and the public interest in *Huang v Secretary of State for the Home Department* [2007] UKHL 11

² See *Right-touch regulation*, published by the Professional Standards Authority in 2015.

³ For an example of a case where a panel's decision to rely on a 'previously unblemished career' and not impose a striking-off order was overturned on appeal, see *Judge v Nursing and Midwifery Council* [2017] EWHC 817 (Admin)

Considering sanctions for serious cases

Reference: SAN-2 Last Updated: 31/08/2018

In this guide

- How we determine seriousness
- Cases involving dishonesty
- Cases involving sexual misconduct
- Cases involving criminal convictions or cautions

How we determine seriousness

Our [guidance on seriousness](#) explains that there are certain concerns that are more difficult to put right and often mean that the nurse or midwife's right to practise needs to be restricted.

In cases involving dishonesty, sexual misconduct and criminal convictions or cautions, it's likely that we would need to take action to uphold public confidence in nurses and midwives, or to promote proper professional standards.

The guidance below covers the considerations a panel should make when reviewing these types of cases and deciding which sanction to impose.

There's further [guidance on factors to consider before deciding on sanctions](#).

Cases involving dishonesty

The most serious kind of dishonesty is when a nurse or midwife deliberately breaches the professional duty of candour to be open and honest when things go wrong in someone's care.

However, because of the importance of honesty to a nurse or midwife's practice, dishonesty will always be serious.

In every case, the Fitness to Practise Committee must carefully consider the kind of dishonest conduct. Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse or midwife should be allowed to remain on the register will involve:

- deliberately breaching the professional duty of candour to cover up when things have gone wrong, especially if it could cause harm to patients
- misuse of power
- vulnerable victims
- personal financial gain from a breach of trust
- direct risk to patients
- premeditated, systematic or longstanding deception

Dishonest conduct will generally be less serious in cases of:

- one-off incidents
- opportunistic or spontaneous conduct
- no direct personal gain
- no risk to patients
- incidents in private life of nurse or midwife

The law about healthcare regulation¹ makes it clear that a nurse or midwife who has acted dishonestly will always be at risk being removed from the register.

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Nurses and midwives who behaved dishonestly can engage with the Fitness to Practise Committee to show that they feel remorse, that they realise they acted in a dishonest way, and tell the panel that it will not happen again. They can do this in person, through anyone representing them, or by sending information they want the Committee to consider. If they do this, they may be able to reduce the risk that they will be removed from the register.

None of this means that the Fitness to Practise Committee only has choice between suspending a nurse or midwife or removing them from the register in cases about dishonesty. It's vital that, like any other case, the Fitness to Practise Committee should start by considering the sanction with the least impact on the nurse or midwife's practice, and work upwards to the next most serious sanctions if it needs to.

Cases involving sexual misconduct

Conduct ranging from criminal convictions for sexual offences to sexual misconduct with patients, colleagues or patients' relatives could undermine a nurse or midwife's trustworthiness as a registered professional.

When making decisions on sanctions in this kind of case, the Fitness to Practise Committee should consider the guidance on sexual boundaries produced by the [Professional Standards Authority](#).

Sexual misconduct will be particularly serious if the nurse or midwife has abused a special position of trust they hold as a registered caring professional. It will also be particularly serious if they have to register as a sex offender. The level of risk to patients will be an important factor, but the panel should also consider that generally, sexual misconduct will be likely to seriously undermine public trust in nurses and midwives.

Sexual offences include accessing, viewing, or other involvement in child pornography, which involves the abuse or exploitation of a child. These types of offences gravely undermine patients' and the public's trust in nurses and midwives. In the criminal courts, some offences of child pornography offences are considered more serious than others. However, in fitness to practise, any conviction for child pornography is likely to involve a fundamental breach of the public's trust in nurses and midwives.

Panels deciding on sanction in cases about serious sexual misconduct will, like in all cases, need to start their decision-making with the least severe sanction, and work upwards until they find the appropriate outcome. They will very often find that in cases of this kind, the only proportionate sanction will be to remove the nurse or midwife from the register. If the panel decides to impose a less severe sanction, they will need to make sure they explain the reasons for their decision very clearly and very carefully. This will allow people who have not heard all of the evidence in the case, which includes the victims, to properly understand the decision.

Cases involving criminal convictions or cautions

In the criminal courts, one of the purposes of sentencing is to punish people for offending. When making its decision passing sentence, the criminal court will look carefully at the personal circumstances of the offender. In contrast, the purpose of the Fitness to Practise Committee when deciding on a sanction in a case about criminal offences is to achieve our overarching objective of public protection. When doing so, the Committee will think about promoting and maintaining the health, safety and wellbeing of the public, public confidence in nurses and midwives, and professional standards.

It's clear that the Committee's purpose isn't to punish the nurse or midwife for a second time. Because of this, the sentence passed by the criminal court isn't necessarily a reliable guide to how seriously the conviction affects the nurse or midwife's fitness to practise. So, the personal circumstances or mitigation of the nurse or midwife is also less likely to be useful or helpful to the Fitness to Practise Committee when making a sanction decision than it would have been to the criminal court.

Cases about criminal offending by nurses and midwives illustrate the principle that the reputation of the professions is more important than the fortunes of any individual member of those professions. Being a registered professional brings many benefits, but this principle is part of the 'price'.²

What about criminal sentences that haven't yet been fully served?

The law says that, when making its decision on sanction, the Fitness to Practise Committee should consider:

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- the fact that a nurse or midwife convicted of a serious offence is still serving their sentence (even if on probation), and
- whether the nurse or midwife should be able to restart their professional practice before they have completed their sentence

In general, the rule is that a nurse or midwife should not be permitted to start practising again until they have completed a sentence for a serious offence.³ This is a general rule that it would be right for the Fitness to Practise Committee to consider, but it does not mean that the Committee has no choice but to remove the nurse or midwife from the register permanently.⁴

1 Parkinson v NMC [2010] EWHC 1898 (Admin)

2 Bolton v Law Society [1994] 1 WLR 512

3 Council for the Regulation of Health Care Professionals v (1) General Dental Council and (2) Fleischmann [2005] EWHC 87 (QB)

4 Chandrasekera v Nursing and Midwifery Council [2009] EWHC 144 (Admin)

Available sanction orders

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

Fitness to Practise Committee panels will consider the full range of sanctions open to them.

The proper approach is to start with the least severe sanction: the panel should decide whether the outcome is right for fitness to practise concern in question after they have considered any less severe sanction.¹

This means that panels must explain why they have chosen a particular sanction, and also say why they have rejected other sanctions. The following section of this guidance deals with each of the sanctions in turn, starting with the least serious first. These are:

- taking no further action
- a caution order of between one and five years
- a conditions of practice order of up to three years
- a suspension order of up to twelve months
- a striking-off order

¹ See *Giele v General Medical Council* [2005] EWHC 2143 (Admin)

Taking no further action

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

In this guide

- When the panel makes the first sanction decision in a case
- On review of an existing sanction order

When the panel makes the first sanction decision in a case

The Fitness to Practise Committee does have a discretion to take no further action and impose no sanction immediately after it has first decided that a nurse or midwife's fitness to practise is impaired. However, the panel will use this discretion only in rare cases, and it will need to explain its decision very clearly.

This is because as part of its decision about fitness to practise, the panel must already have decided that the nurse or midwife:

- presents a continuing risk to patients
- was responsible for conduct or failings that undermined the public's trust in nurses and midwives, or
- breached one of the fundamental tenets of the professions.

Any one of those factors, or more than one, may apply in a particular case. They will usually mean that to achieve our overarching objective of public protection, the panel needs to take action to secure patient safety, to secure public trust in nurses and midwives, or to promote and maintain proper professional standards and conduct.

So before taking no further action, the panel will need to explain in detail why it is appropriate to do so, even though it has decided that the nurse or midwife's fitness to practise is currently impaired. It will need to carefully identify the circumstances, along with clear and reliable evidence that supports its approach.

On review of an existing sanction order

When the Fitness to Practise Committee is reviewing an existing sanction order against a nurse or midwife, the panel first has to decide whether the nurse or midwife's fitness to practise is still impaired.

If the panel decides that the nurse or midwife's fitness to practise is still impaired, in some circumstances, taking no action and allowing the order to expire can be the best way to protect the public from the concerns about a nurse or midwife's practice.

We explain these circumstances, and how to decide when this will be the best way to make sure the public remains protected, in our [guidance on allowing orders to expire when a nurse or midwife's registration will lapse](#).

Caution order

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

A caution order is the least serious of our sanctions in that it is the least restrictive.

A caution order is only appropriate if the Fitness to Practise Committee has decided there's no risk to the public or to patients requiring the nurse or midwife's practice to be restricted, meaning the case is at the lower end of the spectrum of impaired fitness to practise, however the Fitness to Practise committee wants to mark that the behaviour was unacceptable and must not happen again.

Because a caution order doesn't affect a nurse or midwife's right to practise, the Committee will always need to ask itself if its decision about the nurse or midwife's fitness to practise indicated any risk to patient safety.

If it did, the panel members will then have to ask themselves whether a caution order will be enough to protect the public, given that it would allow the nurse or midwife to continue to practise without any restriction.

How long can a caution order run?

A caution order can be ordered to run for a period of between one and five years. It is recorded on the register and published on our website, and disclosed to anyone enquiring about the nurse or midwife's fitness to practise history.

Conditions of practice order

Reference: SAN-3c Last Updated: 28/01/2020

In this guide

- Overview
- How does a conditions of practice order protect the public?
- When conditions of practice are appropriate
- Being fair and protecting the public
- Make conditions clear
- Conditions of practice imposed as a sanction
- When and how to get other people's input when setting conditions
- How conditions and sanctions apply to those registered as both nurse and midwife
- Return to practice courses and the test of competence

Overview

When a conditions of practice order is imposed on a nurse or midwife's registration, they have to comply with the conditions placed on their practice for up to three years.

If conditions of practice are imposed as an interim order, rather than as a sanction, the order allows the nurse or midwife to work while the allegations against them are being investigated.

How does a conditions of practice order protect the public?

Conditions of practice keep patients safe by addressing the concerns that led to the panel deciding the nurse or midwife's fitness to practise is currently impaired, but also allow the nurse or midwife to continue to work.

Conditions are published on our website and details of any conditions of practice order are made available to anyone enquiring about a nurse or midwife's registration.

However, we do not publish conditions that relate to a nurse or midwife's health.

A conditions of practice order is usually reviewed before it expires.

A nurse or midwife must comply with the conditions of a conditions of practice order. It's a serious problem if they don't, and it could mean the panel reviewing the order will replace the conditions with a suspension order, or make a striking-off order.

For examples of conditions, decision makers should look at our [conditions of practice library](#).

When conditions of practice are appropriate

The key consideration for the panel, before making this order, is whether conditions can be put in place that will be sufficient to protect patients or service users, and if necessary, address any concerns about public confidence or proper professional standards and conduct.

Conditions may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

- no evidence of harmful deep-seated personality or attitudinal problems
- identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining
- no evidence of general incompetence
- potential and willingness to respond positively to retraining
- the nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on

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- medical condition, treatment and supervision
- patients will not be put in danger either directly or indirectly as a result of the conditions
- the conditions will protect patients during the period they are in force
- conditions can be created that can be monitored and assessed.

Being fair and protecting the public

To make sure conditions of practice achieve their aim of public protection, in a way that's fair to the nurse or midwife, they should be **relevant, proportionate, workable and measurable**.

Relevant means that the conditions should relate to and address the concerns that led to the panel deciding that the nurse or midwife's fitness to practise is impaired.

In the case of an interim conditions of practice order, conditions should address the risks to the public, the public interest, and the nurse or midwife's own interests raised by the allegations.

Proportionate means that the conditions must be no more restrictive than necessary to protect the public and uphold confidence in the profession.

They must strike a fair balance between the interests of the nurse or midwife and the public interest. This also includes public protection and public confidence.

There is also a public interest in nurses and midwives being allowed to practise their profession in a safe manner.

Workable means that it must be possible for the nurse or midwife to comply with the conditions.

Any conditions imposed should be realistic and practical for a nurse or midwife to comply with. They should not have the effect of amounting to a complete restriction on the nurse or midwife's ability to practise. It is inevitable that conditions may have the effect of making it more difficult to obtain employment, but this does not mean that the conditions are unworkable.¹

Measurable means that it must be possible to assess objectively whether or not the nurse or midwife has complied with each condition.

The condition must be clear and unambiguous. The question of whether the nurse or midwife has complied with the condition should be capable of being answered 'yes' or 'no'. If the question is capable of being answered 'It depends...', the condition is not measurable because it is not specific enough.

The conditions should also ensure that, where necessary, the nurse or midwife is under an obligation to provide us with sufficient information, in sufficient time, to allow the panel at a review hearing to properly consider whether the nurse or midwife has complied with the condition.

Make conditions clear

A conditions of practice order should be easy to read and understand as a stand-alone document, without referring to any other document so with this in mind, when drafting conditions, panels should:

Use plain English: Avoid complicated words when simple ones are available. For example, use 'before', not 'prior to', 'start', not 'commence'.

Avoid jargon or technical terms: If it is necessary to use clinical terms, these should be defined clearly in a way that can be understood by a lay person.

Use unambiguous language: If a term is used that is capable of being interpreted in different ways by different panels, the panel must provide a clear definition of what it means by that term.

For example, 'supervision' is a term that is capable of being interpreted differently by different people. Among other things, it could mean:

- having regular meetings with a supervisor to discuss clinical issues
- working with a supervisor at the other end of a telephone if required
- working with a supervisor who is physically present some, but not all of the time

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- being observed at all times by a supervisor.

Accordingly, if a panel considers that there should be a degree of supervision or oversight of the nurse or midwife's work, it must specify precisely the extent of that oversight. Examples are included in the **conditions of practice library**.

Be consistent: A conditions of practice library has been prepared to help panels to achieve consistency in the conditions of practice that are imposed. Where the wording of a library condition meets the requirements of the panel, that wording should be used. Where there is no condition in the library that meets the requirements of the panel, the panel must create its own condition.

To help panels to ensure that no conditions are published that should not be, the conditions in the library are divided into public and confidential conditions.

Make sure the obligation to comply is on the nurse or midwife:

Conditions should always put the obligation on the nurse or midwife, not an employer or third party.

For example instead of saying

"Your GP must provide a report to the NMC...."

the condition should say

"You must provide the NMC with a report from your GP".

Express times and dates clearly: Times and periods of the order must be specified, for example 'weekly', 'on the first day of each month', or 'once every three months' instead of 'regularly', and 'within x days' instead of 'promptly'.

Know when the order takes effect: It is important that panels, and nurses and midwives, understand when conditions take effect, and that this is clearly reflected in the order.

Conditions of practice imposed as a sanction

After a nurse or midwife's fitness to practise has been found to be impaired, conditions of practise order imposed as a sanction, take effect when the period for appealing against the order expires, which is 28 days after we send the nurse or midwife the decision in a letter.

If the nurse or midwife appeals, then the conditions don't take effect until the appeal is withdrawn or otherwise finally disposed of by the court.

Conditions of practice imposed as a **standard review before the expiry** of an order² take effect from the expiry of the original order.

In the instance of an **early review**, if the panel decides to extend an existing conditions of the practice order, this also takes effect when the original order would have expired. If an early review panel replaces a different original order (for example suspension) with a conditions of practice order, or varies an existing conditions of practice order, this takes effect immediately.

When and how to get other people's input when setting conditions

The panel needs to be confident that the conditions of an imposed order are workable, however, neither the nurse or midwife, employer, nor anyone else who may be affected by a conditions of practice order, needs to expressly agree to the terms of the conditions for it to be imposed.³

In practical terms though, if a nurse or midwife refuses to comply with conditions, it's unlikely that the order will be workable.

Where a nurse or midwife is not employed

Conditions may still be workable even where a nurse or midwife is not employed, or doesn't have a job offer at the time conditions are being considered.

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A condition preventing a nurse or midwife from working in a particular environment or role, or from carrying out a particular procedure would still be a workable condition in these circumstances.

The condition doesn't make any demands of an employer or anyone else for support or input, so there wouldn't be any need for anyone to comment on the conditions before the order could be made.

Where the panel needs the input of an employer or other organisation

The panel may decide that it needs the input from an employer or other organisation to make sure the conditions it wants to impose will achieve public protection. This could be further information, advice, or support. If the panel decides it needs this input, it should give us, the nurse or midwife, any employer, other organisation or person affected by the order, an opportunity to comment on whether the proposed conditions are workable.

Doing this will help panels to make informed decisions and might avoid the need for early reviews. Where possible, we'll try to arrange for any employer or other organisation to be available to comment before any order is made.

If this hasn't been possible (for example, because we didn't know who the employer, proposed employer or other person or organisation was before the hearing), the panel may take a short break during the day for us to contact them and get their comments on the proposed conditions.

Where we can't get the input the panel needs

If there's no evidence to suggest that the relevant organisation or person is available or willing to provide the input the panel needs to make sure a conditions of practice order will protect the public, a conditions of practice order is unlikely to be workable.

In these circumstances, the panel will need to move on to consider a suspension order.

Either party can seek an early review of the order should further evidence become available.

If it does impose a suspension order, the panel should explain in its decision what support or input it considered necessary to protect the public. It should also explain why it considered a conditions of practice order to be unworkable on the evidence it had.

This will help the nurse or midwife understand what will be needed before a conditions of practice order can be workable, and give them the chance to gather the necessary evidence before a review hearing.

A case should never be adjourned to another day simply because it has not been possible to obtain the comments of a third party about a conditions of practice order. This would leave the public unprotected in the meantime.

The panel must make an order that is relevant, proportionate, workable and measurable based on the evidence it has. Either party can seek an early review of the order should further evidence become available.

When conditions can be imposed without prior support by an employer

The panel might decide that the conditions needed to protect the public would need some form of support to be given to the nurse or midwife, like for example direct supervision by a colleague equivalent to a band 6 nurse. The panel might anticipate who will provide this support, but perhaps not have specific confirmation that they will do so. It would be appropriate to go ahead and make the order if the conditions were general in nature, and didn't need the particular input of a specific identified person, like in the supervision example. The supervision could be by any colleague who fit the requirements.

The practical effect of conditions might be that the nurse or midwife is unable to practise until they find a setting or employer prepared to employ them on the conditions. If the nurse or midwife finds an employer or setting who will employ them under the conditions, the public have the benefit of a nurse or midwife in practice, but with the limits to make sure they do not present a risk. The public will be protected either way.⁴

How conditions and sanctions apply to those registered as both nurse and midwife

Our register is made up of parts.

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One part of the register is for nurses, and one part is for midwives. Someone entered on our register as a nurse **and** as a midwife will only have one single registration with us, but they will be entered on two parts of our register.

Fitness to practise sanctions apply to all parts of someone's single registration.

If someone who is a nurse and a midwife has a conditions of practice order, all of the conditions will apply to all parts of their practice, unless the order states otherwise.

For the same reason, a suspension order will apply to all of a nurse or midwife's single registration. We cannot suspend someone from only one part of the register.

If a panel wants to prevent someone who is registered as both a nurse and a midwife from practising in only **one** of those professions, it must do so using a conditions of practice order, which would say (for example) 'you must not practise as a nurse'.

This would be appropriate if someone had problems in one of the professions they practise that are so serious that the panel decides they need to be prevented from practising that profession, but the panel **also** decided that a complete restriction on all areas of practice would not be necessary to protect the public.

This wouldn't be equivalent to a suspension order, because it would allow the person to continue to work in one area of their professional practice.

Sometimes, there will be an overlap between the two areas of professional practice. When this happens, panels should consider whether they need to impose particular conditions on the nurse or midwife's work in the other profession.

In a case with serious clinical problems about only one area of professional practice, like a repeated failure in midwifery care, but also separate failings about a more general part of practice, like record keeping, it may be necessary to prevent the person from working as a midwife, and to impose conditions on their practice as a nurse, to address the record keeping concerns.

This would be a proportionate response if the panel decided it needed to prevent someone practising in one profession, but it also decided they were able to practise safely with restrictions in the other profession.

Return to practice courses and the test of competence

A nurse or midwife can complete a [return to practice course](#) or take a [test of competence](#) if they cannot meet the NMC's readmission or revalidation practice hours requirements.

Return to practice courses are intended to be a way of updating skills and knowledge before returning to registered practice.

The test of competence is made up of two parts:

- a multiple-choice computer based theoretical test known as the CBT
- a practical test known as the OSCE.

Although return to practice courses and the test of competence may provide relevant evidence that a panel can take into account at a hearing or a review, they are not designed to remedy specific concerns about a nurse or midwife's fitness to practise.

It would be generally inappropriate for a panel to rely on a return to practise course or test of competence in place of a conditions of practice order. Nor should a panel direct a nurse or midwife to complete a return to practice course or a test of competence as part of an order.

¹ Daraghme v General Medical Council [2011] EWHC 2080 (Admin)

² Article 30 of the Nursing and Midwifery Order 2001 ('the Order')

³ Whitehead v General Medical Council [2003] HRLR 9

⁴ Perry v Nursing and Midwifery Council [2012] EWHC 2275 (Admin)

Suspension order

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

This order suspends the nurse or midwife's registration for a period of up to one year and may be appropriate in cases where the misconduct isn't fundamentally incompatible with the nurse or midwife continuing to be a registered professional, and our overarching objective may be satisfied by a less severe outcome than permanent removal from the register.

A suspension order is usually [reviewed before it expires](#). The nurse or midwife may not practise as a registered nurse or midwife during the period the order is in force.

Key things to weigh up before imposing this order include:

- whether the [seriousness of the case](#) require temporary removal from the register?
- will a period of suspension be sufficient to protect patients, public confidence in nurses and midwives, or professional standards?

Use the checklist below as a guide to help decide whether it's appropriate or not. This list is not exhaustive:

- a single instance of misconduct but where a lesser sanction is not sufficient
- no evidence of harmful deep-seated personality or attitudinal problems
- no evidence of repetition of behaviour since the incident
- the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour
- in cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions
- in cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions

When considering seriousness, the Fitness to Practise Committee will look at how far the nurse or midwife fell short of the standards expected of them. It will consider the risks to patients and to the other factors above, and any other particular factors it considers relevant on each case.

When making a suspension order the Fitness to Practise Committee may wish to explain clearly what expectations it has, or what actions the nurse or midwife could take that would help a future Committee reviewing the order before it expires.

Striking-off order

Reference: SAN-3e Last Updated: 10/01/2020

A striking-off order is the most serious sanction. It results in removing the nurse or midwife's name from the register, which prevents them from working as a registered nurse or midwife.

This sanction is likely to be appropriate when what the nurse or midwife has done is fundamentally incompatible with being a registered professional. Before imposing this sanction, key considerations the panel will take into account include:

- Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?
- Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?
- Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?

The panel should refer to our [guidance on seriousness](#), which highlights a number of factors indicating which kinds of concern it may not be possible for the nurse or midwife to remedy or put right, and which will most seriously affect their trustworthiness as a registered nurse or midwife.

The courts have supported decisions to strike off healthcare professionals where there has been lack of probity, honesty or trustworthiness, notwithstanding that in other regards there were no concerns around the professional's clinical skills or any risk of harm to the public.¹ Striking-off orders have been upheld on the basis that they have been justified for reasons of maintaining trust and confidence in the professions.

When a striking off order cannot be used

A striking-off order can't be used if the nurse or midwife's fitness to practise is impaired due to:

- their health,
- lack of competence or
- not having the necessary knowledge of English

until they have been on either a suspension order **or** a conditions of practice order for a continuous period of two years.

The two-year period can be made up of a combination of periods of suspension and conditions, provided that there is a continuous period during which the nurse or midwife's practice has been subject to restriction under a substantive order.

The panel should also refer to the guidance on [standard reviews of substantive orders](#) if they are considering imposing a strike off at a substantive order review hearing.

Restoration

A nurse or midwife who has been subject to a striking off order may not apply for restoration until a period of five years has elapsed since the striking-off order was made. Our [guidance on restoration](#) explains how the Fitness to Practise Committee approaches these applications.

¹ For example, Parkinson v NMC [2010] EWHC 1898 (Admin), Menge v GMC [2010] EWHC 3529 (Admin), Ige v Nursing and Midwifery Council [2011] EWHC 3721 (Admin)

Available orders for fraudulent or incorrect entry

Reference: SAN-4 Last Updated: 15/12/2017

In this guide

- Making an order that the Registrar remove the entry
- Making an order that the Registrar amend the entry
- Taking no action
- Imposing an interim order

If the Investigating Committee finds an allegation of fraudulent or incorrect entry proved, it may order the Registrar to remove the entry, amend the entry, or it may take no action.¹ The Committee also has the power to impose an interim order at the same time.

The appropriate outcome will depend on the circumstances of the case. The Investigating Committee should consider whether the other options may be appropriate before ordering that the Registrar should remove the entry. They should bear in mind that they are not deciding whether the nurse or midwife would now meet the entry requirements, but deciding what action should be taken following their decision that the entry was fraudulent or incorrect.

The Investigating Committee should consider its purpose carefully in line with our main objective of protecting the public, which includes maintaining public confidence in the professions we regulate.

Making an order that the Registrar remove the entry

Taking account of our [overarching objective](#), if the Investigating Committee has decided that the person gained or maintained their registration through wrong information about their qualifications, practice history or character, it should assess carefully whether the person's registration should be removed. In cases of fraudulent entry, the fact that the person's application to gain, maintain or renew their registration was supported by deliberately misleading information is likely to be a strong factor in favour of removing the entry.

This is because our duty to maintain the register is a vital part of our overarching objective, which is the protection of the public. Members of the public who need or rely on the services of nurses and midwives should be able to trust that people registered with us are in fact entitled to practise as registered professionals. Once the Investigating Committee has decided that someone has gained entry to our register because of fraud, their decision on what action to take should assess very carefully whether the person can continue to be registered without undermining the public's trust in the accuracy of our register.

Removing the entry may also be the appropriate outcome if the entry was incorrectly made and the person concerned did not act dishonestly. If their entry is removed, the person concerned can apply for registration immediately afterwards. If they do this, the Registrar is able to consider the nature and circumstances of the case.

In deciding whether to remove the entry in these circumstances, the Investigating Committee should take account of:

- the Registrar's specialism in making registration decisions
- whether the panel decided the entry was incorrect because the Registrar didn't know about information which would have needed a value judgment or balancing exercise.

For example, if the entry was incorrect because the Registrar wasn't aware of a minor criminal conviction or a health condition, then it is more likely to be appropriate to order that the entry is removed. If the person applies again for registration, the Registrar can make a new registration decision, using their specialism and our [health and character guidance](#) to help them carry out the value judgement or balancing exercise.

Sanctions

Where the factor which led us to find the entry incorrect didn't require a value judgment and was more clear-cut, it may be more appropriate to consider taking no action. Factors that are more clear-cut include whether the person had carried out the required practice hours, continuing professional development or had professional indemnity insurance in place.

Making an order that the Registrar amend the entry

In certain circumstances, it may be appropriate to order that the Registrar amend the entry in the register. This may apply in situations where an annotation has been made in error and there is no wider concern regarding the integrity of the entry in question.

Taking no action

Taking no action may be appropriate if the error or inaccuracy in the application process was trivial or unimportant. It may also be appropriate where the nurse or midwife has corrected the error or inaccuracy, or where the Registrar has since correctly entered the nurse or midwife on the register based on all relevant information.

The Investigating Committee may decide there is no need to make an order removing the entry if:

- the entry was incorrect
- there was no fraud or dishonesty, and
- there is no issue over any of the registration requirements that needs the specialist judgement of the Registrar.

There would then be no need for the person to reapply for registration.

This is only likely to be an appropriate outcome where the entry was incorrect because of a clear-cut issue that the person has shown they have now put right, such as completing the required number of hours of practice or continuing professional development, or having professional indemnity insurance in place.

Action should be taken if the issues in the case need a value judgment or balancing exercise about whether the person would now meet the requirements for registration (such as health or character). This is because these issues should be decided by the Registrar, who is in the best position to make such judgments if the person decides to reapply for registration in the future.

Even if the Investigating Committee has decided that an entry was fraudulent, there may still be exceptional cases where it could decide to take no action. This is only likely to happen when the person concerned was not aware of the fraud as it was carried out by a third party. In such cases, taking no action will only be appropriate if there are no issues with the registration requirements that might need the specialist judgement of the Registrar.

Imposing an interim order

If it makes an order, the Investigating Committee should consider whether it is necessary to impose an **interim order**. In doing so, it should consider whether the fact that its decision will not take effect immediately would present a risk to:

- members of the public
- public confidence in nurses and midwives
- the person whose entry in the register it has been considering.

¹ Article 26(7) of the Nursing and Midwifery Order 2001 ('the Order')

Interim orders after a sanction is imposed

Reference: SAN-5 Last Updated: 12/10/2018

When the panel announces its decision on a sanction, any interim order that has been in place up to that point will lapse.

Sanctions cannot take effect until the end of the appeal period, that is 28 days after the date on which the decision letter is served, or, if an appeal has been lodged, before the appeal has been finally determined.

The Fitness to Practise Committee has the power to impose an interim order for up to 18 months to cover this period. The decision to make an order after a sanction has been passed involves discretion and careful consideration. It is not an automatic decision in every case.

Whenever it makes a conditions of practice order, suspension order or striking-off order, the Committee will consider whether or not to impose an [interim order](#).

Directing reviews of substantive orders

Reference: SAN-6 Last Updated: 12/10/2018

When a panel of the Fitness to Practise Committee imposes conditions of practice orders or suspension orders, it will need to decide whether a review is necessary.

Where no review is ordered, the order will expire at the end of its period.

As conditions of practice orders are usually imposed to protect the public from a risk to patients, it is unlikely that the order should be allowed to expire without review by a panel, as they will need to assess if an order is still necessary.

If a finding of impairment is made to promote and maintain public confidence in the professions or proper professional standards and conduct, and the nurse or midwife does not present a current risk to patients, the panel may conclude that a review would serve no purpose, and therefore decide not to require a review.

Panels should always give reasons for their decision.