Table of Contents

Appeals against panel decisions 2
Restoration 3
Deciding on applications for restoration 4
Powers of the Fitness to Practise Committee at a restoration hearing 6

Appeals against panel decisions

Reference: APP-1 Last Updated: 03/02/2021

A nurse, midwife or nursing associate can appeal against the outcome of a final hearing to the court.

In the case of a final substantive order, the nurse, midwife or nursing associate can appeal to:[1]

- The High Court in England and Wales
- The High Court Justice in Northern Ireland
- Court of Session in Scotland.

In the case of an order to remove a person from the register or an order to amend the register where an entry has been fraudulently procured or incorrectly made, a nurse, midwife or nursing associate can appeal to the county court or in Scotland to a sheriff.[2]

If the nurse, midwife or nursing associate wants to appeal against a final committee decision (or a decision on review), they have to do so within 28 days, unless the court decides that there are exceptional circumstances to justify extending the time period.[3] This 28 day period starts from the day after the date on the letter informing the nurse, midwife or nursing associate of the outcome of the hearing. If the last of the 28 days falls on a day when the court office is closed, such as a weekend or bank holiday, then we consider that the next working day will be the last day of the appeal period.

Interim orders

If a nurse, midwife or nursing associate appeals the outcome of a final hearing, they might be on an interim order until the appeal is determined. For more information about this see our guidance on:

- Interim orders after sanction
- Early reviews of a substantive order following an appeal

Appeals by the Professional Standards Authority (PSA)

The Professional Standards Authority (PSA) routinely reviews all our fitness to practise decisions along with those of other health and social care regulators. It has the power to appeal against a final decision by one of our practice committees if it considers it is not sufficient for the protection of the public.[4]

The PSA may only do this during a 40 day period, which begins on the last day of the nurse, midwife or nursing associate's appeal period.[5] In situations where the nurse, midwife or nursing associate does not have a right to appeal, the PSA has 56 days, beginning on the day after the date on the letter informing the nurse, midwife or nursing associate of the outcome of the hearing.[6]

We may refer a panel's decision to the PSA in circumstances where we consider a decision is not sufficient to meet our objectives. Our objectives are to:

- Protect the health, safety and well-being of the public
- Maintain public confidence in the profession concerned
- Maintain proper standards and conduct for members of that profession.

We will make this decision in line with the PSA Section 29 Process and Guidelines.

1 Articles 29(10), 38(1)(a) and (4) of the Nursing and Midwifery Order 2001 ('the Order')
2 Articles 26(13) and 38(1)(b) of the Order
3 R (on the application of) Adesina & Ors v The Nursing Midwifery Council [2013] EWCA Civ 818
4 s29(4) National Health Service Reform and Health Care Professions Act 2002
5 s29(6)(a) National Health Service Reform and Health Care Professions Act 2002
6 s29(6)(b) National Health Service Reform and Health Care Professions Act 2002

Restoration

Reference: APP-2 Last Updated: 11/01/2018

If a person has been struck off the register and wishes to return to the nursing or midwifery professions, they must apply for restoration to the register.[1]

Applications for restoration can only be made after five years have passed since the striking-off order came into force.[2] Only one application will be considered in any 12 month period.[3]

A panel of the Fitness to Practise Committee will consider the application for restoration, which will determine whether the applicant should be able to apply for readmission to the register. The Committee has a range of powers once it has considered the application.

The purpose of a restoration hearing is to consider whether, looking at the circumstances that led to the striking-off order, the applicant is a fit and proper person to practise as a nurse, midwife or nursing associate, and whether they meet the other requirements for restoration.[4] When considering restoration applications the panel's role is to make sure that the health, safety and wellbeing of members of the public is protected, and that public confidence in the professions, and proper standards and conduct are maintained.

A restoration hearing is not an opportunity for the applicant to appeal the original striking-off order. The purpose of a restoration hearing is not to reassess the finding of fact or the decision of the panel at the initial hearing.

1. Article 33(1) of the Nursing and Midwifery Order 2001 (the Order)
2. Article 33(2)(a) of the Order
3. Article 33(2)(b) of the Order
4. Article 33(5) of the Order

Deciding on applications for restoration

Reference: APP-2a Last Updated: 19/04/2024

In this guide

- Order of proceedings at restoration hearings
- Is the applicant a fit and proper person?
- Other requirements for restoration
- Unresolved concerns

Order of proceedings at restoration hearings

Unless the panel decides otherwise, the order of proceedings at a restoration hearing is:[1]

- the case presenter informs the panel of the background to the case and directs the panel to any relevant evidence, including decisions, reasons or if needed, transcripts of previous substantive or restoration hearings
- the applicant presents evidence to support their application for restoration. If the applicant was struck off the register because their fitness to practise was impaired by their health, they should present any medical evidence they want to rely on, which it is their responsibility to obtain, at this stage.
- the panel deliberates in private and announces its decision in public, setting out its reasons.

Is the applicant a fit and proper person?

In addition to the other requirements for restoration, the applicant must show that they are a fit and proper person to practise as a nurse, midwife or nursing associate. The panel must consider this in the context of a previous decision that the applicant's conduct (or other fitness to practise concern) was fundamentally incompatible with continuing to be registered as a nurse, midwife or nursing associate.

In deciding whether the applicant is now a fit and proper person to practise as a nurse, midwife or nursing associate, the Fitness to Practise Committee needs to consider our overarching objective of public protection and explain how its decision fits with that objective. This means that when it looks at the relevant factors listed below, the panel needs to show how it has taken account of our objectives to promote and maintain public confidence in the nursing and midwifery professions, proper professional standards for those professions, as well as the health, safety and wellbeing of members of the public.[2]

The following factors should be considered:

- the extent to which the applicant has demonstrated insight and addressed the concerns which led to the striking-off order (using the guidance on insight and strengthened practice),
- the period of time since being struck off and any previous restoration application,
- the applicant's employment history since they were removed from the register,
- the efforts the applicant has made to keep up to date with professional practice,
- taking into account the above factors, whether the applicant would be able to practise safely as a nurse, midwife or nursing associate in the future, and
- whether, in the context of the concerns that led to the previous striking-off order, public confidence in the nursing or midwifery professions would be undermined if the applicant was restored to the register. There is a spectrum of concerns which lead to a nurse, midwife or nursing associate being struck off the register. At one end, some cases may be just serious enough to end in a striking-off order. At the other, there may be cases which are so serious that it may be difficult to see how the nurse, midwife or nursing associate could ever be restored to the register.[3]

Other requirements for restoration

For their application to be successful, as well as showing that they are a fit and proper person to practise as nurse, midwife or nursing associate, the applicant must show that they meet the following additional requirements for restoration, which form part (but not all) of the requirements for applications for first registration.[4]

- An approved qualification which was awarded in the last five years, or if their qualification was awarded earlier, have satisfied the requirements for additional education or training and experience as set out in the NMC's return to practice standards.[5]
- Capable of safe and effective practice as a nurse, midwife or nursing associate. This includes showing that they meet the required practice standards and can provide evidence that they meet the NMC's health and character requirements. The panel should consider our guidance on this question.
- The necessary knowledge of English. The applicant will have to show that they meet our English language requirements. This can be through evidence of having undertaken nursing or midwifery training in the UK or having completed a Return to Practice programme in the UK.[6] Alternatively, other evidence could be provided, such as language test results which demonstrate the necessary knowledge of English. Guidance on this standard is available.

Unresolved concerns

Sometimes there will be a concern about an applicant that hadn't been addressed by the time the striking off order was imposed. In other cases, a concern will have been raised about an applicant after the striking off order was imposed.

An example could be a situation where, prior to the imposition of the striking off order, we received a referral from the applicant's employer raising a new concern about their clinical practice. By the time the striking off order was imposed, the new concern hadn't reached an outcome because it was still being investigated and so wasn't ready to progress to a substantive hearing.

Another example could be where an applicant was convicted of a criminal offence after the striking off order was imposed.

We call these "unresolved concerns" and in such situations we'll establish if there's evidence to support those concerns.

If we obtain evidence to support the unresolved concerns, we'll give the applicant notice of the unresolved concerns and provide them with a copy of the evidence that supports those concerns. We'll also give the applicant an opportunity to respond to those concerns.

Once the applicant's case is ready to progress to a hearing, we'll inform the panel of our intention to present evidence that we think supports the unresolved concerns.

Our legislation states that when the panel makes its decision on whether to restore an applicant to the register it must be satisfied "on such evidence as it may require."[7]

Similarly, our legislation says that we can direct the panel "to any relevant evidence."[8]

It is for the NMC to prove the unresolved concerns on the balance of probabilities. If the panel find those concerns proved, we'll ask the panel to consider them along with any other relevant factors when making its decision on whether to restore the applicant to the register.

. Rule 25 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (FtP Rules)
. General Medical Council v Chandra [2018] EWCA Civ 1898
. General Medical Council v Nooh [2017] EWHC 2948 (Admin)
. Article 9(2)(a), (b) and (ba) of the Order
. Article 33 (6) of the Order
. Successful completion of a return to practice course is listed as evidence of knowledge of English for readmission to the register in the guidance on registration anguage requirements.
. Article 33(5) of the Nursing and Midwifery Order 2001
. Rule 25(2) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004

Powers of the Fitness to Practise Committee at a restoration hearing

Reference: APP-2b Last Updated: 28/01/2020

In this guide

- Overview
- Grant the application for restoration
- Grant the application subject to the applicant satisfying the NMC's return to practice standards
- Grant the application and impose a conditions of practice order
- Grant the application subject to the applicant satisfying the NMC's return to practice standards and impose a conditions of practice order
- Refuse the application

Overview

Panels dealing with an application for restoration have a range of powers available to them, depending on whether they find that the applicant has satisfied the fit and proper person test, and the other requirements for restoration.

If they are satisfied, they may grant the application or grant the application subject to the applicant satisfying requirements for additional education or training and experience as set out in the NMC's return to practice standards. They also have the power to grant the application and impose a conditions of practice order. They could, if needed, grant the application subject to the applicant satisfying the return to practice standards and impose a conditions of practice order.

If the applicant does not meet the fit and proper person test, or has not satisfied the other requirements for restoration, the panel must refuse the application. These powers are explained in more detail below.

Grant the application for restoration

This means that the applicant will become effective on our register, with no restrictions on their practice, once they have met the readmissions requirements and their readmission application has been accepted by a Registrar.[1]

Grant the application subject to the applicant satisfying the NMC's return to practice standards

Panels may direct the applicant to satisfy requirements for additional education or training and experience as set out in the NMC's return to practice standards.[2] If the panel makes this direction the applicant must either complete a return to practice course or pass the test of competence before they can re-join the register.[3]

It is important to note that this is not a conditions of practice order, but a requirement which must be satisfied before the applicant can re-join the register. Conditions of practice orders should not be used to require the applicant to complete a return to practice course or to take a test of competence. In the context of restoration applications, the purpose of the return to practice course or completing a test of competence is to address the fact that the applicant's qualification in nursing or midwifery is likely to be more than five years old.

Grant the application and impose a conditions of practice order

- Panels may impose a conditions of practice order which will come into force when the applicant joins the register.[4] As an applicant's registration only becomes effective once the readmission requirements are met, the conditions of practice imposed will come in to force at this time and not when the restoration decision is made.[5]
- The purpose of making a conditions of practice order at a restoration hearing is to make sure that the applicant can resume their professional practice safely after their time away from nursing or midwifery. Conditions of

practice should not be used to manage risks that led to the initial striking-off order. If the applicant's nursing or midwifery practice still presents a risk because of those concerns, then they are unlikely to have demonstrated that they will be able to practise safely, and the panel should refuse their application.
- Panels should only grant restoration and impose conditions if it is possible to impose conditions that will protect the public and which are relevant, proportionate, workable and measurable. When considering imposing conditions of practice, panels should consider the principles set out in the conditions of practice guidance. Once in force, the conditions of practice order will be reviewed under the substantive order review procedure.[6]

Grant the application subject to the applicant satisfying the NMC's return to practice standards and impose a conditions of practice order

A panel can direct the applicant to satisfy requirements for additional education or training and experience as set out in the NMC's return to practice standards before they re-join the register[7], and impose conditions of practice that will take effect once the applicant has been restored to the register.

Refuse the application

Where an applicant has not satisfied the test for restoration, a panel must refuse the application. Panels may wish to state in their reasons what further evidence (if any) the applicant should gather to assist a panel at any future restoration hearing.

If a panel refuses an application and it is the applicant's second or subsequent application, the panel may suspend the applicant's right to make further applications for restoration. The applicant can apply to the Registrar to review this direction after three years.[8]

. Article 33(7) of the Order
. Article 33(6) of the Order
. Article 33(7)(a) of the Order
. Article 33(7)(b) of the Order
. Article 33(7)(a) of the Order
. Article 30 of the Order
. Article 33(6) of the Order
. Article 33 (10) of the Order