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Reviewing case examiner decisions

Reference: REV-1 Last Updated: 13/01/2023

The Registrar (or one of our Assistant Registrars who also make decisions on behalf of the Registrar) is able to review the following decisions[1] 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, midwife or nursing associate.
- A recommendation that variations to the undertakings are agreed with the nurse, midwife or nursing associate.
- A decision that undertakings should no longer apply and that the allegation against the nurse, midwife or nursing associate 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: 27/02/2024

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, midwife or nursing associate
- Letting people know there will be a review
- Deciding if further investigation is needed

What we're able to review

The Registrar (or one of our Assistant Registrars who also make decisions on behalf of 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 recommend undertakings
- a decision to recommend variations to 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, midwife or nursing associate is not on our register.

When we receive a request to review, we will check that the nurse, midwife or nursing associate is still on our register. If the nurse, midwife or nursing associate 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, midwife or nursing associate 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 allegation
- the 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:

- the person or organisation who originally referred the allegation
- the nurse, midwife or nursing associate 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, midwife or nursing associate.

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 law 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 flawed[4] 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 information[5] 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, midwife or nursing associate

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, midwife or nursing associate. 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, midwife or nursing associate?
- Does the nurse, midwife or nursing associate 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 addressed, meaning we need to take action to uphold public confidence?
- If the regulatory concern is not about professional practice, has the nurse, midwife or nursing associate done something that raises fundamental questions about their ability to uphold the standards and values set out in the Code, meaning we need to take action to uphold public confidence?

Necessary to prevent injustice to the nurse, midwife or nursing associate

This consideration is only likely to be relevant where a nurse, midwife or nursing associate 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, midwife or nursing associate 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, midwife or nursing associate 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 must[6] notify the following parties of any decision taken to review a decision.

- The nurse, midwife or nursing associate
- 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 information[7] 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, midwife or nursing associate. 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.

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, midwife or nursing associate 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").

7 Rule 7A (10)
8 Lord Bingham CJ in R v Kelly (Edward) (No.2) (2001) EWCA 1751
9 Rule 7A(2)(a-b)
Rule 7A(2)(a)
Rule 7A(2)(b)
Rule 7A(3)(a)
Rule 7A(3)(b)
Rule 7A(3)(c)
Rule 7A (5)
10 Rule 7A(6)(a-b)

Stage two: what happens during the review process?

Reference: REV-1b Last Updated: 01/09/2025

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 (or one of our Assistant Registrars who also make decisions on behalf of 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, midwife or nursing associate.

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, midwife or nursing associate for the case to be re-opened, then the decision stands.

We will write to the nurse, midwife or nursing associate, 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, midwife or nursing associate that the case is re-opened and a fresh decision is made, they can:

- refer the decision back to the case examiners for reconsideration[2]
- 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?
- Delay to the progress of the case and how this affects the interests of the nurse, midwife or nursing associate and the wider public interest in concluding cases expeditiously.

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, midwife or nursing associate.
- 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.

Rule 7A(6)
Rule 7A(7)(a)(i)
Rule 7A(7)(a)(ii)

Substantive order reviews

Reference: REV-2 Last Updated: 14/10/2022

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, midwife or nursing associate
- maintain public confidence in the nursing and midwifery professions
- declare and uphold proper standards of conduct and behaviour.

This makes sure that nurses, midwives and nursing associates 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, midwife or nursing associate 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 order[3]. In certain circumstances it may be appropriate to review a striking off order where new evidence becomes available[4].

Arrangements for substantive order review hearings

We will normally list substantive order review hearings for a virtual hearing, but we will always consider requests from the nurse, midwife or nursing associate for the hearing to be held physically at a hearings centre. We'll expect such requests to be supported by clear reasons for the request. We'll be guided by the principle of fairness and will do what we can to ensure that people can engage effectively in the hearing. Before we hold a case virtually, we'll check to find out if participants have the right technology to participate effectively, and are able to use it.

Article 30(1) of the Nursing and Midwifery Order 2001 ('the Order')
Article 29(8A) of the Order
Article 30(2) of the Order
Article 30(7) of the Order

Standard reviews of substantive orders before they expire

Reference: REV-2a Last Updated: 30/08/2024

In this guide

- Overview
- How the panel reaches a decision
- Other considerations

Overview

When a conditions of practice or suspension order has been imposed, we are legally bound[1] 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

There is a persuasive burden on the professional at a substantive order review to demonstrate that they have fully acknowledged why past professional performance was deficient and through insight, application, education, supervision or other achievement sufficiently addressed the past impairments[2].

At the review, we will ask the panel to consider whether the nurse, midwife or nursing associate's fitness to practise remains impaired in light of any new facts or information about the issue of impairment. The nurse, midwife or nursing associate is also able to put new information before the panel.

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

- Has the nurse, midwife or nursing associate complied with any conditions imposed? What evidence has the nurse, midwife or nursing associate provided to demonstrate this? What is the quality of that evidence and where does it come from?
- Does the nurse, midwife or nursing associate 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, midwife or nursing associate taken effective steps to maintain their skills and knowledge?
- Does the nurse, midwife or nursing associate 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, midwife or nursing associate is now safe to practise unrestricted, or does any risk to patient safety still remain?

If the panel decides that the nurse, midwife or nursing associate'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 the nurse, midwife or nursing associate remains impaired, they will decide what sanction, if any, to impose.

A panel can:

- extend the existing order
- make a new order
- allow the existing order to expire. Professionals who have passed the deadline for the renewal of registration will automatically be removed from the register (lapse).

If it determines that a professional remains impaired, a reviewing panel will consider the circumstances in the round before deciding what to do.

A panel should ask whether, in the circumstances, suspending the professional or imposing a conditions of practice order will

- maintain proper professional standards and public confidence in the profession; and
- mean the professional is likely to return to safe unrestricted practice within a reasonable period of time.

A panel should remember that any conditions considered must be relevant, proportionate, workable and measurable, and that imposing a suspension order must serve a useful purpose.

Relevant considerations include, but are not limited to:

- the length of time the professional has already been subject to substantive orders.
- the professional's level of engagement;
- the professional's level of insight/understanding;
- the amount of progress made (and remaining) towards being fit to practise;
- any barriers to the professional progressing and whether/when these are likely to be surmounted.

If the panel concludes that continuing or imposing a conditions of practice order or suspension order is unlikely to result in the professional returning to safe unrestricted practice within a reasonable period of time, it should ensure that the professional is removed from the register.

Other considerations

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.[3]

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, midwife or nursing associate has been 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, midwife or nursing associate 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, midwife or nursing associate 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 Abrahaem v NMC [2008] EWHC 183 (Admin) at [23]
3 Article 30(5) of the Order

Early review of a substantive order

Reference: REV-2b Last Updated: 06/05/2025

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

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

When we schedule early reviews

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

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

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

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

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

Early reviews of a substantive order following an appeal

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

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

If this is the case, then the time spent on the interim order is not simply deducted from the sanction. However, a nurse, midwife or nursing associate can ask for an early review of their substantive order so that a panel can consider what

effect the time spent on an interim order might have had on their fitness to practise. A Panel might consider this in their overall assessment of what order is now appropriate and proportionate.

Find out about how the panel reaches a decision.

What happens when we schedule an early review

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

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

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

What power does the panel have

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

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

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

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

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

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

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

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

Reference: REV-2c 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, midwife or nursing associate. 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, midwife or nursing associate. For example:

- A nurse, midwife or nursing associate, states that they have been practising in breach of conditions, or their insight into former behaviour has drastically deteriorated.
- A nurse, midwife or nursing associate, 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, midwife or nursing associate'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, midwife or nursing associate is on a conditions of practice order, but the public is adequately protected because the nurse, midwife or nursing associate 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:

- change any condition imposed by the order[1] and extend, or further extend the period for which the order is in place under its powers of early review[2]

- 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, midwife or nursing associate 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 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-2d Last Updated: 03/02/2021

A striking-off order lasts at least five years, during which time a nurse, midwife or nursing associate 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.

New allegations

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

If we receive information about the practice of a nurse, midwife or nursing associate 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, midwife or nursing associate'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, midwife or nursing associate's fitness to practise.

Reviewing orders when there may have been a breach

Reference: REV-2f Last Updated: 02/10/2023

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

Where a nurse, midwife or nursing associate 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 particularly 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]

If we are satisfied that a nurse, midwife or nursing associate has deliberately not complied with a substantive order this is likely to call into question whether that person should remain on the register.[2]

Further guidance on how seriously we view deliberate breaches of substantive orders can be found here.

[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."
[2] See case of GMC v Donadio [2021] EWHC 562 (Admin) in relation to the serious nature of deliberate breaches of interim orders.

Reviews where an interim order is in place

Reference: REV-2g 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, midwife or nursing associate'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.

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

Reference: REV-2h Last Updated: 13/05/2026

In this guide

- Overview
- Removal from the Register while still impaired
- Need for clarity concerning finding of impairment

Overview

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

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

There is a persuasive burden on the professional at a substantive order review to demonstrate that they have fully acknowledged why past professional performance was deficient and through insight, application, education, supervision or other achievement sufficiently addressed the past impairments[1].

While Suspension Orders and Conditions of Practice Orders can be varied or extended, they are not intended to exist indefinitely. In time the professional must be allowed to practise without restriction or they should be removed from the register. It is neither in the interests of the public nor the professional's own interests that they are kept in limbo[2].

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

Important note: panels are required to work through each section of this Guidance sequentially in a staged approach, bearing in mind that in most cases a strike off decision will be the right method for removing someone from the Register. Only in the specific situations outlined in this guidance will allowing the professional to lapse while impaired, or agreed removal, be appropriate.

Removal from the Register while still impaired

Panel considerations

Panels and professionals should bear in mind that:

- It is not in the public interest or a professional's interests to remain on the register indefinitely when they are not fit to practise;
- public confidence in the professions is more important than the fortunes of any individual professional. Panels should explain how they have taken this into account and how public confidence will be upheld when deciding whether to allow someone to lapse with impairment[3].
- there are advantages to all parties in setting time limits to conditions; those time limits are set for a reason and should be respected;
- if a professional believes that the conditions they are subject to are or have become unworkable, they should consider applying for an early review to seek to vary the order, rather than waiting for the next substantive review;
- sometimes a conditions of practice order will no longer be workable and there are no alternative conditions that will ensure the public is safe and maintain confidence in the professions we regulate;
- a professional who is struck off can only apply to be restored to the Register after a period of five years has elapsed[4]; by contrast, professionals who leave the register by way of agreed removal or lapse while impaired can

apply for readmission[5] at any time if they consider they are no longer impaired – for example, their health or language skills have demonstrably improved. When deciding whether or not to strike someone off or to allow them to lapse while impaired, it is essential that panels bear this distinction in mind. The importance of this point was emphasised by the High Court in the case of Graham[6] a case where an NMC panel allowed a professional to 'lapse while impaired'. The Court criticised the panel for failing to give any adequate consideration to the seriousness of the misconduct and other relevant issues in that case (including the registrant's lack of meaningful engagement since the last hearing). Nor did the Panel in that case take into account the very significant practical differences between the routes back to registration following a striking off decision as opposed to allowing someone to lapse while impaired and the difference in the level of assessment at each of these stages in order to provide adequate safeguards for public protection This is an issue that is particularly important in cases that involve serious misconduct. The panel had also focused on the registrant's desire to leave the nursing profession without properly engaging with the purpose of professional regulation and the public protection objectives of the NMC. Public protection includes maintaining public confidence and upholding standards in our professions.

- a panel has to take into consideration the case before them as it currently stands, bearing in mind our overarching objective of public protection (which will include consideration of public safety, public confidence and the need to uphold professional standards) and the purpose of professional regulation. Panels should not base their decision whether strike off or lapse with impairment is appropriate solely upon the nature of the allegations as proven by the original panel. Although the seriousness of the original allegations is a relevant factor, what is also important is whether or not the registrant has meaningfully engaged since the substantive decision, any conduct and progress since the last panel determination, any attitudinal concerns present, and the current overall circumstances of the case.
- in any application for readmission the decision maker will be aware of the concerns that led to the original substantive finding of impairment, and that the professional left the register while impaired.

l. Striking off

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

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

- misconduct
- criminal convictions and cautions

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

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

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

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

Similarly, when imposing a suspension order a panel might set a number of expectations it has, or actions the nurse,

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

Professionals whose fitness to practise is impaired for reasons of health, lack of competence or not having the necessary knowledge of English cannot be struck off unless they have been continuously subject to a conditions of practice order for at least two years[7]. No such limitation exists in respect of other cases, such as misconduct.

Case Study

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

2. Lapse with impairment

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

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

- the professional would no longer be on the register but for the order in place[8];
- the panel concludes that the professional is unlikely to return to safe unrestricted practice within a reasonable period of time;
- The case relates solely to health or English language or is one where the professional has retired and has made it clear through engagement with the NMC and evidence that they do not intend to return to practice or situations where a professional's inability to address impairment not related to health (for example misconduct or lack of competence) is clearly related to a health condition;
- The case doesn't involve concerns of the kind referred to in our guidance on sanctions for the highest risk cases.

Circumstances where a health condition may justify allowing the professional to lapse with impairment, even though the underlying impairment does not relate to health, include (but are not limited to) circumstances where[9]:

- the professional has a terminal illness;
- the professional suffers from a health condition, which means that they are unlikely to work as a registered professional again;
- the professional does not have mental capacity to engage in proceedings and is unlikely to do so within a reasonable timeframe.

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

Case Studies

A midwife is suspended on the grounds of insufficient English Language skills. When the suspension order is reviewed, the midwife indicates that she is now practising in a country where English language skills are not required. It is

herefore unlikely that she will be able to improve her English Language skills within a reasonable period of time. In hese circumstances allowing the professional to lapse with impairment will be an appropriate decision.

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

3. Agreed removal

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

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

Circumstances where a health condition may justify agreed removal, even though the underlying impairment does not relate to health, include (but are not limited to) circumstances where[10]:

- the professional has a terminal illness;
- the professional suffers from a health condition, which means that they are unlikely to work as a registered professional again;
- the professional does not have mental capacity to engage in proceedings and is unlikely to do so within a reasonable timeframe.

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

Need for clarity concerning finding of impairment

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

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

n looking at any application in the future, and deciding whether the nurse, midwife or nursing associate is capable of safe and effective practice and meets the requirements for health and character, the Registrar (or one of our Assistant Registrars who also make decisions on behalf of the Registrar) would be able to take account of the panel's decision hat the nurse, midwife or nursing associate's fitness to practise was still impaired when they were removed from the egister.

Abrahaem v NMC [2008] EWHC 183 (Admin) at [23]
Annon v NMC [2017] EWHC 1879 (Admin)
Bolton v Law Society [1994] 1 W.L.R. 512 and PSA v NMC & Graham [2025] EWHC 3132 (Admin) [60]
Article 33(2)(a) of the Order
For readmission following Agreed Removal, see Readmission to the Register

see PSA v NMC & Graham [2025] EWHC 3132 (Admin), paras 53 and 56 - 61
Art 29(6) of the Nursing and Midwifery Order 2001
Even if they haven't revalidated, professionals cannot be removed from the register while a substantive suspension or conditions of practice order is in place. See rt 12(3)(b) of the Nursing and Midwifery Order 2001; Rule 14(4)(b) of the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 004
See Cancelling hearings for guidance on these circumstances.
0 As above