

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

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

- a professional hasn't addressed outstanding fitness to practise concerns, and
- continuing/imposing a conditions of practice order or suspension order is unlikely to mean the professional will return to safe unrestricted practice within a reasonable period of time.

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

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

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

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

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1. Agreed removal

A professional who would remain on the register in the absence of the substantive order can make an application for agreed removal to be taken off the register. 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.

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 will allow a professional to lapse with impairment where:

- the professional would no longer be on the register but for the order in place³;
- the panel can no longer conclude that the professional is likely to return to safe unrestricted practice within a reasonable period of time;
- a striking off order isn't appropriate.

Whilst the intentions or wishes of the professional do not determine whether they should be allowed to lapse, a professional who would no longer be on the register but for the order in place can themselves request an early review to ask that the order is removed.

Panels should be considering lapse with impairment even where the reason for a professional's lack of progress is outside their control. What matters is whether such issues are likely to be resolved in a reasonable period of time.

Circumstances where lapse with impairment is likely to be appropriate include where

- a professional has shown limited engagement and/or insight, but this is reasonably attributable to a health condition; or
- there has been insufficient progress
 - in cases involving health or English language; or
 - in other cases, where the lack of progress is attributable wholly or in significant part to matters outside the professional's control (e.g. health, immigration status, the ability to find work or other personal circumstances).

3. Striking off

The panel can impose a striking off order, removing the professional from the register. At a substantive order review, the panel will take into account both the concerns themselves and the professional's conduct since they were sanctioned. The panel will ask:

- Are there now fundamental questions about the nurse, midwife or nursing associate's professionalism?
- Can public confidence in nurses, midwives and nursing associates now be maintained if the nurse, midwife or nursing associate is not struck off from the register?
- Is striking-off now the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?

For example, a reviewing panel could impose a striking off order if the professional has shown they clearly lack insight, pose a risk of repeating the behaviour, or their conduct suggests harmful deep-seated personality or attitudinal problems.

Cases where _____ is likely to be appropriate include when:

- the professional has shown limited engagement and/or insight,
- the professional has breached a substantive order; or
- the professional has otherwise made no or negligible progress towards addressing issues with their fitness to practise.

Striking off will _____ usually be an appropriate outcome where:

- the professional has engaged with the fitness to practise process;
- the concerns relate solely to matters involving health or English language skills

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

Similarly, when imposing a suspension order a panel might set a number of expectations it has, or actions the nurse, midwife or nursing associate could take that would help a future Committee reviewing the order before it expires. It is appropriate for a reviewing panel to look at those requirements and consider whether they have been met when determining what action to take in future.

Professionals whose fitness to practise is impaired for reasons of _____ or _____ cannot be struck off unless they have been continuously subject to a conditions of practice order for at least two years⁴. We would not expect professionals with such concerns to lapse with

impairment in the same period either, unless they request that the panel take such an approach⁵. No such limitation exists in respect of other cases, such as misconduct.

Panel considerations

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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 member⁶;
- 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;
- professionals who leave the register can apply for readmission⁷ if they feel they are no longer impaired – for example, their health or language skills have demonstrably improved. A professional who has been struck off can only apply for restoration after five years⁸.
- 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.

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

This is because nurses, midwives or nursing associates, whose registration lapses or are removed from the register after a suspension or conditions of practice order expires or is lifted, can apply for readmission. In looking at any application in the future, and deciding whether the nurse, midwife or nursing associate is capable of safe and effective practice and meets the requirements for health and character, the Registrar (or one of our Assistant Registrars who also make decisions on behalf of the Registrar) would be able to take account of the panel's decision whether the nurse, midwife or nursing associate's fitness to practise was still impaired when they were removed from the register.

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

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

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

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

5 Even so, a professional could only lapse with impairment at the end of the order that has been imposed. If they wish to do so before the substantive order is set to expire, they would need to apply for Agreed Removal so that the panel can revoke the order.

6 *Bolton v Law Society* [1994] 1 W.L.R. 512

7 For readmission following Agreed Removal, see Readmission to the Register

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