

Standard reviews of substantive orders before they expire

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Overview

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

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

How the panel reaches a decision

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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 impairments².

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 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

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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