

## Health and Care Professions Tribunal Service

# PRACTICE NOTE

## Review of Article 30 Sanction Orders

This Practice Note has been issued  
for the guidance of Panels and to assist those appearing before them.

### Introduction

1. Article 30(1) of the Health Professions Order 2001 (the Order) requires all conditions of practice orders and suspension orders to be reviewed before they expire.
2. In addition to that mandatory review, Article 30(2) of the Order provides Panels with a discretionary power to review caution orders, conditions of practice orders and suspension orders at any time.

### Article 30(1) mandatory reviews

3. Article 30(1) provides that a conditions of practice order or suspension order must be reviewed before it expires and that the reviewing Panel may:
  - a. extend, or further extend the period for which the order has effect;
  - b. make an order which could have been made when the order being reviewed was made; or
  - c. replace a suspension order with a conditions of practice order.
4. Any order made following an Article 30(1) review only takes effect from the date on which the order under review expires, so the registrant must continue to comply with the expiring order until then.<sup>1</sup>

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<sup>1</sup> The power to impose interim orders does not apply to Article 30 reviews. A Panel should only replace a suspension order with a conditions of practice order where it is satisfied that the registrant will continue to comply with the existing order. An interim order cannot be imposed to ensure that the registrant does so.

## **Article 30(2) early reviews**

5. Article 30(2) of the Order provides that, on the application of the person concerned or otherwise, a caution order, conditions of practice order or suspension order may be reviewed at any time it is in force and that the reviewing Panel may:
  - a. confirm the order;
  - b. extend, or further extend, the duration of the order;
  - c. reduce the duration of the order (but a caution order cannot be reduced to less than one year);
  - d. replace the order with any other order which the Panel could have made (to run for the remaining term of the original order); or
  - e. revoke the order or revoke or vary any condition imposed by it.
6. Article 30(2) is a discretionary power and does not specify the circumstances in which it may be exercised. Consequently, reviews are not limited to cases in which new evidence has come to light but may encompass any case where a significant and material change in circumstances has occurred since the original order was made, including breaches of that order by the registrant. If the HCPC has requested an early review because of concerns that there has been a breach of an order, Panels should expect the HCPC to present credible evidence of any alleged breach.
7. There is no legislative provision setting out when an order made under Article 30(2) takes effect. With the exception of an order to extend, or further extend, the duration of the order, the natural meaning of the language used in Article 30(2) is that the order made on an early review has immediate effect. However, where an order is confirmed or replaced by another kind of order, it will only have effect for the remaining period of the order under review.
8. An order under Article 30(2) to extend, or further extend, the duration of the order, takes effect when the order would otherwise have expired. In the absence of any provision in the legislation to the contrary, the use of the word “extend” implies that the existing order will run its course before the extended order takes effect.

## **Extending Orders**

9. The power to extend, or further extend, the duration of an order under Article 30(1) or (2) is subject to the following limitations in Article 30(5):
  - a. a suspension order cannot be extended by more than one year at a time; and
  - b. a conditions of practice order cannot be extended by more than three years at a time.

## Procedure

10. Article 30(9) of the Order provides that, before a Panel exercises its powers under Article 30(1) or (2), the registrant concerned must be given the opportunity to appear before and be heard by the Panel, in accordance with the relevant Panel rules.<sup>2</sup>
11. The procedure to be followed by a Panel when conducting an Article 30 review will generally be the same as for other fitness to practise proceedings. However, in the case of an Article 30(2) review on the application of the registrant concerned, Rule 13(10) of the Panel rules provides for the registrant (who has the burden of persuasion) to present his or her case first and for the HCPC to respond.
12. At the start of the hearing, the Panel must ensure that all parties are clear what type of review hearing is being conducted, and what powers are available to the Panel as a result. This must also be clearly recorded in the Panel's determination. The determination must refer to the legislative power under which the Panel acted, and clearly set out the order made. It must:
  - a. Include confirmation of when any order made will come into effect (with reference to the legislation)
  - b. Where the order does not come into effect immediately, set out what order the registrant is subject to until then
  - c. Set out the date on which the order imposed by the Panel will expire.

## The issues to be addressed

13. The review process is not a mechanism for appealing against or 'going behind' the original finding that the registrant's fitness to practise is impaired. The purpose of review is to consider:
  - a. whether the registrant's fitness to practise remains impaired; and
  - b. if so, whether the existing order or another order needs to be in place to protect the public and maintain standards.
14. The key issue which needs to be addressed is what, if anything, has changed since the current order was imposed or last reviewed. The factors to be taken into account include:
  - a. the steps which the registrant has taken to address any specific failings or other issues identified in the previous decision;

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<sup>2</sup> the HCPC (Conduct and Competence Committee) (Procedure) Rules 2003 and the HCPC (Health Committee) (Procedure) Rules 2003.

- b. the degree of insight shown and whether this has changed;<sup>3</sup>
  - c. the steps which the registrant has taken to maintain or improve his or her professional knowledge and skills;
  - d. whether any other fitness to practise issues have arisen;
  - e. whether the registrant has complied with the existing order and, if it is a condition of practice order, has practised safely and effectively within the terms of that order.
15. The reviewing Panel's task "is to consider whether all the concerns raised in the original finding of impairment...[have] been sufficiently addressed".<sup>4</sup> As the decision in *Abraheam* indicates, in practical terms this places a "persuasive burden" on the registrant to demonstrate at a review hearing that he or she has fully acknowledged the deficiencies which led to the original finding and has addressed that impairment sufficiently "through insight, application, education, supervision or other achievement...".
16. The decision reached must be proportionate, striking a fair balance between interfering with the registrant's ability to practise and the overarching objective of public protection.<sup>5</sup>

### Early review applications

17. Where an Article 30(2) review application is made, Panels should expect an explanation as to why the application is appropriate.
18. In cases where new information has become available or circumstances have changed, that explanation should be straightforward and, in many cases, the appropriateness of the application will be self-evident. This will be the case where, for example, the registrant is breaching the terms of an existing order or is complying with an order which is ineffective.
19. In cases where there is no new evidence or change in circumstances, the Panel should expect the application to provide a compelling explanation as to why it is appropriate for the original order to be reviewed. That explanation must go beyond mere disagreement with the original order because that cannot alone be the basis of an early review. Review hearings should not be used as an opportunity to reopen findings made by a panel based on dissatisfaction with the decision.

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<sup>3</sup> A registrant who denied allegations which were held to be well founded and maintains that denial on review is entitled to do so and continuing refusal to accept the original findings should not be characterised as a lack of insight. However, that continuing denial is a relevant factor which the reviewing Panel may take into account: *Yusuff v GMC* [2018] EWHC 13 (Admin).

<sup>4</sup> *Abrahaem v GMC* [2008] EWHC 183 (Admin).

<sup>5</sup> Which includes protecting, promoting and maintaining the health, safety and well-being of the public, promoting and maintaining public confidence in the professions, and promoting and maintaining proper professional standards and conduct

20. Examples of cases where an early review may be appropriate include those where the order:

- a. is clearly impractical (for example, by requiring a registrant to undertake a training course which does not exist);
- b. is improper (for example, by imposing conditions of practice which, in effect, amount to suspension from the practice of the relevant profession); or
- c. exceeds the Panel's jurisdiction (for example, by purporting to impose obligations on a person other than the registrant - "your employer must...").