

# Decisions on interim measures

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## Introduction

1. An interim measure can be used to restrict a Physician Associate (PA) or Anaesthesia Associate's (AA) registration on an interim basis. Consideration can be given to whether an initial assessment is needed once the Regulator considers that a question has arisen as to whether a PA or AA's fitness to practise is impaired\* and an initial assessment has been opened, and thereafter at any stage of the fitness to practise process†.
2. Where the Regulator or a case examiner consider that an interim measure may be needed to protect the public or is otherwise in the interests of the public or the PA or AA, they can make a referral to an Interim Measures Tribunal (IMT)‡. [Part A](#) of this guidance sets out considerations relevant to referral to IMT.
3. The role of an IMT is to consider whether it is necessary for a PA or AA's registration to be restricted on an interim basis. If the IMT considers that an interim measure is necessary, it may impose conditions or suspension on the PA or AA's registration for up to 18 months§. [Part B](#) of this guidance explains the types of interim measures available, when each type may be proportionate to impose, and for how long.
4. Where an interim measure has been imposed, the Regulator may either refer the case to a case examiner or an IMT to review it\*\*. Guidance relating to reviews of interim measures is provided in [Part C](#).
5. [Part D](#) of this guidance sets out considerations relating to interim measures in specific case types.
6. The purpose of this guidance is to support fair and consistent decision making by the Regulator and case examiners in relation to interim measures. There is separate [guidance on interim measures for MPTS tribunals](#).

## Being proportionate, transparent and fair

7. The Regulator and case examiners must be [proportionate](#) in their approach to making decisions about interim measures.

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\* Article 10 of the Order

† Article 11 of the Anaesthesia and Physician Associate Order 2024 (AAPA Order 2024) ('the Order')

‡ Rule 8(1) of the General Medical Council (Fitness to Practise) (Anaesthesia Associates and Physician Associates) Rules 2024 (the FtP Rules 2024)

§ Article 11(3) of the Order

\*\* Rule 11 of the FtP Rules 2024

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8. To be proportionate when reviewing an interim measure, a case examiner will need to consider any real and immediate risk to public protection, the public interest and / or the interests of the PA or AA themselves and weigh and balance these against the adverse consequences that interim action has on the PA or AA.
  9. To ensure decisions made are [transparent](#) the Regulator or case examiner must give reasons for their decisions and record them clearly. This means using straightforward language and explaining technical terms wherever possible. This is particularly important in case examiner reviews of interim measures as it will help the PA or AA understand the case examiner's assessment of the case and any outcome proposed, so they are able to respond in an informed and meaningful way.
  10. To ensure [fairness](#), the Regulator and case examiners should act reasonably, be impartial and be aware of the risk of bias and take steps to mitigate it.

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# Part A - Referral to an interim measures tribunal

11. The Regulator or a case examiner may refer a matter to an IMT to consider imposing an interim measure\*. They should do this if they consider an interim measure may be needed pending:
- a. the conclusion of an initial assessment;
  - b. an accepted outcome decision by a case examiner;
  - c. the outcome of a hearing before an Associate's Tribunal (AT);
  - d. a review of a final measure of conditions or suspension; or
  - e. an appeal in relation to a decision about a PA or AA's fitness to practise†.

## The test for referral to an IMT

12. The test for referral is that an interim measure **may** be needed for the protection of the public or **may** otherwise be needed in the interests of the public and / or in the interests of the PA or AA.
13. Whether a referral to an IMT is needed will depend on the individual circumstances of the case and any potential risk posed by the PA or AA. In reaching a decision on referral, the Regulator or case examiner will need to consider each part of the test for imposing an interim measure outlined below and make a referral if they consider that one or more parts of the test may be met.
14. An IMT will not make findings of fact, but it will undertake an assessment of the cogency of the information before it and the concern must therefore be credible. It may be premature to make a referral if the only available evidence is hearsay or speculative in nature. However, the Regulator or case examiner should bear in mind that it may not be possible to obtain corroborative evidence at an early stage of an initial assessment and this should not, in itself,

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\* Rule 8(1) of the FtP Rules 2024

† Article 11(1) of the Order

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be a barrier to referral. In some circumstances, a slight delay in referral may be appropriate to clarify the concerns or obtain further evidence.

## The test for imposing an interim measure

15. The test for imposing an interim measure is **whether it is necessary** for the protection of the public, or is otherwise necessary in the interests of the public and / or in the interests of the PA or AA\*.

## Protection of the public

16. In the context of interim measures, an order may be necessary for the protection of the public where the concern about the PA or AA's fitness to practise indicates there is a real and immediate risk to patient safety. Most often this will arise from concerns about a PA or AA's behaviour, performance or the impact of a health condition on their ability to provide safe care.

## In the interests of the public

17. The interest of the public incorporates three elements:

- a. the protection of patients and the public generally from a PA or AA whose fitness to practise may be impaired;
- b. the maintenance and promotion of public confidence in the professions; and / or
- c. the maintenance and promotion of proper professional standards and conduct for PA's and AA's.

18. There is some overlap between protection of the public above and (a) given the impact on patient safety. However, (b) and (c) are also likely to be relevant in cases involving serious clinical concerns, particularly if the act or omission is persistent or repeated, or the circumstances surrounding the concern have attracted widespread public concern. This is because public confidence in the professions and the maintenance of professional standards and conduct would be undermined if the PA or AA's registration was not restricted due to the serious nature of the risk to patients.

19. Where an interim measure is needed for the protection of the public because there is a real and immediate risk to patient safety, then it is likely that imposing it will also be in the interests of the public.

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\* Article 11(1) of the Order

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20. In some instances, a PA or AA may not appear to pose any real and immediate risk to patient safety, but an interim measure may still be needed on the basis that they pose a risk to public confidence. This is because public confidence in the professions may be seriously damaged if the PA or AA is allowed to continue in unrestricted practice while the matter is being considered. A risk to public confidence may arise from something unrelated to the PA or AA's practice, such as a criminal charge or other serious alleged misconduct in their private life.

## In the interests of the associate

21. An interim measure may be needed where an assessment is made that it's not in the PA or AA's interests to hold unrestricted registration. This may be because the PA or AA lacks insight into the impact of a health condition and how it is affecting them.

## Factors to consider when deciding if an interim measure may be needed pending the conclusion of an initial assessment, an accepted outcome decision by a case examiner or the outcome of a hearing before an Associate's Tribunals

22. When deciding if an interim measure may be needed in one of these circumstances, the seriousness of the concern will need to be assessed. This involves considering the extent of any departure from the professional standards and / or the impact of the PA or AA's health condition on their ability to practise safely and effectively. It also means looking at any specific factors that may increase seriousness.

The [Decision on whether regulatory action is required](#) guidance should be referred to, to inform a view on the seriousness of the concern. Once this has been done, the view on seriousness should be used to inform the decision on whether one or more parts of the test for imposing an interim measure may be met. Concerns or cases which have a starting point of a high level of seriousness will often require referral for consideration of an interim measure.

23. The seriousness of the concern will inform a view on whether there is any real and immediate risk to members of the public if the PA or AA were to continue to hold unrestricted registration while the concern is assessed, or the case is decided. When considering whether there is likely to be a real and immediate risk to patient safety, the likelihood of a further incident of poor performance, or the behaviour reoccurring will be relevant to deciding if an interim measure referral may be needed.
24. Whilst a PA or AA's failure to comply with a direction to undergo an assessment of their performance, health or knowledge of English language, or a significant delay in their compliance with an assessment without a reasonable explanation, is not in itself a factor to consider when reaching a view on the seriousness of the concern, a failure or delay can be

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relevant to reaching a view on whether the concern may present a real and immediate risk to protection of the public, the public interest, or the interests of the PA or AA, and so inform the decision on whether a referral is necessary.

25. When considering if an interim measure referral may be needed in the interests of the public, one question that should be considered is whether trust in the professions is likely to be seriously damaged if the PA or AA continues to hold unrestricted registration during the relevant period.
26. When considering whether an interim measure referral may be needed in the interests of the PA or AA, consideration will need to be given to if it is in the PA or AA's own interests to hold unrestricted registration. When reaching a view on this, the PA or AA's insight into the concern will be relevant, particularly where this relates to the impact of a health condition. When considering the PA or AA's insight, the [Decision on whether regulatory action is required](#) guidance should be referred to.
27. The following general factors may also inform the Regulator or case examiner's view on whether an interim measure referral may be needed:

- f. Any local measures already in place to restrict the practice of the PA or AA.
- g. Where local measures are in place, it's important that any restrictions cover the PA or AA's entire practice in all places where they work and would be able to continue to apply if the PA or AA changed roles.

And whilst local measures may be sufficient to address any real and immediate risk to patient safety, if they are not in the public domain they may not be adequate to mitigate any public confidence considerations when deciding if an interim measure is in the public interest.

- h. The PA or AA's compliance with previous measures (both interim and final measures), and
- i. Previous fitness to practise concerns.

28. To decide whether an interim measure referral may be necessary, the Regulator or case examiner should also refer to the [specific case types section](#) below.

## Factors to consider when deciding if an interim measure

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## referral may be needed pending a review of a final measure

- 29.** A PA or AA practising in breach of a final measure put in place to protect the public will usually have the effect of undermining the public's trust in the professions and therefore pose a risk to public protection and / or the wider public interest. Where the Regulator or case examiner considers there is sufficient evidence to indicate that a breach is likely to have occurred, referral for consideration of an interim measure will often be appropriate.
- 30.** Some, or all, of the following factors are also likely to be relevant to deciding if a referral to IMT is needed following a breach of a final measure:
- j.** If the breach is a one-off or a repeated occurrence;
  - k.** Whether patient safety has been compromised and it places patients at risk of harm;
  - l.** If there appears to have been a wilful disregard of a final measure of conditions imposed on the PA or AA's registration; and / or
  - m.** Whether the PA or AA accepts a breach has occurred, the reasons for it and level of insight shown about the impact and likely consequences.

## Factors to consider when deciding if an interim measure referral may be needed pending an appeal?

- 31.** Where a PA or AA has appealed a decision to an internal appeal panel or lodged an appeal with the Court, the Regulator may refer the matter to an IMT. As the interim or final measure that has already been imposed on the PA or AA's registration will stay in effect during any internal or Court appeal process, it will be rare for a referral to be needed.
- 32.** A referral for consideration of an interim measure will usually only be needed where new information becomes available during the appeal process that indicates the interim or final measure currently in effect on the PA or AA's registration may no longer be sufficient to meet its purpose. To reach a view on whether an interim measure may be necessary, the Regulator or case examiner should consider the reasons for the AT or case examiner concluding that an interim or final measure was needed, and what has changed since that decision point. Referral may also occasionally be needed where the appeal relates to the imposition of a warning and there is currently no interim measure in place.

## Decision on whether the test for referral is met

- 33.** If, having considered the individual circumstances of the case and the factors outlined above, the Regulator or case examiner consider that one or more parts of the test for imposing an interim measure may be met, the matter should be referred to an IMT. The IMT will then decide if the test for

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imposing an interim measure is met and where it is, they will consider what interim measure is a proportionate response.

## Withdrawal of referral from an IMT

- 34.** If following referral to a tribunal it appears to the Regulator or a case examiner that it is not necessary for the tribunal to impose an interim measure, the referral must be withdrawn\*.
- 35.** The Regulator or case examiner should first consider the following questions:
- n.** Is there a change in circumstances which impacts upon the Regulator or case examiner's previous view of the concern or case or reason for referring the matter to a tribunal?
  - o.** Is there any other reason why the tribunal hearing should not proceed?
- 36.** If the answer to either of these questions is yes, then the Regulator or case examiner should go on to consider whether to withdraw.
- 37.** Withdrawal will normally only be appropriate where:
- p.** there is new evidence that was not available at the time of the referral decision, and had it been available it could reasonably have led to the Regulator or case examiner reaching a different conclusion on whether the test for referral was met;
  - q.** the Regulator is no longer able to rely on evidence that was relevant to the referral decision and the absence of that evidence could reasonably lead to the Regulator or case examiner reaching a different conclusion on whether the test for referral is met;
  - r.** the Regulator or case examiner failed to previously consider evidence that was available to them and relevant to their earlier decision to refer; or
  - s.** the Regulator or case examiner made a material error of fact or law in relation to the information relied upon, which if corrected may have led to a different

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\* Rule 8(4) of the FtP Rules 2024

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decision.

- 38.** It will not be appropriate to withdraw a referral to a tribunal simply on the basis that a complaint has been withdrawn, without consideration of whether there may still be sufficient evidence to support the assessment of the concern or case.
- 39.** The power to withdraw a referral is not intended as an avenue for the PA or AA to appeal against an earlier decision to refer a PA or AA to a tribunal. Where the Regulator or case examiner decides to withdraw a referral to a tribunal, they should clearly set out their reasons.

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## Part B – Types of interim measures

- 40.** If a tribunal decides an interim measure is necessary, it must consider what is a proportionate response in terms of the type of interim measure to put in place (conditions or suspension) and the length. Where a case examiner or IMT decides on review that an interim measure remains necessary, they will need to consider what is a proportionate response. Further guidance relating to the outcomes available on review is given below in the section [Review of an interim measure](#).
- 41.** Being proportionate in the context of an interim measure means taking only the action that is required but not more than necessary. This means weighing the significance of the risk posed to protection of the public, the public interest and the PA or AA's own interests and balancing these against the adverse consequences that interim action has on the PA or AA to decide what is required but not more than necessary. This will include considering if conditions are sufficient to mitigate the risk(s) identified rather than suspension.

### Interim conditions

- 42.** Conditions restrict a PA or AA's ability to practise or requires them to do something.
- 43.** Interim conditions may be proportionate in cases where there are failings in identifiable areas of the PA or AA's practice that require temporary restrictions to be imposed, or require the PA or AA to take specific action, and where the PA or AA would not put patients or themselves at harm, either directly or indirectly, by having conditional registration.
- 44.** Conditions must be appropriate, workable and measurable:
- t.** To be appropriate, interim conditions must address the immediate risk that has been identified to protection of the public, the interests of the public and / or the PA or AA.
  - u.** To be workable, they must be capable of producing the desired result of addressing the risk identified and the tribunal (or case examiner on review) must be satisfied the PA or AA can reasonably be expected to, and will, comply with them.
  - v.** To be measurable, individual conditions must be described in specific terms. This is important to ensure the PA or AA knows what is required of them and so their compliance with the interim conditions can be monitored.
- 45.** Interim conditions should be drawn from the suite of conditions detailed in the *Physician*

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*Associate and Anaesthesia Associate interim measures conditions bank.* The wording of interim conditions in the bank should be applied unless unusually it is necessary to amend or add to them, considering the individual circumstances of the case.

- 46.** Sometimes evidence is provided that a PA or AA's employer, or another relevant body, will not support certain interim conditions if they were to be put in place. Where alternative interim conditions can be identified that still adequately address the immediate risk(s) identified, consideration can be given to putting those in place instead. However, where they can't be, the interim conditions considered necessary to address the risk(s) should be imposed (or proposed by a case examiner on review). This is provided they are still considered to be generally workable, despite the fact they may not be supported by the PA or AA's current employer or relevant body, as it is possible the PA or AA may be able to work elsewhere. A lesser or greater action than that which is necessary to address the immediate risk(s) should not be imposed simply because certain interim conditions may not be supported by a specific body.
- 47.** When deciding whether an interim measure of conditions is proportionate, the guidance in the specific [case types section](#) should also be considered.

## Interim suspension

- 48.** Suspension restricts a PA or AA's registration and prevents them from practising during the period it is in effect. The purpose of suspending a PA or AA's registration on an interim basis is to remove them from practice to manage the immediate risk(s) presented to protection of the public, the public interest and / or themselves.
- 49.** Interim suspension may be proportionate in cases where some, or all, of the following factors are present:
- w.** interim conditions that are appropriate, workable and / or measurable cannot be identified;
  - x.** the risk(s) identified cannot be safely managed with interim conditions and interim suspension is necessary to stop the PA or AA from working and putting patients and / or themselves at risk; and / or
  - y.** the risk(s) identified are such that although patient safety is not in issue, interim suspension is necessary in the public interest to maintain public confidence in the professions.
- 50.** When deciding whether an interim measure of suspension is proportionate, the guidance in the specific [case types section](#) should also be considered.

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## The length of an interim measure

51. When first imposing an interim measure, the tribunal must specify the length of time for which it is to remain in force\*. A tribunal may impose an interim measure for up to 18 months<sup>†</sup>.
52. When considering the length of time the interim measure should be imposed for, the time needed to complete the whole fitness to practise process is a relevant consideration. This includes the time needed by the Regulator to gather evidence to fully assess the concern and the time needed for the case to go through the accepted outcome process and potentially be listed before an AT, or, for interim measures imposed during a review or appeals process, the time needed to complete those processes.
53. To be proportionate when deciding the length of an interim measure, the tribunal must consider the impact of the specific type of measure to be imposed on the PA or AA. As conditions do not prevent the PA or AA from working, a longer initial period may be justified compared to suspension which has a greater impact on the PA or AA's ability to work and demonstrate they can practise safely and effectively, including having kept their knowledge and skills up to date.

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## Part C - Review of an interim measure

- 54.** An interim measure must first be reviewed before the end of a period of six months beginning with the date on which it first had effect\*. It must then subsequently be reviewed before the end of a period of six months beginning with the date of the last review, or beginning with the date of a Court order to extend the period the interim measure may remain in force for†.
- 55.** The Regulator may at any time review an interim measure‡.

### Should the Regulator direct a review of an interim measure?

- 56.** The Regulator may direct a review of their own choice or because they have agreed to a request for a review made by a PA or AA§. To decide whether to direct a review of an interim measure, the Regulator must consider the individual circumstances of the case. A review must be directed when one of the statutory review points is approaching. A review should also usually be directed where:
- z.** The Regulator is in receipt of information that suggests the current interim measure may no longer be the most proportionate response, or that an interim measure may no longer be necessary at all, on the basis that the real and immediate risk to public protection, the interests of the public and / or the interests of the PA or AA has decreased;
  - aa.** The Regulator is in receipt of information that suggests the interim measure currently imposed on the PA or AA's registration may no longer be sufficient to protect the public, or protect the interests of the public or the interests of the PA or AA;
  - bb.** The Regulator is in receipt of information that suggests the PA or AA has breached the interim measure currently imposed on their registration and more restrictive interim action may be needed in response; or
  - cc.** The Regulator has agreed to a request for a review from a PA or AA made on the

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\* Article 12(1)(a) of the Order

† Article 12(1)(b) of the Order

‡ Article 12(3) of the Order

§ Rule 11(1) and (2) of the FtP Rules 2024

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basis the PA or AA is seeking for the existing interim measure to be varied, replaced by a different interim measure or revoked.

## Should an interim measure review be referred to a case examiner or an IMT?

**57.** When the Regulator directs a review, it must decide if the review should be referred to a case examiner or an IMT. If the Regulator refers the review to a case examiner, the case examiner can decide to carry out the review or decide that the review should be considered by an IMT.

**58.** A case examiner review will usually be appropriate where:

**dd.** The Regulator has directed a review because they are of the view that consideration should be given to revoking an interim measure of suspension and replacing it with an interim measure of conditions or revoking the interim measure on the basis it may no longer be necessary;

**ee.** The Regulator has no information that clearly indicates the PA or AA would be unwilling to agree to the continued imposition of an interim measure; or

**ff.** The PA or AA has admitted to having breached the interim measure currently imposed on their registration and shown insight into the impact and likely consequences.

**59.** An IMT review will usually be appropriate where:

**gg.** The Regulator has directed a review because they are of the view that the interim measure currently imposed on the PA or AA's registration is no longer sufficient to protect the public, or protect the interests of the public or the interests of the PA or AA, and swift action is required in response;

**hh.** The Regulator is in receipt of information that clearly indicates the PA or AA would be unwilling to agree to the continued imposition of an interim measure; or

**ii.** There is evidence to suggest the PA or AA has breached the interim measure currently imposed on their registration but has not admitted the breach or shown insight into the impact and likely consequences.

## Case examiner review of an interim measure

**60.** On review, the question is whether an interim measure remains necessary to protect the

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public or is otherwise in the interests of the public or the PA or AA.

## Does an interim measure remain necessary?

61. To decide whether an interim measure remains necessary, the case examiner will need to fully consider all the circumstances of the case, including all relevant information previously available, the reasons the interim measure was imposed on the previous occasion(s) and any new information available. This does not amount to a reconsideration of the previous decision but is necessary to inform the case examiner's current view on whether an interim measure remains necessary.
62. In making a decision, the case examiner should have regard to the sections in this guidance on [The test for imposing an interim measure](#) and [Interim measures in specific case types](#).
63. The Regulator may have directed a review of an interim measure on the basis they consider there is evidence to suggest the PA or AA has breached the interim measure currently imposed on their registration. Where this is the case, before deciding if an interim measure remains necessary, the case examiner will first need to decide whether they are satisfied, on the balance of probabilities, that a breach has in fact occurred.
64. If the case examiner considers that a breach of the interim measure has occurred, they should consider what risk, if any, this poses to protection of the public, the interests of the public or interests of the PA or AA. This assessment should be made having regard to the seriousness of the breach and the reasons why an interim measure was previously put in place.
65. Some, or all, of the following factors are also likely to be relevant to assessing the seriousness of a breach of an interim or final measure and any associated risk:
  - jj. If the breach is a one-off or a repeated occurrence;
  - kk. Whether patient safety has been compromised;
  - ll. If there appears to have been a wilful disregard of an interim measure of conditions imposed on the PA or AA's registration; and / or
  - mm. Whether the PA or AA accepts a breach has occurred, the reasons for it and level of insight shown about the impact and likely consequences.

## What is a proportionate response where an interim measure

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## no longer remains necessary?

66. Where the case examiner decides an interim measure no longer remains necessary, the interim measure should be revoked.

## What is a proportionate response where an interim measure remains necessary?

67. Where a case examiner decides that an interim measure remains necessary, they can\*:

**nn.** allow the existing interim measure to continue;

**oo.** extend the existing interim measure (up to the maximum of 18 months);

**pp.** vary the existing interim measure of conditions;

**qq.** revoke and impose a different interim measure (which can only run up to the maximum of 18 months from when an interim measure was initially imposed).

68. Where appropriate, it is open to the case examiner to take more than one of these actions. This may be necessary where the case examiner considers it is proportionate to extend the amount of time that an existing interim measure of conditions is in place for and considers it is proportionate to vary one or more individual conditions.

69. It will usually be proportionate to allow an existing interim measure of conditions to continue where:

**rr.** the assessment of the immediate risk to protection of the public, the public interest or the interests of the PA or AA has not significantly increased; and

**ss.** the length of time the measure is in place for remains appropriate i.e. it will not expire until after the relevant process (FtP, review or appeal) is expected to conclude.

70. It will usually be proportionate to allow an existing interim measure of suspension to continue where:

**tt.** the assessment of the immediate risk to protection of the public, the public

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\* Rule 13(1) and 14(2)(b) of the FtP rules 2024

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interest or the interests of the PA or AA remains the same or has increased; and

**uu.** the length of time the measure is in place for remains appropriate i.e. it will not expire until after the relevant process (FtP, review or appeal) is expected to conclude.

**71.** It will usually be proportionate to extend an existing interim measure of conditions where:

**vv.** the assessment of the immediate risk to protection of the public, the public interest or the interests of the PA or AA has not significantly increased; and

**ww.** the relevant process (FtP, review or appeal) is unlikely to be concluded prior to the measure expiring.

**72.** It will usually be proportionate to extend an existing interim measure of suspension where:

**a.** the assessment of the immediate risk to protection of the public, the public interest or the interests of the PA or AA remains the same or has increased; and

**b.** the relevant process (FtP, review or appeal) is unlikely to be concluded prior to the measure expiring.

**73.** An interim measure can only be extended for up to an initial maximum of 18 months from when it was initially imposed. When deciding how long to extend the interim measure for, the case examiner should take into account any information available about the time needed to complete the fitness to practise, review of final measure or appeal process. Where an interim measure has been put in place for up to the maximum of 18 months and it becomes apparent the process cannot be concluded within that time, the Regulator will have to apply to the Court for the period to be extended.

**74.** It may be proportionate to vary an existing interim measure of conditions where:

**a.** the assessment of the immediate risk to protection of the public, the public interest or the interests of the PA or AA has not significantly increased; and

**b.** the Regulator or case examiner considers that one or more interim conditions are no longer needed or that alternative or additional interim conditions are needed to address the risk(s) identified.

**75.** It may be proportionate to revoke and impose a different interim measure where:

**a.** the assessment of the immediate risk to protection of the public, the public

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interest or the interests of the PA or AA has increased or decreased; and

- b.** the Regulator or case examiner considers that an alternative measure is a more proportionate response.

- 76.** A PA or AA practising in breach of an interim measure of conditions put in place to protect the public or put in place in the interests of the public will usually put patient safety at risk and / or have the effect of undermining the public's trust in the professions. It may also put the PA or AA themselves at risk. Where this is the case, it will often be proportionate to revoke an interim measure of conditions and impose suspension instead.
- 77.** Where an interim measure of suspension is in effect, and on review the case examiner's assessment is that the risk(s) to protection of the public, public interest or the PA or AA have reduced since the measure was put in place, consideration should be given to whether an interim measure of conditions would adequately address the nature of the risk(s) identified.
- 78.** Where the case examiner decides to revoke and impose a different interim measure, this can only run up to the maximum of 18 months from when an interim measure was initially imposed by a tribunal.

## Additional considerations for case examiner reviews

### Requesting further information

- 79.** When considering whether an interim measure remains necessary, a case examiner may request further information from the Regulator which is relevant to their consideration of the case\*.
- 80.** The ability to request further information allows a case examiner to seek any clarification needed to support them to make a fair decision. However, as the case examiner is not required to make a conclusion on facts or impairment, it will be unusual for them to need further information for the purpose of reviewing an interim measure.
- 81.** A case examiner should be mindful when reviewing an interim measure in a case that is pending the conclusion of the initial assessment stage that evidence collection will usually still be ongoing. It is unlikely to be proportionate to request further information in these cases.

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\* Rule 17 of the FtP Rules 2024

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- 82.** It may be proportionate for a case examiner to request further information in cases where they must decide if a breach of an interim or final measure has occurred, and the case examiner considers it is necessary to get clarification on a specific issue.
  - 83.** The case examiner's reasons for requesting further information will need to include an explanation of why the case examiner considers it is necessary to make the request and explain how it is relevant to their consideration of the case. The question of what steps to take to obtain further information will be decided by the Regulator, having regard to the case examiner's reasons for requesting it, and in the interests of fairness, ensuring that the information is shared with the PA or AA.
  - 84.** Where further information is obtained and supplied to the case examiner, as with other available evidence, the case examiner must consider and assess the information. In circumstances where further information cannot be obtained and supplied, this should be noted, along with the reasons why and any impact the case examiner considers it has had on their decision.

## Referral to a tribunal

- 85.** A case examiner can decide that a case should be referred to a tribunal at any time\*.
- 86.** A case examiner should consider the information provided to them by the Regulator, including any written representations from the PA or AA, to decide whether they can reach a view on whether an interim measure remains necessary or if the case should be referred to a tribunal.
- 87.** Where new information is provided to the case examiner during the review that indicates that the interim measure currently imposed on the PA or AA's registration is no longer sufficient to protect the public, or protect the interests of the public or the PA or AA and swift action is required to be taken in response, this indicates that a referral is likely to be needed.
- 88.** A referral to tribunal will also be needed where it appears to the case examiner, they will not be able to conclude the review within the necessary timescales for any reason.

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\* Rule 11(7) of the FtP Rules 2024

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## Extending the timeframe for a response to an interim measure proposal

- 89.** When a case examiner notifies a PA or AA of an interim measure proposal, the PA or AA will have 14 calendar days to respond from the date the notification of proposed measure is deemed served. The question of whether it's reasonable to extend the timeframe for a PA or AA to respond to an interim measure proposal may arise in some cases and will depend on the individual circumstances. A case examiner may be asked by a PA or AA (or representative on their behalf) to extend the timeframe for a response, but they can also decide to do so of their own choice\*.
- 90.** It may be fair and proportionate for a case examiner to extend the timeframe for a response where they are in receipt of information that:
- a.** indicates a PA or AA was prevented from responding in the initial timeframe due to their specific personal circumstances but are now able to respond; or
  - b.** the PA or AA has indicated an intention to agree to the interim measure proposal but needs time to confirm the workability of a specific condition that's been proposed with a third party or needs to make representations about the workability of a specific condition.
- 91.** When deciding if it's fair and proportionate to extend the timeframe for a PA or AA to respond to the interim measure proposal, the case examiner should be mindful of the reason for the Regulator directing the review. If it is because there is a legal requirement under the Order for a review to be conducted, there may be insufficient time to conclude a case examiner review and for the Regulator to refer the case to an IMT if the timeframe for a response is extended and the interim measure proposal is not subsequently accepted by the PA or AA.
- 92.** In making their decision, the case examiner should have regard to:
- a.** the date upon which the review must be concluded;
  - b.** whether there is a good reason why the PA or AA needs additional time to respond;

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\* Rule 14(5) of the FtP Rules 2024

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- c. the length of extension required and the likelihood of the PA or AA responding within that time;
  - d. the risk(s) to protection of the public, interests of the public and interests of the associate that led to them concluding that an interim measure remains necessary; and
  - e. the need to protect the public is more important than the interests of any individual.

## Imposing an interim measure

### Where the PA or AA agrees to proposed interim measure

93. Where the PA or AA agrees to the interim measure proposal, the case examiner must impose the interim measure as specified in the interim measure proposal\*.

### Where the PA or AA rejects the proposed interim measure

94. Where the PA or AA rejects the interim measure proposal, the Regulator must make a referral to an IMT†.

### Where the PA or AA does not accept or reject the proposed interim measure

95. Before exercising their discretion‡ to impose an interim measure or request the Regulator to refer the case to an IMT, a case examiner should be satisfied that:
- a. the PA or AA has not accepted or rejected the interim measure proposal within the required timeframe;
  - b. the PA or AA was informed about the consequences of not responding to the interim measure proposal; and

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\* Rule 15(1)(b) of the FtP Rules 2024

† Rule 15(2) of the FtP Rules 2024

‡ Rule 11(7) of the FtP Rules 2024

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- c. service of the document notifying the PA or AA of the proposed interim measure and informing them about the consequences of not responding, was effective\*.
96. Where a PA or AA has sent a response, but the content does not clearly indicate if they agree or reject the proposed interim measure, it may be appropriate for the case examiner to seek clarification of the PA or AA's response. Where their response has only been received towards the end of the timeframe in which they were required to reply, the case examiner might consider that it is fair and proportionate to extend the timeframe for a response for a short period of time, so that clarification of the PA or AA's position can be sought. The case examiner will need to consider the guidance in the section [Extending the timeframe for a response to an interim measure proposal](#) to make this decision.
97. The information provided to the PA or AA about the consequences of not responding must be clearly documented and unambiguous. In the interests of fairness, where there is any uncertainty about the warning given, the case examiner should not proceed to impose the interim measure and the matter should be referred to an IMT.

## Where the PA or AA makes representations about the workability of interim conditions

98. A case examiner may receive notice that the PA or AA agrees with an interim measure proposal of conditions in principle, but that a specific condition(s) is not workable. Where this is the case, the PA or AA should set out clear reasons why they consider the specific condition(s) are not workable for them. The case examiner will consider the request and, where an amendment is identified that is workable, proportionate and achieves the overall aim of conditions, the PA or AA can be notified of a new interim measure proposal.
99. When considering suggested amendments to proposed conditions, the case examiner will primarily have regard to the reason(s) for deciding an interim measure remains necessary and should propose the action that is required and no more than necessary to achieve protection of the public in a timely way. In some cases, the case examiner may, having considered a request to amend interim conditions, conclude that an amendment is not appropriate or proportionate, and that it remains necessary to propose the original conditions. In these circumstances the PA or AA will need to be informed that the interim measure proposal will not be changed and the PA or AA will need to accept or reject those terms.

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\* Rule 74 of the FtP Rules 2024



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## Withdrawal of an interim measure proposal

**100.** If a case examiner becomes aware of new relevant information after they've notified a PA or AA of a proposed interim measure, they may decide to withdraw the interim measure proposal unless the PA or AA has already agreed to the measure. Where the case examiner withdraws the proposal, they may take any of the steps available to them under the review process. In cases where the case examiner decides that withdrawal would be appropriate but is unable to execute it because the PA or AA has already agreed to the measure, then an immediate review should be directed.

**101.** New information will be 'relevant' where the case examiner is of the view that had it been available to them as part of their initial review of the interim measure, it could reasonably have led to them reaching a different conclusion on one or more matters.

## Withdrawal of referral of a review from a tribunal

**102.** The Regulator may withdraw a referral of a review to an IMT, or a part of it, at any time\*. When deciding whether to withdraw a review from an IMT, the Regulator should consider the principles set out in the section [Withdrawal of referral from an IMT](#).

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\* Rule 18 of the FtP Rules 2024

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# Part D - Considering interim measures in specific case types

## Sexual misconduct

- 103.** Where the concern involves sexually inappropriate behaviour towards patients or colleagues, or the PA or AA is under police investigation for a sexual criminal offence, particular consideration should be given to the public interest and the impact on public confidence if the PA or AA were to continue working unrestricted in the meantime.
- 104.** The following factors are likely to indicate that a case would raise significant public confidence and / or public interest issues if no interim action is taken, requiring a referral to IMT to be made:
- a.** Information that a PA or AA is under investigation by police in connection to serious criminal offences such as rape or attempted rape, sexual assault or attempted sexual assault or sexual abuse of children, including accessing images of child sexual abuse.
  - b.** Concerns that a PA or AA exhibited predatory behaviour in seeking or establishing a sexual or improper emotional relationship with a patient or a former patient where, at the time of the professional relationship, the patient was particularly vulnerable.
  - c.** Concerns about a PA or AA's sexualised behaviour towards a patient or a colleague that fall on the higher end of the spectrum of seriousness of sexual misconduct, including those arising in a single episode.
  - d.** Concerns about a pattern of sexually motivated behaviour towards patients, their relatives or colleagues.
- 105.** There are also circumstances in which a departure from the more detailed guidance on [intimate examinations and chaperones](#) may suggest that a referral to an IMT is needed and may support a decision on initial consideration by an IMT or review by a case examiner or tribunal, that an interim measure is necessary, or remains necessary. This includes where there is a concern that the PA or AA did one of the following and there is evidence the conduct was sexually motivated or had no clinical justification:
- a.** performed an examination;
  - b.** failed to obtain informed consent before undertaking an examination or procedure;
  - c.** failed to offer or arrange a chaperone for an examination in accordance with our detailed guidance;
  - d.** failed to maintain professional boundaries when treating a patient, such as by making

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a remark of a sexual or inappropriate personal nature; or

- e. failed to respect a patient's privacy, such as when the patient was undressing for an examination.

**106.** A single failure to offer a chaperone is, in and of itself, unlikely to require an interim measure referral in the absence of any information to suggest the examination was sexually motivated or inappropriate. However, persistent and repeated failures to follow the more detailed guidance on chaperones may require a referral and support the need for an interim measure to be imposed.

**107.** An interim measure referral may also be necessary where the concern or case relates to the PA or AA having departed from our more detailed guidance on [maintaining personal and professional boundaries](#). This will usually be the case where there is evidence to suggest a PA or AA has engaged in predatory behaviour towards a patient or a colleague.

**108.** Consideration of an interim measure is likely to be needed if there is information to suggest that a PA or AA has:

- a. displayed sexual behaviour towards a patient or colleague, including any acts, words or behaviour designed to arouse or gratify sexual impulses and desires, or with the effect or purpose of causing offence, embarrassment, humiliation or distress,
- b. pursued or engaged in a sexual relationship with a patient,
- c. pursued or engaged in an improper emotional or financial relationship with a patient, or
- d. pursued or engaged in a sexual or improper emotional or financial relationship with a former patient where at the time of the professional relationship the patient was particularly vulnerable.

**109.** The proportionate interim measure for an IMT to put in place, or for a case examiner or tribunal to consider on review, in response to a sexual misconduct concern will depend on the extent of the PA or AA's behaviour and the impact it's assessed as having on the protection of the public, the interests of the public and / or the interests of the PA or AA.

**110.** Whilst a range of behaviour can amount to sexual misconduct, the nature of the departure from the standards expected indicates a starting point of a high level of seriousness in all cases. Given the impact these cases will usually have on public confidence, the public interest may require consideration to be given to an interim measure of suspension. This is particularly the case where the PA or AA has been charged by the police in connection with a serious criminal offence. However, in cases where the behaviour is isolated or limited in nature and so the resulting impact on protection of the public or on the interests of the public is less, conditions will be proportionate.

**111.** In those cases where an interim measure of conditions is considered to be the proportionate response, careful consideration will need to be given to the workability and effectiveness of

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conditions.

- 112.** In some cases, a condition requiring the PA or AA to only see patients in the presence of a chaperone may be appropriate. However, one or more of the following factors are a strong indicator that conditions requiring the use of a chaperone may not be workable or effective:
- a.** any concerns that the PA or AA has not complied with existing chaperoning arrangements at their place of work,
  - b.** concerns that a PA or AA asked a chaperone to leave the room during an intimate examination,
  - c.** concerns that a PA or AA exhibited sexually motivated behaviour towards patients in the presence of a chaperone,
  - d.** concerns that indicate a possible pattern of behaviour of a PA or AA engaging or seeking to engage in a sexual or an improper emotional relationship with more than one patient. Chaperone conditions may not be fully effective in protecting patients from this type of behaviour by PAs or AAs, since most contact of this nature is likely to occur in unchaperoned time, outside a consultation. A tribunal, or case examiner on review, may, however, consider a chaperone condition to be proportionate where the circumstances giving rise to the concern appear to be an isolated incident in respect of a patient.
- 113.** When considering the use of age specific chaperone conditions, the nature of the sexual misconduct concern should be reflected upon. Careful consideration should be given to whether such conditions would adequately protect patients from predatory and opportunistic behaviour which may lead to alleged perpetrators offending against a wide age range of patients\*.
- 114.** When imposing chaperone conditions, the wording of any such conditions should make it clear whether the requirement for a chaperone applies to all consultations, including video and telephone consultations, or only those where the patient is physically present.
- 115.** Where a PA or AA carries out consultations remotely, the proportionality of a chaperone condition should be considered, and whether this would unduly restrict a PA or AA's practice. Careful consideration should be given to the individual circumstances of the concern to assess whether the PA or AA may still pose any risk to patients if the consultation
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\* The report by the Professional Standards Authority - Sexual Misconduct In Health And Social Care: Understanding Types of Abuse and Perpetrators' Moral Mindsets found that some perpetrators limit their abuse to a small number of victims, while others take advantages of opportunities and pursue targets more widely. The latter group is separated into those who are unrelenting in their harassment of a few victims and those with a more inconsistent pattern to their behaviour, operating as the context allows.

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is by video or telephone.

- 116.** Whilst recordings of remote consultations can be made for teaching, training or assessment purposes, it will not usually be workable to impose a condition stipulating that telephone or video consultations with patients should be recorded. This is because it would require each patient to be fully informed of the reason for the recording (to comply with conditions arising from fitness to practise proceedings) and to provide clear consent which is unlikely to be feasible from a practical perspective for every consultation.

## Dishonesty

- 117.** Where the concern involves dishonesty in the workplace or otherwise arising from the PA or AA's professional practice, or the PA or AA is under police investigation for a dishonesty offence, particular consideration should be given to the public interest and impact on public confidence if the PA or AA were to continue working unrestricted in the meantime.
- 118.** Whether the test for referral to an IMT is met will depend on the extent of the PA or AA's behaviour and the impact it's assessed to have on protection of the public, the interest of the public and / or the PA or AA.
- 119.** Whilst a range of behaviour can amount to dishonesty, the nature of the departure from the standards expected often indicates a starting point of a high level of seriousness. Given the impact these cases will usually have on public confidence, referral to IMT will often be required. Where an interim measure is necessary, or on review remains necessary, the public interest is likely to require consideration to be given to an interim measure of suspension. This is particularly the case where the PA or AA has been charged by the police in connection with a serious criminal offence. However, there may be cases of dishonesty outside of a PA or AA's professional practice where suspension may be disproportionate.

## Violent or abusive behaviour

- 120.** Where the concern involves violent or abusive behaviour towards patients or colleagues, or the PA or AA is under police investigation for a violent offence, particular consideration should be given to the public interest and the impact on public confidence if the PA or AA were to continue working unrestricted in the meantime.
- 121.** Whether referral to an IMT is necessary, and whether an interim measure is necessary, will depend on the extent of the PA or AA's behaviour and the impact it's assessed to have on protection of the public, the interest of the public and / or the interests of the PA or AA.
- 122.** Whilst a range of behaviour can amount to violent or abusive behaviour, the nature of the departure from the standards expected often indicates a starting point of a high level of seriousness. Given the impact these cases will usually have on public confidence, referral to IMT will often be required. Where an interim measure is necessary, or on review remains

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necessary, the public interest is likely to require consideration to be given to an interim measure of suspension. This is particularly the case where the PA or AA has been charged by the police in connection with a serious criminal offence. However, in cases where the PA or AA's behaviour is connected to the impact of a health condition, or isolated or limited in nature and so the resulting impact on protection of the public or on the interests of the public is less, conditions may be appropriate.

## Discrimination

- 123.** Where the concern involves discrimination towards patients or colleagues, particular consideration should be given to public interest which will include the impact on the safe delivery of healthcare services as well as the impact on public confidence if the PA or AA were to continue working unrestricted in the meantime.
- 124.** Whether referral to IMT is necessary, and whether an interim measure is necessary, will depend on the extent of the PA or AA's behaviour and the impact it's assessed to have on protection of the public, the interest of the public and / or the interests of the PA or AA.

Whilst a range of behaviour can amount to discrimination, the nature of the departure from the standards expected will often indicate a starting point of a high level of seriousness. Where discrimination is unlawful because it relates to a protected characteristic, the seriousness of the behaviour is likely to require referral to IMT. Where an interim measure is necessary, or on review remains necessary, the public interest is likely to require consideration to be given to an interim measure of suspension given the impact it will usually have on public confidence. In other cases, interim conditions may be appropriate.

## Clinical concerns

- 125.** The test for referral to IMT may be met where there is information that a PA or AA's clinical skills and/or professional knowledge and competence are, or are likely to be, seriously below an acceptable standard and that they pose a real and immediate risk to patients if they were to continue working without restriction. Such cases may include either a series of failures to provide a proper standard of care amounting to a departure from the professional standards, or one particularly serious departure.
- 126.** A wide range of behaviour and / or poor performance can be seen in these cases. Where an interim measure is necessary, or on review remains necessary, the proportionate interim measure will depend on the impact that a PA or AA's behaviour and / or poor performance is assessed to have on protection of the public, the interests of the public and / or the interests of the PA or AA.
- 127.** Interim conditions will often be a proportionate response to clinical concerns. Interim suspension is only likely to be needed where the concern has a starting point of a high level

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of seriousness, or the assessment of seriousness identifies the presence of factors that increase risk.

**128.** In a very small number of cases, a clinical failing by a PA or AA will be so serious that, even if it is unlikely to recur, an interim measure is needed in the public interest given the impact on public confidence in the professions. In these cases, consideration should be given to interim suspension.

## Impact of a health condition

**129.** Where there are concerns about the impact of a PA or AA's health condition, our primary duty is to protect the public and the wider public interest, and not to assume responsibility for, or give priority to, the treatment or rehabilitation of the PA or AA.

**130.** The decision on referral to an IMT will depend on the nature of the PA or AA's health condition and the impact it's assessed to have on protection of the public, the interest of the public and / or the interests of the PA or AA.

**131.** We are committed to taking a compassionate approach to cases involving health and most concerns about a PA or AA's health can be adequately managed at a local level. A referral to an IMT will not usually be needed where the PA or AA has insight into the extent of their health condition and is seeking and/or following treatment and advice. This includes following the advice of their treating healthcare professionals and/or occupational health departments in relation to their work and restricting their practice appropriately.

**132.** However, there will be cases where a PA or AA's health condition poses a significant risk to patients, themselves, or public confidence in the profession and that risk is not being appropriately managed. An IMT may need to consider making an order if the particular concern about the impact of the health condition poses a serious and immediate risk to patients and:

- a. there are also concerns about the PA or AA's behaviour or performance that puts patients or public confidence in the professions at risk and the PA or AA's health condition may be a contributory factor;
- b. the PA or AA is working or likely to work and:
  - i. there are, or have been, serious concerns about the clinical care the PA or AA has provided, and the health condition may have been a contributory factor.
  - ii. the nature of the condition may affect the PA or AA's behaviour or the clinical care they provide and they are not seeking and / or following treatment and

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advice, and / or are not engaging with local support and steps put in place to manage any risks to patients. This suggests the PA or AA may lack insight into any risk, or potential risks, their health condition poses.

- iii. the health condition has only recently been diagnosed, is not well controlled and it is too soon to know if risks to patients can be appropriately managed by the PA or AA seeking and following treatment and advice and / or engaging with local support and steps to manage risk.

- c. a GMC health assessor has concluded the PA or AA is not fit to practise without restriction.

**133.** Where an interim measure is necessary, or on review remains necessary, interim conditions will often be the proportionate response. Interim conditions can help the PA or AA to manage their health condition and/or any related deficiencies in their practice, while addressing the immediate risk(s) identified.

**134.** Interim suspension is only likely to be needed in a health case where:

- a. the PA or AA's judgement may be diminished due to the nature of the health condition and there is a risk to patients or themselves if they continue to practise, even with conditions, and / or
- b. the PA or AA is considered to lack insight into the impact of their health condition and will put patients or themselves at harm, either directly or indirectly, which means they are not currently safe to practise with conditions, and / or
- c. the PA or AA has not complied with previous restrictions or requirements put in place to manage the impact of their health condition.

## Knowledge of English language

**135.** The test for referral to an IMT may be met where there is information that a PA or AA's knowledge of English language is, or is likely to be, deficient such that they pose a real risk to patients if they were to continue working without restriction. This may include where:

- a. the extent of the language deficiency is so severe that the PA or AA is unable to understand instructions from colleagues or obtain the necessary information from patients about their symptoms;
- b. the language concerns are accompanied by other concerns about a PA or AA's behaviour and/or performance.
- c. a PA or AA has not achieved a satisfactory level of attainment [as set by the GMC] in an English language assessment.



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**136.** Where an interim measure is necessary, or on review remains necessary, the proportionate interim measure in response to a concern about a knowledge of English language will depend on the impact it's assessed to have on protection of the public, the interest of the public and / or the interests of the PA or AA.

**137.** Interim conditions may be the proportionate response. The areas in which the PA or AA is deficient - speaking, listening, reading and / or writing - and the breadth of their deficiency, will inform the decision on whether conditions are appropriate. Interim conditions may need to include requirements that the PA or AA work under supervision.

**138.** A suspension could be needed in an English language case where:

**a.** the PA or AA lacks insight into their language deficiency; and / or

**b.** the PA or AA has not complied with previous restrictions or requirements imposed in respect of their knowledge of English language.

## **Criminal charges, convictions and cautions and determinations by another body responsible for the regulation of a health or social care profession**

**139.** There are differences between the charging system in England, Wales and Northern Ireland compared to Scotland. In England and Wales, the Crown Prosecution Service (CPS) authorise the police to charge the suspect, with the Public Prosecution Service (PPS) undertaking this role in Northern Ireland. However, in Scotland, the police can charge an individual, and then send their report to the Crown Office and Procurator Fiscal Service (COPFS) who will then decide whether to prosecute or ask the police to obtain more evidence. This means a charge in Scotland potentially carries less weight than a charge in England, Wales and Northern Ireland because the decision on whether to prosecute takes place after the individual is charged. Enquiries should therefore be made as to the present status of the charge i.e. whether it has been approved by the COPFS or remains with the police.

**140.** However, the considerations as to whether referral to an IMT is required or whether an interim measure is necessary is the same in all criminal cases and so the individual features of the case and the particular facts and seriousness of the criminal charges must be considered.

**141.** The point at which PA or AAs who are the subject of criminal investigations should be referred to an IMT varies and will depend on all the circumstances of the case. While some referrals will be indicated at the point a PA or AA is arrested or interviewed under caution, in other cases it may be appropriate to wait until a formal criminal charge has been brought or a conviction is secured. However, careful consideration should be given to the nature and seriousness of the alleged criminal offence and the likely risk to patient safety or public

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confidence if the PA or AA is allowed to continue in unrestricted practice pending a charging decision.

- 142.** In evaluating whether an interim measure is necessary, the IMT should have in mind the ultimate possibilities of both the PA or AA's acquittal and their conviction of the particular charges.
- 143.** Where an interim measure is necessary, or on review remains necessary, the proportionate interim measure will depend on the seriousness of the PA or AA's behaviour resulting in the charge, conviction, caution or determination and the impact it's assessed to have on protection of the public, the interest of the public and / or the interests of the PA or AA.
- 144.** Whilst a range of behaviour can be seen, the nature of the departure from the standards expected can indicate a starting point of a high level of seriousness. Where it does, given the public interest and impact these cases will usually have on public confidence, they are likely to require consideration to be given to an interim measure of suspension. This is particularly the case where the PA or AA has already been convicted of an offence that has resulted in, or is likely to result in, a custodial sentence (immediate or suspended).
- 145.** The threshold for making an interim measure in the public interest alone is likely to be high if suspension is the only outcome that will adequately address the risk posed. It is however likely to be met in police investigations or convictions (or very rarely cautions) for serious offences such as murder, manslaughter, rape and sexual assault as well as offences involving serious violence, or harm to children or adults with care and support needs.

## Freedom of expression

- 146.** Concerns may sometimes be raised about opinions that a PA or AA has expressed on social media or in other forums. This may include a concern that a PA or AA is promoting and/or spreading misinformation which has the potential to harm public health or seriously damage public confidence in the professions.
- 147.** Before making a referral to IMT, consideration should be given to whether there is cogent evidence to support the concern. This is because the imposition of an interim measure in these cases may restrict the PA or AA's freedom of expression and therefore the IMT may need more cogent evidence than would usually be the case. However, a referral should not be unduly delayed if a significant risk to the public, or to the public interest, is identified as the IMT will not need to make any findings of fact or decide impairment.
- 148.** Where the test for imposing an interim measure is met, conditions will often be the proportionate response. When considering what conditions are needed in response to the risk(s) identified, in very rare cases, it may be necessary to impose interim conditions which

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would restrict the PA or AA's right to freedom of expression\* .

- 149.** Blanket restrictions should not be imposed on a PA or AA's freedom of expression in relation to a particular topic. Where consideration is being given to imposing a specific condition which would restrict the PA or AA's freedom of expression, the duty to protect the public and the wider public interest must be carefully balanced with the PA or AA's right to freedom of expression.
- 150.** If a specific condition will have the effect of restricting the PA or AA's freedom of expression, Article 10 will be engaged. Article 10 is more likely to be engaged where a PA or AA expresses their opinion on a public platform, rather than privately.
- 151.** The right to freedom of expression protects an individual's right to hold their own opinions and express them freely without interference. However, this right can be restricted by a public authority if it is necessary and proportionate to do so. For example, in the interests of public safety, to protect health or to prevent disorder or crime.
- 152.** Any of the following may justify interference with a PA or AA's right to freedom of expression, particularly where they have identified themselves as being a PA or AA:
- a.** Information that a PA or AA is encouraging members of the public to commit an offence;
  - b.** A concern that a PA or AA is promoting and/or spreading misinformation which has the potential to harm public health or undermine public confidence in the professions;
  - c.** Information that a PA or AA is encouraging members of the public to engage in specified behaviours which expose them to a risk of harm;
  - d.** Information that a PA or AA is encouraging treatments which are unproven or known to be ineffective;
  - e.** Information that a PA or AA is discouraging treatments which are known to be effective; or
  - f.** A concern that a PA or AA's conduct amounts to bullying or harassment.
- 153.** Any condition(s) restricting freedom of expression must be workable, enforceable and meet the aim of imposing an interim measure: to protect the public or are otherwise in the interests of the public or the PA or AA. They must also be a proportionate response to the concern.

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\* Under Article 10 of the ECHR

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- 154.** Before imposing interim conditions that restrict freedom of expression the additional test under section 12(3) of the Human Rights Act 1998 ('the Human Rights Act') must be applied. The test means the decision maker must be satisfied that it is more likely than not that the case will be referred on to the accepted outcome stage of the FtP process, on the basis there is a reasonable likelihood of regulatory action being required, and that it is more likely than not that a case examiner or AT will go on to make a finding which justifies the interim measure being made in the particular circumstances of the case.
- 155.** In applying the additional test under the Human Rights Act, the decision maker may need more cogent evidence to support the concern than would usually be the case. This may sometimes require considering expert evidence, if this has been obtained by one of the parties, on whether the PA or AA's views have any credible basis or are likely to create a risk of harm to the public.
- 156.** Where interim suspension is considered to be the most proportionate response, this would not usually interfere with the PA or AA's right to freedom of expression. However, any information provided as to the impact of any suspension should be considered and, if the decision maker is satisfied that suspension would interfere with the PA or AA's Article 10 rights, the additional test under the Human Rights Act should be applied. However, it will not be necessary to apply this test if the decision maker does not consider that the interim measure will have the effect of restricting the PA or AA's freedom of expression as Article 10 will not be engaged.