

Guidance for decision makers on referral to an Interim Orders Tribunal (IOT)

What does an IOT do?

- 1 Cases may be referred to an IOT by the Registrar or by a case examiner at any point after an investigation has been opened.
- 2 The role of an interim orders tribunal (IOT) is to consider whether or not it is necessary for a doctor's registration to be restricted on an interim basis, either by suspension or by imposing conditions on their registration. This is most commonly to protect the public or to maintain public confidence in the profession while serious allegations about a doctor's fitness to practise are investigated. An IOT can also make an order in a doctor's own interests although this is less common. Cases considered by an IOT are heard in private although they may be heard in public in certain circumstances e.g. a doctor requests a public hearing.
- 3 An IOT's powers derive from Section 41A of the Medical Act 1983, as amended, which enables an interim orders tribunal or a medical practitioners tribunal (MPT) to make an order suspending a doctor's registration, or imposing conditions upon a doctor's registration for a period of up to 18 months. Any such orders must be reviewed by a tribunal or a Legally Qualified Chair within six months of the order being made, and thereafter at least every six months. An order may also be reviewed where new evidence relevant to the order becomes available or at the doctor's request once three months have elapsed. The GMC must apply to the High Court should they wish to extend the order beyond the period initially set. Any order extended by the High Court must be reviewed within three months of the extension being agreed.

In what circumstances will an IOT make an order?

- 4 There are three grounds under which a tribunal will consider making an order:

Protection of the public

An order may be necessary for the protection of the public where there is a serious risk to patient safety arising from concerns about a doctor's clinical skills, their health, performance or knowledge of English.

The public interest

This incorporates three elements:

- a** the protection of patients and the public generally from doctors whose fitness to practise is impaired
- b** the maintenance and promotion of public confidence in the medical profession
- c** the maintenance and promotion of proper professional standards and conduct for doctors

There will be cases where an order is made in the public interest only e.g. a doctor has been charged with a serious criminal offence unconnected to their practice. However, the second and third elements (b. and c.) are also likely to be relevant in cases involving serious clinical concerns particularly if they are persistent, numerous or have attracted widespread public concern. This is because public confidence in the medical profession and the maintenance of professional standards and conduct would be undermined if the doctor's registration was not restricted due to the serious nature of the risk to patients.

When making a referral on the grounds of public protection (patient safety), decision makers should normally also cite the public interest as an additional referral ground. This enables the tribunal to consider both grounds as appropriate in making an order.

A doctor's own interests

It is relatively rare for an IOT to make an order in the doctor's interests. However, this may happen in cases where the doctor's fitness to practise is impaired through substance misuse or the doctor is acting contrary to their own welfare by not restricting their practice.

- 5** A tribunal may make an order at any stage of the fitness to practise procedures.

Factors to consider when making a referral decision

- 6** The test applied by an IOT when considering whether an order is necessary* is that they must be satisfied that:
 - a** in all the circumstances there may be impairment of the doctor's fitness to practise which poses a real risk to members of the public, or may adversely affect the public interest or the interests of the practitioner;

* Please refer to [Imposing Interim Orders – Guidance for the Interim Orders Tribunal, Tribunal Chair and Medical Practitioners Tribunal](#)

and

- b** after balancing the interests of the doctor and the interests of the public, an interim order is necessary to guard against such risk.
- 7** Decision makers should bear in mind however that, in deciding whether to make a referral to an IOT, they are not applying exactly the same test as set out above and do not need to make a judgement that an interim order is necessary. The key consideration for decision makers is the potential risk posed by a doctor and their role is to assess only whether an IOT should be asked to *consider* making an order restricting a doctor's registration.
- 8** The following factors should be considered when deciding whether to refer a case to an interim orders tribunal:
 - a** The seriousness of risk to members of the public if the doctor were to continue to hold unrestricted registration.* In assessing this risk, the tribunal will consider the seriousness of the allegations and the weight of the evidence, including evidence about the likelihood of further concerns or incidents occurring whilst the allegations are investigated.
 - b** Whether public confidence in the medical profession is likely to be seriously damaged if the doctor were to continue to hold unrestricted registration whilst the allegations are resolved
 - c** Whether it is in the doctor's interests to hold unrestricted registration. For example, the doctor may clearly lack insight and need to be protected from themselves.
 - d** The adequacy of any local measures already in place restricting the doctor's practice. Decision makers should bear in mind that the restrictions need to cover the doctor's entire medical practice and there is a risk the doctor may undertake additional work which is not subject to the safeguards imposed by local restrictions. An assessment will need to be made, in discussion with the relevant Employer Liaison Adviser (ELA), of the confidence we can reasonably place in the local system and its ability to enforce and monitor compliance with any restrictions imposed on the doctor. Decision makers should not rely solely on assurances given by the doctor about their work intentions.
 - e** Whether the doctor has complied with any undertaking given or conditions previously imposed in relation to the matter under consideration

* When considering this guidance, it should be noted that some doctors may already have formal conditions imposed by an MPT (medical practitioners tribunal) or other restrictions (undertakings) on their registration

- f The doctor's history with the GMC (if any). The decision maker should consider previous cases that include similar allegations. However, a doctor's previous history may be of limited, or no, relevance where:
- there is no clear link or similarity with the current allegation(s)
 - there is a lengthy gap between the previous incident and the new event(s) under consideration
 - the previous case did not result in action to restrict the doctor's registration. However, an accumulation of cases may suggest a pattern of concern and/or persistence which is relevant to the risk a doctor may pose to patients or public confidence; even though the individual cases did not lead to action against the doctor.

Decision makers should refer to our separate [guidance](#) on taking a doctor's fitness to practise history into account for further advice on how to weigh this evidence.

Any reliance on previous history should be noted in the decision to refer to an IOT and disclosed to the doctor.

What kinds of case may need to be referred?

- 9 It's not possible to provide an exhaustive list but the following categories of cases, depending on the individual circumstances, may require referral to an IOT. The list is not definitive and there will be others where referral would also be appropriate.

Cases where there is a risk of harm to patients

Concerns about a doctor's clinical practice

- 10 This category concerns cases where there is information to suggest a doctor poses a significant and ongoing risk to patients as we have received information that suggests their clinical skills are, or are likely to be, seriously below an acceptable standard. Such cases will normally involve either a series of failures to provide a proper standard of care, or one particularly serious failure. Allegations indicating a serious lack of basic medical knowledge or skills are also likely to meet the threshold for a referral to an IOT.

Concerns about intimate examinations

- 11 There are also circumstances in which an alleged failure to comply with the GMC's guidance on intimate examinations and chaperones may suggest that it is necessary to refer the doctor to an IOT. A referral is very likely to be indicated if there is an allegation that the doctor 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 GMC guidance
- d failed to maintain professional boundaries when treating a patient e.g by making a remark of a sexual or inappropriate personal nature
- e failed to respect a patient's privacy e.g while undressing for an examination

Referral may also be indicated if there is evidence of a persistent and repeated contravention of GMC guidance on chaperones. A single failure to offer a chaperone is, in itself, unlikely to warrant referral in the absence of any information to suggest the examination was inappropriate.

Maintaining boundaries

- 12** It may also be necessary on the grounds of public protection and in the public interest to refer matters to an IOT where a doctor is alleged to have committed a serious breach of our guidance on maintaining boundaries. Referral will usually be appropriate where there is evidence to suggest a doctor has engaged in predatory behaviour by using their professional position to seek or establish an inappropriate relationship with a patient.
- 13** A referral would be indicated if there is evidence to suggest a doctor has:
- a engaged in sexualised behaviour towards a patient including any acts, words or behaviour designed to arouse or gratify sexual impulses and desires
 - b pursued a sexual relationship with a patient, where at the time of the professional relationship the patient was vulnerable, for example because of their mental health problems or lack of maturity
 - c engaged in an inappropriate emotional or financial relationship with a patient or otherwise committed a significant breach of our guidance on maintaining boundaries

Concerns that a doctor's health condition is placing patients at risk or presents a risk to themselves

- 14** The majority of concerns about a doctor's health can be adequately managed at a local level. There is no need for GMC intervention if there is no risk to patients, the doctor's interests or to public confidence because a doctor has insight into the extent of their condition, and is seeking appropriate treatment. This would include following the advice of their treating physicians and/or occupational health departments in relation to their work and restricting their practice appropriately.

15 However, there will be cases where a doctor's health poses a significant risk to patients or themselves and that risk is not being effectively managed locally. An IOT may need to consider making an order if the doctor lacks insight, has failed to seek appropriate treatment, or has ceased to engage with support or comply with treatment **AND** one or more of the following factors are present:

- there is a clear risk to patients arising from the doctor's health
- the doctor is currently or has recently been detained under the Mental Health Act 1983 and remains very unwell or at high risk of relapse
- a GMC health assessor has concluded the doctor is not fit to practise without restriction
- the severity of the health problem reported is likely to significantly affect the doctor's fitness to practise or pose a risk to patients either now or in the future (e.g. the health problem has only recently been diagnosed, is not well controlled and is of a type that can be associated with high rates of relapse and lack of insight or compliance on the part of the doctor)

The following are aggravating factors which may heighten the need to make a referral but would not indicate one by themselves. If these factors are absent, then the need for a referral will correspondingly decrease:

- the doctor's employers and/or Responsible Officer were previously unaware of any health concerns and have been unable to implement an adequate support plan
- the doctor is not in stable employment or training or has no Responsible Officer, and is known to be seeking work
- the doctor is (or was) part of a locally managed action plan but is intending to leave (or has left) employment while the existing employer believes that a risk to patient safety, or the doctor's welfare, persists
- the doctor has a related or significant fitness to practise history.

Concerns that a doctor's language skills are placing patients at risk

16 A referral may be indicated if serious concerns are raised about a doctor's language skills. However, the decision maker will need to carefully consider the following factors:

- the extent to which the language deficiency is likely to place patients at risk. For example, a referral would be indicated if it is so severe that the doctor is unable to understand instructions from colleagues or obtain the necessary information from patients about their symptoms

- whether the language concerns are accompanied by other serious concerns about a doctor's conduct and/or performance. This is likely to indicate a referral is necessary as the overall risk to patients is increased.
- if a doctor has not achieved a satisfactory level of attainment [as set by the GMC] in an English language assessment, this is a strong indicator that referral is necessary as the doctor's fitness to practise is impaired by their inadequate language skills

Refusal to co-operate with a language, health or performance assessment

- 17** A doctor's refusal to comply with a direction to undergo a performance, language or health assessment, or a significant delay in their doing so without a reasonable explanation, should be treated as an aggravating factor when considering a referral to an IOT. However, it is the risk posed by the underlying poor health or language/performance deficiency that should be the basis for any referral rather than a doctor's non-compliance.

Cases involving a breach of conditional registration or undertakings

- 18** A referral to an IOT may be indicated if the doctor has breached their existing conditions or undertakings without a reasonable explanation or has withdrawn their agreement to undertakings. However, not all breaches of conditions or undertakings will require referral and the decision maker will need to make a careful assessment of whether the breach is so significant that it places patients at risk of harm or risks causing significant harm to the public interest or the doctor's own interests.
- 19** If a doctor has been referred to an MPT as a result of breaching their undertakings, it will usually be necessary to also make a referral to an IOT. This is because their registration will otherwise be unrestricted while awaiting an MPT hearing due to the undertakings no longer being effective.

Cases where there is a risk to the public interest

- 20** There will be cases where the doctor does not appear to pose a direct risk to patients but the decision maker must consider whether a referral should be made in the public interest. This is usually because public confidence in the profession may be seriously damaged if the doctor is allowed to continue in unrestricted practice while the allegations are resolved. A risk to the public interest can arise from something unrelated to the doctor's medical practice such as a criminal charge or other serious alleged misconduct in their professional or private life.

Criminal cases

- 21** The threshold for making an interim order in the public interest alone is likely to be high if suspension is the only outcome that will adequately address the risk posed by the doctor. It is however likely to be met in police investigations or convictions (or

more 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 vulnerable adults. Although this is not an exhaustive list it is indicative of the level of seriousness likely to warrant an interim order. Other, less serious, offences may also require referral to an IOT, depending on the circumstances.

- 22** The point at which doctors who are the subject of criminal investigations should be referred to an IOT varies and will depend on all the circumstances of the case. While some referrals will be indicated at the point a doctor is arrested or interviewed under caution, it may be appropriate to wait until a formal criminal charge has been brought or a conviction is secured in other cases. However, careful consideration should be given to the nature and seriousness of the alleged offence and other relevant factors such as the likely risk to patient safety or public confidence if the doctor is allowed to continue in unrestricted practice pending a charging decision.
- 23** There will be cases where there is a link to patients but the information does not suggest they are at direct risk of clinical harm from the doctor. Nonetheless, a referral may be necessary to protect patients from other types of harm such as psychological and financial. For example, where there are serious concerns about a doctor's probity such as claiming NHS money in fraudulent expense claims or forging paperwork for clinical research trials.
- 24** Other serious concerns which may indicate referral include where there is information to suggest the doctor has unlawfully discriminated in relation to characteristics protected by law.

Cases where an order is necessary in the doctor's own interests

- 25** There will, less frequently, be cases where it is necessary for an IOT to consider restricting a doctor's registration in their own interests. Rarely, this may be because the doctor is acting contrary to their own interests and welfare due to a serious lack of insight into their situation. More commonly, this referral ground may be appropriate if there are significant concerns about a doctor's health which are not being adequately managed at a local level and the doctor has little or no insight into the need to restrict their practice due to their condition. Please also refer to paragraphs 14-15 above.

When should a referral be made?

- 26** An interim orders tribunal has a duty to act to protect members of the public, the doctor's own interests and the wider public interest. It is therefore important that cases are referred as soon as practicable after information becomes available suggesting that the doctor's registration needs to be restricted on an interim basis. It will not always be possible to gather all the evidence before referring the matter to a tribunal. A referral can be made at any stage of an investigation including right at the outset when information may be scarce.

How much evidence is needed?

- 27** An IOT will make no findings of fact but it will undertake an assessment of the cogency of the information before it and the complaint must therefore be credible and of a serious nature. It may be premature to refer a case if the only available evidence is hearsay or speculative in nature. The decision maker should bear in mind however that it may not be possible to obtain corroborative evidence at an early stage of an investigation and this should not, in itself, be a bar to referral. In some circumstances, however, a slight delay in referral may be appropriate to clarify the concerns or obtain further evidence.

Assessment of the risk

- 28** A careful assessment should be carried out of the seriousness of the allegations together with the risk arising from the doctor continuing to practise without restriction while they are investigated. When making a referral, the decision maker should be satisfied that there is enough evidence to suggest the risk is credible, of a serious nature and an IOT should consider whether immediate action is needed to restrict the doctor's registration.
- 29** In cases where a referral is likely in the public interest, decision makers should consider whether a reasonable and properly informed member of the public would be offended or surprised to learn, if the doctor is subsequently convicted or the allegations against them are proven, that they were allowed to continue treating patients in the interim.* In deciding whether to impose an order, an IOT will undertake a balancing exercise between the risk posed by the doctor and the impact upon them of restricting their registration while allegations are investigated.

Cases which carry a presumption of impairment

- 30** There are seven categories of case where the allegations, if proven, would amount to such a serious failure to meet the standards required of doctors that there will be a presumption of impaired fitness to practise. These are:
- a.** sexual assault or indecency
 - b.** violence
 - c.** improper sexual/emotional relationships
 - d.** knowingly practising without a licence
 - e.** unlawfully discriminating in relation to characteristics protected by law
 - f.** dishonesty

* Patel v GMC [2012] EWHC 3688 Administrative Court

g. gross negligence or recklessness about a risk of serious harm to patients

- 31** Such cases are by their nature more serious but there is no automatic need to refer allegations with a presumption of impairment to an IOT. Whether or not a referral is necessary will depend on the individual circumstances of each case and the risk posed by the doctor. Where allegations carry a presumption of impairment but are unrelated to a doctor's practice, the key question is whether public confidence would be damaged if the doctor continued to hold unrestricted registration while the allegations are resolved. This test is unlikely to be met in respect of a single episode of low level violence or dishonesty outside of a doctor's professional practice.

Doctors who do not hold a licence

- 32** On occasion, we may receive information which suggests an unlicensed doctor poses a risk to either patient safety [should they restore their licence] or public confidence in the profession as they continue to hold GMC registration albeit they are not currently practising.
- 33** Interim orders attach to a doctor's registration rather than their licence and an unlicensed doctor is entitled to have their licence re-instated unless their registration is suspended. If the other criteria for a referral are met, unlicensed doctors should be referred to an IOT as they remain on the Medical Register and may be undertaking professional duties for which a licence is not required or may at any time have their licence reinstated. The public's trust in us as an effective regulator is likely to be undermined if no referral is made in circumstances where this would otherwise be necessary for public protection or in the public interest including to maintain public confidence in the medical profession.

Recording decisions to make an IOT referral

- 34** Decisions on referrals to the IOT should be written in accordance with the relevant [guidance](#) on drafting decisions and recorded on the standard [template](#).
- 35** Decision makers should be careful to identify all relevant referral grounds. As highlighted in paragraph 4, it will usually be appropriate in cases involving a direct risk to patients (which are being referred for the protection of the public) to also cite the three pronged test for the public interest in the decision. This is because, in cases where there is a serious risk to patient safety, a reasonable and properly informed member of the public would expect that an IOT be asked to consider restricting the doctor's registration in the public interest while the allegations against them are resolved. This would also maintain confidence in the GMC's performance of its statutory fitness to practise function which links to the third element of the public interest test.

Withdrawal of referrals under Rule 28

- 36** Rule 28(3) of the Fitness to Practise Rules 2004 (as amended) provides for the withdrawal of all or part of a matter referred to an IOT hearing, where, before the opening of the hearing a case examiner decides that the tribunal should not consider making an order. This may be due to new information emerging or if it appears to the registrar that for some other reason, the hearing should not be held. In these circumstances, decision makers should refer to the separate guidance on withdrawal of referrals under rule 28.