

Reviews on the papers

IM Suitability Guidance (IOT)

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1. Decision points

Investigation Managers may consider the suitability of a review on the papers (ROP) at any time during the ROPs process. However, consideration will most commonly be needed at the following points:

- An initial decision, confirming whether or not a case is eligible for a ROP based on the proposed sanction submission and doctor's capacity.
- A final decision, confirming whether or not the ROP will go ahead based on the doctor's response to our order proposal and the compliance evidence received.
- Whenever an AoI or IM IOT decision is required and the doctor is subject to IOT.

The IM will also need to consider the suitability of a ROP where a doctor initiates the ROP process.

This guidance will outline the factors to be considered to each of the above points.

2 Initial decision

2.1 Immediate exclusions

ROP eligibility should be considered and decided upon in all cases where a review is directed and a doctor should be given the chance to accept our proposed sanction submission wherever possible. There will, however, be situations in which this is not possible.

Due to the amount of time taken to complete the ROP process operationally, the following cases will be excluded:

- Any case in which the review period has been set at 3 months following a change to the interim order.
- Any case in which an early Interim Orders Tribunal (IOT) review has been directed.
- Any case where an MPT hearing has been listed to take place and conclude before the next IOT review.

Any of the above cases will be excluded from the ROP process by the Case Owner (CO). No IM decision will be required in these instances.

Case owners are given discretion to consider ROP eligibility at this initial stage. However, if the CO is in any doubt as to whether:

- 1) The current interim order remains necessary and proportionate and/or
- 2) ROP is not suitable for any other reason

then they should refer the matter to their IM for an IM IOT or ROP suitability decision. The IM should consider ROP as part of any IM IOT decision.

2.2 IM Suitability Decision

At **7 weeks (6 weeks for 3 month reviews after HCE)** prior to the ROP cut-off date, the IM may be allocated a ROP suitability or IM IOT decision. The CO will complete a CARF which will:

- provide a case summary
- provide a summary of the previous IOT outcome
- detail anything that has changed since the last IOT
- provide a view on the appropriate sanction submission
- make a recommendation as to the suitability of the ROP.

The IM should consider the following factors when deciding whether or not a case is eligible for a ROP:

- Whether the existing interim order remains necessary and proportionate
- The operational viability of the ROP
- The doctor's capacity to consent.
- Non-engagement.

The GMC has decided that in general it will only be promoting ROPs in IOT cases where – subject to the doctor's providing evidence of compliance with the existing order – it appears appropriate for that order to be **maintained**¹. If we think that the current IOT conditions are not sufficient or are too stringent and need to be varied or new conditions should be added, then the case is not suitable for a ROP.

When considering ROP suitability, the IM should therefore ask themselves the following two questions:

- 1) Is the current interim order still necessary and proportionate?
- 2) Are there any other factors affecting ROP suitability?

¹ The exceptions to this are cases where we are looking to revoke the order, cases where the doctor has interim conditions which need updating to a new conditions bank, and some cases where the doctor has requested a variation (see section 5 of this guidance).

2.2.1 Considering whether an order remains necessary and proportionate

The IM should consider the following factors when considering whether the current interim order remains appropriate:

- **Have we received any information to suggest that the allegations are more/less serious or substantiated than when they were previously considered by the IOT/LQC?**

COs should be ensuring that any new information received during the life of a case is reviewed quickly and the Doctor referred for an early IOT review at the time if necessary.

The IM should consider whether there is any evidence to suggest allegations are more or less serious than they were at the last referral to IOT. Where a variation seems appropriate, a referral to an early IOT should be considered.

- **Have we received new allegations about the doctor?**

New allegations may indicate that a doctor poses a greater or lesser risk to public safety/ the public interest from when the matter was last considered by the IOT (this may include a breach of the existing order). That in turn may mean that the current interim order is not sufficient and needs to be reviewed. Where a variation seems appropriate as a result, a referral to an early IOT should also be considered.

- **Are we due to receive any substantive information before the next review hearing date i.e. a health assessment, performance assessment, trust or export report?**

In general, expecting a piece of substantive information should not stop us from pursuing ROP. In these situations, IMs should be minded to proceed with ROP unless there are other factors against pursuing this.

If on receipt, the information indicates that the order should be varied, the CO/IM can at this point consider whether ROP is still suitable and whether an early IOT review is needed.

- **In criminal cases (whether in the Convictions team or NIT) only, are the police due to make a charging decision or is a criminal verdict expected before the next review hearing date?**

A police charging decision will often substantially change the level of concern either towards suspension if charges are brought, or towards no order if the charges are dropped.

Where a doctor has been given a bail date pending further investigations and a charging decision, we should be minded to proceed with ROP. There is no guarantee a charging decision will be made at this point and it is common for people on bail to be re-bailed.

We should only be minded to ROP OFF where the police have clearly indicated that they expect a charging decision on a date prior to the scheduled review hearing.

A criminal verdict may also substantially change the level of concern either towards suspension if convicted, or towards no order if found not guilty. We should only be minded to ROP OFF we are confident that the verdict will occur prior to the scheduled IOT review hearing.

- **Have we received information to suggest the Doctor has breached their interim order?**

If there has been a serious breach of conditions, a review on the papers will usually not be suitable to maintain an order of conditions and the IM ought to consider referring the case for an early review. In some situations, a breach of a less serious nature may have occurred and the IM may decide that the existing order of conditions may still be proportionate. The mere existence of a breach would not necessarily exclude the possibility of a ROP.

If there has not yet been a direct breach, we will invite the doctor to a ROP and, if they have not already done so, ask for evidence of compliance. When outlining the reasoning behind a decision, the decision maker should specify the compliance evidence required for a ROP to go ahead.

2.2.2 Other factors which may affect ROP suitability

The CO should consider the following factors when considering whether ROP is suitable:

- **Have any questions been raised about the Doctor's capacity?**

Careful consideration should be given to a doctor's capacity to consent where adverse physical or mental health may limit their ability to comply with the requirements of the process, or to appreciate the consequences of the agreement.

Where we are aware that a doctor is unrepresented, the decision maker should be satisfied that the doctor is sufficiently well informed to appreciate the consequences of his/her agreement with the sanction.

If, for any other reason, the decision maker feels that that the doctor is not in a position to consent to a sanction submission, the case should not be reviewed on the papers.

- **Have we established that the Doctor is non-engaging?**

In cases where a Doctor is not engaging or where the Doctor did not consent to a recent High Court extension (HCE), the CO has the option to issue a preliminary letter to the Doctor to see if they would be amenable to their next interim order review being on the papers. The Doctor will be given a week to respond to confirm or decline their interest.

Non-engagement is defined in strict terms and covers circumstances where:

- the Doctor has explicitly refused to engage with GMC enquiries and continues to do so, or
- the Doctor has failed to respond to or acknowledge any correspondence that requires a response.

Where the doctor is non-engaging, the ROP cannot proceed. There is no need for the CO to raise ROP suitability decision. The case will be prepared for an IOT review hearing.

- **When the case was last considered at IOT, did the Tribunal make reference to the new conditions bank and glossary?**

The new conditions bank and glossary was introduced in August 2015. The GMC would like to see all doctors' transition to these conditions at the earliest opportunity. Unless the doctor has had an oral IOT hearing on or after the 1 November 2015, then it is likely that a doctor's conditions are still based on the old conditions bank. If this is the case, it will not be suitable for the order to simply be maintained in its current form via a ROP. Where possible, a doctor should be transitioned from one bank to the other via a ROP.

Where an order is likely to be maintained, but the doctor is on the old conditions bank, the IM should use the condition [translation spreadsheet](#) to determine whether or not a case is appropriate for a ROP. The changes to certain conditions are substantive enough that they may trigger the need for an oral hearing.²

- **Operational viability**

Even where the current order appears to remain necessary and proportionate, there is an additional factor which may affect whether the case is suitable for a ROP.

It is possible that, due to the time it takes to prepare for and carry out a review on papers, certain cases will not be eligible for the process.

² More detailed information on translation cases can be found in the [Interim Orders ROP operational Guidance](#).

Where the decision maker decides the review on papers cannot go ahead, they should provide reasons, stating whether any of the above factors are applicable.

If the decision maker is unsure about whether a ROP should be pursued, they should err in favour of pursuing a ROP in the knowledge that Legal will, thereafter, undertake a thorough review of the case and secure PLA approval of the sanction.

3. Final decision

At the end of the period allowed for the doctor to agree with the GMC's sanction submission, no later than **3 days** prior to the ROP cut-off date, an IM will need to be satisfied that:

- The doctor has signed the Agreement Form agreeing to the proposed sanction.
- The doctor has provided any necessary compliance information, or the information they have provided will suffice.
- The GMC has received no further information which would suggest a revision to our sanction submission is necessary, or if they have, it has already been considered in an AOI, IM IOT or ROP suitability decision.
- The Doctor has capacity to consent to the ROP.

If any of the above conditions are **not** met, the decision maker should inform the CO so that they may inform the doctor that the GMC has been unable to agree the outcome originally proposed and providing the reason. The matter should, thereafter be heard in full at the scheduled oral review hearing.

If the IM is in any doubt then they can seek advice from legal or senior management.

If the IM considers that maintenance of the existing interim order remains appropriate and ROP is appropriate, then they should countersign the Agreement form and return this to the CO along with any relevant observations.

4. AOI and IM IOT Decisions

If any information is received, at any time leading up to the ROP that might affect our sanction submission or otherwise suggest that an agreement is not appropriate, then the CO will raise an AOI or IM IOT decision. As part of this decision, the AR or IM should also consider ROP suitability.

The IM should consider the two questions and factors set out at section 2 above.

Where the IM feels that an early IOT review is required, they may wish to refer to our example decision template which is at Annex A of this guidance.

5. Doctor Initiated Decisions

5.1 Doctor requests ROP

It may be that a doctor contacts the GMC, proposing a sanction submission for consideration and querying whether agreement can be reached (enabling a ROP to take place).

If the request is received with less than **7 weeks** until the ROP cut-off date, a ROP is highly unlikely to be possible due to the amount of time required for the ROP process.

If the request is received more than **7 weeks** prior to the ROP cut-off date then the doctor's proposal should be taken into account and considered at the 7 week point.

If the doctor's review is not due to take place for a considerable amount of time and the doctor is not content to wait, then the IM should consider whether an early review is in fact warranted in light of any new evidence received, or remind the doctor of their right to request a review under the Rules.

5.2 Suspension to Conditions and vice versa

Where a doctor has requested a variation from suspension to conditions, or vice versa, a ROP will not be appropriate. Where this is the case, the IM should consider any new evidence provided by the doctor and decide whether or not to refer to an early IOT review.

5.3 Condition variation

Where the doctor requests a variation of conditions, this should be considered by the IM. A small group of HoS/IMs are trained specifically to form new conditions where a variation is requested by a doctor.

When drafted, a Case Examiner will need to review the varied conditions. The varied conditions will be sent by legal to a PLA who will approve the conditions. The CO will then send this to the doctor.

The IM should apply the same scrutiny as outlined in section 2 above when deciding whether or not the variation is appropriate for a ROP. If we think the current conditions need to be made more stringent, or new conditions need to be added, then the case is not suitable for a ROP.

The IM should give special consideration to the nature of the variation. A ROP is only likely to be appropriate where:

- the variation is a minor technical change
- the variation is a practical change without which a doctor might be unable to comply with conditions

In practice, this is only likely to occur in a small minority of cases. Any substantive variation to the nature of the conditions will not be suitable for a ROP and is likely to require a referral for an early IOT.

ANNEX A- Suggested decision template for where an Early IOT review is required

<Doctor's name/UID>

Early IOT Review Decision:

I am being asked to consider whether information has been received that makes an early Interim Orders Tribunal (IOT) review desirable and, if, so whether a Review on Paper (ROP) is appropriate.

Case summary:

<provide an overview of the case chronology>

<include the current order and original reasons for the interim order>

<detail the new information received which has led to the early IOT review decision>

Decision:

Early IOT review

<state the reasons why the current order may no longer be necessary/proportionate/sufficient to protect public/public interest/Doctor's interest in light of the new information, and the reasons for this>

<view on whether early IOT review is desirable>

IF THE DECISION IS THAT AN EARLY IOT REVIEW IS DESIRABLE PLEASE INCLUDE THE FOLLOWING PARAGRAPH:

NOT FOR STANDARD DISCLOSURE

ROP

In certain circumstances, the Medical Practitioner's Tribunal Service (MPTS) must carry out a review on the papers where both parties (the GMC and the Doctor) agree, in writing, to the terms of an order the IOT could make upon review.

The GMC considers that those cases where a revocation or maintenance of the current IOT order is desirable will proceed to a ROP, subject to a number of other considerations.

INCLUDE THIS PARAGRAPH IF REVOCATION IS DESIRABLE:

I am of the view that revocation of the interim order is desirable because

<briefly state the reasons why the current order may no longer be necessary/proportionate to protect public/public interest/Doctor's interest in light of the new information, and so why revocation is desirable>

I must therefore consider whether the case is suitable for a ROP.

<consider whether we have received all substantive information in relation to the allegations>

<if the information suggests a warning is appropriate, have we sought CE advice and issued a minded to issue warning letter>

<detail any other factors which suggest a ROP is/isn't indicated, including whether the Doctor is vulnerable>

<view on whether the case is suitable for a ROP>

INCLUDE THIS PARAGRAPH IF A VARIATION OF THE ORDER (NOT REVOCATION) IS DESIRABLE:

In this case, it may be desirable for the interim order be varied in light of the new information received. For operational reasons the case is therefore not eligible for a ROP and should proceed to an early IOT review hearing so that the Tribunal may consider the continued necessity and proportionality of the interim order.