

# Decisions on interim orders (Doctors)

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# Introduction

1. An interim order can be used to restrict a doctor's registration on an interim basis. Cases may be referred to an Interim Orders Tribunal (IOT) by the Regulator<sup>1</sup> or by a case examiner<sup>2</sup> at any point after an investigation has been opened.
2. Where the Regulator or a case examiner consider that an interim order may be needed to protect the public or is otherwise in the interests of the public or the doctor, they can make a referral to an IOT<sup>3</sup>. [Part A](#) of this guidance sets out considerations relevant to referral to IOT.
3. The role of an IOT is to consider whether it is necessary for a doctor's registration to be restricted on an interim basis. If the IOT considers that an interim order is necessary, it may impose conditions or suspension on the doctor's registration for up to 18 months<sup>4</sup>. [Part B](#) of this guidance explains the types of interim orders available.
4. Where an interim order has been imposed, it will be referred to an IOT or a Legally Qualified Chair to review it<sup>5</sup>. Guidance relating to when to direct a review of an interim order, the mandatory review points and when an interim order can be reviewed on the papers is provided in [Part C](#).
5. [Part D](#) of this guidance sets out considerations relating to interim orders in specific case types.
6. The purpose of this guidance *Decisions on interim orders (Doctors)* is to support fair and consistent decision making by the Regulator and case examiners in relation to interim orders. There is separate guidance on interim orders for Medical Practitioner Tribunal Service (MPTS) tribunals.

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<sup>1</sup> References to 'the Regulator' mean the GMC and GMC staff who are authorised to make decisions at each stage of the fitness to practise process on behalf of the GMC.

<sup>2</sup> Where the case examiners do not agree an outcome at the end of an investigation, the matter is decided by the Investigation Committee in accordance with Rule 9 of the General Medical Council (Fitness to Practise) Rules 2004 ('the FtP Rules 2004'). References to the case examiners should be read as also applying to the Investigation Committee where it is considering a matter in those circumstances.

<sup>3</sup> Under Rule 6 of the General Medical Council (Fitness to Practise) Rules 2004 ('FTP Rules 2004')

<sup>4</sup> Under Section 41A of the Medical Act 1983 (as amended) ('the Act')

<sup>5</sup> Rule 26(A) the FTP Rules 2004

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## Being proportionate, transparent and fair

7. The Regulator and case examiners must be [proportionate](#) in their approach to making decisions on interim orders. To be proportionate when considering whether a referral to an IOT or a review is necessary, the Regulator and case examiners will need to consider any real and immediate risk to protection of the public, the public interest and / or the interests of the doctor themselves.
8. To ensure decisions made are [transparent](#), the Regulator and case examiners must give reasons for their decisions and record them clearly. This means using straightforward language and explaining technical terms wherever possible.
9. 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 Orders Tribunal

- 10.** The Regulator or a case examiner may refer a matter to an IOT to consider imposing an interim order<sup>6</sup> at any time after an investigation has opened. It is important cases are referred as soon as possible after information becomes available that indicates an interim order may be needed.

## The test for imposing an interim order

- 11.** The test for imposing an interim order that will be applied by the IOT is whether an interim order is necessary for the protection of the public or is otherwise necessary in the public interest and / or in the interests of the doctor<sup>7</sup>.

## Protection of the public

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

## In the public interest

- 13.** The public interest incorporates three elements:
- a. the protection of patients and the public generally from a doctor whose fitness to practise may be impaired
  - b. the maintenance and promotion of public confidence in the profession and / or
  - c. the maintenance and promotion of proper professional standards and conduct for doctors.
- 14.** 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 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.

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<sup>6</sup> Rule 6 of the FTP Rules 2004

<sup>7</sup> Section 41A of the Act

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15. Where an interim order 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 public interest.
  16. In some instances, a doctor may not appear to pose any real and immediate risk to patient safety, but an interim order may still be needed on the basis that they pose a risk to public confidence. This is because public confidence in the profession may be seriously damaged if the doctor is allowed to continue in unrestricted practice while the matter is being considered. A risk to public confidence may arise from behaviour or poor performance in the doctor's working life but can also arise from something unrelated to the doctor's practice, such as a criminal charge or other serious alleged misconduct in their private life.

## In the interests of the doctor

17. An interim order may be needed where an assessment is made that it's not in the doctor's interests to hold unrestricted registration. This may be because the doctor lacks insight into the impact of their health condition and how it is affecting them.

## The test for referral to an Interim Order Tribunal

18. The test for referral to an IOT is that an interim order **may** be needed for the protection of the public or **may** otherwise be needed in the public interest and / or in the interests of the doctor. This is necessarily a lower threshold than the test for imposing an interim order that will be applied by the IOT.

## Is the test for referral met?

19. Whether a referral to an IOT is needed will depend on the individual circumstances of the case and any potential risk posed by the doctor. In reaching a decision on referral, the Regulator and case examiners will need to consider each part of the test for imposing an interim order and make a referral if they consider that one or more part(s) of the test may be met.
20. An IOT will not make findings of fact, but it will undertake an assessment of the cogency of the information before it and so the concern about the doctor's fitness to practise must be credible. It may be premature to make a referral to an IOT if the only available evidence is hearsay or speculative in nature. And in some circumstances, a slight delay in referral may be appropriate to clarify the concerns or obtain further evidence.
21. However, the Regulator and case examiners should bear in mind 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 barrier to referral.
22. If, having considered the individual circumstances of the case and the factors below, the Regulator or case examiner considers that one or more parts of the test for imposing an interim order **may** be met, the test for referral to IOT will be met and the matter should be referred. The IOT will then decide if the test for imposing an interim order is met and where it is, they will consider what [interim order is a proportionate response](#).

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23. The factors relevant to deciding whether an interim order may be needed will vary depending on the stage of the fitness to practise process that the concern or case is at.

## Factors to consider when deciding if an interim order referral is needed pending the conclusion of an investigation or the outcome of a hearing before an MPT

24. When deciding if an interim order may be needed in one of these circumstances, the seriousness of the concern or allegation will need to be assessed. This involves having regard to the nature of the concern or allegation, the extent of any departure from the professional standards and / or the impact of the doctor's health condition on their ability to practise safely and effectively. It also means looking at any specific features about the concern or allegation that may increase seriousness.
25. The Regulator and case examiners should refer to the section *What is the seriousness of the information received?* in the guidance [Decision on whether regulatory action is required \(Doctors\)](#) to reach a view on seriousness. Once this has been done, the Regulator and case examiners' view on seriousness should be used to inform the decision on whether one or more parts of the test for imposing an interim order may be met.
26. Concerns or allegations which usually fall at the higher end of the spectrum of matters that give rise to a question of impaired fitness to practise will often present one or more risks that require the Regulator or case examiner to make a referral to an IOT.
27. In particular, the seriousness of the concern will inform the Regulator and case examiners' view on whether there may be a real and immediate risk to members of the public if the doctor were to continue to hold unrestricted registration while the concern is being considered through the fitness to practise process. When considering whether there may 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 order referral is needed.
28. Whilst a doctor'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 a factor to consider when reaching a view on the seriousness of the concern or allegation, it can be relevant to the Regulator and case examiners' view on whether the concern or allegation may present a real and immediate risk to protection of the public, the public interest, or the interests of the doctor.
29. When considering if an interim order referral is needed in the public interest, one question that should be considered is whether trust in the profession is likely to be seriously damaged if the doctor continues to hold unrestricted registration during the relevant period.
30. When deciding whether an interim order referral is needed because interim restrictions may be in the interests of the doctor, consideration should be given to whether it is in the doctor's own interests to hold unrestricted registration. When the Regulator and case examiners are reaching a view on this, the doctor's insight into the concern or allegation will be relevant, particularly where this relates to the impact of a health condition. When

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considering the impact of the doctor's insight, the section *How has the doctor responded to the concern?* in the guidance [Decision on whether regulatory action is required \(Doctors\)](#) should be referred to.

31. The Regulator or case examiners' view on whether an interim order referral is needed will be informed by a range of factors, including but not limited to:
- whether any local measures are already in place to restrict the doctor's practice and if so, if they are a suitable alternative to interim regulatory action
  - the doctor's compliance with previous restrictive action (both interim and final sanctions)
  - previous fitness to practise concerns or allegations.
32. Where local measures are in place, for them to be a suitable alternative to interim regulatory action, it's important that any restrictions cover the doctor's entire practice in all places where they work and would be able to continue to apply if the doctor 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 order may be needed in the public interest.
33. To decide whether an interim order referral is needed pending the conclusion of an investigation or the outcome of a hearing before an MPT, the Regulator and case examiners should also refer to the guidance in the [specific case types section](#) below.

## Factors to consider when deciding if an interim order referral is needed following a breach of conditions or undertakings

34. Where conditions or undertakings specifically relate to a doctor's clinical practice and / or have been put in place to help manage the impact of a health condition on the doctor's ability to practise safely and effectively, a breach may give rise to a real and immediate risk to patient safety.
35. Given the purpose of restricting a doctor's registration with the GMC, a doctor practising in breach of conditional registration or undertakings put in place to protect the public will usually have the effect of undermining the public's trust in the profession and therefore pose a risk to public protection and / or the wider public interest.
36. Where the Regulator or case examiner considers there is sufficient evidence to indicate that a breach of conditional registration or undertakings is likely to have occurred, referral for consideration of an interim order will often be appropriate.
37. Some, or all, of the following factors may also inform the decision on whether a referral to IOT is needed:
- if the breach is a one-off or a repeated occurrence
  - whether patient safety has been compromised and repetition of the breach places patients at risk of harm,
  - if there appears to have been a wilful disregard of a sanction of conditions imposed on the doctor's registration, and / or

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- whether the doctor accepts a breach has occurred, the reasons for it and level of insight shown about the impact and likely consequences.

## The relevance of whether a doctor holds a licence to practise

38. Interim orders attach to a doctor's registration and not their licence.
39. Although doctors require a licence to undertake activities involving contact with patients, the fact that a doctor does not currently have a licence does not replace the role of the GMC or IOT in ensuring patient safety.
40. When deciding if a referral to IOT is needed, the Regulator and case examiners must remember that:
  - all registered doctors are expected to comply with [Good medical practice](#), regardless of whether they hold a licence to practise
  - a registered doctor is entitled to a licence to practise unless their registration is currently suspended and therefore the absence of a licence does not provide protection for patients
  - taking action on a doctor's registration in circumstances where 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 interests of the doctor will be important in maintaining public confidence and the integrity of the medical register.
41. If a doctor's registration is suspended by a tribunal the doctor's licence will automatically be withdrawn. If conditions are imposed, the doctor will continue to be entitled to hold a licence to practise but will be expected to comply with any conditions.
42. When considering whether referral to IOT is needed, the Regulator or case examiner should bear in mind that if an interim order is not sought in respect of an unlicensed doctor, that doctor may later successfully apply for a licence, and if granted, they would not be subject to any restrictions that would otherwise be needed to protect patients, or the wider public interest.

## Decision on whether the test for referral is met

43. The Regulator or case examiner should give clear and adequate reasons for the decision on whether an interim order referral is needed. Where a referral is being made, this will enable the doctor to understand the decision and prepare appropriately for the IOT hearing.
44. Where relevant fitness to practise history has been taken into account in the assessment of the seriousness of the concern or allegation, this needs to be noted in the decision. The Regulator should then ensure that the information or evidence relied upon relating to the doctor's fitness to practise history is disclosed to the doctor if it has not already been.

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## Withdrawal of referral from an Interim Order Tribunal

45. If following referral to an IOT it appears to the Regulator that it is not necessary for the tribunal to impose an interim order, the Regulator can refer the matter to a case examiner to decide whether the matter (or part of it) should be withdrawn<sup>8</sup>.
46. To decide whether to refer a case to a case examiner for consideration of withdrawal, the Regulator should consider the following questions:
- is there a change in circumstances which is reasonably capable of impacting upon the Regulator or case examiner's previous view of the concern or allegation, or reason for referring the matter to an IOT?
  - is there any other reason why the IOT hearing should not proceed?
47. If the answer to either of these questions is yes, the Regulator should refer the case to a case examiner for a decision on withdrawal<sup>9</sup>.
48. Withdrawal will normally only be appropriate where:
- 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
  - 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
  - the Regulator or case examiner failed to previously consider information or evidence that was available to them and relevant to their earlier decision to refer, or
  - 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 referral decision.
49. It will not be appropriate for the case examiner to withdraw a referral to an IOT simply on the basis that a complaint has been withdrawn or because the doctor disputes the evidence on which the referral is based, without consideration of whether there may still be sufficient evidence to support the investigation or assessment of the concern or allegation.
50. The power to withdraw a referral is not intended as an avenue for the doctor to appeal against an earlier decision to refer a doctor to a tribunal. Where the case examiner decides to withdraw a referral to a tribunal, they should clearly set out their reasons as the Regulator is required to inform both the doctor and the complainant of the case examiner's decision and the reasons for it<sup>10</sup>.

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<sup>8</sup> Rules 28(2) of the FTP Rules 2004

<sup>9</sup> Rule 28(3) of the FTP Rules 2004

<sup>10</sup> Rule 28(4) of the FTP Rules 2004

## Part B – Types of interim orders

51. At an IOT hearing, when the Regulator addresses the tribunal on the issue of whether an interim order is necessary, representations can also be made on the most proportionate type and duration of the order. An IOT can impose an interim order of conditions or suspension on a doctor's registration for up to a maximum period of 18 months.
52. Being proportionate in the context of an interim order means taking only the action that is required but not more than necessary. This means the IOT must weigh the significance of the risk(s) posed to protection of the public, the public interest and / or the doctor's own interests and balance these against the adverse consequences that interim action has on the doctor. This will include considering if conditions are sufficient to mitigate the risk(s) identified rather than suspension.

### Interim conditions

53. Conditions restrict a doctor's ability to practise or require them to do something.
54. Conditions must be appropriate, workable and measurable:
  - To be **appropriate**, interim conditions must address the risk(s) identified to protection of the public, the public interest and / or the doctor.
  - To be **workable**, they must be capable of producing the desired result of addressing the risk(s) identified and the tribunal must be satisfied the doctor can reasonably be expected to, and will, comply with them.
  - To be **measurable**, individual conditions must be described in specific terms. This is important to ensure the doctor knows what is required of them and so their compliance with the interim conditions can be monitored.
55. The following may be relevant to the IOT deciding if they are satisfied that a doctor will comply with interim conditions:
  - whether the doctor has complied with any undertaking(s) given to the GMC or any conditions previously imposed on their registration
  - the doctor's fitness to practise history, if any.
56. Interim conditions may be proportionate in cases where there are failings in identifiable areas of the doctor's practice that require temporary restrictions to be imposed, or require the doctor to take specific action, and where the doctor would not put patients

or themselves at harm, either directly or indirectly, by having conditional registration.

## Interim suspension

- 57.** Suspension restricts a doctor's registration and prevents them from practising during the period it is in effect. The purpose of suspending a doctor'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.
- 58.** Interim suspension may be proportionate in cases where some, or all, of the following factors are present:
- interim conditions that are appropriate, workable and / or measurable cannot be identified
  - the risk(s) identified cannot be safely managed with interim conditions and interim suspension is necessary to stop the doctor from working and putting patients and / or themselves at risk
  - 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 profession.

## The length of an interim order

- 59.** When first imposing an interim order, the IOT must specify the length of time for which it is to remain in force. A tribunal may impose an interim order for up to 18 months<sup>11</sup>.
- 60.** When considering the length of time an interim order 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 investigate the concern and the time needed for the case to go to the case examiners for consideration and potentially be listed and concluded before an MPT.
- 61.** To be proportionate when deciding the length of an interim order, the IOT must consider the impact of the specific type of measure to be imposed on the doctor whilst still being mindful of the time needed to complete the fitness to practise process.
- 62.** As conditions do not prevent the doctor from working, a longer period may be justified compared to suspension. This is because suspension has a greater impact on the doctor'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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<sup>11</sup> Section 41A of the Act

## Part C - Review of an interim

63. When an IOT reviews an interim order, they must decide if an order remains necessary and if so, what the proportionate response is.
64. Any interim order must be reviewed within six months of the order being made, and thereafter every six months. However, following any review of an order, the doctor may request an early review. If three months have elapsed since the date of the immediately preceding review, then the Regulator must arrange for the order to be reviewed as soon as practicable after receipt of the doctor's request.
65. An interim order may be reviewed at any time when new evidence relevant to the order becomes available, which may affect the order in place<sup>12</sup>.
66. If the Regulator wishes to extend an order beyond the period initially set, then it must apply to the relevant Court<sup>13</sup> to extend the order. Each extension will be for up to a maximum period of 12 months. There is no limit on the number of extensions which may be sought and granted.
67. There are three instances where a review must take place within three months of any preceding review of the order having taken place. This is where:
- an interim order of conditions has been replaced with an interim order of suspension
  - an interim order of suspension has been replaced with an interim order of conditions
  - the High Court has extended an order beyond the period initially set.
68. On review, the IOT has the power to maintain, vary, replace or revoke an interim order.

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

69. A review must be directed when one of the statutory review points is met. Otherwise, the Regulator may direct a review:
- of its own choice where the Regulator has received new information that suggests there has been a change in risk that is relevant to the order or
  - because the Regulator has agreed to a request for a review made by a doctor three

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<sup>12</sup> Section 41(2) of the Act.

<sup>13</sup> The relevant Court means the Court of Session where a doctor's registered address is in Scotland, the High Court in Northern Ireland where a doctor's registered address is in Northern Ireland and the High Court in England and Wales for all others. Where reference is made to the High Court in this document it includes the Court of Session and the High Court in Northern Ireland.

months after the date from which the interim order took effect.

**70.** To decide whether to direct a review of an interim order, the Regulator must consider the individual circumstances of the case. A review should usually be directed where the Regulator:

- is in receipt of new information that suggests the current interim order may no longer be the most proportionate response, or that an interim order may no longer be necessary at all, on the basis that the risk(s) to public protection, the public interest and / or the interests of the doctor has decreased or no longer exists
- is in receipt of new information that suggests the interim order currently imposed on the doctor's registration may no longer be sufficient to protect the public, or protect the public interest and / or the interests of the doctor
- is in receipt of new information that suggests the doctor has breached the interim order currently imposed on their registration and more restrictive interim action may be needed in response, or
- has agreed to a request for a review made by a doctor on the basis the doctor is seeking for the interim order to be varied, replaced by a different interim order or revoked and the Regulator is of the view that the request is reasonable.

**71.** The Regulator should give clear and adequate reasons for any decision made on whether to direct a review of an interim order.<sup>14</sup> Where a review is directed by the Regulator, this will enable the doctor to understand the decision and prepare appropriately for the review.

## Should an interim order be reviewed on the papers?

**72.** Interim orders can be reviewed on the papers (ROP) as an alternative to holding a hearing<sup>15</sup>. This means the review will be conducted by an IOT or Tribunal Chair without the attendance of the parties.

**73.** Reviews on the papers take place when the Regulator and doctor agree on the outcome. The IOT or Tribunal Chair has the power to maintain, vary, replace or revoke an interim order in line with the terms of an order that has been agreed. Alternatively, they can decide that a hearing should take place to consider the case.

**74.** When the Regulator is preparing for a review of an interim order, all cases should initially be considered suitable for a ROP. However, the presence of one or more of the following factors may indicate that a ROP is not appropriate:

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<sup>14</sup> Rule 26(a)(i) of the FTP Rules 2004

<sup>15</sup> Rule 26A of the FTP Rules 2004.

- a change in the potential risk(s) posed by the doctor
- it is not operationally viable to hold a ROP
- the doctor lacks capacity to consent to an outcome
- the doctor is not engaging in the fitness to practise process
- the doctor has requested a hearing
- any other matters affecting ROP suitability.

## Has there been a change in the potential risk posed by the doctor?

- 75.** To decide whether there has been a change in the potential risk that impacts on the case being appropriate for a ROP, the Regulator should consider any new information, concerns or allegations. Where there has been a breach of conditional registration, the Regulator will need to decide whether the breach is so serious that the terms of the order need to be changed to manage the associated risk.
- 76.** Where the Regulator's assessment of the potential risk posed by the doctor suggests that the order should be maintained or revoked, a ROP will usually be appropriate.
- 77.** However, where the Regulator's assessment suggests that the order should be varied, a ROP may not be appropriate unless the variation is minor, or the doctor has interim conditions which need updating onto a new version of the interim conditions bank.
- 78.** Where the purpose of the variation to the order is to make substantive changes, an IOT will be best placed to draft a full schedule of conditions at a hearing having heard relevant submissions from the parties. And where the variation is intended to make the order more stringent, an IOT hearing is more appropriate than a ROP because of the need to address the risk posed by the doctor quickly, or in some cases, immediately.
- 79.** Where the Regulator is awaiting receipt of substantive information as part of the investigation, this should not prevent the Regulator from proceeding with a ROP. If on receipt of new information, the Regulator considers there has been a change in risk which impacts on ROP suitability, the Regulator should consider whether the case is still appropriate to go ahead as a ROP or needs to be heard at an IOT hearing.
- 80.** Occasionally, a doctor may not be able to provide the Regulator with information that is relevant to assessing their compliance with any current restrictions imposed on their registration prior to the review. Where the Regulator considers the doctor has a good reason for not being able to provide the relevant information prior to the review and there is no evidence which indicates the potential risk(s) posed by the doctor have changed, it will usually be appropriate for the ROP to proceed. However, the Regulator should provide written assurance to the IOT or Tribunal Chair to that effect.
- 81.** Where the police are due to make a charging decision or a criminal verdict is expected, this will often substantially change the types and / or level of potential risk(s) posed by

the doctor. In these circumstances, the Regulator should only proceed with a ROP where the charging decision or verdict will occur after the review date.

### Is the ROP operationally viable?

82. It is possible that, due to the time it takes to prepare for and carry out a ROP, it will not be operationally viable for a specific case to proceed as a ROP. This may include where new information, which impacts on the parties' view on the proportionate order, is received close to a mandatory review point.
83. It will not be appropriate for the Regulator to proceed with a ROP where it is not operationally viable to do so.

### Does the doctor have capacity to consent?

84. Where a doctor is not represented, the Regulator should satisfy themselves that the doctor is sufficiently well informed to appreciate the consequences of their agreement with the terms of the order.
85. In all cases, the Regulator should presume that the doctor has the mental capacity to consent to an interim order. Where there is information to suggest the doctor may lack capacity, the Regulator should explore further how the doctor's understanding can be maximized to agree to the interim order.
86. If, the Regulator is of the opinion that the doctor does not have the mental capacity at the time to agree to the interim order or that they may not be in a position to consent to the order for any other reason, the case will not be appropriate to proceed as a ROP and should instead be reviewed by the IOT.

### Is the doctor not engaging with the fitness to practise process?

87. The Regulator may consider that a doctor is not engaging with the fitness to practise process where they have:
  - explicitly refused to engage with GMC enquiries and continue to do so
  - failed to respond to, or acknowledge, any correspondence that requires a response and / or
  - failed to attend an MPTS hearing in relation to the same matter and not provided reasons for their failure to attend or sought an adjournment.
88. Where a doctor is not engaging with the fitness to practise process, it will usually be reasonable for the Regulator to conclude that the doctor will not actively participate in the ROP process. Since a ROP is reliant on the doctor's agreement, it will not be appropriate for the Regulator to proceed, and the interim order should instead be reviewed at an IOT hearing.

## Has the doctor requested a hearing?

89. Where a doctor clearly indicates that they want the review of the order to be conducted by an IOT at a hearing, it will not be appropriate for the Regulator to proceed with a ROP.

## Are there any other matters affecting ROP suitability?

90. The Regulator will need to consider the individual circumstances of the case to decide if there are any other matters that affect ROP suitability.
91. Where a doctor has not signed the Regulator's agreement form confirming they agree to the proposed terms of the order, this may mean that a ROP is no longer appropriate.

## What is a proportionate response on review of an interim order?

92. Where an interim order remains necessary, the Regulator will need to consider what order to propose as part of a ROP or consider what submissions to make at an IOT hearing. In making its proposal or submission, the Regulator will carefully consider the proportionality of its recommendation in dealing with the risk identified and the adverse consequences of any action taken in the doctor's own interests.
93. The ROP or IOT will then consider if the order proposed is the proportionate response. To do this, the tribunal chair or tribunal will review their reasons for deciding that an interim order remains necessary and consider any submissions received from the parties on the appropriate outcome. What action is needed will depend on the individual circumstances of the case and is a matter for the tribunal chair or tribunal's judgement.
94. Where a tribunal or tribunal chair is reviewing an interim order on the papers, they will consider if the order agreed by the parties is sufficient. If they are not satisfied the order is sufficient, if insufficient information has been provided, or there is reason to doubt the doctor's mental capacity to agree to the proposed outcome, the tribunal or tribunal chair will direct that a hearing should be held.
95. Where the Regulator is of the view that an interim order is no longer necessary, the Regulator should provide reasons to satisfy the tribunal or tribunal chair that revocation is appropriate.

## Actions where an interim order remains necessary

### Maintain the current interim order

**96.** It will usually be proportionate for the Regulator to propose that an existing interim order of conditions or suspension should continue where its assessment of the risk to protection of the public, the public interest or the interests of the doctor themselves has not changed or, in the case of conditions, has not significantly increased.

### Vary the current interim order

**97.** It may be proportionate to recommend a variation to an existing interim measure of conditions where:

- the assessment of the immediate risk to protection of the public, the public interest or the interests of the doctor themselves has not changed or has not significantly increased
- the Regulator 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.

### Replace the current interim order

**98.** It may be proportionate to recommend that the current interim order should be replaced with a different interim order where:

- the assessment of the immediate risk to protection of the public, the public interest or the interests of the doctor themselves has increased or decreased
- the Regulator considers that an alternative measure is a more proportionate response.

**99.** A doctor practising in breach of an interim order of conditions put in place to protect the public or put in place in the public interest will usually put patient safety at risk and / or have the effect of undermining public confidence in the profession. It may also put the doctor himself at risk. Where this is the case, it will often be proportionate to recommend replacing an interim order of conditions with an interim order of suspension.

**100.** Where an interim order of suspension is in effect, and the Regulator's assessment is that the risk to protection of the public, the public interest or the doctor himself has reduced since the last hearing or ROP, consideration should be given to whether an interim order of conditions would now adequately address the nature of the risk identified. Where it would, the Regulator should refer to the guidance in the sub-section Interim conditions in Part B of this section of the guidance when making its submission. The Regulator should also bear in mind that if the interim order is replaced with another

type of interim order, it can only stay in effect up until the expiry of the period for which the interim order was imposed.

## Withdrawal of referral of a review from an Interim Order Tribunal

**101.** Where a review has been listed for a hearing, but it appears to the Regulator that the referral to an IOT, or a part of it, should be withdrawn, the Regulator may refer the matter to a case examiner for a withdrawal decision to be made<sup>16</sup>. When considering the issue of withdrawal, the Regulator and case examiner should consider the guidance in the section Withdrawal of referral from an IOT in Part A.

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<sup>16</sup> Rule 28(2) of the FTP Rules 2004

# Part D - Considering interim orders in specific case types

**102.** When deciding if an interim order may be needed the Regulator or case examiner should consider the specific case type guidance below, as well as the general principles in Part A that apply to all cases. Specific guidance is provided for the following:

- [Sexual misconduct](#)
- [Dishonesty](#)
- [Violent or abusive behaviour](#)
- [Discrimination](#)
- [Clinical concerns](#)
- [Impact of a health condition](#)
- [Insufficient knowledge of English](#)
- [Criminal charges, convictions, cautions, court sanctions and determinations by another body responsible for the regulation of a health or social care profession](#)
- [Freedom of expression.](#)

## Sexual misconduct

**103.** Whether the test for referral to an IOT is met will depend on the extent of the doctor's behaviour and the impact it's assessed to have on protection of the public, the interest of the public and / or the doctor.

**104.** Where the concern or allegation involves sexually inappropriate behaviour towards patients or members of the public, including colleagues, or the doctor 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 doctor were to continue working unrestricted in the meantime.

**105.** 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 IOT to be made:

- information that a doctor 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.

- concerns that a doctor 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.
- concerns about a doctor's sexualised behaviour towards a patient or a colleague that give rise to a question of impaired fitness to practise, including those arising in a single episode.
- concerns about a pattern of sexually motivated behaviour towards patients, their relatives or colleagues.

**106.** 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 IOT is needed and may support a decision by an IOT that an interim order is necessary, or remains necessary. This includes where there is a concern that the doctor did one of the following and there is evidence the conduct was sexually motivated or had no clinical justification:

- performed an intimate examination
- failed to obtain informed consent before undertaking an intimate examination or procedure
- failed to offer or arrange a chaperone for an intimate examination in accordance with the more detailed guidance
- failed to maintain professional boundaries when treating a patient, such as by making a remark of a sexual or inappropriate personal nature or
- failed to respect a patient's privacy, such as when the patient was undressing for an examination.

**107.** A single failure to offer a chaperone is, in and of itself, unlikely to require an interim order 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 order to be imposed.

**108.** An interim order referral may also be necessary where the concern or allegation relates to the doctor having departed from the more detailed guidance on [maintaining personal and professional boundaries](#). This includes where there is evidence to suggest a doctor has engaged in predatory behaviour towards a patient or a colleague.

**109.** An interim order referral is likely to be needed if there is information to suggest that a doctor has:

- 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

- pursued or engaged in a sexual relationship with a patient
- pursued or engaged in an improper emotional or financial relationship with a patient or
- 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 vulnerable.

## Dishonesty

**110.** Whether the test for referral to an IOT is met will depend on the extent of the doctor's behaviour and the impact it's assessed to have on protection of the public, the interest of the public and / or the doctor.

**111.** Whilst a range of behaviour can amount to dishonesty, the nature of the departure from the professional standards often means that dishonest behaviour will fall at the higher end of the spectrum of matters that give rise to a question of impaired fitness to practise. Given the impact these cases will usually have on public confidence, referral to an IOT will often be required. However, the test for referral may be less likely to be met in cases where the dishonest behaviour falls at the lower end of the spectrum of matters that give rise to a question of impaired fitness to practise.

**112.** Where the concern or allegation involves dishonesty in the workplace or otherwise arising from the doctor's professional practice, or the doctor is under police investigation for a dishonesty offence, particular consideration should be given to the public interest and impact on public confidence if the doctor were to continue working unrestricted in the meantime.

## Violent or abusive behaviour

**113.** Whether referral to an IOT is necessary will depend on the extent of the doctor's behaviour and the impact it's assessed to have on protection of the public, the public interest and / or the interests of the doctor.

**114.** Whilst a range of behaviour can amount to violent or abusive behaviour, the nature of the departure from the professional standards expected often means that this behaviour will fall at the higher end of the spectrum of matters that give rise to a question of impaired fitness to practise. Given the impact these cases will usually have on public confidence, referral to IOT will often be required. However, the test for referral may be less likely to be met in cases where the violent or abusive behaviour falls at the lower end of the spectrum of matters that give rise to a question of impaired fitness to practise.

**115.** Where the concern or allegation involves violent or abusive behaviour towards patients or members of the public, including colleagues, or the doctor 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 doctor were to continue working unrestricted in the meantime.

## Discrimination

- 116.** Whether referral to IOT is necessary will depend on the extent of the doctor's behaviour and the impact it's assessed to have on protection of the public, the public interest and / or the interests of the doctor.
- 117.** Whilst a range of behaviour can amount to discrimination, the nature of the departure from the professional standards may mean that the doctor's behaviour falls at the higher end of the spectrum of matters that give rise to a question of impaired fitness to practise. Where discrimination is unlawful because it relates to a protected characteristic, the seriousness of the behaviour is likely to require referral to IOT.
- 118.** Where the concern involves discrimination towards patients or members of the public, including colleagues, particular consideration should be given to the public interest which will include the impact on the safe delivery of healthcare services as well as the impact on public confidence if the doctor were to continue working unrestricted in the meantime.

## Clinical concerns

- 119.** The test for referral to IOT may be met where there is information that a doctor's clinical skills and/or professional knowledge and competence are, or are likely to be, seriously below an acceptable standard and so the doctor poses a real and immediate risk to patients if they 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.

## Impact of a health condition

- 120.** The decision on referral to an IOT will depend on the nature of the doctor'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 doctor.
- 121.** The GMC is committed to taking a compassionate approach to cases involving health and most concerns about the impact of a doctor's health condition can be adequately managed at a local level. A referral to an IOT will not usually be needed where the doctor 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.
- 122.** However, there will be cases where a doctor'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 IOT referral may be needed if the particular concern about the impact of the doctor's health condition poses a serious and immediate risk to patients and:

- there are also concerns about the doctor's behaviour or performance that puts patients or public confidence in the profession at risk and the doctor's health condition may be a contributory factor
- the doctor is working or likely to work and:
  - there are, or have been, serious concerns about the clinical care the doctor has provided, and the health condition may have been a contributory factor
  - the nature of the condition may affect the doctor's behaviour or the clinical care they provide and they are not seeking and / or following treatment and advice, and / or are not engaging with local support and steps put in place to manage any risks to patients - this suggests the doctor may lack insight into any risk, or potential risks, their health condition poses, and / or
  - 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 doctor seeking and following treatment and advice and / or engaging with local support and steps to manage risk.
- a GMC health assessor has concluded the doctor is not fit to practise without restrictions.

**123.** Where there are concerns about the impact of a doctor's health condition on their ability to practise safely and effectively, the GMC's 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 doctor.

## Insufficient knowledge of English language

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

- the extent of the doctor's language deficiency is so severe that the doctor is unable to understand instructions from colleagues or obtain the necessary information from patients about their symptoms
- the language concerns are accompanied by other concerns about the doctor's behaviour

and / or performance

- the doctor has not achieved a satisfactory level of attainment (as set by the GMC) in an English language assessment.

## **Criminal charges, convictions, cautions, misconduct arising from breach of court sanctions and determinations by another body responsible for the regulation of a health or social care profession**

**125.** 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, 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 confidence if the doctor is allowed to continue in unrestricted practice pending a charging decision.

**126.** 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.

**127.** 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. The Regulator should therefore make enquiries as to the present status of the charge i.e. whether it has been approved by the COPFS or remains with the police.

**128.** The considerations as to whether referral to an IOT is necessary is the same in all criminal cases and the Regulator or case examiner must consider the individual features of the case and the particular facts and seriousness of the criminal charges.

**129.** Where the concern or allegation relates to criminal behaviour in the workplace or otherwise arising from the doctor's professional practice, or the doctor is under police investigation, the Regulator or case examiner should carefully consider the public interest, and the impact on public confidence if the doctor were to continue working unrestricted pending resolution of the fitness to practise process.

**130.** Similarly, where the concern or allegation relates to a determination case where the regulatory body ordered the suspension or erasure / removal of the doctor from the

relevant register, the Regulator or case examiner should carefully consider the public interest, and the impact on public confidence if the doctor were to continue working unrestricted pending resolution of the fitness to practise process. Depending on the underlying reason for the determination, patient safety may also be a key consideration.

## Freedom of expression

**131.** Concerns may sometimes be raised about opinions that a doctor has expressed on social media or in other forums. This may include a concern that a doctor is promoting and/or spreading misinformation which has the potential to harm public health or seriously damage public confidence in the profession.

**132.** Before making a referral to IOT, consideration should be given to whether there is cogent evidence to support the concern. This is because the imposition of an interim order in these cases may restrict the doctor's freedom of expression and this may involve consideration of Article 10 of the European Convention of Human Rights ('ECHR'). Therefore, the IOT may need to be presented with more cogent evidence than would usually be the case. 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.

**133.** Any of the following may justify interference with a doctor's right to freedom of expression, particularly where they have identified themselves as being a doctor:

- information that a doctor is encouraging members of the public to commit an offence
- a concern that a doctor is promoting and/or spreading misinformation which has the potential to harm public health or undermine public confidence in the profession
- information that a doctor is encouraging members of the public to engage in specified behaviours which expose them to a risk of harm
- information that a doctor is encouraging treatments which are unproven or known to be ineffective
- information that a doctor is discouraging treatments which are known to be effective, or
- a concern that a doctor's conduct amounts to bullying or harassment.

**134.** Article 10 is more likely to be engaged where a doctor expresses their opinion on a public platform, rather than privately.

**135.** As an IOT may consider imposing interim conditions that restrict the doctor's 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 Regulator or case examiner must be satisfied that it is more likely than not that the case will be referred to an MPT hearing, and that it is more likely than not that the MPT will go on to make a finding which justifies the interim order being made in the particular circumstances of the case.

**136.** In applying the additional test under the Human Rights Act, more cogent evidence may be needed to support the concern than would usually be the case. This may sometimes require the IOT to consider expert evidence, if this has been obtained by one of the parties, on whether the doctor’s views have any credible basis or are likely to create a risk of harm to the public.

**137.** However, a referral to IOT should not be unduly delayed if the Regulator or case examiners considers there may be a significant risk to the public, or to the public interest, as the IOT will not need to make any findings of fact or decide impairment.