

Health and Care Professions Tribunal Service

PRACTICE NOTE

Interim Orders

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

Introduction

1. The HCPC has the power to apply to a Panel of any of the three Practice Committees for an interim order to be imposed on registrants.
2. The purpose of an interim order is to put in place interim safeguards to protect the public interest, including the protection of the public, whilst concerns about a registrant's fitness to practise remain unresolved.
3. Accordingly, an interim order is a temporary measure that will restrict the registrant's ability to practice and will usually apply until a final decision is made in relation to an allegation (including on any appeal), or it is revoked.
4. Article 31 of the Health Professions Order 2001 (the Order) sets out the procedure by which a Panel may impose an interim order.

Considering an Application for an Interim Order

5. When considering an application for an Interim Order a Panel should consider the following in sequence: Basis; Grounds; Nature; Duration.

Basis for an Interim Order

6. First, the Panel must be satisfied that, on the face of the information presented, there is sufficient evidence of a case against the registrant.
7. A Panel considering an interim order can't make findings of fact and does not have to decide whether there is a ['case to answer'](#). In order to take action the Panel only needs to be satisfied there's sufficient evidence to support the concern, even though this may later be disproved.

8. The Panel should consider the nature and cogency of the evidence. This means looking at both the evidence that supports a particular fact or version of events, and any evidence that contradicts or undermines it.
9. When considering the nature of the evidence, there is no requirement for the Panel to receive oral or formal evidence from witnesses before making an interim order¹.
10. When assessing the overall cogency of the evidence, the Panel will need to consider a number of factors, including:
 - a. The source of the evidence. Direct evidence is likely to be more reliable than information from an indirect or unknown source. If evidence is disputed, it is unlikely to be fair to rely on anonymous or multiple hearsay as the only basis for imposing an interim order.
 - b. Whether the evidence is sufficiently clear for the registrant and Panel to be able to understand the concern.
 - c. The consistency of the evidence. Although the Panel can't make a decision on the facts of any disputed allegation, it should not rely on evidence which is inconsistent with objective or undisputed evidence.
11. Where the referral concerns an allegation of criminal offending, a criminal charge is likely to provide sufficiently cogent evidence of a concern². However, this is not the only basis for concluding that there is sufficiently cogent evidence of a concern in a case involving an allegation of criminal offending. All of the information available, and the factors set out above, must be considered.

Grounds for an Interim Order

12. If the Panel is satisfied that there is enough evidence to make out a concern, they should go on to consider whether one or more of the three grounds for imposing an interim order applies. These are³:
 - a. It is necessary for the protection of members of the public; and/or
 - b. It is otherwise in the public interest; and/or
 - c. It is in the interests of the registrant concerned.
13. For an interim order to be necessary for the protection of the public, the Panel must be satisfied that there is a real risk to patients, colleagues or other members of the public if an order is not made.
14. The factors which are especially important to this consideration are:

¹ Perry v NMC [2013] EWCA Civ 145

² Fallon v Horseracing Regulatory Authority [2006] EWHC 2030.

³ Health Professions Order 2001 Article 31(2)

- a. The seriousness of the regulatory concern. This will depend on how much harm the alleged conduct has already caused, or could have caused.
 - b. The likelihood of the alleged conduct being repeated if an interim order were not imposed.
15. Each case will be considered on its own facts. There may be other relevant factors the Panel needs to consider in a particular case to decide whether to make an interim order on public protection grounds.
16. Interim orders solely on the ground that an order is otherwise in the public interest are relatively rare. The threshold for the imposition of an order solely on this ground is high. In *R (Shiekh) v General Dental Council*⁴, the court said:

"It is a very serious thing indeed for a dentist or a doctor to be suspended. It is serious in many cases just because of the impact on that person's right to earn a living. It is serious in all cases because of the detriment to him in reputational terms. Accordingly, it is, in my view, likely to be a relatively rare case where a suspension order will be made on an interim basis on the ground that it is in the public interest."
17. In *NH v GMC*⁵, the court upheld a decision to impose an interim order on a registrant who was awaiting trial for allegedly assaulting and falsely imprisoning his younger sister for bringing 'dishonour' on their family. In that case, the court said that the question to be answered is:

"would an average member of the public be shocked or troubled to learn, if there is a conviction in this case, that the [registrant] had continued to practise whilst on bail awaiting trial?"
18. The mere fact that an informed member of the public would be "concerned" if the registrant was allowed to practice without restriction during the investigation is not sufficient to justify an interim order on public interest grounds. In *Nursing and Midwifery Council v Persand*⁶, the court said:

"... an order on public interest grounds is only justifiable in a relatively rare case. There must be something in the evidence of the individual case which far more substantial than anything arising here to justify a public interest suspension. That must be far more than a concern that a hypothetical member of the public might have a concern if no interim sanction was imposed."
19. The court said that the onus is on the regulator to show that it is necessary for an interim order to be imposed, and that the test is:

⁴ [2007] EWHC 2972 (Admin)

⁵ [2016] EWHC 2348 (Admin)

⁶ [2023] EWHC 3356 (Admin)

“Something close to saying that an interim order is essential, in the sense that a responsible regulator would not be acting properly in failing to act on a proven risk to the public”.

20. When considering whether an interim order is in the interests of the registrant, the Panel will often be concerned with evidence suggesting that the registrant's work is adversely affecting their health and there is the potential for this to impact on their ability to practice safely.
21. There are particular considerations that apply in a case where a Panel is considering whether it may be necessary to impose conditions restricting the registrant's right to freedom of expression because the registrant is alleged to have published harmful material. Before imposing such an interim order, as well as being satisfied that at least one of the statutory grounds for an interim order is met, the Panel must also be satisfied that at a final hearing, the HCPC is likely to establish that publication of the material should not be allowed.⁷

Nature of the Interim Order

22. If a Panel determines that it is appropriate to make an interim order, it must then decide whether to make:
 - a. An interim conditions of practice order, or
 - b. An interim suspension order.
23. A Panel should always consider whether a conditions of practice order would be the more proportionate means of securing the degree of protection which the Panel considers necessary.
24. When considering the imposition of conditions the Panel must ensure that any conditions imposed are proportionate, workable, enforceable and will protect the public, the wider public interest or the registrant's own interest.
25. Interim conditions of practice are likely to be limited to specific restrictions on practice, for example, not to provide services to children, not to act as an expert witness or not to undertake unsupervised home visits, etc. An interim conditions of practice order may also specify supervision requirements, including a requirement to provide regular reports from the supervisor to any Panel reviewing the order.
26. Normally, a Panel should not impose conditions of a kind which may be more appropriate after an allegation has been determined to be well founded at a final hearing, such as conditions requiring the registrant to undertake additional training.

⁷ *White v General Medical Council* [2021] EWHC 3286 (Admin)

27. An interim suspension order should be imposed only if the Panel considers that a conditions of practice order would be inadequate to protect the public, the wider public interest or the registrant's own interest.

Duration

28. The Panel must determine the duration of the interim order. They cannot exceed 18 months.
29. Panels should not regard 18 months as the 'default' position: an interim order should be imposed only for as long as the Panel considers it to be necessary.
30. In reaching its decision on duration, the Panel should be aware that a reviewing Panel can vary or revoke the interim order, but cannot extend it.

Proportionality

31. The decision to make an interim order is one that must not be taken lightly and will depend upon the circumstances in each case.
32. The Panel must balance the need for an interim order against the consequences for the registrant and ensure that they are not disproportionate to the risk that the Panel is seeking to address. This includes the financial and other impacts which an interim order may have on a registrant.

Procedure

When Interim Orders may be applied for

33. The HCPC may apply for an interim order to a Panel of HCPC's Practice Committees at any stage between being first notified of a concern about a registrant up to immediately after a sanction is imposed, although there are limitations.
34. The HCPC can apply to the Investigating Committee for an interim order at any time (subject to notice requirement - see below) between first notification of the matter received by the HCPC up to the moment the Investigating Committee determines whether or not to refer the case to the Conduct and Competence or Health Committee. A separate Investigating Committee Panel will be arranged to hear the application.
35. The HCPC may also apply for an interim order when the Investigating Committee makes an order that an entry in the register has been fraudulently procured or incorrectly made but the time for appealing against that order has not yet passed or an appeal is in progress.

36. The HCPC may apply to the Conduct and Competence or Health Committee (as appropriate and on notice – see below) for an interim order at any time between the Investigating Committee referring the case to the relevant Practice Committee and that Committee making a determination on impairment. Any such application will be made to a panel arranged specifically to hear the application or the final hearing Panel if it has met.
37. The HCPC may apply to the Conduct and Competence or Health Committee for an interim order after a Panel has determined to impose a sanction. Further guidance is given below.

Notice of Interim Order Hearing

38. As the need for an interim order may arise as a matter of urgency, the usual notice period that applies to other proceedings such as final hearings do not apply.
39. No interim order can be applied for, and no existing interim order can be varied or replaced on a review, unless the registrant “*has been afforded an opportunity of appearing before the Committee and being heard*” on whether an interim order should be granted.⁸
40. Article 31 does not set out specific notice requirements for interim order application or review hearings, and the notice requirements in the Panel rules⁹ for other types of hearing do not apply to them.
41. Ordinarily, the HCPC will provide registrants with seven days’ notice of an application for an interim order. In exceptional circumstances, such as when the concerns are particularly serious or raise urgent public protection needs, the notice period may be substantially less, provided the registrant is afforded the opportunity of appearing and being heard. Usually, the HCPC informs the registrant of its intention to seek an interim order before serving formal notice of the application.
42. The HCPC will send notice by email and/or by post to the registrant's registered address. It may also attempt to correspond with them at any other known address if this can reasonably be done and appears likely to be effective at bringing the matter to the registrant's attention. In considering what is reasonable, the HCPC will have regard to data security and its duty to comply with the General Data Protection Regulation. It will not be reasonable for the HCPC to send personal data to addresses on a speculative basis, without having good grounds to believe that by doing so the data will reach the intended recipient and be secure.

⁸ Article 31(15) of the Health Professions Order 2001.

⁹ HCPC (Investigating Committee) (Procedure) Rules 2003; HCPC (Conduct and Competence Committee) (Procedure) Rules 2003; and HCPC (Health Committee) (Procedure) Rules 2003.

43. The sending of a Notice of Interim Order Hearing to a registrant's email address (where one has been notified to the HCPC) or their registered address provides registrants with an opportunity of attending and being heard. Registrants are under an obligation to notify the HCPC of changes to their registered address¹⁰, and generally to engage with their regulator¹¹. For more information about [proceeding in absence](#), see the separate guidance relating to final and review hearings.
44. The HCPC is under no obligation to seek out alternative addresses for the registrant, but may make reasonable enquiries where there is good reason to do so, and this would not unreasonably delay matters. For instance, when the HCPC has been informed that a registrant has been sentenced to a term of imprisonment, it may seek to establish their location in order to serve notice on them in prison, as well as via email and/or their registered address. However, as interim orders impose restrictions necessary for the protection of the public, otherwise in the public interest, or in the registrant's own interest, it is important that consideration is not delayed pending receipt of information about the registrant's location from a third party. Imprisonment does not remove the obligation on a registrant to inform the HCPC about a change to their registered address (although it may make it more difficult to comply with that obligation).

Proceeding in the absence of the registrant, attendance from abroad, and applications to adjourn

45. The absence of the registrant does not preclude the proceedings from taking place, provided he or she has been offered the opportunity of attending. In the event that the registrant does not attend, the HCPC may make an application to proceed in the absence of the registrant. There is separate guidance regarding applications to proceed in absence relating to final and review hearings. The same/similar principles apply in relation to interim order proceedings, with the added factor being the urgent need to consider if an interim order is required. These are separate proceedings held solely to consider the risk presented by a registrant's practice, rather than to make findings of fact in relation to a particular allegation. Given this, it will usually be appropriate for a Panel to proceed with an interim order application or review hearing in the registrant's absence if they fail to attend, provided that the registrant has been given an opportunity to be heard. In considering whether to exercise its discretion to proceed in the absence of a registrant, the Panel can have regard to the fact that if an interim order is made, confirmed or varied, it is then subject to regular review and may be reviewed at any time where relevant new evidence becomes available.
46. Sometimes, registrants attend remote interim order hearings from outside the UK. When this happens, there may be legal restrictions on them giving oral

¹⁰ Rule 9(1) of The Health and Care Professions Council (Registration and Fees) Rules 2003 (as amended)

¹¹ *GMC v Adeogba* [2016] EWCA Civ 162

evidence during the course of the hearing¹². This should not prevent the interim order hearing from proceeding, provided that it is fair to do so. There is no absolute right to give oral evidence at an interim order hearing. As noted above, the legislation requires that the registrant be afforded an opportunity to appear before the Committee and be heard. The registrant is able to make oral submissions, and will also be able to rely on written evidence. The notice of interim order hearing will have notified the registrant about the potential restrictions on giving evidence from abroad and the alternative ways in which they may be heard.

47. Applications by registrants to adjourn will normally be considered by the Panel on the day. Due to the urgent nature of the risks, applications to adjourn should be granted only in the most compelling circumstances. Panels will decide the application based on the information available. If an interim order is made it is then subject to regular review. A registrant has the right to ask for a review of an interim order at any time outside the scheduled regular review cycle. Therefore, where an interim order has been imposed in the absence of a registrant, the registrant may ask for the interim order to be reviewed should they wish later to appear before the Panel.

Interim orders imposed at final hearings after a sanction has been imposed

48. Once a final hearing Panel reaches a final decision in respect of the substantive allegation (which includes the imposition of any sanction following a finding of impairment), any pre-existing interim order terminates¹³. The Registrant will then not be subject to any practice restrictions until a restrictive sanction order is made and comes into effect, unless an interim order is imposed. A sanction order will not come into effect until either (a) the expiry of the appeal period (28 days from service of the determination¹⁴), or if there is an appeal, (b) the determination of that appeal¹⁵.
49. In cases when the sanction is restrictive, namely a Striking Off Order, a Suspension Order, or a Conditions of Practice Order, the HCPC may apply immediately after a sanction is declared for an interim order to restrict the registrant's practice during the appeal period and any subsequent appeal proceedings up to the maximum of 18 months (and thereafter subject to the HCPC making an application to the High Court / Court of Session.)
50. If present at the final hearing, the registrant must be given the opportunity of making representations regarding the application for an interim order. If registrants are taken by surprise by the application for an interim order they may be incapable of formulating meaningful submissions, especially if they are unrepresented. This issue was considered in the case of *Gupta v GMC*.¹⁶ The court held that, in view of the potentially severe consequences of interim orders

¹² For more information about this, please see the HCPTS briefing note on giving evidence from abroad

¹³ Article 31(5) (a) of the Health Professions Order 2001

¹⁴ Article 29(10) of the Health Professions Order 2001

¹⁵ Article 29(11) of the Health Professions Order 2001

¹⁶ [2001] EWHC Admin 631

for registrants, the common law principle of fairness requires panels to give registrants notice of any intention to consider an interim order so that they have an opportunity to make meaningful representations.

51. Panels should therefore specifically warn the registrant after the impairment stage that an interim order might be considered at the final hearing, and that they will be entitled to make representations in relation to it.
52. If the registrant is absent, the HCPC will first have to make, and the Panel will have to determine, an application to proceed in the registrant's absence. The HCPC will need to show that the registrant has been given notice that an application for an interim order to cover the appeal period may be made. Such notice may be contained within the Notice of Final Hearing. As before, the overriding statutory objective of protecting the public and the wider public interest will weigh heavily in favour of an application proceeding in absence, particularly when the Panel has made a finding that fitness to practise is impaired.
53. Thereafter, the considerations to be given to an interim order are as set out above with regards to grounds, nature of the order and duration, and the factors to consider, along with the additional factor that the Panel will have made a finding of impairment and decided that a restrictive sanction is required.

Reasons

54. The draconian nature of an interim order means that a Panel must be very clear in its decision as to why an interim order is necessary and, if applicable, why an interim suspension order has been imposed rather than interim conditions of practice.
55. Panels need to conduct a balancing exercise, balancing the need for protecting the public or registrant, or the public interest generally, against the other consequences that an interim order would have on a registrant, and to consider whether the consequences of making the order are proportionate to the risk from which they are seeking to protect the public (or registrant for their own protection)

Multiple Referrals

56. There can only ever be one interim order in place at any one time. Therefore, where a registrant is the subject of two or more referrals, or where further concerns are raised about a registrant who is already subject to an interim order, the Panel must consider the information about all of the referrals. This is so that consideration of an interim order application or review can be carried out by a Panel with all relevant material being available

Review, variation, revocation and replacement

57. Interim orders must be reviewed on a regular basis; within six months of the date when it was made and then every three months from the date of the preceding review until the interim order ceases to have effect¹⁷.
58. A registrant may also ask the HCPC for an interim order to be reviewed at any time if new information becomes available or circumstances change¹⁸. A registrant may also appeal to the appropriate court for the order to be varied or revoked¹⁹.
59. At a review, an interim order may be confirmed, varied, revoked, or replaced²⁰. If an interim order is replaced by another interim order or extended by the court before it is first reviewed, that first review does need not to take place until six months after the order was replaced or extended. If replacement or extension occurs after the first review, then the next review must take place within three months of the order being replaced or extended²¹.
60. If one type of interim order is replaced by another, the replacement order may only have effect up to the date on which the original order would have expired (including any time by which the order was extended by a court).
61. The HCPC may apply to the appropriate court to extend an interim order for up to twelve months²². Registrants will be put on notice of any such application.
62. When an interim order is imposed in the absence of a registrant, or despite an application to adjourn, the registrant can apply for the interim order to be reviewed. This will often be a significant factor in support of a decision to proceed with an interim order hearing despite the registrant's absence or application to adjourn.
63. Reviews of orders can take place without a hearing and upon review of the papers only. This may be appropriate when there is agreement between the parties as to the outcome of the review or if a registrant is not engaging and there has been no material change in circumstances. Whether a review on the papers is appropriate will be considered on a case by case basis. The usual requirements of notice, proceeding in absence and establishment of grounds for an order continue to apply.

Terminating an interim order

64. Interim orders can be brought to an end in three ways²³:

¹⁷ Article 31(6) (a) of the Health Professions Order 2001

¹⁸ Article 31(6) (b) of the Health Professions Order 2001

¹⁹ Article 31(12) of the Health Professions Order 2001

²⁰ Article 31(7) of the Health Professions Order 2001

²¹ Article 31(11) of the Health Professions Order 2001

²² Article 31(9) of the Health Professions Order 2001

²³ Article 31(5) of the Health Professions Order 2001

- a. By the court, on the application of the person who is subject to the order;
- b. By the Practice Committee currently dealing with the allegation to which the interim order relates; or
- c. Automatically, when it lapses or the circumstances under which the order was made no longer exist:
 - i. if the order was made before a final decision is reached in respect of an allegation, when that final decision is made (but a further interim order may be made at that time); and
 - ii. if an order was made after a final decision was reached, to have effect during the 'appeal period', either when that period expires or, if an appeal is made, when the appeal is concluded or withdrawn.