

Interim orders guidance for decision makers – Interim Orders Committee

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Introduction

1. The aim of this Guidance is to promote consistency and transparency in decision making. It should be noted that this Guidance is a “living” document, which will be revised as necessary and updated on the GDC’s website.
2. The Guidance is intended for use by the Interim Orders Committee (IOC). However, it may also be helpful to:
 - Registrants whose cases are referred to an IOC;
 - Barristers or solicitors who represent Registrants or the GDC before the IOC;
 - A Practice Committee when considering whether to impose an interim order as an alternative to referring the matter to an IOC¹;
 - Legal advisers.

Related Document

3. The following is related to this guidance document.
 - [IOC Conditions Bank \(April 2013\)](#)

Referral process

4. The Registrar, the Case Examiners, the Investigating Committee (the “IC”) or a Practice Committee may refer a matter to the Interim Orders Committee (“IOC”) for consideration of whether an interim order should be imposed against the registration of a dentist or dental care professional, pending final determination of a matter by the GDC.

Powers of the IOC

5. An IOC essentially conducts a risk-assessment rather than a fact-finding process. Where its test is met (see below), the IOC can make an order suspending a Registrant’s (a dentist or dental care professional) registration or imposing conditions upon their registration for a period of up to 18 months². Applications to extend orders made by the IOC must be made to the appropriate court (the High Court in England and Wales, the Court of Session in Scotland, and the High Court in Northern Ireland).
6. The IOC must review any order it makes within 6 months of it being made, and thereafter within 6 months of the previous review. The IOC must also review an order

¹ Under section 32 (*dentists*) and 36V(*dental care professionals*) of the Dentists Act 1984 (as amended) (“the Act”) a Practice Committee may exercise functions in respect of interim orders. References to the IOC in this Guidance should be deemed to include a Practice Committee, when a Practice Committee is exercising its functions under sections 32/36V

² See sections 32/36V of the Act

at the registrant's request, if at least three months have elapsed since the previous review. In addition, an order may be reviewed if new evidence relevant to the order has become available to the making of the order.

7. Upon review the IOC may:
 - (i) revoke the order;
 - (ii) add to, vary or revoke any conditions imposed by the order;
 - (iii) replace an interim suspension order with an order for interim conditional registration, or vice versa, to have effect for the remainder of the order.

8. Where an order which has not yet been reviewed is extended by the court or replaced by the IOC as set out in paragraph 7(iii) above, it must be reviewed within 6 months of the date of extension/replacement. If the order had previously been reviewed, a further review must take place within 3 months of that previous review.

Test to be applied

9. As a statutory Committee of the GDC, the IOC has a duty to act in accordance with the over-arching objective when exercising its functions. The pursuit of the over-arching objective includes:
 - protecting, promoting and maintaining the health, safety and well-being of the public;
 - promoting and maintaining public confidence in the dental and dental care professions; and
 - promoting and maintaining proper professional standards and conduct for members of the dental and dental care professions³.

10. The test that the IOC applies in deciding whether to impose an interim order against the registration of a dentist or a dental care professional while a matter is investigated is set out at sections 32(4) and 36V(4) of the Act respectively:

“Where a Committee are satisfied that it is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of the person concerned, for the person’s registration to be suspended or to be made subject to conditions, the Committee may make –

 - (a) *an order that his registration in the register shall be suspended during such period not exceeding 18 months as may be specified in the order (an “interim suspension order”);*

³ see section 1(1ZA) and 1(1ZB) of the Dentists Act 1984, as amended by the Health and Social Care (Safety and Quality Act 2015)

or

(b) *an order that his registration shall be conditional on his compliance, during such period not exceeding 18 months as may be specified in the order, with such conditions so specified as the Committee think fit to impose (an “order for interim conditional registration”).*

11. This test is considered in more detail below:

Public Protection

12. The IOC must be satisfied on all the available information before it that an order is **necessary** for the protection of the public: that is to say, there is a real risk of harm to the health, safety or well-being of a patient, visitor, colleague or other member of the public if the Registrant is allowed to practise without restriction.
13. In assessing the risk to members of the public, the IOC will consider the seriousness of the matter, the cogency and weight of the evidence, including evidence about the likelihood of recurrence, should the Registrant continue to hold unrestricted registration, while the matter is investigated.

Public Interest

14. As well as protection of the public, the public interest includes:
- promoting and maintaining public confidence in the dental and dental care professions; and
 - promoting and maintaining proper professional standards and conduct for members of the dental and dental care professions⁴.
15. An interim order solely on the basis of the public interest is therefore sought in order to maintain public confidence in the profession and uphold proper professional standards, pending the final outcome of fitness to practise proceedings.
16. In deciding whether to impose an interim order, the IOC will consider whether **serious** damage will be caused to public confidence in the profession and the maintenance of good standards if an order is not imposed, and whether an informed member of the public looking on would be surprised, dismayed, shocked or troubled, if the IOC did not make an order in respect of a matter that was later found proved.

⁴ see section 1(1ZA) and 1(1ZB) of the Dentists Act 1984, as amended by the Health and Social Care (Safety and Quality Act 2015)

17. It will be a relatively rare case where an interim suspension order is made solely on the basis of the public interest⁵. Although the word “necessary” is not used for this ground, it does at least carry some implication of necessity and desirability. That is so because the imposition of any order must be proportionate. It should also be noted that the interests of the Registrant do not override the public interest.

Registrant’s own interests

18. This ground may apply because the Registrant is ill and does not recognise it, or other factors suggesting lack of insight where the Registrant needs to be protected from himself/herself. The IOC will look at the risk of harm in the future if there is no restriction on registration.

Proportionality

19. The IOC must carefully consider the proportionality of its response. They must balance the need to protect the public and the wider public interest against the Registrant’s own interests including the impact of any order on the Registrant both professionally and financially⁶. The IOC should therefore take the minimum necessary and appropriate steps to address the concerns identified.
20. In cases where there are criminal proceedings, in determining whether to impose an interim order, the IOC should consider the seriousness of any police charges as well as whether, in the event that the Registrant is later convicted, it will damage public confidence that he or she has been able to continue working unrestricted in the meantime.

Risk Assessment

21. Essentially, the IOC conducts an assessment of the risks to the public were the Registrant to continue to practise until the matter is determined by a Practice Committee. It is the **current** risk that is important and it should be considered as at the time of making or reviewing an order. The IOC does not engage in fact finding or resolve conflicts of evidence, although, as well as assessing the seriousness of the matter, it will consider the cogency of the information before it. The rules are silent as to the threshold test and the IOC may make an order when a decision has not yet been made that there is a case to answer⁷. The Registrant’s previous or current

⁵ *Sheikh v General Dental Council* [2007] EWHC 2972 (Admin)

⁶ *Houshian v General Medical Council* [2012] EWHC 3458 (QB) King J

⁷ *Perry v Nursing & Midwifery Council* [2013] EWCA Civ 145

fitness to practise history with the GDC may also be a relevant factor for the IOC to take into account when conducting its risk assessment.

22. The need for a referral to the IOC may arise at any time during an investigation e.g. on receipt of a witness statement or an expert report; being notified of a police investigation or other inquiry. A referral should therefore be made promptly. The longer a regulator takes to make an application for an interim order without good reason, from receipt of the information which suggests that the Registrant poses an immediate risk to the public, the less likely it will be that an order based on the need to protect the public will be made.⁸

Evidence

23. As the IOC will often be considering a matter at an early stage of the GDC's investigation, it may only have limited information available at the time of considering whether the Registrant should be allowed to remain in unrestricted practice.
24. The IOC therefore conducts a risk assessment on the basis of the information before it and will weigh the cogency and credibility of that information when conducting such an assessment and when applying the test set out in paragraph 10 above. If information becomes available following the imposition of an interim order, which raises questions about the necessity of continuing the interim order, this can be considered at an early review hearing and if appropriate, the interim order can be varied or revoked by the IOC⁹.

Type of Order (interim suspension or interim conditions of practice)

25. As set out above, the IOC should first consider whether an order is necessary for the protection of the public, or is otherwise in the public interest, or is in the interests in the registrant concerned. Orders made by the IOC should be proportionate to the risk. If the IOC decides that an order is appropriate, it should therefore impose the minimum restriction on the Registrant's registration necessary to protect the public, the public interest or the interests of the registrant.
26. As such, the IOC should first consider whether to impose interim conditions of practice on the Registrant's registration. If it considers that interim conditions of practice are inappropriate, the IOC must consider whether to impose an interim suspension order.
27. An interim order for conditions of practice can only be appropriate when there is reasonable confidence in the Registrant's capacity to comply with them. If

⁸ *Bradshaw v General Social Care Council* [2010] UKFTT3 (HESC)

⁹ Pursuant to the IOC's powers under sections 32(6) (*dentists*) and 36V(6) (*dental care professionals*)

circumstances prevent the Registrant from complying with possible interim conditions, then the IOC must consider whether to impose an interim suspension order.

28. When imposing interim conditions of practice, the IOC will have regard to the “[IOC Conditions Bank \(April 2013\)](#)”. In general terms however, interim conditions of practice should be:
- workable;
 - enforceable;
 - clear;
 - relevant;
 - addressed to the Registrant (not to third parties);
 - proportionate to the matter;
 - formulated so that the interim conditions are not in effect an interim suspension;
 - and
 - written in such a way that compliance can be easily verified.
29. The purpose of imposing interim conditions of practice is to ensure that the public are protected, pending final determination of a matter. It is not to impose conditions for the purpose of remediation following a finding of impaired fitness to practise.
30. In considering whether interim conditions of practice are workable, compliance by the Registrant with any conditions previously imposed may be a relevant factor.

Notice of Hearing and Proceeding in absence

31. The IOC may impose an interim order only if the Registrant has been given an opportunity to attend and to make representations on whether an order should be made¹⁰.
32. However, the IOC may proceed in the absence of the Registrant if it is satisfied that the Registrant has been served with notice of the proceedings. The Rules specify that the Registrant must receive a period of notice in advance of the IOC hearing that “*may be reasonable in all the circumstances of the case*”¹¹. Given the nature of an IOC referral, in practice the GDC aim to give Registrants at least 7 days’ notice of the IOC hearing, but in cases of exceptional urgency, the notice period may be shorter.
33. Where an application for an adjournment is made¹², the IOC should consider, bearing in mind the nature of an IOC referral, whether in all the circumstances of the case, it is appropriate to grant the application. In doing so, the IOC will need to balance fairness to the parties with the risk of harm, resulting from any adjournment, to the public and the wider public interest or the Registrant.

¹⁰ Rule 35(1)

¹¹ Rule 35(2)

¹² Rule 58

Hearing in Public

34. In principle all hearings, including IOC hearings, are held in public although all Committees have discretion to allow a hearing to proceed in private in certain circumstances¹³.
35. Circumstances in which all or part of a hearing may be held in private include:
 - where it is necessary to protect the interests of the parties or the protection of the private and family life of the respondent or any other person so requires e.g. vulnerable or juvenile witnesses; or
 - where the Committee is of the opinion that publicity would prejudice the interests of justice.
36. The IOC should invite representations from the Registrant and the GDC and take advice from the legal adviser before making a decision to hear a case in private.
37. Even where all or part of the hearing is held in private, the IOC should still ensure that its decisions are recorded properly and that reasons are given. A shortened determination is read out in public when any part of the hearing is held in private.

Period of Order

38. Where the IOC imposes an interim order, it must specify the length of the order and give reasons for the period of time imposed. The maximum period for which an initial order may be imposed is 18 months, however there are circumstances in which an order for a shorter period of time would be a proportionate response¹⁴.
39. In considering the period for which an order should be imposed an IOC should consider the time that is likely to be needed before the matter is resolved (for example, the time needed to complete the fitness to practise investigation and for the case to be listed for hearing by a Practice Committee).
40. If the IOC wishes to extend an order beyond the period initially set, the GDC will need to apply to the relevant Court to do so.
41. The IOC should also bear in mind that it has the power to revoke, vary or replace an interim order at a review hearing.

¹³ Rule 53

¹⁴ Harry v GMC [2012] EWHC 2762 (QB)

Reasons for Decisions

42. When it announces its decision, the IOC is required to give reasons for that decision¹⁵, including a decision not to impose an order.
43. Whilst the courts do not expect an IOC to give long detailed reasons, the reasons given must be clear and explain how any decision was reached, including identifying the interest(s) for which the order is considered necessary (i.e. protection of the public, and/or the public interest, and/or the interests of the Registrant), so that it is clear that the proper test has been applied on the basis of the information before the IOC.
44. Although IOC decisions should be concise, they ought to include the following details, with specific reference to the particular facts of each individual case:
 - the risk to patients so as to demonstrate the proportionality of any action taken;
 - the risk to public confidence in the profession if the Registrant continued working without restriction on his/her registration and the matter is later proved, to demonstrate the proportionality of any interim action taken;
 - where an order is made primarily because it is desirable in the public interest to uphold public confidence and there are no public protection concerns, specific reasons should be given for why this is appropriate;
 - reasons for the period of time for which an interim order is imposed;
 - where no order is imposed, the reasons for this.

Review and revocation

45. A review hearing may be conducted orally. In addition, a review may be conducted on the basis of the papers alone provided:
 - (i) that both parties are in agreement that the IOC hearing may proceed in the absence of the parties and on the basis of written submissions;
 - (ii) that there is no material change in circumstances and both parties are in agreement that they are content for the current interim order to continue without any changes (e.g. provided no information has been received since the last IOC hearing which indicates that the order ought to be varied or changed from an Interim Suspension Order to an Interim Conditions of Practice Order, or vice versa);

¹⁵ Rule 36(d)

- (iii) that, where an Interim Conditions of Practice Order has been imposed, the registrant has complied with the interim conditions of practice and where necessary, has demonstrated compliance (e.g. a supervisor's report should be provided by the registrant/on behalf of the registrant if one of the interim conditions requires that this is provided in advance of any IOC review hearing); and
 - (iv) the registrant/the registrant's representative confirms in writing that the registrant:
 - is not opposed to the continuation of the interim order and understands it is likely in the circumstances that the order will continue;
 - will not be attending the review hearing;
 - will not be represented at the review hearing;
 - understands that the hearing will proceed in his/her absence;
 - agrees to the IOC considering the continuation of the interim order on the papers rather than at a hearing.
46. The options available to the IOC at a review hearing are set out at Section 32(6) of the Act, and are detailed at paragraph 7 above.
47. Those options include revocation of the interim order, as per section 32(6)(a). In addition, the GDC's Act and Rules also provide for revocation of an interim order in circumstances where:
- (i) an interim order has been made in respect of an allegation or allegations which are then closed by the Investigating Committee, either initially (including by way of undertakings) or upon review¹⁶;
 - (ii) an interim order has been made in respect of an allegation or allegations which are then closed by the Case Examiners, either initially (including by way of undertakings) or upon review¹⁷;
 - (iii) an interim order has been made in respect of an allegation or allegations which are then the subject of a substantive determination by a Practice Committee¹⁸.

¹⁶ see section 27A(10) of the Act

¹⁷ see Rule 6(5) of the Rules (initial consideration), Rule 6A(3)(b) of the Rules (undertakings) and Rule 6E(3) of the Rules (review)

¹⁸ see section 27B(9) of the Act

APPENDIX A: Examples of matters which, depending on all the circumstances, suggest a referral to the IOC is appropriate

<p>Removal from a Primary Care Organisation performer list because of poor performance</p>	<p>But consider: has that situation now been remedied? Is the Registrant back on the list and performing appropriately?</p>
<p>Clinical allegations involving numerous patients/ a very serious single clinical incident</p>	<p>Consider:</p> <ul style="list-style-type: none"> - if the allegations are current or historic and the present risk i.e. is there an ongoing risk to patients from the Registrant's clinical practice? - Is it alleged that there is a serious lack of basic clinical knowledge or skills (which may include evidence of failings in basic and fundamental aspects of dentistry), and/or that the Registrant has provided treatment which he or she was not competent to provide?
<p>Alleged physical or sexual assault of patients or staff</p>	<p>Each case will very much depend upon the circumstances.</p>
<p>Sexual or improper relationship with a patient</p>	<p>Has the Registrant used their professional position to establish or pursue a sexual or improper relationship with a patient? As above, each case will depend upon the circumstances.</p>
<p>Serious cross infection control breaches</p>	<p>Consider if they have been rectified and whether there is a current risk.</p>
<p>Criminal investigations or charges for serious offences</p>	<p>It will always depend on the gravity of the criminal investigation and/or charge e.g. murder, manslaughter, rape and sexual abuse of children. Other offences of indecent behaviour may be referred but will depend on the circumstances. In other cases ask what would be the difficulty of the Registrant holding unrestricted registration while the allegations are resolved and whether a properly informed member of the public would be surprised, dismayed, shocked or troubled to learn that the Registrant had been allowed to practise in the interim?</p>
<p>A decision to bar the registrant from working with children or vulnerable adults</p>	
<p>Health grounds</p>	<p>Health grounds which affect the Registrant's ability to do his/her job or may result in passing on a serious communicable disease. A Registrant's refusal to co-operate</p>

	with a health assessment may be a relevant factor in deciding whether to make an IOC referral.
Serious scope of practice breach	Importantly, is it a continuing breach (so there is a current public protection risk) or is the allegation historic?
No indemnity	Are we considering a period of past practice without indemnity, or evidence that the Registrant continues to practise without indemnity notwithstanding the investigation?