

# HEALTH PROFESSIONS COUNCIL

## GUIDANCE NOTE

### Interim Orders

#### Introduction

The Investigating Committee, the Conduct and Competence Committee and the Health Committee (“the Practice Committees”) of the Health Professions Council have the power to impose interim conditions of practice or suspension orders on health professionals who are the subject of a fitness to practise allegation where the Committee is satisfied that doing so is necessary for the protection of members of the public; is otherwise in the public interest; or is in the interests of the health professional concerned.

#### Background

Article 31 of the Health Professions Order 2001<sup>1</sup> (the 2001 Order) sets out the procedure by which any of the Practice Committees can make an interim order to take effect either before a final decision is made in relation to an allegation or pending an appeal against such a decision

#### Types of order

An interim order may be either:

- an **interim conditions of practice order** which imposes conditions with which the health professional must comply for a particular period of time; or
- an **interim suspension order** which directs the Registrar to suspend the health professional’s registration for a particular period of time; or

An interim order has effect immediately but may last no more than eighteen months. The time period for which it has effect must be stated in the interim order.

#### When orders may be made

The **Investigating Committee** may make an interim order:

- when an allegation has been referred to it, but it has not yet taken a final decision in relation to the allegation;
- when, having considered an allegation, it decides that there is a case to answer, and it refers that case to one of the other Practice Committees (but the interim order must be made before the case is referred); or

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<sup>1</sup> SI 2002/254

- when it 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.

The **Conduct and Competence Committee** and the **Health Committee** may make an interim order:

- where an allegation has been referred to that Practice Committee but it has not yet reached a decision on the matter; or
- when, having decided that an allegation is well founded, the Committee makes a striking-off order, a suspension order or a conditions of practice order but the time for appealing against that order has not yet passed or an appeal is in progress.

### **Conditions for making an interim order**

A Practice Committee may only make an interim order if it is satisfied that:

- it is necessary for the protection of members of the public;
- it is otherwise in the public interest; or
- it is in the interests of the health professional concerned;

for the registration of that person to be suspended or to be made subject to conditions.

The appropriate place to consider and weigh all of the evidence in relation to an allegation is when that allegation is being considered at a fitness to practise hearing. Therefore, in determining whether to make an interim order a Committee will not be in a position to weigh all of the evidence but must act on the information that is available.

In essence, its task is to consider whether the nature and severity of the allegation is such that the health professional, if he or she remains free to practise without restraint, may pose a risk to the public or to himself or herself or that for wider public interest reasons freedom to practise should be restrained..

In doing so the Committee may have regard to the overall strength of the evidence, whether the allegation is serious and credible and the likelihood of harm or further harm occurring if an interim order is not made.

The decision to issue an interim order is not one that will be taken lightly and will depend upon the circumstances in each case. However cases in which restraining freedom to practise may be appropriate include those involving serious or persistent failure in clinical care, cases involving violence, sexual abuse or serious misconduct, cases where it appears that the health professional's own health means he or she may pose a risk to others or be capable of self harm and cases where the broader public interest, such as public confidence in the integrity of the regulatory process or the profession concerned, may be at risk

## Procedure

By its very nature, an interim order will only be made in the course of fitness to practise proceedings (when a Practice Committee has received an allegation) or at the end of such proceedings (when an order is made by a Practice Committee).

Before a Practice Committee decides that it is appropriate to make an interim order, it must give the health professional concerned the opportunity to appear before the Panel of the Practice Committee which is considering the case and allow him or her the right to be heard.

In relation to interim orders made whilst an allegation is still pending this will take the form of a separate hearing held solely to consider whether an interim order should be made and, if so, its terms. Normally the health professional will be given seven day's notice of such a hearing but in particular cases or circumstances a Committee may decide that it is appropriate to hold a hearing at shorter notice.

Where the Panel of a Practice Committee is considering the imposition of an interim order at the conclusion of proceedings in relation to an allegation (in order to restrain the health professional's freedom to practise during the appeal period) the decision will be made as part of the main hearing and not in separate proceedings. However, before imposing an interim order at the end of such proceedings the Panel will give the health professional an opportunity to address it specifically on the issue of whether or not an interim order should be made.

All hearings will take place in the United Kingdom country in which the health professional has his registered address and the health professional may be represented at any hearing, whether by a legally qualified person or otherwise.

A Committee may only make the interim order once it has heard and considered any representations made by the health professional. If it does decide to make an interim order it will:

- notify the person affected of the order, whether it is an **interim conditions of practice order** or an **interim suspension order** and of the terms of the order;
- state the reasons for the decision; and
- notify the person affected of his right to apply to the court to have the order shortened, terminated or any conditions varied or revoked.

The Practice Committee will also give the Registrar appropriate directions to annotate the register when it makes, varies, replaces or revokes an order or when an order ceases to have effect.

A similar procedure will apply when a Practice Committee decides to vary, confirm or replace an interim order.

## **Variation, revocation and replacement**

The Practice Committee which made the order or to which an allegation has since been referred may at any time revoke the order or any condition imposed by the order, confirm the order or vary any condition imposed by the order.

A Practice Committee may replace an **interim conditions of practice order** with an **interim suspension order**. However, since this would prevent the person concerned from practising for the duration of the order, the Committee must be satisfied that doing so is necessary for the protection of members of the public or is otherwise in the public interest or is in the interests of the health professional concerned.

A Practice Committee may also replace an **interim suspension order** with an **interim conditions of practice order**. Since this is a lesser restriction than that originally imposed, it must be satisfied that the protection of the public, the public interest and the interests of the health professional would be adequately served by doing so.

In both cases where one type of interim order is replaced by another, the replacement order may have effect no longer than the day the original order would have expired (including any time by which the order was extended by a court).

Any person who is the subject of an interim order may apply to the appropriate court to have the order shortened, terminated or any conditions varied or revoked. The court's decision is final.

On application by the Council, an interim order may be extended for up to 12 months by the appropriate court (i.e. the Court of Session in respect of persons registered in Scotland, the High Court of Justice in Northern Ireland in respect of persons registered there, and the High Court of Justice in England and Wales in every other case).

## **Ending of an interim order**

Interim orders can be brought to an end in three ways:

- by the court, on application by the person affected by the order (see above);
- by the Practice Committee which made the order or to which the matter has been transferred (see above); or
- in certain circumstances automatically, when the circumstances which allowed them to be made no longer exist.

The circumstances in which an interim order terminates automatically are as follows:

- An interim order which was made before a final decision was taken by a Practice Committee ceases to have effect when a Practice Committee reaches a final decision regarding the allegation in question. In that case, however, a further interim order may be made if an order is made by that Practice Committee and there is still a possibility of appeal as set out above.

- An interim order which was made after a final decision was taken but when there was still an opportunity for appeal ceases to have effect either when the period for appealing expires or, if an appeal is brought, when the appeal is withdrawn or otherwise finally dealt with.

### **Review of interim orders**

Interim orders must be reviewed on a regular basis by the Practice Committee which is dealing with a matter for the time being. Reviews must take place within six months of the date on which the order was made and then every three months from the date of the preceding review until the interim order ceases to have effect. A review must also be made where new evidence has become available after the order was made.

If before the first review the interim order is replaced by another interim order or extended by the court (see above), the first review need not be until six months after the replacement or extension. If such replacement or extension takes place after the first review, then the next review must take place within three months after the replacement or extension.