
PRACTICE NOTE

Interim Orders

This Practice Note has been issued jointly by the HPC Practice Committees for the guidance of Panels and to assist those appearing before them.

Introduction

Article 31 of the Health Professions Order 2001¹ (the 2001 Order) sets out the procedure by which a Panel may 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 final decision.

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 registrant concerned;

for that person's registration to be suspended or to be made subject to conditions.

Types of order

An interim order may be either:

- an interim conditions of practice order - which imposes conditions with which the registrant must comply for a particular period of time; or
- an interim suspension order - which directs the Registrar to suspend the registrant's registration for a particular period of time.

An interim order has effect immediately and its duration should be set out in the order but cannot be for more than eighteen months.

When orders may be made

A Panel of the **Investigating Committee** may make an interim order:

- when an allegation has been referred to that Committee, but it has not yet taken a final decision in relation to the allegation²;

¹ SI 2002/254

² these proceedings take the form of a separate hearing which will only consider whether an interim order should be imposed. The panel concerned does not take any other action at that hearing.

- when, having considered an allegation, it decides that there is a case to answer, and refers that case to another Practice Committee (but the interim order must be made before the case is referred)³; or
- 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.

A Panel of the **Conduct and Competence Committee** or **Health Committee** may make an interim order:

- when an allegation has been referred to that Committee but it has not yet reached a decision on the matter⁴; or
- when, having decided that an allegation is well founded, the Panel 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.

Procedure

Before a Panel decides that it is appropriate to make an interim order, Article 31(15) of the 2001 Order provides that it must give the registrant concerned the opportunity to appear before it 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.

Article 31 does not specify any detailed procedural requirements for such hearings but, normally, the registrant should be given seven day's notice of such a hearing unless there are exceptional circumstances which make it necessary for the Panel to hold a hearing at shorter notice.

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 Panel 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 registrant, 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.

³ as decisions on whether there is a case to answer are made 'on the papers' and without the registrant being present, this would require the Panel to adjourn without referring the case on, in order to give the registrant an opportunity to appear before the Panel and be heard on whether an interim order should be imposed. In practice this power is not used.

⁴ these proceedings take the form of a separate hearing which will only consider whether an interim order should be imposed. The panel concerned does not take any other action at that hearing.

In doing so the Panel 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 should 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 competence failures; cases involving violence, sexual abuse or serious misconduct; cases where it appears that the registrant's 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 regulatory process or the profession concerned, may be at risk.

Although this list is not exhaustive, the types of case in which an interim order is likely to be made are:

- cases where, if the allegation is well founded, there is an ongoing risk to service users from the registrant's serious lack of professional knowledge or skills;
- cases which may not be directly related to practice but where, if the allegation is well founded, the registrant may pose a risk to service users; for example allegations of indecent assault or where it appears that a registrant with serious health problems is practising whilst unfit to do so;
- cases where, although there may be no evidence of a direct link to practice, the allegation is so serious that public confidence in the regulatory process would be seriously harmed if the registrant was allowed to remain in practice on an unrestricted basis; for example, allegations of murder, rape, the sexual abuse of children or other very serious offences;
- cases where the registrant has breached a conditions of practice order or suspension order previously imposed by a Panel.

A Panel may be asked to impose one or other kind of interim order in a particular case, but will in every case need to consider whether, if it is necessary to impose an order to protect the public, the registrant or the public interest, an interim conditions of practice order will secure the necessary degree of protection. An interim suspension order should only be imposed if the Panel regards conditions of practice as being an insufficient safeguard.

In imposing an interim conditions of practice order a Panel must take account of the fact that it has not heard all of the evidence in the case. Therefore it should not impose the kind of conditions which may be appropriate after a case has been heard and the allegation has been determined to be well founded; for example, conditions requiring the registrant to undertake additional training. Consequently, interim conditions of practice are likely to be limited to specific restrictions on practice, for example, not to provide services to children or not to undertake unsupervised home visits.

Where the Panel is considering the imposition of an interim order at the conclusion of proceedings in relation to an allegation (in order to restrain the registrant'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, such orders should not be regarded as an automatic outcome to such proceedings and, before imposing an interim order at the end of such proceedings, the Panel should give the registrant an opportunity to address it specifically on the issue of whether or not an interim order should be made.

All hearings must take place in the UK home country in which the registrant has his registered address and the registrant may be represented at any hearing, whether by a legally qualified person or otherwise.

Review, variation, revocation and replacement

Interim orders must be reviewed on a regular basis; as a minimum 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 if new evidence becomes available after the order is made.

If before the first review the interim order is replaced by another interim order or extended by the court, 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.

Orders may be varied or revoked at any time and the person who is subject to the order may also apply to the appropriate court for the order to be varied or revoked. On application by HPC, an interim order may be extended for up to 12 months by the appropriate court. 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). The 'appropriate court' is, in England and Wales or Northern Ireland, the relevant High Court and in Scotland, the Court of Session.

Terminating an interim order

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

- by the court, on the application of the person who is subject to the order;
- by the Panel which made the order or to which the matter has been transferred; or
- automatically, when the circumstances under which the order was made no longer exist, namely:
 - in respect of an order which 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
 - in respect of an order made after a final decision was reached and which has effect during the 'appeal period', either when the period for appealing expires or, if an appeal is made, when the appeal is concluded or withdrawn.

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