

## Guidance for decision makers on requests to relax or revoke sanctions or IOT orders in response to Covid-19

### Purpose

- 1** As a result of the Covid-19 pandemic, we are receiving a number of requests from doctors to relax or revoke their sanctions or Interim Order Tribunal (IOT) orders so they are able to contribute their services in response to the pandemic.
- 2** The purpose of this guidance is to assist the following GMC decision makers and tribunals when they are determining whether it is appropriate to relax or revoke a sanction or interim order on a doctor's registration, in light of the national demand for doctor's services during the pandemic. This guidance will apply in these circumstances:
  - a** Case examiners (CE) when reviewing decisions regarding undertakings
  - b** Assistant Registrar (AR) when referring a case to a Medical Practitioners Tribunal (MPT) for early review, and
  - c** Tribunals when reviewing sanctions or IOT orders.
- 3** Decision makers should consider this guidance alongside:

#### *GMC decision makers*

- [Guidance for decision makers on agreeing, varying and revoking undertakings](#)
- [Guidance for assistant registrars on making decisions related to restricted registration](#)
- [Guidance on assessing suitability of cases for a review on papers](#)

#### *Tribunals*

- [Guidance for tribunal chairs and tribunals on IOT reviews on the papers](#)

- *Guidance for the Interim Order Tribunal (IOT), Tribunal Chair and the MPT on imposing interim orders*

## Background

- 4 Restrictions on a doctor's practice may include undertakings offered by the CE and agreed by the doctor and conditions placed on a doctor's registration or a period of suspended registration imposed by an MPT. If required, interim restrictions on a doctor's registration can also be imposed by an IOT whilst an investigation is progressing.

### Undertakings – no time limits

- 5 Undertakings agreed with a CE (including during a tribunal) can be relaxed or revoked by a CE where they are satisfied based on evidence received that:
  - a The doctor's fitness to practise is no longer impaired or, while still impaired, the current level of restrictions is no longer necessary to protect the public.
  - b Due to a change in the doctor's circumstances, the undertakings are no longer effective and/or workable in their current format. For example, due to a change in the doctor's contract or working environment, and alternative undertakings are appropriate.
- 6 Circumstances where undertakings can be varied or revoked are:
  - a When the GMC seeks to vary or revoke undertakings in response to evidence of remediation or a change in circumstances.
  - b When a doctor requests that undertakings are varied or revoked in response to evidence of remediation or a change in circumstances.

### Conditions or suspension – time limited sanctions imposed by MPT tribunals

- 7 Conditions or suspended registration imposed by MPT can only be removed or relaxed by an MPT.
- 8 Circumstances where this could occur include:
  - a Before a sanction has run its course and, on review, an MPT is content that the doctor has remediated and is no longer a risk to patients or public confidence.

- b** Upon referral of a case by an AR for an early review under the Medical Act<sup>1</sup> and the fitness to practise rules<sup>2</sup>, where it is considered desirable in response to a change in circumstances. This could include evidence of remediation.
  - c** When a doctor seeks an early review of a sanction by a tribunal in response to evidence of remediation or a change in circumstances.
- 9** When considering referral to an MPT for early review, the AR can seek advice from CEs in considering if relaxation or revocation is desirable in the circumstances.

### **IOT orders**

- 10** IOT orders imposed by an IOT can only be relaxed or revoked by an IOT or a Tribunal Chair. An IOT or Tribunal Chair must review any interim order made within six months of the order being made and thereafter every six months.
- 11** Circumstances where IOT orders can be relaxed or revoked earlier than six months are:
  - a** Where the doctor requests an early review and three months have elapsed since the first review of the order or,
  - b** Where the doctor requests an early review and new evidence relevant to the order becomes available, which may affect the order in place.

### **Early review requests arising from Covid-19**

- 12** As a result of Covid-19, requests from doctors to relax or revoke their restrictions will generally arise from two different scenarios:
  - **A change in circumstances** where changes have been made to the role a doctor was performing which prevents them complying with their restrictions and/or the environment in which a doctor is performing their role has changed which prevents them complying with their restrictions.
  - **A doctor's wish to contribute** in order to offer their expertise and is prevented from doing so by their restrictions.

<sup>1</sup> Section 35D (4B) or (11B) of the Medical Act 1983 (as amended)

<sup>2</sup> Rule 21 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended)

## Factors to consider

- 13** GMC decision makers and tribunals must ensure they take the minimum action necessary to protect the public, which includes to
- protect and promote the health, safety and wellbeing of the public;
  - promote and maintain public confidence in the medical profession; and
  - promote and maintain proper professional standards and conduct for the members of the profession.
- 14** When a request is received from a doctor to relax or revoke a sanction or an interim order on their registration as a result of Covid-19, decisions makers will weigh the following factors when considering the request:
- Covid-19 amounts to a change of circumstances that may justify the relaxation or revocation of sanctions or interim orders.
  - Requests for relaxation or revocation will be assessed on a case by case basis.
  - The assessment of the need to protect and promote the health, safety and wellbeing of the public will involve weighing the risks of harm to the public from relaxing or revoking the sanctions or interim orders against the risk of harm to the public presented by the Covid-19 crisis which the doctor subject to sanctions may be able to alleviate.
  - While all requests for relaxation or revocation will be considered and assessed, the following requests for change will be more likely to be successful and will be given priority:
    - i** A doctor's role or environment has changed in response to Covid-19 making their conditions or undertakings unworkable or ineffective as compared to a doctor who is seeking to work or change their work in order to contribute.
    - ii** Conditions or undertakings as compared with suspensions.
    - iii** Interim orders (where no findings have yet been made) as compared with substantive sanctions.
    - iv** Sanctions or interim orders that relate to solely to public confidence concerns compared to patient safety concerns.
    - v** Changes to sanctions or interim orders that have been in place for some time and are close to the end of their time limit compared to more recent sanctions or interim orders.

- vi** Changes to sanctions where there is evidence of progress with remediation compared to those where there is little or none.
- 15** None of these factors are in themselves determinative and all factors will need to be weighed and balanced.
- 16** For example, a request for changes to interim conditions or substantive conditions that have been in place for some time which are not workable because the doctor's environment has changed and where the doctor has some evidence of remediation will be more likely to be granted than a request from a doctor who would like to contribute during Covid-19 for revocation of their substantive suspension that has recently been imposed and where there is little or no evidence of remediation.
- 17** When applying these principles, it is important for GMC decision makers and tribunals to keep in mind that their decisions must still meet our overarching objective to protect the public and the overall risk posed by the doctor.

**This guidance is applicable from March 2020.**