

Imposing interim orders – Guidance for the interim orders tribunal, tribunal chair and the medical practitioners tribunal

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Introduction

1. This guidance is for use by Interim Orders Tribunals (IOT). It will also be of assistance to:
 - a. Doctors whose cases are referred to an IOT
 - b. Barristers or solicitors who represent doctors or the GMC before an IOT
 - c. Tribunal chairs reviewing matters on the papers
 - d. Medical practitioners tribunals (MPT) when considering whether to impose an interim order on a doctor's registration.
2. The aim of the guidance is to promote consistency and transparency in decision making relating to interim orders. The guidance is a 'living document' and will be revised as the need arises.

The role and functions of the IOT

3. The role of the IOT is to consider whether a doctor's registration should be restricted on an interim basis while an investigation takes place, either by suspension or by imposing conditions on their registration. Cases considered by an IOT are heard in private although they may be heard in public in certain circumstances e.g., the doctor requests a public hearing or the IOT considers it appropriate.¹

Powers of the IOT

4. An IOT, or a MPT, can make an order, either suspending or imposing conditions upon a doctor's registration, for a period of up to 18 months². In practice, most interim orders will be imposed by an IOT. An MPT may, however, impose such orders if, for example, it adjourns a case and considers that it is necessary to do so pending its resumed consideration of the matter. Further guidance on when it may be necessary for an MPT to consider the imposition of an interim order is set out in the ['Test applied'](#) and ['Factors to consider'](#) sections of the guidance.
5. An IOT may make an order under one or more of three grounds:

¹ Rules 41(3), (4) and (6) of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) ('the rules').

² Section 41A of the Medical Act 1983 (as amended) ('the Act').

- I. when it considers it necessary to do so for the protection of members of the public
 - II. when it is otherwise desirable in the public interest, to maintain public confidence and uphold proper standards of conduct and behaviour
 - III. where it is in the interests of the doctor.
6. An IOT does not make findings of fact or determine the allegations against the doctor.

Referral process

7. The Registrar may refer a case to the IOT at any stage if they are of the opinion that the IOT should consider making an interim order³. The case examiners and Investigation Committee also have powers to direct the Registrar to refer a case to the IOT⁴.
8. This includes cases of doctors who have appeared before an MPT and are subject to sanctions but without an immediate order being imposed or where the substantive MPT sanction has come into effect but is not deemed sufficient to protect the public *and* the GMC receives new information which was not available at the time of the original determination which suggests that an IOT should consider making an interim order.

Review of interim orders

9. Except in the circumstances referred to below, any order imposed must be reviewed by an IOT or a tribunal chair within six months of the order being made, and thereafter every six months. However, following any review of an order, the doctor may request an early review. If three months have elapsed since the date of the immediately preceding review, then the order shall be reviewed as soon as practicable after receipt of a request for an early review. An order may also be reviewed at any time when new evidence relevant to the order becomes available, which may affect the order in place⁵. If the GMC wishes to extend an order beyond the period initially set, then it must apply to the relevant Court⁶ to

³ Rule 6.

⁴ Rule 8(6) and section 35C(8) of the Act.

⁵ Section 41(2) of the Act.

⁶ The relevant Court means the Court of Session where a doctor's registered address is in Scotland, the High Court in Northern Ireland where a doctor's registered address is in Northern Ireland and the High Court in England and Wales for all others. Where reference is made to the High Court in this document it includes the Court of Session and the High Court in Northern Ireland.

extend the order. Each extension will be for up to a maximum period of 12 months, however there is no limit on the number of extensions which may be granted.

10. There are, however, three instances where a review must take place within three months of any review of the order having taken place:
 - a. Where an order for interim conditions has been replaced with an order for interim suspension.
 - b. Where an order for interim suspension has been replaced with an order for interim conditions.
 - c. Where the High Court has extended an order beyond the period initially set.
11. When reviewing interim orders, an IOT or tribunal chair must fully consider all the circumstances relating to the case, including any new information. It must decide whether the order should be maintained, varied, replaced or revoked. In doing so the IOT or tribunal chair should apply the same test and take account of the same factors as set out in the [‘Test applied’](#) and [‘Factors to consider’](#) sections of the guidance.

Review on the papers

12. Cases can be reviewed on the papers as an alternative to holding a hearing⁷. ‘On the papers’ means the review of a case by a tribunal or tribunal chair without the attendance of parties (ie the doctor and the GMC).
13. Reviews on the papers take place when the parties are in agreement as to the outcome. The chair or tribunal has the power to maintain, vary, replace or revoke an interim order in line with the terms of the order agreed by the parties. Alternatively, the chair can determine that a hearing should take place to consider the case.
14. Specific guidance for chairs or tribunals reviewing cases on the papers is provided in *Guidance for MPTs/IOTs/chairs conducting reviews on the papers*⁸. Reviews on the papers are reviews of an interim order without the attendance of parties so the principles set out in this guidance apply.

⁷ Rule 26A.

⁸ www.mpts-uk.org/guidance-for-reviews-on-the-papers

Service of hearing notice

15. An IOT may only make an order if the doctor has been given an opportunity to attend and be heard on the question of whether such an order should be made⁹.
16. The Medical Act¹⁰ sets out how notice of an IOT hearing may be served. Notice of the hearing ('Notice') must be sent to the doctor at their registered address or last known address. Notice can also be served by sending it to an e-mail address which the doctor provides for the purpose of fitness to practise proceedings. The Rules require that notice of the hearing be served "in such time before the hearing as is reasonable in the circumstances of the case". In practice, doctors will normally receive at least seven days' notice of the hearing, but in cases of exceptional urgency the period of notice may be shorter.

Absence of the doctor

17. The absence of the doctor does not prevent the hearing from taking place and an IOT does not have to be satisfied that the doctor is aware of the proceedings. If the doctor does not appear and is not represented before it, the tribunal should proceed if it is satisfied that all reasonable efforts have been made to serve the doctor with notice of the proceedings¹¹. It is the doctor's responsibility to maintain an effective registered address.

Applications for adjournment

18. An IOT may, at any stage in its proceedings, adjourn the hearing whether of its own motion or upon the application of either party until such date as it thinks fit¹².
19. Postponement (as opposed to adjournment) does not fall within the IOT's remit. Applications for postponements can only be made to the Case Manager before the opening of a hearing¹³. Where a doctor's application for a postponement has been rejected by the Case Manager, the doctor may make an application for adjournment at the hearing. While the grounds of such an application may be similar, it is for the IOT to consider the matter afresh.

⁹ Section 41A(4) of the Act

¹⁰ Schedule 4 paragraph 8(2)

¹¹ Rule 31

¹² Rule 29(2)

¹³ Rule 29(1). For guidance on postponement please refer to www.mpts-uk.org/postponement-guidance.

20. If a doctor is not present or represented, issues of service must be dealt with before an adjournment can be considered. In the event that an application for adjournment is made, an IOT should, having formally opened the hearing, carefully consider the submissions made and invite the other party also to make submissions on whether the case should be adjourned. It is vital that both parties should be given reasonable opportunity to make their representations.¹⁴ However, where necessary, parties should be reminded of the importance of keeping submissions brief, addressing the reasons why an adjournment is considered necessary (or the reasons why it is opposed) and that they should not enter into presentation of the issues of the case.
21. Having heard the submissions made by each party and, where appropriate, sought advice from the legally qualified chair, the IOT should consider the matter in the absence of the parties. It is for the IOT to decide whether, in the circumstances of the case, it is appropriate to grant the application. In doing so, the tribunal will need to balance fairness to the applicant with the potential risk resulting from any adjournment, to the public, the wider public interest or the doctor.

Information available to the IOT

22. Prior to the hearing, the relevant documentation is sent to the IOT, the doctor and the parties' legal representatives. Due to the nature of the IOT's work, documents may be received at the last moment; those documents are tabled on the day of the hearing and must, where possible, be read by tribunal members before they hear any submissions on the case.
23. However, every effort should be made by all parties to ensure that documents are submitted in advance of the hearing to enable tribunals to consider them. Where documents are to be tabled by either party on the day of the hearing, the IOT may request that the bundle is indexed and paginated by the relevant party. Where the size of the bundle is substantial, parties should explain why it was not possible to provide the documents sooner and highlight key documents for consideration by the tribunal.
24. Both the GMC's legal representative and the doctor or their representative may make submissions and provide documentary evidence. Those submissions are limited to the question whether, given the circumstances of the case, it is

¹⁴ Rule 29(3).

necessary to impose/maintain an order either imposing interim conditions or interim suspension on the doctor's registration. It is important to keep in mind that the IOT does not make findings of fact or resolve disputes of fact. For this reason, the Rules provide¹⁵ that no person may give oral evidence before an IOT unless the tribunal is satisfied that 'such evidence is necessary to enable it to discharge its functions.' In the past the IOT have rarely found it necessary to hear oral evidence from witnesses, but each case must be considered on its own merits. However, the IOT will always hear from the doctor, if they wish to give evidence.

25. Although the IOT does not make findings of fact or resolve evidential disputes, in some cases which raise issues around freedom of expression¹⁶, the IOT may need to assess the cogency of the evidence in more depth so as to make a proportionate decision.

In what circumstances will an IOT impose an interim order?

Test applied

26. An IOT may make an interim order where they "are satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of a fully registered person, for the registration of that person to be suspended or to be made subject to conditions".¹⁷
27. In applying this test, the IOT should make the appropriate order if it is satisfied that:
- a. in all the circumstances there may be impairment of the doctor's fitness to practise which poses a real risk to members of the public, or may adversely affect the public interest or the interests of the doctor.
- and
- b. after balancing the interests of the doctor and the interests of the public, that an interim order is necessary to guard against such risk.

¹⁵ Rule 27(2).

¹⁶ Where the tribunal may have to apply an additional test under section 12(3) of the Human Rights Act

¹⁷ Section 41A(1) of the Medical Act 1983 (as amended)

28. In rare cases where the IOT has concluded an order is necessary and the proposed restrictions will have the effect of restricting a doctor's freedom of expression, the tribunal must also apply a further test under section 12(3) of the Human Rights Act (see annex A.)

Factors to consider

29. In reaching a decision on whether to impose an interim order an IOT should consider the following issues.
- a. The seriousness of risk to members of the public if the doctor continues to hold unrestricted registration. In assessing this risk the IOT should consider:
 - i. the seriousness of the allegations
 - ii. the weight of the information which includes information about the likelihood of a further incident or incidents occurring during the relevant period, such as the number of alleged incidents and whether the doctor has previous and relevant fitness to practise history
 - b. Whether public confidence in the medical profession is likely to be seriously damaged if the doctor continues to hold unrestricted registration during the relevant period.
 - c. Whether it is in the doctor's interests to hold unrestricted registration. For example, the doctor may clearly lack insight regarding the impact of a serious health condition and need to be protected from themselves.
30. In weighing up these factors, the IOT must carefully consider the proportionality of its response in dealing with the risk to the public interest (including patient safety and public confidence) and the adverse consequences of any action on the doctor's own interests.
31. In assessing whether it is appropriate to take action, the IOT should consider the seriousness of any police charges and the acceptability of its decision on interim action should the doctor later be convicted or acquitted (including public confidence issues as above).
32. When considering whether to make an interim order, the IOT cannot accept any undertakings given by the doctor as it has no power to accept them and they are, in any event, unenforceable.

The relevance of whether a doctor holds a licence to practise

33. Although doctors will require a licence to undertake activities involving contact with patients, the fact that a doctor does not currently have a licence does not replace the role of the tribunal in ensuring patient safety.
34. Interim orders attach to a doctor's registration and not their licence. It is important that tribunals bear this in mind when considering whether a doctor's registration should be restricted on an interim basis, either by suspension or by imposing conditions on their registration. Submissions may be made suggesting that, as the doctor is currently unlicensed, there are no patient safety issues and that interim action is therefore not required. It is important to remember that:
- a. a registered doctor is entitled to a licence unless their registration is currently suspended, and therefore the absence of a licence does not provide protection for patients.
 - b. all registered doctors are expected to comply with [*Good medical practice*](#), regardless of whether or not they hold a licence.
 - c. taking action against registered doctors in circumstances where there may be impairment of the doctor's fitness to practise which poses a real risk to members of the public, or may adversely affect the public interest or interests of the practitioner will be important in maintaining public confidence and the integrity of the register.
35. If a doctor's registration is suspended by a tribunal the doctor's licence will automatically be withdrawn. If conditions are imposed the doctor will continue to be entitled to hold a licence but will be expected to comply with any conditions.
36. A tribunal may impose conditions on unlicensed doctors in the same way as for licensed doctors. Practice related conditions may still be appropriate even though a doctor does not currently hold a licence.
37. When considering whether to impose an interim order the tribunal should bear in mind that if it does not impose an interim order on an unlicensed doctor, that doctor may at a later date successfully apply for a licence and would not be subject to any restrictions to protect patients, or the wider public interest.
38. If a tribunal imposes conditions which are practice related on a doctor who does not currently hold a licence, for example a requirement to work under medical supervision or to undertake a course of training, the conditions will continue to

attach to the doctor's registration during the period which they are unlicensed for the term of the order.

39. Should the doctor successfully apply for a licence at a later date, they will need to comply with the conditions when taking up any employment.

Examples of types of cases where an IOT may impose an interim order

Allegations of poor performance/ substandard clinical care

40. The test for imposing an order may be met where there is information that a doctor's clinical skills and/or professional knowledge and competence are, or are likely to be, such that they pose a real risk to members of the public if they were to continue without restriction. Such cases may include either a series of failures to provide a proper standard of care, or one particularly serious failure. Consideration should be given to making an order both for the protection of the public and in the public interest, including to maintain public confidence and to maintain and promote proper professional standards and conduct for doctors.

Allegations of sexual misconduct

41. In general, where allegations involve sexually inappropriate behaviour towards patients or colleagues or the doctor is under police investigation for a sexual criminal offence, particular consideration should be given to the impact on public confidence if the doctor were to continue working unrestricted in the meantime.
42. The following factors are likely to indicate, balanced alongside other considerations, that a case is likely to raise significant public confidence issues if no interim action is taken.
- a. Information that a doctor is under investigation by police in connection to serious offences such as rape or attempted rape, sexual assault or attempted sexual assault or sexual abuse of children, including accessing inappropriate images of a child/children.
 - b. Allegations that a doctor exhibited predatory behaviour in seeking or establishing a sexual or improper emotional relationship with a patient or a

former patient where, at the time of the professional relationship, the patient was particularly vulnerable¹⁸.

- c. Serious concerns about a doctor's sexualised behaviour towards a patient or a colleague in a single episode.
- d. Allegations of a pattern of sexually motivated behaviour towards patients, their relatives or colleagues.

43. Where a doctor is under investigation for any other serious criminal offence, particular consideration should be given to the impact on public confidence if the doctor were to continue working unrestricted in the meantime.

Doctor's health

44. Where there are issues about the doctor's health, the IOT should bear in mind that its primary duty is to protect members of the public and the wider public interest, and not to assume responsibility for, or give priority to, the treatment or rehabilitation of the doctor. However, where the IOT considers it appropriate to make an order for interim conditions, these may include conditions relating to the ongoing treatment and supervision of the doctor.

Concerns about a doctor's opinions

45. Concerns may sometimes be raised about opinions that a doctor has expressed on social media or in other forums. This may include allegations that a doctor is promoting and/or spreading misinformation which has the potential to harm public health or seriously damage public confidence in the medical profession. Where the test for an interim order is otherwise met, the IOT should consider very carefully the workability and appropriateness of any conditions they wish to impose. In very rare cases, the IOT may consider it necessary to impose conditions which would restrict the doctor's right to freedom of expression¹⁹. For example, by restricting the content they can post on social media platforms such as You Tube.

46. In all such cases, the IOT must refer to the supplementary guidance at annex A which sets out the approach to be taken and the additional legal test that must be applied under section 12(3) of the Human Rights Act.

¹⁸ For further information on vulnerability please refer to paragraphs 15 to 17 in the GMC's more detailed guidance on [maintaining personal and professional boundaries](#)

¹⁹ Under Article 10 of the ECHR

Interim conditions or interim suspension?

47. The IOT shall first consider whether it is necessary to impose an interim order under one or more of three grounds:

- I. when it considers it necessary to do so for the protection of members of the public
- II. when it is otherwise desirable in the public interest, to maintain public confidence and uphold proper standards of conduct and behaviour
- III. where it is in the interests of the doctor.

If it decides that an order is appropriate, it must consider whether to impose interim conditions on the doctor's registration. If it considers an interim order for conditions inappropriate, it must consider whether to suspend the doctor's registration.

Factors to consider

48. In deciding the appropriate action, the tribunal must very carefully consider the issue of proportionality in weighing the significance of any risk to patient and public safety or public confidence, for example in not suspending the doctor against the damage to them by preventing them from practising²⁰.

49. The suspension of a doctor's registration on 'public protection' grounds can only be done if it is necessary but there is no such qualification on suspension where it is desirable in the 'public interest' to maintain public confidence^{21 22}.

50. When considering the imposition of conditions, the IOT must ensure that any conditions imposed are workable, enforceable and will protect the public, the wider public interest or the doctor's own interests. Conditions should normally follow the format of conditions set out in the [Interim Conditions bank](#) and should:

- a. be adequately defined to minimise opportunities for misinterpretation;
- b. be directed at the doctor and not at other parties;
- c. be capable of being complied with by the doctor;
- d. enable breaches to be readily identified.

51. The following factors may also be relevant.

²⁰ Sandler v General Medical Council England and Wales High Court (Administrative Court) (2010)

²¹ Sandler v General Medical Council England and Wales High Court (Administrative Court) (2010)

²² Under section 41A(1) of the Act

- a. Whether the doctor has complied with any undertaking(s) given to the GMC or conditions previously imposed under GMC fitness to practise procedures.
- b. The doctor's fitness to practise history with the GMC, if any.

Sexual misconduct

52. Where allegations involve sexual misconduct, there may be a significant risk to patient safety as well as public confidence in the profession if decisions at the interim stage are not seen to reflect the seriousness of the individual case.

Workability and effectiveness of conditions

53. In cases involving allegations of sexual misconduct, one or more of the following factors are a strong indicator that conditions requiring the use of a chaperone may not be workable or effective.

- a. Any concerns that the doctor has not complied with existing chaperoning arrangements at their place of work.
- b. Allegations that a doctor asked a chaperone to leave the room during an intimate examination.
- c. Allegations that a doctor exhibited sexually motivated behaviour towards patients in the presence of a chaperone.
- d. In the context of psychotherapeutic practice such as by psychiatrists, due to the highly personal and confidential nature of therapy and where the presence of a chaperone would therefore be highly intrusive.
- e. Allegations that indicate a possible pattern of behaviour of a doctor engaging or seeking to engage in a sexual or an improper emotional relationship with more than one patient. Chaperone conditions may not be fully effective in protecting patients from this type of behaviour by doctors, since most contact of this nature is likely to occur in unchaperoned time, outside a consultation²³. An IOT may, however, consider a chaperone condition to be proportionate in light of a single allegation depending on the circumstances of the case and having considered all the relevant factors set out in this guidance in reaching their decision.

54. When considering the use of age specific conditions, the IOT should reflect on the nature of the sexual misconduct allegations. It should consider whether such

²³ As per the conclusions of the *Independent review of the use chaperones to protect patients in Australia* conducted by Professor Ron Paterson.

conditions would adequately protect patients from predatory and opportunistic behaviour which may lead to alleged perpetrators offending against a wide age range of patients²⁴.

55. The IOT should also ensure that any conditions imposed make it clear whether the requirement for a chaperone applies to all consultations, including video and telephone consultations, or only those where the patient is physically present.
56. Where a doctor carries out consultations remotely, an IOT should consider the proportionality of a chaperone condition and whether this would unduly restrict a doctor's practice. In doing so, they should carefully consider the individual circumstances to assess whether the doctor may still pose a risk to patients if the consultation is by video or telephone. This is likely to be the case where there is evidence the doctor has failed to maintain appropriate professional boundaries including attempting to pursue a sexual or improper emotional relationship with a patient or making inappropriate remarks of a sexual nature.
57. In other cases, having considered the circumstances and all the relevant factors set out in this guidance, the IOT may feel there is little or no risk arising from a remote consultation, and it is proportionate to allow these to take place without a chaperone.
58. It will not usually be workable for the IOT to impose a condition stipulating that telephone or video consultations should be recorded. Recordings can be made for a secondary purpose which does not directly benefit patients such as teaching, training or assessment of healthcare professionals. However this would require each patient to be fully informed of the reason for the recording (to comply with conditions arising from a fitness to practise investigation) and to provide clear consent. This is unlikely to be feasible from a practical perspective for every consultation.

Public confidence

59. The public has a right to know about a doctor's fitness to practise history to enable them to make an informed choice about where to seek treatment. To

²⁴ The [report](#) by the Professional Standards Authority - *Sexual Misconduct In Health And Social Care: Understanding Types of Abuse and Perpetrators' Moral Mindsets* found that some perpetrators limit their abuse to a small number of victims, while others take advantages of opportunities and pursue targets more widely. The latter group is separated into those who are unrelenting in their harassment of a few victims and those with a more inconsistent pattern to their behaviour, operating as the context allows.

balance this with fairness to the doctor, allegations leading to the imposition of interim conditions are not published or disclosed to general enquirers. It is therefore the responsibility of the IOT to consider whether, if allegations are later proved, it will damage public confidence to learn the doctor continued working with patients while the matter was investigated.

60. With this in mind, the presence of one or more of the following factors are a strong indicator that conditions may not be adequate to maintain public confidence in the profession or the medical regulator.
- a. Information that a doctor has been charged by police²⁵ in connection to serious offences such as rape or attempted rape, sexual assault or attempted sexual assault or sexual abuse of children, including accessing inappropriate images of a child/children.
 - b. Allegations of a pattern of sexually inappropriate conduct towards patients.
61. In exercising its discretion in relation to the particular facts of each case the IOT should also consider any immediate risk to patient safety²⁶. However, there are circumstances in which it is necessary to take action to protect public confidence even where there is no immediate risk to patients.

Criminal charges

62. Where the allegations involve serious criminal charges the tribunal should consider case law in relation to the proportionality of their response.

'The statutory test is there, and that is the one to be applied. One would like, all the same, to think that in all these kinds of cases of potential interim suspension an interim orders panel would at least be asking itself, as part of its thought process, the following: will it be acceptable for us not to suspend in a case of this kind if at the end of the day the charges are proved and the guilt of the applicant is established? That is one aspect. Another part of the thought process should be: will it be acceptable for us to suspend an applicant in a case of this kind if, at the end of the day, the applicant may be acquitted of all charges?'

²⁵ Please refer to paragraph 63 below about differences between the charging system in England/Wales/Northern Ireland and Scotland.

²⁶ *Yeong v General Medical Council* [2009] EWHC 1923 (Admin).

Those considerations should form at least part of the thinking of an interim orders panel...'²⁷.

- 63.** There are differences between the charging system in England, Wales and Northern Ireland compared to Scotland. In England and Wales, the Crown Prosecution Service (CPS) authorise the police to charge the suspect with the Public Prosecution Service (PPS) undertaking this role in Northern Ireland. However, in Scotland, the police can charge the suspect of their own volition, and then subsequently send their report to the Crown Office and Procurator Fiscal Service (COPFS.) The COPFS will then decide whether or not to prosecute, or can ask the police to obtain more evidence. A charge in Scotland therefore potentially carries less weight than a charge in England, Wales and Northern Ireland as it could be rejected at the COPFS stage. In Scottish cases, the IOT should therefore seek information as to the present status of the charge eg whether it has been approved by the COPFS, or remains with the police.
- 64.** However the considerations for the IOT are the same in all criminal cases and it is incumbent on the tribunal to consider the individual features of each case and the particular facts and seriousness of the criminal charges. In evaluating the acceptability of intervening or declining to do so, the IOT should have in mind the ultimate possibilities of both the doctor's acquittal and their conviction of the particular charges.

Breach of conditions

- 65.** Where the IOT has credible information placed before it relating to a breach of interim conditions previously imposed by an IOT or MPT, the IOT must determine whether it is satisfied, on the balance of probabilities, that a breach has occurred²⁸. If so, that information should be taken into account in the assessment of the overall risk posed by the doctor.
- 66.** In making this risk assessment, IOTs must bear in mind the risk posed to the public interest of a doctor practising in breach of conditions put in place to protect the public or uphold confidence in the profession. Relevant factors to consider when assessing the risk posed may include whether:
- a.** a breach is a one-off or repeated occurrence;

²⁷ *Sosanya, R (on the application of) v General Medical Council England and Wales High Court (Administrative Court) (2009).*

²⁸ Any determination made by a IOT in this regard does not, and is not intended to, amount to a finding of fact on the allegation(s) of impaired fitness to practise made against the doctor.

- b. patient safety has been compromised;
- c. there appears to have been a wilful disregard of conditions imposed by a tribunal.

Period of order

67. Where it imposes an interim order an IOT must specify the length of the order and provide reasons. The maximum period for which an initial order may be imposed is 18 months. It is important to bear in mind that if the GMC wishes to extend an order beyond the period initially set, it will need to apply to the relevant Court to do so.
68. In considering the period for which an order should be imposed an IOT should bear in mind the time that is likely to be needed before the matter is resolved (for example, the time needed to complete any investigation into allegations regarding the doctor's fitness to practise, including obtaining assessments of the doctor's health and/or performance, and for the case to be listed for hearing before an MPT). The IOT should also bear in mind that there is provision²⁹ enabling it, or an MPT, to revoke, vary or replace an interim order on review as per the ['Review of interim orders' section](#).

Reasons for decisions

69. The Rules makes clear that when announcing its decision the IOT "shall give its reasons for that decision."³⁰ An IOT must therefore ensure that reasons are given for any decisions taken, including decisions not to impose an order. The courts do not expect an IOT to give long detailed reasons but the reasons given must be clear and explain how the decisions were reached, including identifying the ground(s) under which the order is considered necessary.
70. Although IOT decisions should be fairly concise, they should set out the specific ground(s) under which the order is being made and the reasons why. The decision must include the following information with specific reference to the distinct features and particular facts of each individual case:
- a. The risk to patients should be clearly identified to support the proportionality of any action it was necessary to take.

²⁹ Section 41A(3) of the Act

³⁰ Rule 27(4)(g)

- b. The risk to public confidence in the profession if the doctor continued working without restriction on their registration and the allegations are later proved, to support the proportionality of any interim action taken.
- c. Where an order is made primarily because it is desirable in the public interest to uphold public confidence and there are no concerns about clinical practice, specific reasons should be given for why this is appropriate.
- d. Reasons for the initial period of time for which an interim order is imposed.
- e. Where no order is imposed, clear reasons must be given.

Cases where an MPT considers imposing an interim order

71. The imposition of interim orders will normally be considered by the IOT. An MPT may also impose an interim order³¹ but this is only likely to occur in a relatively small number of cases where for example the tribunal is considering non-compliance matters, or a case has been referred to an MPT but adjourned and the MPT considers that the imposition of such an order may be necessary in the interim, pending its further consideration of the matter.
72. MPTs will need to bear in mind that the notice of hearing sent to doctors who are not already subject to an interim order, not only notifies them of the details of their hearing into allegations against them by an MPT, but also includes a reference to the tribunal's powers to place an interim order of conditions or suspension on their registration under the circumstances described in the above paragraph. It also informs them that any such order would be reviewed after six months, and at regular intervals thereafter³².
73. If the doctor is present and/or legally represented the MPT should proceed to hear submissions by both parties (the doctor and/or their representative and the GMC's legal representative) on whether an interim order should be imposed following the procedure set out in the paragraph below. In fairness both to the doctor and the GMC, the MPT should notify them that they wish to consider whether an interim order should be imposed and allow them a short period to obtain instructions and prepare their submissions. If, however, the doctor is not present or not represented they will not be able to make submissions on this question. As outlined in the ['Absence of the doctor'](#) section of the guidance, the doctor will have had notice of the Tribunal's powers in this regard. Therefore the requirement that no interim order "shall be madeunless he has been afforded

³¹ Section 41A of the Act

³² As set out in section 41A(2) of the Act

an opportunity of appearing before the Tribunal and being heard on the question of whether such an order should be made in his case” will have been met.

- 74.** When considering whether to impose an interim order, an MPT should:
- a.** consider the matter in private, unless the doctor requests that the matter be considered in public;
 - b.** follow the procedure set out in the Rules regarding an interim order hearing³³; and
 - c.** apply the same test and follow the same guidance set out above for the IOT.

³³ Rule 27

Annex A – supplementary guidance for cases where the IOT is considering restricting a doctor’s freedom of expression

1. Where there are concerns about a doctor’s expression of opinion, for example when posted on social media, and the IOT is considering imposing an interim order which would restrict the doctor’s freedom of expression, it should bear in mind that its duty to protect members of the public and the wider public interest must be balanced with the doctor’s right to freedom of expression under Article 10 of the ECHR.³⁴
2. The right to freedom of expression protects an individual’s right to hold their own opinions and express them freely without interference. This includes the right to express their views through social media. However, this right can be restricted by a public authority if it is necessary and proportionate to do so. For example, in the interests of public safety, to protect health or to prevent disorder or crime.
3. Any of the following may justify interference with a doctor’s right to freedom of expression, particularly where they identify themselves as a doctor.
 - a. Information that a doctor is encouraging members of the public to commit an offence.
 - b. Allegations that a doctor is promoting and/or spreading misinformation which has the potential to harm public health or undermine public confidence in the medical profession.
 - c. Information that a doctor is encouraging members of the public to engage in specified behaviours which expose them to a risk of harm.
 - d. Information that a doctor is encouraging treatments which are unproven or known to be ineffective.
 - e. Information that a doctor is discouraging treatments which are known to be effective.
 - f. Allegations that a doctor’s conduct amounts to bullying or harassment.

³⁴ “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information [...]”.

4. The IOT should first consider whether the statutory test³⁵ for an interim order is met. If it is met, the IOT should consider whether the proposed order will have the effect of restricting the doctor's freedom of expression. For example, the conditions stipulate that the doctor must not share specific views or content on social media applications such as X (formerly known as Twitter) or YouTube. If both these criteria are met, Article 10 will be engaged. Article 10 is more likely to be engaged where a doctor expresses their opinion on a public platform, rather than privately (see paragraph 8 below.)
5. Where the IOT considers suspension to be the most appropriate outcome, this would not usually interfere with the doctor's right to freedom of expression. However, the IOT should consider any information provided by the doctor as to the impact of any suspension and, if satisfied that suspension would interfere with the doctor's Article 10 rights, apply the additional test under the Human Rights Act as set out below. It will not however be necessary to apply this test if the IOT does not consider that its order will have the effect of restricting the doctor's freedom of expression as Article 10 will not be engaged.
6. If the IOT is satisfied that Article 10 is engaged, it should then proceed to apply the test under section 12(3) of the Human Rights Act 1998 ('the Human Rights Act')³⁶. The test set out in section 12(3) of the Human Rights Act means the IOT must be satisfied that the case will be referred to a MPT, as there may be impairment of the doctor's fitness to practise, and that it is more likely than not that the MPT will make a finding which justifies the interim order being made in the particular circumstances of the case.³⁷ In other words, the MPT will find the doctor's behaviour amounts to misconduct.³⁸
7. In applying the test under the Human Rights Act, the IOT may need more cogent evidence to support the allegation than would usually be the case. This may sometimes require considering expert evidence, if this has been obtained by one

³⁵ Under section 41A of the Act

³⁶ The test sets out that where a court or tribunal is considering whether to grant any relief which, if granted, might affect the convention right to freedom of expression, "no such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed."

³⁷ *PJS v News Group Newspapers Limited* [2016] UKSC 26 (which was referenced in *White v GMC* [2021] EWHC 3286 (Admin)) has interpreted the test as the Court needing to be satisfied the applicant's chances of succeeding at trial are "sufficiently favourable" to justify an interim restriction on the defendant's freedom of expression. In the context of our regulatory proceedings, we have interpreted this as an IOT being satisfied that it's more likely than not that a medical practitioners tribunal will ultimately find that the doctor's behaviour amounted to misconduct.

³⁸ Under section 35(C)(2) of the Act

of the parties at the time of the hearing, on whether the doctor's views have any credible basis or are likely to create a risk of harm to the public. The IOT will not however need to make any findings of fact or make any determination on impairment.

Private communications

8. Having first applied the statutory test for an interim order, in very rare cases, the IOT may consider it appropriate to restrict a doctor's use of more private methods of communication such as WhatsApp. Where this is the case, the IOT should consider whether the statements made by the doctor in private correspondence fall within the scope of Article 10 of the ECHR (the right to freedom of expression), even though the public nature of such statements is limited. When considering if Article 10 is engaged by a doctor's private communications, the IOT must very carefully consider how public that communication is i.e. how many people can see the misinformation shared, the method by which the communication was disseminated and how it came to the GMC's attention. If Article 10 is engaged, the IOT should proceed to consider the test under the Human Rights Act as set out above.

Workability of conditions restricting freedom of expression

9. The IOT must ensure that any conditions restricting freedom of expression are workable, enforceable and will protect the public and the wider public interest, in addition to being a proportionate response to the concern. For cases involving the alleged misuse of social media and inappropriate views expressed in public or private communications, any conditions should be targeted and specific about what the doctor cannot express views about. Tribunals should not attempt to impose blanket restrictions on a doctor's freedom of expression in relation to a particular topic.