

# Guidance for MPTS Tribunals

## Section three: AT hearings - review hearings

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# Contents

General introduction.....	4
Review hearings .....	4
Review hearings where there are also new allegations .....	6
Process of decision making at an AT review hearing .....	6
AT review: stage one– impairment.....	9
Step 1: decide if the PA or AA’s fitness to practise remains impaired .....	9
Step 1a: Consider what has happened since the previous decision on risk .....	11
i. What was the previous assessment of risk and reasons given for it?.....	11
ii. What new evidence has been received since the previous assessment of risk and what impact does this have? .....	12
iii. What evidence is there is of insight and is the PA or AA’s insight genuine?..	18
iv. What evidence is there relating to remediation, has the allegation now been remedied or is it still likely to be repeated? .....	20
v. Has the PA or AA kept their knowledge and skills up to date? .....	21
vi. Has the risk to public protection that previously required restrictive action in response changed and if so, how? .....	22
Step 1b: make a finding on impairment .....	22
Review hearings where there have also been new findings of fact.....	24
AT review: stage two – final measure .....	26
Step 2: decision on what action to take, if any .....	26
Review hearings where there have also been new findings of fact.....	31
Adjournments .....	31
Any final measure must be proportionate, transparent and fair .....	31
Outcomes available to the AT at the final measure stage of a review or a new and review hearing where the PA or AA’s fitness to practise does not remain impaired .....	32
Outcomes available to the AT at the final measure stage of a review or a new and review hearing where the PA or AA’s fitness to practise remains impaired	33
Additional evidence that may be relevant to the decision on what outcome is proportionate .....	37
The AT’s determination .....	37
Taking effect of directions and final measures .....	38



# General introduction

1. The role of an associate's tribunal (AT) carrying out a review of a final measure of conditions or suspension is to decide whether a PA or AA's fitness to practise remains impaired and if so, what restrictive action, if any, is needed to protect the public.
2. References made to 'public protection' throughout this guidance refer to the GMC and MPTS' legal duty to protect the public which is split into three distinct parts. It means an AT must act in a way that:
  - ▶ protects, promotes and maintains the health, safety and wellbeing of the public
  - ▶ promotes and maintains public confidence in the profession, and
  - ▶ promotes and maintains proper professional standards and conduct for members of the profession.
3. Where a final measure of conditions or suspension has been imposed on a PA or AA's registration, a case examiner or AT may direct that the final measure is reviewed prior to its expiry.<sup>1</sup> Additionally, the GMC may direct a review of a final measure at any time, of their own choice or because they have agreed to a request for a review made by a PA or AA.<sup>2</sup> Usually, a review of a final measure will be referred to a case examiner, however it may sometimes be appropriate to refer the case directly to an AT.
4. The purpose of this guidance is to support ATs to make fair and consistent decisions when reviewing a final measure at a hearing.

## Review hearings

5. An AT review hearing has two distinct stages:
  - ▶ **Stage one:** the AT will reach a decision on whether the PA or AA's fitness to practise remains impaired
  - ▶ **Stage two:** the AT will consider their conclusion on impairment and decide what action, if any, is required in response.
6. At stage one, to decide if a PA or AA's fitness to practise remains impaired, the AT must assess whether that PA or AA poses any current and ongoing risk to one or more of the three parts of public protection requiring restrictive action

<sup>1</sup> Rule 62(1) of the fitness to practise rules 2024 ('the rules')

<sup>2</sup> Rule 62(2) of the rules

in response. This assessment must be made with reference to the findings of the original AT or case examiners ('decision maker'), the findings of any decision makers who have conducted a previous review of the case, and any relevant new evidence presented to the AT.

7. An AT can only assess whether a PA or AA is fit to practise where there is a legal basis for doing so. There are two grounds for taking regulatory action for PAs and AAs. These are:
  - ▶ inability to provide care to a sufficient standard, or
  - ▶ misconduct.<sup>3</sup>
8. The AT should assess whether the PA or AA's fitness to practise remains impaired having regard to whichever ground for action the PA or AA was previously found to be impaired by. While they cannot add or consider new grounds for impairment in the absence of separate matters against the PA or AA having been referred for determination, the AT should assess if the PA or AA is currently fit to practise by considering all the available relevant evidence.<sup>4</sup>
9. At stage two, the AT will consider their conclusion on impairment and decide what action, if any, is required in response.
10. Where the PA or AA's fitness to practise does not remain impaired, the AT can<sup>4</sup>:
  - ▶ allow the existing measure to expire, or
  - ▶ revoke the existing measure.
11. Where the PA or AA's fitness to practise remains impaired, the outcomes available to the AT are to<sup>5</sup>:
  - ▶ take no further action, i.e. allow the existing measure to expire
  - ▶ extend the existing measure for up to 12 months
  - ▶ vary the existing measure of conditions for up to 12 months, or
  - ▶ revoke the existing measure and impose a different one
12. The process that the AT should follow at a review hearing to decide if a PA or AA's fitness to practise remains impaired and what action to take, if any, is illustrated in diagram one.

<sup>3</sup> Part 1 (2)(a) of the Anaesthesia and Physician Associate Order 2024 (AAPA Order 2024) (the Order).

<sup>4</sup> The AT should refer to the section [Review hearings where there are also new allegations](#) where separate matters against the PA or AA have been referred for determination

<sup>5</sup> Article 14(3) of the Order

## Review hearings where there are also new allegations

13. Where new allegations about a PA or AA's fitness to practise have been referred to an AT hearing, the new matter and review must be listed together.<sup>6</sup>

The hearing will have three stages:

- ▶ Stage one: the AT will use the guidance in Part A: stage one - facts of the guidance for Associates tribunal hearings to consider and decide the facts in the new matter
- ▶ Stage two: the AT will reach a decision on whether the PA or AA's fitness to practise remains impaired, considering both their findings at stage one in relation to the new allegation and information relevant to the review which includes the findings of the original decision maker, the findings of any decision makers who have conducted a previous review of the case, and any relevant new evidence presented to the AT<sup>7</sup>
- ▶ Stage three: the AT will consider their conclusion on impairment and decide what action, if any, is required in response.

14. If a new allegation has been referred to the MPTS shortly before a scheduled review hearing, with insufficient time for the new allegation to be prepared so the matters can be considered together, the AT should adjourn the review hearing. In these circumstances, the AT may extend the current measure or consider whether any interim measure should be imposed, extended, varied, revoked or revoked and replaced with a different interim measure so that there is no public protection gap.

## Process of decision making at an AT review hearing

<sup>6</sup> Rule 73(14) of the rules

<sup>7</sup> Rule 73(17) of the rules

## Process of decision making at an AT review hearing

1

### Impairment: decide if the PA or AA's fitness to practise remains impaired

- Follow steps 1a and 1b
- Decide if the PA or AA poses any current and ongoing risk to public protection and if their fitness to practise remains impaired
- If impaired, decide which parts of public protection are engaged, and why
- Give reasons for decision

1a

### Consider what has happened since the previous decision on risk

- What was the previous assessment of risk and reasons given for it?
- What new evidence has been received since the previous assessment of risk and what impact does it have?
- What evidence is there of insight and is the PA or AA's insight genuine?
- What evidence is there relating to remediation and has the allegation been remedied or is it still likely to be repeated?
- Has the PA or AA kept their knowledge and skills up to date?
- Has the risk to public protection that previously required restrictive action in response changed and if so, how?

1b

### Make a finding on impairment

- On the basis of the conclusions reached in step 1a, decide if the PA or AA poses any current and ongoing risk to public protection and make a finding on impairment
- If there is no current and ongoing risk to public protection requiring restrictive action in response, make a finding of no impairment
- If the PA or AA continues to pose a current and ongoing risk to public protection requiring restrictive action in response, make a finding of impairment, decide which parts of public protection are engaged and state the level of risk (low, medium, high)
- Give reasons for decision

2

### Final Measure: decide what action to take, if any

- If impaired, consider what final measure is proportionate i.e. is needed but no more than necessary to protect the public
- Review decision on impairment and consider the level of current and ongoing risk the PA or AA poses to public protection
- Refer to final measure bandings (where available) if required to assist understanding of the final measure imposed
- Consider whether there is relevant evidence relating to the impact a certain type of final measure will have and / or relevant references and testimonials and what impact, if any, they have
- Decide on the type and length of final measure - stand back and check if it is proportionate to meet the level of current and ongoing risk posed to public protection
- Consider directing a review and whether the final measure should take effect immediately
- Give reasons for decisions

## Stage one: impairment

Step 1: decide if the PA or AA's fitness to practise is impaired.

- ▶ Follow steps 1a to 1b
- ▶ Decide if the PA or AA poses any current and ongoing risk to public protection and if their fitness to practise remains impaired
- ▶ If impaired, decide which parts of public protection are engaged, and why
- ▶ Give reasons for decision

Step 1a: consider what has happened since the previous decision on risk?

- ▶ What was the previous assessment of risk and reasons given for it?
- ▶ What new evidence has been received since the previous assessment of risk and what impact does it have?
- ▶ What evidence is there of insight and is the PA or AA's insight genuine?
- ▶ What evidence is there relating to remediation, has the allegation now been remedied or is it still likely to be repeated?
- ▶ Has the PA or AA kept their knowledge and skills up to date?
- ▶ Has the risk to public protection that previously required restrictive action in response changed and if so, how?

Step 1b: make a finding on impairment

- ▶ On the basis of the conclusions reached in step 1a, decide if the PA or AA poses any current and ongoing risk to public protection and make a finding on impairment.
- ▶ If there is no current and ongoing risk to public protection requiring restrictive action in response, make a finding of no impairment.
- ▶ If the PA or AA continues to pose a current and ongoing risk to public protection requiring restrictive action in response, make a finding of impairment, decide which parts of public protection are engaged and state the level of risk (low, medium, high).
- ▶ Give reasons for decision.

## Stage two: final measure

Step 2: decide what action to take, if any

- ▶ If impaired, consider what final measure is proportionate i.e. is needed but no more than necessary to protect the public.
- ▶ Review decision on impairment and consider the level of current and ongoing risk the PA or AA poses to public protection.
- ▶ Refer to final measure bandings (where available) if required to assist understanding of the final measure imposed.

- ▶ Consider whether there is relevant evidence relating to the impact a certain type of final measure will have and/or relevant references and testimonials and what impact, if any, they have.
- ▶ Decide on the type and length of final measure - stand back and check if it is proportionate to meet the level of current and ongoing risk posed to public protection.
- ▶ Consider directing a review and whether the final measure should take effect immediately.
- ▶ Give reasons for decisions.

## AT review: stage one– impairment

At Stage one of an associates tribunal (AT) review hearing, the AT will consider the evidence provided by both parties (the GMC and PA or AA) to decide whether the PA or AA's fitness to practise remains impaired or not.

This stage outlines:

- ▶ how decisions on impairment should be approached and how the previous tribunal's decision should be considered and,
- ▶ the need to record reasons for decisions on impairment.

### Step 1: decide if the PA or AA's fitness to practise remains impaired

1

#### Impairment: decide if the PA or AA's fitness to practise remains impaired

- Follow steps 1a and 1b
- Decide if the PA or AA poses any current and ongoing risk to public protection and if their fitness to practise remains impaired
- If impaired, decide which parts of public protection are engaged, and why
- Give reasons for decision

- ▶ Follow steps 1a to 1b
- ▶ Decide if the PA or AA poses any current and ongoing risk to public protection and if their fitness to practise remains impaired
- ▶ If impaired, decide which parts of public protection are engaged, and why
- ▶ Give reasons for decision

15. At stage one of an AT review hearing, the AT decides if the PA or AA's fitness to practise remains impaired in relation to each of the relevant grounds for action upon which the previous decision maker had found the PA or AA to be impaired. While they cannot add or consider new grounds for action in the absence of separate matters against the PA or AA having been referred for determination, the AT should assess if the PA or AA is currently fit to practise by considering all the available relevant evidence.
16. To decide if a PA or AA's fitness to practise remains impaired, the AT must assess whether that PA or AA poses any current and ongoing risk to one or more of the three parts of public protection requiring restrictive action in response. This assessment must be made with reference to the findings of the original decision maker, the findings of any decision makers who have conducted a previous review of the case, and any relevant new evidence.
17. On review, the following questions should be used to inform the AT's assessment of whether a PA or AA poses any current and ongoing risk to public protection requiring restrictive action in response, and if so, what level of risk (low, medium or high):
  - i. What was the previous assessment of risk and reasons given for it?
  - ii. What new evidence has been received since the previous assessment of risk and what impact does this have?
  - iii. What evidence is there of insight and is the PA or AA's insight genuine?
  - iv. What evidence is there relating to remediation, has the allegation now been remedied or is it still likely to be repeated?
  - v. Has the PA or AA kept their skills and knowledge up to date?
  - vi. Has the risk to public protection that previously required restrictive action in response changed and if so, how?
18. The AT will only make a finding that the PA or AA's fitness to practise remains impaired where a decision is reached that the PA or AA poses a current and ongoing risk to one or more of the three parts of public protection requiring restrictive action in response.
19. The decision on whether the PA or AA remains impaired is one for the AT alone, exercising their judgment. There is no burden or standard of proof.
20. The AT will always need to record reasons for their decision and be clear about which part(s) of public protection are engaged. Where the AT's decision departs from the principles in this part of the guidance the AT must carefully explain how this is justified, given the specific circumstances of the case. They

must also explain how the decision relates to any submissions made by the parties.

## Step 1a: Consider what has happened since the previous decision on risk

1a

### Consider what has happened since the previous decision on risk

- What was the previous assessment of risk and reasons given for it?
- What new evidence has been received since the previous assessment of risk and what impact does it have?
- What evidence is there of insight and is the PA or AA's insight genuine?
- What evidence is there relating to remediation and has the allegation been remedied or is it still likely to be repeated?
- Has the PA or AA kept their knowledge and skills up to date?
- Has the risk to public protection that previously required restrictive action in response changed and if so, how?

- ▶ What was the previous assessment of risk and reasons given for it?
- ▶ What new evidence has been received since the previous assessment of risk and what impact does it have?
- ▶ What evidence is there of insight and is the PA or AA's insight genuine?
- ▶ What evidence is there relating to remediation and has the allegation been remedied or is it still likely to be repeated?
- ▶ Has the PA or AA kept their knowledge and skills up to date?
- ▶ Has the risk to public protection that previously required restrictive action in response changed and if so, how?

### i. What was the previous assessment of risk and reasons given for it?

21. The previous decision maker will have decided that the PA or AA's fitness to practise was impaired, considering the assessment of current and ongoing risk to public protection they made at that time. The AT should not reconsider or go behind those findings. Their role is to decide whether the PA or AA's fitness to practise remains impaired at the time of the review.

22. To understand the previous assessment of risk, the AT should note:

- ▶ the seriousness of the allegations which resulted in the finding of impairment
  - ▶ the impact of any relevant context known about the PA or AA and/or their working environment and
  - ▶ how the PA or AA has responded to the allegations which resulted in the first finding of impairment and how they responded to, if relevant, any subsequent findings made by a previous decision maker.
23. The AT should also be mindful of which parts of the three parts of public protection were engaged and note this along with the level of risk that the previous decision maker identified as part of their finding of impairment (low, medium or high).

## **ii. What new evidence has been received since the previous assessment of risk and what impact does this have?**

24. Once the AT has noted the previous assessment of risk and reasons for it, they should go on to consider what new evidence has been received and assess what impact this has. This will help inform their assessment of the current and ongoing risk the PA or AA poses to public protection.
25. The AT should consider any relevant new evidence provided by the parties (the General Medical Council (GMC) and the PA or AA) about what has happened since the last impairment decision and assessment of risk was made.
26. In many cases the GMC will have been monitoring the PA or AA's compliance with the current final measure of conditions or suspension and/ or may have received information relevant to considering the PA or AA's current fitness to practise from another source. The PA or AA may also provide their own evidence of what has occurred since the last impairment decision and assessment of risk was made.
27. The AT may need to consider new evidence, including evidence:
- ▶ regarding the PA or AA's health, performance or knowledge of English Language
  - ▶ relating to any change to relevant context known about the PA or AA and/or their working environment
  - ▶ about a material change in the PA or AA's circumstances that needs to be considered

- ▶ relevant to the PA or AA's compliance with the current final measure, including the relevance of any facts found proved in relation to a new allegation.

28. Further guidance about each of these is below.
29. When assessing new evidence and deciding the weight to attach to it, the AT should consider its source, relevance and the extent to which they have been able to adequately test it at the hearing.
30. If the AT is not able to reach a fair decision based on the evidence before them, they may wish to consider whether to adjourn in order to direct an assessment or for further information or reports to be provided. Before doing so, the AT should invite submissions from the parties on whether this is appropriate. For further guidance on this issue, the AT should refer to [Adjourning to direct an assessment or for further information or reports to be obtained](#) in Part B of Section two: Procedural matters relating to tribunal hearings of the Guidance for MPTS tribunals.

## **Evidence regarding the PA or AA's health, performance or knowledge of English language**

31. Evidence provided to the AT about the PA or AA's health, performance or knowledge of English language may include:
  - ▶ a GMC health, performance or assurance assessment or an English language assessment
  - ▶ reports provided by the PA or AA's own treating healthcare practitioner
  - ▶ witness statements that provide an up to date position on the PA or AA's health, performance or knowledge of English Language.
32. The AT should consider the weight to be given to any new evidence received about the PA or AAs health, performance or knowledge of English language with reference to the source of the information and their awareness of the circumstances that led to the original findings about the PA or AA's fitness to practise
33. Where there is evidence that demonstrates an improvement in the PA or AA's health, performance, or knowledge of English language, this may indicate that either (a) the PA or AA no longer continues to pose a current and ongoing risk to public protection requiring restrictive action in response, or (b) that any risk they do still pose has decreased.

34. Evidence of improvement in a PA or AA's health may be triggered by a full recovery. As many health conditions are remitting and relapsing in nature, it may also be triggered by a PA or AA developing insight that enables them to recognise any warning signs and/or where the impact of the PA or AA's health condition is being appropriately managed.
35. When deciding how much weight to attach to evidence of improvement, more weight can usually be attached to objective evidence that demonstrates improvement over a sustained period.
36. Evidence that demonstrates a deterioration in the PA or AA's health or performance, including knowledge of English language, is likely to suggest that the PA or AA continues to pose a current and ongoing risk to public protection requiring restrictive action in response and may indicate that the risk to one or more parts of public protection has increased.
37. It may be appropriate for the AT to conclude that the deterioration demonstrates an increase in risk where:
- ▶ the deterioration is significant
  - ▶ the deterioration or impact of the PA or AA's health condition is not being, or cannot be, managed locally
  - ▶ patient safety has been compromised as a result
  - ▶ the PA or AA has continually not engaged with the GMC about the deterioration
  - ▶ the PA or AA does not accept that there has been a deterioration, has not demonstrated insight into the impact and potential consequences of the deterioration and has not taken steps towards recover and/or to remediate and/or
  - ▶ the deterioration occurred in conjunction with a breach of restrictions.
38. It may be appropriate for the AT to conclude that the deterioration does not impact on the present assessment of the current and ongoing risk to public protection posed by the PA or AA where several of the following factors are seen:
- ▶ the deterioration is not considered to be significant
  - ▶ the deterioration is being managed, or can be, managed locally
  - ▶ patient safety has not been compromised as a result
  - ▶ the PA or AA engaged with the GMC regarding the deterioration and continues to engage and/or

- ▶ the PA or AA accepts that there has been a deterioration, demonstrates insight into the impact and potential consequences of the deterioration and has taken any relevant steps towards recovery and/or to remediate.

### **Evidence relating to any change to relevant context known about the PA or AA and/or their working environment that was relevant to the previous assessment of risk**

39. When the previous AT decided the PA or AA posed a current and ongoing risk to public protection requiring restrictive action in response, they may have taken into account evidence of [relevant context known about the PA or AA and/or their working environment](#). Where the previous AT considered that the type of relevant context identified had an impact on the PA or AA, they may have concluded that it could give rise to a risk of the matter being repeated.
40. The AT should consider whether there has been a change to the relevant context previously identified. If there has been no change, this is unlikely to impact on the present assessment of current and ongoing risk posed by the PA or AA. However, if the likelihood of repetition has now been removed or reduced, either because the specific setting or circumstances that created the context have changed or because steps have been put in place to mitigate the impact on the PA or AA, this may decrease the level of current and ongoing risk the PA or AA poses to public protection.
41. The AT should refer to the section [What is the impact of any relevant context known about the PA or AA and/or their working environment?](#) in Part B of Section three: AT hearings of the *Guidance for AT tribunals* for further guidance on how to decide the impact any relevant context has on their assessment of risk.

### **Evidence relating to a material change in the PA or AA's circumstances that needs to be considered**

42. Where there is evidence that demonstrates a material change in the PA or AA's circumstances, the AT should consider what impact this has on their assessment of the current and ongoing risk the PA or AA poses to public protection.
43. In some cases, such evidence may suggest that the risk the PA or AA poses to public protection requiring restrictive action in response has not changed, but

that any current conditions are no longer appropriate, workable and/or measurable in their existing format. In these circumstances, provided there are no other matters that increase risk requiring consideration of a more restrictive final measure, the AT should consider if alternative conditions are appropriate, workable and measurable, achieve the overall aim of conditions and adequately address the current and ongoing risk to public protection posed by the PA or AA.

### **Evidence relevant to the PA or AA's compliance with the current final measure, including the relevance of any facts found proved in relation to a new allegation**

44. Where the evidence demonstrates the PA or AA is complying with the current final measure of conditions or suspension this could indicate that either the level of risk has decreased or that the PA or AA no longer continues to pose a current and ongoing risk to public protection requiring restrictive action in response. However, in some cases, the fact of compliance in and of itself may not be directly relevant to the assessment of risk but may indicate that the conditions or final measure remain suitable to address the level of risk currently posed by the PA or AA.
45. More weight can be attached to evidence of compliance where there is a range of objective evidence that demonstrates the PA or AA's compliance over a sustained period. However, the fact of compliance alone is unlikely to be sufficient for the AT to conclude the PA or AA no longer continues to pose a risk to one of more of the three parts of public protection. The impact of compliance will need to be considered alongside other information including the PA or AA's response to the previous decision maker's findings.
46. If there is evidence suggesting that a breach of the current final measure has occurred, the AT will need to decide whether they are satisfied, on the balance of probabilities, that a breach has in fact occurred.<sup>8</sup>
47. The AT should give clear and adequate reasons for its conclusion as to whether there has been a breach to enable the PA or AA, profession and members of the public to understand their decision.

<sup>8</sup> Rule 72(2bii)

48. Where a review has been directed solely on the basis that the PA or AA has breached a requirement of a final measure and the AT decides that there has not been a breach, they must allow the existing measure to continue.<sup>9</sup>
49. If the AT decides there has been a breach, they will then need to decide what impact this has on the level of current and ongoing risk the PA or AA poses to public protection. A breach of a final measure is likely to suggest that the PA or AA continues to pose a current and ongoing risk to public protection requiring restrictive action in response and may indicate that the risk to one or more parts of public protection has increased.
50. It may be appropriate for the AT to conclude that the breach demonstrates an increase in risk where:
- ▶ the breach was significant in nature or repeated
  - ▶ patient safety was compromised as a result
  - ▶ the circumstances of the breach, including the reasons for it, were completely within the PA or AA's control
  - ▶ the breach demonstrates a wilful or deliberate disregard of instructions issued by the previous AT
  - ▶ recurrence of the breach is likely
  - ▶ the PA or AA does not accept the breach occurred, does not understand the reasons for it, and has not demonstrated insight into the impact and potential consequences and/or
  - ▶ the breach occurred in conjunction with a deterioration in the PA or AA's health or performance.
51. If this is not the first review and it has been found previously that the PA or AA has breached their final measure, then the fact of repetition will usually increase the risk they pose to public protection as they have shown disregard to the purpose and reason for the final measure being imposed.
52. It may be appropriate for the AT to conclude that the breach does not impact on their present assessment of the current and ongoing risk to public protection posed by the PA or AA where several of the following factors are present:
- ▶ the breach was not significant in nature or was isolated or a one off
  - ▶ patient safety was not compromised as a result
  - ▶ the circumstances of the breach, including the reasons for it, were outside of the PA or AA's control

<sup>9</sup> Rule 72(3)

- ▶ recurrence of the breach is unlikely
  - ▶ the PA or AA accepts that a breach has occurred, understands the reasons for it, has demonstrated insight into the impact and potential consequences of the breach and taken any relevant steps to remediate it.
53. Where the AT concludes that a breach of conditions demonstrates an increase in the level of current and ongoing risk the PA or AA poses to public protection, they should be mindful that the most proportionate outcome is likely to be to impose a more restrictive measure.
54. If any new allegations have been considered by the AT with facts found proved, these will need to be considered to inform the AT's decision on impairment. Although an assessment of current and ongoing risk to public protection will need to be made in relation to the new allegations, any facts found proved can also be taken into consideration when assessing current risk in relation to the review matter.
55. Where there are facts found proved that demonstrate additional similar concerns or allegations have arisen, this is likely to suggest that the PA or AA continues to pose a current and ongoing risk to public protection requiring restrictive action in response and may indicate that the risk to one or more parts of public protection has increased. This is because repeated similar concerns or allegations may suggest that the PA or AA lacks insight into their own practice and behaviour and has not taken steps that effectively or sufficiently reduce the risk of similar matters occurring again.
56. The impact of, and weight to be given to, additional similar concerns or allegations having arisen will need to be considered alongside other factors including the PA or AA's insight and remediation, response to the previous decision maker's findings, the timings of the new allegations and any other information that may be relevant as to why further additional allegations have been referred to a hearing.

### **iii. What evidence is there is of insight and is the PA or AA's insight genuine?**

57. To demonstrate insight the PA or AA will need to show they understand and accept any previous decision maker's findings, including the original decision maker's findings on fact and impairment. The PA or AA will also need to

demonstrate they understand what happened and accept how they could have acted differently. The AT will need to consider how complete or developed the PA or AA's insight is.

58. When considering evidence of insight and the impact it has on the present assessment of current and ongoing risk the PA or AA poses to public protection, the AT should consider and apply the guidance in the section [\*insight and remediation\*](#) in *Part B of Section three: AT hearings of the Guidance for MPTS tribunals*. When doing so, the AT should remind itself that it must not revisit the decision made by the previous decision maker but should consider evidence of the insight that has developed since the previous assessment of risk.
59. When assessing insight, the AT should consider how the PA or AA has responded to the findings made by the previous decision maker.
60. When assessing the impact the PA or AA's response has on the present assessment of the current and ongoing risk the PA or AA poses to public protection, the AT should examine the evidence available to them from all sources to reach a view on whether the PA or AA has shown insight into their own practice and behaviour.
61. To be relevant to the current assessment of risk, evidence of insight shown from the PA or AA participating in training or professional development, requires the training or professional development to be relevant to the decision maker's findings. Where it is, this should assist in demonstrating to the AT that the PA or AA has accepted the previous decision maker's findings.
62. Where the PA or AA has made statements about how they've responded to the findings made by the previous AT, the AT will need to consider the objectivity of the statements. If the only source of the information is the PA or AA themselves, it will usually be appropriate for the AT to test the evidence during the hearing before deciding the impact it has on the present assessment of current and ongoing risk to public protection.

#### **iv. What evidence is there relating to remediation, has the allegation now been remedied or is it still likely to be repeated?**

63. Where a PA or AA has shown insight and taken steps to avoid the risk of similar concerns occurring again, this can have a significant impact on the present assessment of the current and ongoing risk the PA or AA poses to public protection. However, the actual impact that evidence of the PA or AA's response to the allegation and previous decision maker's findings has on the assessment of risk, will depend on the individual circumstances of the case.
64. To demonstrate remediation the PA or AA will need to show that they have taken, or are taking, steps aimed at reducing the risk of similar concerns occurring again. The AT will therefore need to consider the quality of the steps taken, or put in place, by the PA or AA since the previous assessment of risk.
65. When assessing the impact of remediation, the AT should examine the evidence available to them to reach a view on whether the PA or AA has remediated i.e. taken steps to reduce the risk of similar concerns occurring again, such as participating in training, supervision, coaching or mentoring relevant to the concern raised.
66. When considering evidence of remediation and the impact it has on the present assessment of the current and ongoing risk the PA or AA poses to public protection, the AT should consider and apply the guidance in the section [Insight and remediation](#) in *Part B of Section three: AT hearings of the Guidance for MPTS tribunals*. When doing so, the AT should remind itself that it is not to revisit the decision made by the previous decision maker but should consider evidence of the remediation that has taken place since the previous assessment of risk.
67. The AT should be mindful that if the original decision maker considered the allegation was remediable, it is not for them to review that decision. Their role on review is to assess whether the allegation has now been sufficiently remedied or could still be remedied if there is further insight to be developed and additional remediation to undertake.

## **v. Has the PA or AA kept their knowledge and skills up to date?**

68. While a final measure of conditions or suspension are in place, a PA or AA must keep their knowledge and skills up to date and be aware of relevant guidelines and developments that affect their work. This is to ensure they are competent in all aspects of their work, including, where applicable, formal leadership or management roles, research and teaching.
69. Where a PA or AA has not been working for a significant period of time, the AT may consider that this creates a risk that the PA or AA's knowledge and skills may have deteriorated. It is therefore important that the PA or AA can evidence they have taken steps to mitigate this.
70. When considering evidence of the PA or AA's knowledge and skills and the impact it has on the present assessment of the current and ongoing risk the PA or AA poses to public protection, the AT should consider and apply the guidance in the section [\*consider how the PA or AA has responded to the allegation\(s\)\*](#) in *Part B of Section three: AT hearings of the Guidance for MPTS tribunals*.
71. Where the PA or AA has been suspended from practising in the UK, at the review the AT may be provided with a certificate of good standing 'CGS' from another regulatory body.<sup>10</sup> A CGS confirms that a PA or AA is in good standing with that organisation at the time of issuing and says whether there are any restrictions on their practice. This may therefore support any assertion by the PA or AA that they have kept their knowledge and skills up to date through practising in a different country. However, when deciding what weight to attach to such evidence, the AT should give careful consideration to the date of issue and the nature of the restrictions, if any, on the CGS.
72. The PA or AA may also provide the AT with testimonials from any workplace attachments or other work that has been carried out that has not required GMC registration. Where the content relates to the PA or AA's knowledge and skills, the weight to be applied is a matter for the AT. Otherwise, references and testimonials relating to the PA or AA's character should only be considered when deciding what action is a proportionate response to the AT's decision on impairment.

<sup>10</sup> Further information about which organisations provide them can be found [here](#).

## vi. Has the risk to public protection that previously required restrictive action in response changed and if so, how?

73. When considering whether the previous assessment of risk to public protection requiring restrictive action in response has changed, the AT should refer to the conclusions they reached on questions (i) – (v) above.
74. The AT may reach a view that the present assessment of current and ongoing risk to one or more of the three parts of public protection indicates the risk posed by the PA or AA has:
- ▶ decreased
  - ▶ not materially changed
  - ▶ increased.

## Step 1b: make a finding on impairment

1b

### Make a finding on impairment

- On the basis of the conclusions reached in step 1a, decide if the PA or AA poses any current and ongoing risk to public protection and make a finding on impairment
  - If there is no current and ongoing risk to public protection requiring restrictive action in response, make a finding of no impairment
  - If the PA or AA continues to pose a current and ongoing risk to public protection requiring restrictive action in response, make a finding of impairment, decide which parts of public protection are engaged and state the level of risk (low, medium, high)
  - Give reasons for decision
- 
- ▶ On the basis of the conclusions reached in step 1a, decide if the PA or AA poses any current and ongoing risk to public protection and make a finding on impairment
  - ▶ If there is no current and ongoing risk to public protection requiring restrictive action in response, make a finding of no impairment
  - ▶ If the PA or AA continues to pose a current and ongoing risk to public protection requiring restrictive action in response, make a finding of impairment, decide which parts of public protection are engaged and state the level of risk (low, medium, high)
  - ▶ Give reasons for decision

75. On the basis of their conclusions to the questions in step 1a, the AT should decide if the PA or AA continues to pose a current and ongoing risk to public protection requiring restrictive action in response and make a finding on impairment.
76. If there is more than one legal basis for considering the PA or AA's fitness to practise an assessment of current and ongoing risk should have been made in respect of each of them to inform the AT's decision on impairment.
77. Where the AT has concluded the current and ongoing risk posed by the PA or AA has decreased, the AT may consider that the PA or AA:
- ▶ no longer poses any current and ongoing risk to public protection requiring restrictive action in response, or
  - ▶ despite the risk to one or more parts of public protection having decreased, the PA or AA continues to pose a current and ongoing risk to public protection requiring restrictive action in response.
78. In cases where the AT has concluded the risk has not materially changed or has increased, this means the PA or AA will continue to pose a current and ongoing risk to public protection requiring restrictive action in response.
79. The AT should find the PA or AA's fitness to practise impaired in cases where they have concluded there is a current and ongoing risk to one or more of the three parts of public protection requiring restrictive action arising from any of the grounds. Where there is no such risk, they should make a finding of no impairment.
80. Where the AT makes a finding of impairment, they should be clear about which parts of public protection – patient safety, public confidence and/or upholding professional standards – are engaged, making reference to the general guidance and specific case types section in the [introduction](#), as appropriate.
81. The AT should also state the level of risk they've identified – low, medium, or high. This is because the level of current and ongoing risk will be relevant to the AT's decision on what is a proportionate response. The AT should then go on to consider the guidance in the section [Decision on what action to take, if any](#) to decide what action is needed to protect the public.
82. Where the AT does not make a finding of impairment, they should still consider the guidance in the section [Decision on what action to take, if any](#) to decide what action, if any, is needed in respect of the current final measure.

83. The AT must record reasons for their conclusion on whether the PA or AA poses any current and ongoing risk to one or more of the three parts of public protection requiring restrictive action in response, to explain their decision on impairment.

## **Review hearings where there have also been new findings of fact**

84. Where the AT hearing commenced as a new hearing to consider new allegations about the PA or AA's fitness to practise, the AT will have used the [Guidance for AT hearings](#) to determine the facts of the new matter. Where facts are found proven, the AT will need to assess the current and ongoing risk to public protection posed by the PA or AA in relation to both the new and review matters. These assessments should then be considered together to reach one decision on impairment.
85. It is possible that the AT may conclude that there is:
- ▶ no current and ongoing risk to public protection requiring restrictive action in response arising from the new allegation or the review matter
  - ▶ no current and ongoing risk to public protection requiring restrictive action in response arising from the new allegation, but there remains a current and ongoing risk to public protection requiring restrictive action in the review matter
  - ▶ a current and ongoing risk to public protection requiring restrictive action in response arising from the new allegation, but no longer a current and ongoing risk to public protection requiring restrictive action in the review matter, or
  - ▶ a current and ongoing risk to public protection requiring restrictive action in response arising from both the new allegation and the review matter.
86. The AT should make a finding that the PA or AA's fitness to practise is impaired where they have concluded there is a current and ongoing risk to one or more of the three parts of public protection requiring restrictive action arising from any of the matters before it. Where there is no such risk, the AT should make a finding of no impairment.



# AT review: stage two – final measure

At Stage two of an associates tribunal (AT) review hearing, the AT will consider what regulatory action, if any, is needed to protect the public.

This stage outlines the outcomes available to an AT review tribunal which are:

- ▶ take no further action,
- ▶ revoke the current measure,
- ▶ allow it to expire,
- ▶ revoke or vary any specific conditions imposed under a current final measure,
- ▶ extend any current final measure of conditions or suspension from when it would otherwise expire,
- ▶ impose a different measure,
- ▶ or remove the PA or AA's name from the register of PAs and AAs.

## Step 2: decision on what action to take, if any

2

### Final Measure: decide what action to take, if any

- If impaired, consider what final measure is proportionate i.e. is needed but no more than necessary to protect the public
- Review decision on impairment and consider the level of current and ongoing risk the PA or AA poses to public protection
- Refer to final measure bandings (where available) if required to assist understanding of the final measure imposed
- Consider whether there is relevant evidence relating to the impact a certain type of final measure will have and / or relevant references and testimonials and what impact, if any, they have
- Decide on the type and length of final measure - stand back and check if it is proportionate to meet the level of current and ongoing risk posed to public protection
- Consider directing a review and whether the final measure should take effect immediately
- Give reasons for decisions

- ▶ If impaired, consider what final measure is proportionate i.e. is needed but no more than necessary to protect the public
- ▶ Review decision on impairment and consider the level of current and ongoing risk the PA or AA poses to public protection
- ▶ Refer to final measure bandings (where available) if required to assist understanding of the final measure imposed

- ▶ Consider whether there is relevant evidence relating to the impact a certain type of final measure will have and/or relevant references and testimonials and what impact, if any, they have
  - ▶ Decide on the type and length of final measure - stand back and check if it is proportionate to meet the level of current and ongoing risk posed to public protection
  - ▶ Consider directing a review and whether the final measure should take effect immediately
  - ▶ Give reasons for decisions
87. At stage two of an AT review hearing, the AT will consider their finding on impairment and consider what action, if any, is needed to protect the public.
88. At the final measure stage of a review hearing, the outcomes available to the AT will depend on their finding on impairment and the final measure in place at the time of the review hearing.
89. Where the AT has decided that the PA or AA's fitness to practise does not remain impaired, the AT can<sup>11</sup>:
- ▶ allow the current measure to expire, or
  - ▶ revoke the current measure.
90. Where the PA or AA's fitness to practise remains impaired, and the PA or AA's registration is currently subject to conditions, the outcomes available to the AT are<sup>12</sup>:
- ▶ take no further action - this allows the existing conditions to continue and end when they are due to expire
  - ▶ Revoke or vary any specific condition(s) imposed under a current final measure of conditions – the amended condition(s) will stay in place until the date the final measure is due to expire
  - ▶ extend the current final measure of conditions from when it would otherwise expire for up to 12 months<sup>13</sup> when doing so, the AT can revoke or vary any specific condition(s) imposed or impose new condition(s)
  - ▶ revoke the current final measure of conditions and impose a final measure of suspension for up to 12 months,<sup>14</sup>

<sup>11</sup> Article 14(2) of the Order

<sup>12</sup> Article 14(3) of the Order

<sup>13</sup> Article 13(2) of the Order

<sup>14</sup> Article 14(3)(c) of the Order.

- ▶ revoke the current final measure of conditions and remove the PA or AA's name from the register of PAs and AAs.
91. Where the AT has concluded that a breach of conditions demonstrates an increase in the level of current and ongoing risk the PA or AA poses to public protection, they should be mindful that the most proportionate outcome is likely to be a more restrictive measure.
92. Where the PA or AA's fitness to practise remains impaired, and the PA or AA is currently suspended from the register, then the outcomes available to the AT are to<sup>15</sup>:
- ▶ take no further action - this allows the current final measure of suspension to continue and end when it is due to expire
  - ▶ extend the current final measure of suspension from when it would otherwise expire for up to 12 months
  - ▶ revoke the current final measure of suspension and impose a final measure of conditions for up to 12 months<sup>16</sup>, or
  - ▶ revoke the current final measure of suspension and remove the PA or AA's name from the register of PAs and AAs.
93. It is not open to an AT on review, including an AT considering both new and review matters, to find no impairment and issue a warning. If restrictive action is required to address the allegations, the AT should have made a finding of impairment.
94. Where the PA or AA's fitness to practise remains impaired but the level of risk the PA or AA poses to public protection has decreased since the last assessment of risk, it may be proportionate for the AT to consider imposing a less restrictive final measure, or the same final measure for the same period or for a shorter period.
95. In cases where the AT is of the view that there has been no material change in the level of risk the PA or AA poses to public protection since the last assessment of risk, it may be proportionate to consider imposing the current final measure of conditions or suspension for a further period.
96. Where the level of current and ongoing risk the PA or AA poses to public protection has increased since the last assessment, it may be proportionate for

<sup>15</sup> Article 14(3) of the Order

<sup>16</sup> Article 13(2) of the Order.

the AT to consider imposing a more restrictive final measure or imposing the same final measure but for a longer period. However, if the AT is of the view that the increased risk can still be managed through the current final measure, it may be appropriate to consider extending the current final measure of conditions or suspension for a further period.

97. When making their decision, the AT should always remind themselves of their earlier conclusions to ensure that they have been, and remain, consistent with previous findings and have regard to the level of current and ongoing risk to public protection posed by the PA or AA (low, medium, or high). Whether the risk the PA or AA poses to public protection has decreased, stayed the same or increased since the last assessment of risk will inform the decision on what final measure is required to protect the public.
98. When deciding what final measure to impose, and for how long, the AT should consider:
- ▶ the initial final measure imposed and how that decision maker applied any relevant final measures bandings, along with the general guidance in [Outcomes available to the AT](#) in *Part C: Stage three - final measure of Section three: AT hearings* to assist their understanding of that final measure
  - ▶ any subsequent decision on final measure if this is not the first review hearing
  - ▶ how the PA or AA has responded to the current final measure, and
  - ▶ what is the necessary and proportionate action to take at this stage to address the present level of current and ongoing risk to public protection.
99. In an early review, the AT should also consider the reasons why an early review was directed as this may impact on what is an appropriate final measure.
100. In all cases, the AT should consider when any new final measure will, or should, come into effect, having regard to how long is remaining on the current final measure.<sup>17</sup> Where there has been an adjournment, the AT should note the effect that any extension of the current final measure has had on its expiry date.

<sup>17</sup> Further information on when sanctions take effect can be found in the section [Taking effect of directions and final measures](#)

101. The AT should also have regard to the general principle that where a PA or AA has been convicted of a serious criminal offence or offences, they should not be permitted to resume unrestricted practice until they have satisfactorily completed their sentence.<sup>18</sup> Similarly, no PA or AA registered as a sex offender should be able to hold unrestricted registration. However, each case should be considered on its merits and decisions should be taken in the light of the individual circumstances of the case.
102. In most review hearings, the final measure stage will follow immediately after the AT has made its decision on impairment. Where there is a delay between the decision on impairment and consideration of what action, if any, is required in response, the AT will need to take particular care to remind themselves of their earlier conclusion on risk before considering what has happened since the case was last before them and assessing the impact of any relevant additional evidence. This amounts to the AT conducting an updated assessment of the current and ongoing risk to public protection posed by the PA or AA.
103. When conducting an updated assessment of risk, the AT must avoid “double counting” evidence that previously informed, and was therefore taken into account in reaching, their earlier decision on impairment. Where there is relevant additional evidence, the AT must consider it and identify any additional factors capable of increasing or decreasing the level of current and ongoing risk to public protection posed by the PA or AA. They should do this with reference to the guidance in [Stage one: Impairment](#) and clearly state the impact these additional factors have on their previous view of risk. It is this updated assessment of current and ongoing risk that should inform the AT’s view on what final measure is a proportionate response.
104. The AT should give reasons as to why the selected outcome is appropriate and where a final measure is imposed, why it is sufficient to protect the public, and why a more restrictive final measure is not necessary. The decision should include a separate explanation as to the length of final measure and why it should last for a particular period, if relevant.
105. Where the tribunal’s decision is to impose a final measure that is lower, or higher, than that suggested by the guidance, the tribunal should provide reasons as to why this is justified given the individual circumstances of the

<sup>18</sup> CHRE v GDC and Fleischmann

case. They must also explain how their decision relates to any submissions made by the parties.

## **Review hearings where there have also been new findings of fact**

**106.** When considering final measure, the AT should consider the most serious allegations found proved resulting in the finding of impairment and ensure that the final measure addresses those findings and the identified risks to public protection.

## **Adjournments**

**107.** If it is not possible for the review hearing to conclude before the date that a final measure of conditions or suspension is due to expire, the AT may extend the current final measure so that it remains in effect during the period of any adjournment. This approach prevents a public protection gap from arising.

**108.** However, if the AT is not satisfied that extending the current final measure would sufficiently protect the public during the adjournment period, they should consider whether any interim measure should be imposed, extended, varied, revoked or revoked and replaced with a different interim measure instead.<sup>19</sup>

## **Any final measure must be proportionate, transparent and fair**

**109.** For guidance on deciding what is a proportionate final measure to impose on review, the AT should refer to the section on [\*Any final measure must be proportionate, transparent and fair\*](#) in *Part C: Stage three - final measure of Section three: AT hearings*.

<sup>19</sup> Article 11(1) of the Order and Rule 38(5)

## **Outcomes available to the AT at the final measure stage of a review or a new and review hearing where the PA or AA's fitness to practise does not remain impaired**

### **Take no further action – this allows the current final measure of conditions or suspension to continue and end when it is due to expire**

- 110.** If the AT is of the view that the PA or AA no longer poses a current and ongoing risk to public protection requiring restrictive action in response and has made a finding that the PA or AA's fitness to practise is not impaired, it may be proportionate to take no further action. The effect of this is that it will allow the current final measure to expire at the end of the final measure period. Whether this is proportionate will depend on the individual circumstances of the case and the reasons the current final measure was imposed.
- 111.** In cases where the current final measure was imposed to maintain public confidence in the profession and/or maintain and promote professional standards, it will usually be more appropriate for the AT to allow the current final measure to expire. In these circumstances revoking the final measure immediately could risk undermining the earlier decision made by the previous AT that the final measure was needed for a certain length of time to specifically uphold and promote public confidence and/or maintain and promote professional standards.

### **Revoke the final measure of conditions or suspension immediately**

- 112.** If the AT is of the view that the PA or AA no longer poses a current and ongoing risk to public protection requiring restrictive action in response, it may be proportionate to revoke the final measure immediately. Whether this is proportionate will depend on the individual circumstances of the case and the reasons the current final measure was imposed.
- 113.** In cases where the current final measure was imposed to maintain public confidence in the profession and/or to maintain and promote professional standards, it is unlikely to be appropriate to revoke the final measure immediately. In these circumstances revoking the final measure immediately could risk undermining the earlier decision made by the AT that the final measure was needed for a certain length of time to specifically uphold and promote public confidence and/or maintain and promote professional standards.

## **Outcomes available to the AT at the final measure stage of a review or a new and review hearing where the PA or AA's fitness to practise remains impaired**

### **Take no further action – this allows the current final measure of conditions or suspension to continue and end when it is due to expire**

**114.** If the AT is of the view that the level of current and ongoing risk to public protection requiring restrictive action in response has stayed the same, it may be proportionate to allow the current final measure to continue. The effect of this is that it will allow the current measure to expire at the end of its current period. Whether this is proportionate will depend on the individual circumstances of the case and the reasons the current measure was imposed.

### **Revoke or vary any *specific* conditions imposed under a current final measure of conditions up until the date the current final measure is due to expire**

**115.** Where the PA or AA's fitness to practise remains impaired but the level of current and ongoing risk the PA or AA poses to public protection has decreased since the last assessment of risk, it may be proportionate for the AT to revoke specific conditions or consider varying the order and imposing less restrictive conditions up until the date the current final measure is due to expire.

**116.** Where the PA or AA's fitness to practise remains impaired but the level of current and ongoing risk the PA or AA poses to public protection has increased, it may be proportionate for the AT to consider varying the order and imposing more restrictive conditions up until the date the current final measure is due to expire

**117.** Where the hearing is following a direction for an early review on the basis that the PA or AA has indicated that one or more of the conditions are not workable and/or will not be supported by a specific body, there may have been no material change to the level of risk the PA or AA poses to public protection. In these circumstances, the AT should carefully consider the reason for the previous conditions being imposed and not allow the review hearing to be used as a form of appeal against those conditions.

- 118.** However, where alternative conditions can be identified that are workable, proportionate and achieve the overall aim of conditions, and they adequately address the current and ongoing risk to public protection posed by the PA or AA, consideration can be given to putting those in place instead. Where alternative conditions are not appropriate or proportionate, the AT does not need to vary the current final measure. A lesser or greater final measure than that which is necessary to protect the public should not be imposed simply because certain conditions cannot be supported by a specific body.
- 119.** For more information about conditions and to decide whether revoking or varying conditions is likely to be the proportionate response, the AT should also refer to the guidance in [Outcomes available to the AT at the final measure stage](#) in *Part C: Stage three - final measure of Section three: AT hearings*.
- 120.** However, where the AT has concluded that a breach of conditions demonstrates an increase in the level of current and ongoing risk the PA or AA poses to public protection, they should be mindful that the most proportionate outcome is likely to be a more restrictive measure.

***Where the current final measure is suspension, revoke the final measure and impose a final measure of conditions on the PA or AA's registration for up to 12 months***

**OR**

***Where the current final measure is conditions, extend it from when it would otherwise expire for up to 12 months – when doing so, the AT can revoke or vary any specific condition(s) imposed or impose new condition(s)***

- 121.** Where the PA or AA is currently suspended and the AT has found that their fitness to practise remains impaired, but the level of current and ongoing risk the PA or AA poses to public protection has decreased since the last assessment of risk, it may be proportionate for the AT to consider revoking the current final measure of suspension and imposing a final measure of conditions for up to 12 months.
- 122.** In cases where the PA or AA currently has a current final measure of conditions and the AT is of the view that there has been no material change in the level of

current and ongoing risk the PA or AA poses to public protection since the last assessment of risk, it may be proportionate to consider extending the current final measure of conditions from the date it would expire for a further period of up to 12 months.

**123.** For more information about conditions and to decide whether conditions are likely to be the proportionate response and if so, how long they should be imposed for, the AT should also refer to the guidance in [Outcomes available to the AT at the final measure stage](#) in *Part C: Stage three - final measure of Section three: AT hearings*.

**124.** Where the AT has concluded that a breach of conditions has demonstrated an increase in the level of current and ongoing risk the PA or AA poses to public protection, they should be mindful that the most proportionate outcome is likely to be a more restrictive measure.

***Where the current final measure is conditions, revoke the final measure and impose a final measure on the PA or AA's registration of suspension for up to 12 months***

**OR**

***Where the current final measure is suspension, extend it from when it would otherwise expire for up to 12 months***

**125.** Where the PA or AA has a current final measure of conditions, the AT has found that their fitness to practise remains impaired, and the level of current and ongoing risk the PA or AA poses to public protection has increased since the last assessment of risk, it may be proportionate for the AT to consider revoking the final measure of conditions and imposing a final measure of suspension for up to 12 months.

**126.** In deciding whether suspension is a proportionate response in cases where the AT has found the PA or AA has breached the current final measure of conditions, the AT must be mindful that where they have concluded that a breach of conditions has demonstrated an increase in the level of current and ongoing risk the PA or AA poses to public protection, the most proportionate outcome is likely to be a more restrictive measure.

127. In cases where the PA or AA currently has a final measure of suspension and the AT is of the view that there has been no material change in the level of current and ongoing risk the PA or AA poses to public protection since the last assessment of risk, it may be proportionate to consider extending the current final measure of suspension from when it would expire for a further period of up to 12 months.
128. For more information about suspension and to decide whether it is likely to be the proportionate response and if so, how long it should be imposed for, the AT should also refer to the guidance in [Outcomes available to the AT at the final measure stage](#) in *Part C: Stage three - final measure of Section three: AT hearings*.

### Removal from the register of PAs and AAs

129. Where the PA or AA has a current final measure of conditions, the AT has found that their fitness to practise remains impaired, and the level of current and ongoing risk the PA or AA poses to public protection has increased since the last assessment of risk, it may be proportionate for the AT to consider imposing a final measure of removal if they consider that conditions or suspension would not be sufficient to protect the public.
130. Where the PA or AA has a current final measure of suspension, the AT has found that their fitness to practise remains impaired, and the level of current and ongoing risk the PA or AA poses to public protection has increased since the last assessment of risk, it may be proportionate for the AT to consider imposing a final measure of removal.
131. For more information about removal and to decide whether it is likely to be the proportionate response, the AT should also refer to the guidance in [Outcomes available to the AT at the final measure stage](#) in *Part C: Stage three - final measure of Section three: AT hearings*.
132. In deciding whether removal is a proportionate response in cases where the AT has found the PA or AA has breached their current final measure of conditions, the AT must be mindful that where they have concluded that the breach demonstrated an increase in the level of current and ongoing risk the PA or AA poses to public protection, the most proportionate outcome is likely to be a more restrictive measure.

## **Additional evidence that may be relevant to the decision on what outcome is proportionate**

133. The following matters are not relevant to the assessment of current and ongoing risk to public protection which will have informed the AT's decision on impairment, but can be considered at the final measure stage when deciding what outcome is proportionate:
- a. evidence about the impact that taking a specific type of action may have on patients or members of the public, or the PA or AA themselves, and/or
  - b. references and testimonials about the PA or AA's character.
134. For more information, the AT should refer to the guidance in [Additional evidence that may be relevant to the decision on what final measure is proportionate](#) in *Part C: Stage three - final measure of Section three: AT hearings*.

## **The AT's determination**

135. The AT's determination should show that the AT has considered their earlier conclusions at the impairment stage and had regard to the level of current and ongoing risk posed by the PA or AA (low, medium, or high) with reference to the parts of public protection that are engaged; patient safety, public confidence and/or maintenance of professional standards.
136. The AT should give reasons as to why the selected outcome is appropriate and where a final measure is imposed, why it is sufficient to protect the public, and if relevant, why a more restrictive final measure is not necessary. The decision should include a separate explanation as to when the final measure will take effect and the length of final measure, if relevant.
137. Where the AT's decision is to impose an outcome that departs from this guidance, the AT should provide reasons as to why this is justified given the individual circumstances of the case. They must also explain how their decision relates to any submissions made by the parties.
138. Any decision not to direct a review of a final measure of conditions or suspension should also be clearly recorded and explained.

## Taking effect of directions and final measures

- 139.** A final measure of conditions or suspension imposed by an AT at a review hearing can take effect on the date that it is served on the PA or AA or on the expiry of the existing final.<sup>20</sup> The AT may direct that a final measure of conditions or suspension takes effect immediately where it considers that there would be a risk to public protection if the measure did not do so.<sup>21</sup> This is likely to be appropriate where the AT imposes a more restrictive final measure than the one currently in place.
- 140.** The AT should give reasons for any decision made that a final measure should take effect immediately, with reference to any submissions made by the parties. In making their decision, the AT should also refer back to its earlier decision on what final measure is a proportionate response, and the reasons for it, to ensure that the decision reached is consistent.
- 141.** Where the AT decides to impose a final measure of removal, the PA or AA's entry in the register of PAs and AAs must be removed as soon as is reasonably practicable.<sup>22</sup> This means the entry will be removed when notice of the decision is deemed served. Where the PA or AA is present and /or represented at the hearing this will be immediately. Otherwise, it will be when notice of the decision is deemed served under Rule 74(5).
- 142.** If it is not possible for the review hearing to conclude before the date that a final measure of conditions or suspension is due to expire, the AT may extend the current final measure so that it remains in effect during the period of any adjournment.<sup>23</sup> This approach prevents a public protection gap from arising. The AT will then need to consider the relevance of the new expiry date when they resume the hearing.

## Interim measures

- 143.** Interim measures are usually used to manage risk while a concern or allegation about a PA or AA's behaviour, performance or the impact of a health condition goes through the fitness to practise process. In review cases where the GMC has alleged the PA or AA has breached a final measure of conditions, it is

<sup>20</sup> Rule 72(7)

<sup>21</sup> Rule 72(8)

<sup>22</sup> Rule 72(9)

<sup>23</sup> Article 14(3) of the Order

possible than an interim measure may be in place to manage any immediate risks arising from the alleged breach.

- 144.** Where the AT makes a decision to adjourn a review hearing, it can also consider whether any interim measure should be imposed, extended, varied, revoked or revoked and replaced with a different interim measure to manage immediate risks where the AT is not satisfied that extending the current final measure in place would be sufficient to protect the public.<sup>24</sup>
- 145.** Where an interim measure is in place at the time that a final measure of conditions or suspension is imposed, this should usually be revoked and any immediate risk to one or more parts of public protection should be managed by directing that the final measure of conditions or suspension takes effect immediately. The exception is where the interim measure relates to other concerns or allegations in the fitness to practise process that have not yet been determined.

<sup>24</sup> Article 11(1) of the Order and Rule 38(5)