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## Interim orders, their purpose, and when we impose them

Reference: INT-1 Last Updated: 21/02/2020

### In this guide

- What types of interim order are available?
- Interim conditions of practice order
- Interim suspension order
- What is the purpose of interim orders?
- Which panels can make or review interim orders?
- When can interim orders be considered?

### What types of interim order are available?

A panel of one of our practice committees is able to impose:

- an interim conditions of practice order, or
- an interim suspension order

on a nurse or midwife's practice while a fitness to practise case is ongoing. This will only happen in cases which satisfy the test for interim orders to be made.

### Interim conditions of practice order

An interim conditions of practice order restricts a nurse or midwife's practice. The panel will decide what conditions are necessary to deal with any risk with the nurse or midwife's practice. This could mean the nurse or midwife is only allowed to practise under supervision, or may have to avoid particular areas of practice. Conditions of practice apply to the nurse or midwife's registration. This means that a nurse or midwife can only practise if they stick to the conditions.

### Interim suspension order

An interim suspension order means that the nurse or midwife's registration is suspended and they must not practise as long as it is in place. For nurses or midwives who have more than one entry on the register (e.g. where they are registered as both a nurse and a midwife), interim suspension orders will prevent them from practising as either a nurse or a midwife.

### What is the purpose of interim orders?

Interim orders protect the public from risk by restricting or suspending a nurse or midwife's practice while we investigate concerns about them. This means that an interim order will be imposed before a panel has considered the substance of those concerns. An interim order will be needed in cases where the concerns about a nurse or midwife's practice are so serious that either:

- patient safety would be put at risk, or
- there would be serious damage to the reputation of the nursing and midwifery professions if they were allowed to practise without any restrictions.

### Which panels can make or review interim orders?

## Interim Orders

Panels of the Investigating Committee and the Fitness to Practise Committee are able to restrict or suspend a nurse or midwife's right to practise. They will consider if an interim order is required after hearing about the concerns and making a risk assessment. They do not consider whether the concerns have been proven.

### Making interim orders

If we've referred a concern to either practice committee, and that committee hasn't yet reached a decision about it, the committee can make an interim order to restrict or suspend the nurse or midwife's right to practise.<sup>1</sup> So for example, if we've referred a concern to the case examiners<sup>2</sup> while we complete our investigation, but the case examiners haven't yet decided whether there's a case to answer, the Investigating Committee can make an interim order. Or, if we've referred a case directly to the Fitness to Practise Committee, and there hasn't yet been a final decision at a hearing or meeting, the Fitness to Practise Committee can make an interim order.

The Investigating Committee has the power to make an interim order at the same time as it refers a case on to the Fitness to Practise Committee after finding a case to answer.<sup>3</sup> So our case examiners, decide whether there's a case to answer on behalf of the Investigating Committee, can direct either practice committee to consider making an interim order.

The Investigating Committee can, in fact, make an interim order in a case that has already been referred to the Fitness to Practise Committee, and it can do this at any time before Fitness to Practise Committee starts considering the case at a hearing or meeting.<sup>4</sup>

### Reviewing interim orders

Under our legislation interim orders have to be reviewed every six months, by either the committee that made the order, or (if the case has been referred to the Fitness to Practise Committee) by the Fitness to Practise Committee.<sup>5</sup>

We don't think this means that only the Fitness to Practise Committee can review orders in cases that have been referred to it. The Investigating Committee can also review these orders, as long as the Fitness to Practise Committee hasn't yet started considering the full case at a hearing or a meeting.

Our legislation<sup>6</sup> very clearly allows the Investigating Committee to make a new interim order, even in a case that has been referred to the Fitness to Practise Committee. So it's not clear why the intent behind our legislation would have been to prevent the Investigating Committee from reviewing orders in those circumstances, if it's able to make them.

It's clear from the [statutory consultations](#) about changes to our legislation that in 2014 there was a clear intent to give our Investigating Committee more flexibility to review cases that had been referred to what was then our Health Committee or Conduct and Competence Committee. When this area of our legislation changed to reflect those committees being replaced by the Fitness to Practise Committee, the consultation did not say there was any desire to restrict the Investigating Committee's role.

## When can interim orders be considered?

Our legislation sets out when interim orders can be imposed. Practice committees must consider that an interim order is:

- necessary to protect the public,
- otherwise in the public interest, or
- in the interests of the nurse or midwife

Our practice committees (which will either be the Fitness to Practise Committee or the Investigating Committee, depending on the circumstances) are able to impose interim orders if:

- an allegation against a nurse or midwife has been referred to the Investigating Committee or the Fitness to Practise Committee but the Committee has not yet reached a final decision. This might be where a final hearing before either Committee adjourns part way through the case, and the panel hearing the case thinks that an interim order is necessary given what they have heard
- case examiners find a case to answer against a nurse or midwife and refer their case to the Fitness to Practise Committee

## Interim Orders

- the Investigating Committee directs that a nurse or midwife's entry on the register should be amended or removed after deciding the entry was fraudulently procured or incorrectly made
- after deciding that a nurse or midwife's fitness to practise is impaired, the Fitness to Practise Committee imposes a striking-off order, a suspension order, or a conditions of practice order. An interim order is imposed at this stage to cover the period before the sanction comes into effect, which is usually 28 days after the date on which the decision letter is served. The interim order can be imposed for a period up to 18 months to cover any potential appeal.

1 Article 31(1)(a)(i) of the Order

2 Who carry out the functions of the Investigating Committee under article 26A(1) of the Order and rule 6C of the Rules

3 Article 26A(1) and article 26(11) of the Order and rule 6C(1) of the

4 Article 26(11) of the Order

5 Article 31(6) of the Order

6 Article 26(11) of the Order

## Decision making factors for interim orders

Reference: INT-2 Last Updated: 24/02/2020

### In this guide

- Overview
- Evidence of the concerns
- Necessary to protect the public
- Otherwise in the public interest
- In the nurse or midwife's own interests

### Overview

There are two steps that the panel must follow when deciding whether an interim order may be necessary to protect the public, otherwise in the public interest, or in the nurse or midwife's own interests.

First of all the panel must be satisfied that, on the face of the information presented, there's sufficient evidence of a case against the nurse or midwife. This is sometimes referred to as finding a 'prima facie case'.

If the panel is satisfied that there's evidence of a concern, they should then go on to consider whether or not an interim order is necessary in light of this evidence, taking into account any information put before them by the nurse or midwife<sup>1</sup>.

A panel may decide that an interim order is necessary on more than one ground (for example an order may be necessary to protect patients, and may also be in the nurse or midwife's own interests), but each of the three interim order grounds has separate considerations, which the panel must carefully assess.

### Evidence of the concerns

The first thing the panel must consider is whether there's enough evidence of a concern about the nurse or midwife.

The interim order panel can't make findings of fact and is not deciding whether there's a 'case to answer', which is a decision for the Case Examiners after a full investigation.

In order to take action the panel only needs to be satisfied there's sufficient evidence to support the concern, even though this may later be disproved.

The panel should consider the nature and strength of the evidence. This means looking at both the evidence that supports a particular fact or version of events, and any evidence that contradicts or undermines it.

Unlike a final substantive hearing, witnesses do not normally attend to give evidence and the panel will make a decision on the papers<sup>2</sup>, taking into account representations from both the NMC and the nurse or midwife.

When assessing the overall strength of the evidence, the panel will need to consider a number of factors, including:

- The source of the evidence. Where the evidence comes from may affect whether it's reasonable for us to rely on it when deciding whether to impose an interim order.  
Evidence which comes directly from an identifiable source is likely to be more reliable than evidence from an indirect or unknown source. If the evidence is disputed, it will rarely be fair to rely on anonymous or multiple hearsay as the only basis for imposing an interim order.  
Where the police have charged someone with a criminal offence, this is likely to be sufficient for the panel to go on to consider the need for an interim order, even where the underlying material isn't available to us.<sup>3</sup>

## Interim Orders

- The accuracy of the information and whether it's sufficiently clear for the registrant to understand the basis for concern. If all of the available evidence is vague or tenuous, the registrant may not be able to respond to it beyond a bare denial and so it may not be fair for us to rely on it;
- The nature of any evidence which supports / corroborates the concerns being raised. Although the panel can't make a decision on the facts of any disputed allegation, it can discount evidence that's inconsistent with objective or undisputed evidence, or which is clearly unreliable.<sup>4</sup>

Having considered these factors, and anything else relevant, if the panel is satisfied there's enough evidence to make out a concern, they should go on to consider whether, in light of this, one or more of the three grounds for imposing an interim order applies.

### Necessary to protect the public

For an interim order to be considered necessary for the protection of the public, it is not enough for the panel to consider that an interim order is merely desirable, the panel must be satisfied that there is a real risk to patients, colleagues or other members of the public if an order is not made.

Three factors are especially important to this consideration:

- **The seriousness of the regulatory concern.** This will depend on how much harm the alleged conduct has already caused, or could have caused, to the public. Cases that involve dishonesty, sexual misconduct, or where the actions of the nurse or midwife may have caused the death of a patient are usually considered more serious.
- **The likelihood of the alleged conduct being repeated if an interim order were not imposed.** If the concerns are serious and it seems they are likely to be repeated, then this significantly increases the risk of harm to members of the public.
- **Each case will be considered on its own facts.** There may be other relevant factors a panel needs to consider in a particular case to decide whether to make an interim order on public protection grounds.

A panel will weigh up the seriousness of the regulatory concern and the likelihood of it being repeated if an interim order were not in place.

The seriousness of the concerns and risk of repetition are then assessed with reference to the particular circumstances of each case. An assessment of the harm that was caused, or could have been caused, to the public by the alleged conduct will be vital when [considering seriousness](#). This could include physical, mental, emotional or financial harm.

A panel must also consider how likely it is that the concerns could arise again in the future if the nurse or midwife's practice was not restricted. This will be crucial in assessing the level of risk the nurse or midwife presents to members of the public.

A panel may find the guidance on [remediation and insight](#) to guidance on remediation helpful in assessing how likely it is that incidents may recur.

### Otherwise in the public interest

As part of their assessment of risk, a panel will consider all the elements of what constitutes the public interest.

One element is promoting and maintaining public confidence in nurses and midwives. It would be relatively rare for an interim order to be made only on the grounds that an order is otherwise in the public interest, if there is no evidence of a risk of harm to patients, so the threshold for imposing an interim order solely on this ground is high.

A panel would have to be satisfied that public confidence in the profession could be seriously damaged by the nurse or midwife continuing to practise without restriction while their case is being investigated, and where necessary, prepared for a hearing.

In which case the panel should set out the nature and seriousness of any damage to the reputation of the professions that would result if an order was not made.

Then it would weigh the likelihood of serious damage to public confidence in the professions if the nurse or midwife were allowed to continue to practise, against the interests of the nurse or midwife; this will ensure their

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decision is proportionate.

Considering the interests of the nurse or midwife includes considering their right to practise unrestricted, damage to their own professional reputation, and their ability to address any concerns through demonstrating safe practice (although this may be less relevant in cases that do not relate to the nurse or midwife's clinical ability).

### **In the nurse or midwife's own interests**

In some cases there may be some evidence that the nurse or midwife's work is adversely affecting their health and there is potential for this to impact their ability to practise safely.

Panels need to be aware of this as where this evidence exists it may suggest that an interim order is in the interests of the individual to protect their health.

1 George v GMC [2003] EWHC 1124 Admin

2 Fairness at the interim stage doesn't require formal witness evidence to be presented. Perry v NMC [2013] EWCA Civ 145 at paragraph 33

3 This is because the prosecution services have made an independent decision, applying a higher evidential threshold, and it is reasonable for us to rely on their assessment of the evidence. The fact of police involvement on its own is unlikely to be sufficient to establish a case unless there has been a charging decision, or we have some information about the underlying evidence to support the concerns being investigated.

4 Perry v NMC [2013] EWCA Civ 145 at paragraph 20

## Interim orders and fraudulent or incorrect entry allegations

Reference: INT-2a Last Updated: 12/10/2018

### In this guide

- Overview
- Imposing interim orders during the investigation
- Imposing interim orders at the determination stage

### Overview

In cases of concerns about the legitimacy of the nurse or midwife's entry in the register, the Investigating Committee can make an interim order to restrict or suspend the nurse or midwife's right to practise, while the concerns are being resolved.

In these circumstances, decision makers will take into account:

- the public interest in maintaining the integrity of the register
- proportionality
- balancing the risk of serious damage to the reputation of the profession against the impact of the order on the nurse or midwife
- the impact on the nurse or midwife for example this might include financial hardship if their practice is restricted or suspended, pending the final outcome.

If they consider that there would be serious damage to the public interest, due to the impact on the integrity of the register, the panel will identify the specific evidence of this.

### Imposing interim orders during the investigation

The Investigating Committee can impose either:

- an interim suspension order or
- an interim conditions of practice order.

The decision is dependent on the circumstances.

If the allegation raises public concerns, it may be necessary to make an interim suspension order to protect the public from the risk of harm.

If an individual is registered as both a nurse and a midwife, and concerns about fraudulent or incorrect entry relate to only **one** of their entries in the register, an interim conditions of practice order, to restrict the person from working, may be appropriate.

Court decisions<sup>1</sup> have emphasised the need for Investigating Committee panels to consider if the integrity of the register could be properly maintained through sanctions imposed at the end of proceedings.

### Imposing interim orders at the determination stage

If the Investigating Committee finds an allegation of fraudulent or incorrect entry is proved and makes an order for removal any interim order that's in place will lapse.

At this stage the Investigating Committee can impose another interim order to prevent the nurse or midwife from practising, until the order to remove their entry on the register takes effect.

This power is discretionary and should not be viewed as an automatic decision in every case. The Investigating

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Committee will consider the public interest in maintaining the integrity of the register in light of any order it has made.

<sup>1</sup> See *Christou v Nursing and Midwifery Council* [2016] EWHC 1947 (Admin)

# Interim orders and not having the necessary knowledge of English

Reference: INT-2b Last Updated: 11/10/2018

## In this guide

- [Overview](#)
- [Ensuring we are proportionate](#)

## Overview

Since the main [purpose](#) of an interim order is to protect the public while the case is being investigated, when a case involves language concerns the following factors should be considered:

- The severity of any actual or potential clinical risk or harm caused to patients, which is related to the alleged lack of knowledge of English.
- The results of any language assessment taken by the nurse or midwife, and
- any refusal or persistent failure to undergo an assessment.

## Ensuring we are proportionate

Panels will always assess whether workable and proportionate conditions can be applied to deal with the risks presented by the nurse or midwife's knowledge of English.

In doing this, the panel should bear in mind the powers available to the Registrar when investigating the case, one of which includes a power to direct the nurse or midwife to take a language test and provide us with the results by a specific date.

So for example a proportionate measure to protect patients could include supervision or observation by other nurses or midwives, whereas ordering a nurse or midwife to take a language test would be less proportionate in terms of protecting the public.

If an interim order is imposed, a practice committee will review it regularly.

<sup>1</sup> Rule 6B(3B) of the Fitness to Practise Rules 2004.

## Applications for interim orders

Reference: INT-3 Last Updated: 28/07/2017

### In this guide

- When will we apply for an interim order?
- Nurses and midwives already under conditions or suspension orders
- Notice
- Information placed before panels
- Reasons for applying

### When will we apply for an interim order?

It is essential that when we receive information that a nurse or midwife's practice presents an immediate risk to the public, the case is referred to a panel for interim order consideration as early as possible.

Our screening team carries out an initial risk assessment on each referral they receive. When we receive new information that an interim order might be necessary we will carry out a risk assessment. In conducting the risk assessment we will consider if it is likely that the panel would impose an interim order based on one or more of the three grounds, namely whether it is necessary for the protection of members of the public, is otherwise in the public interest, or is in the nurse or midwife's own interests.

While interim orders are generally made at the beginning of the process, they can be made at any time if new information becomes available.

### Nurses and midwives already under conditions or suspension orders

When we receive a new referral for a nurse or midwife who has already had a conditions of practice or suspension order imposed on their registration following a previous final hearing, and our risk assessment suggests that we should apply for an interim order because of the new concerns, this will be dealt with at an interim order hearing, rather than at a [review hearing](#) for their existing order.

This allows any potential public protection concerns to be dealt with more quickly at an interim order hearing. A review of the existing order at a hearing would require us to give the nurse or midwife 28 days' notice.

An interim order will not automatically come to an end if the substantive order is revoked or allowed to lapse. However, the panel reviewing the interim order must be made aware of such a change so that it can consider its effect on the ongoing need for an interim order.

### Notice

If we are asking a panel to consider imposing an interim order on a nurse or midwife's registration, we need to give the nurse or midwife reasonable notice. For an initial interim order hearing we try to give at least seven days' notice, however this may be shorter in certain cases. For instance, if the concerns are particularly serious, or we feel there are urgent public protection needs then we can send the notice less than seven days before the hearing. If we do this we will provide reasons for this in the [notice of hearing](#).

When a nurse or midwife has told us that they are unable to attend the hearing for a particular reason, or they have asked for further time to secure or prepare representations, because of the urgent nature of the risks, the panel should consider the merits of the application for the interim order. If the panel decides that one or more of the legal grounds has been satisfied, the panel should proceed to impose an interim order, but direct that it is listed for a [review hearing](#) within the next 14 days, to give the nurse or midwife a further opportunity to attend. The

## Interim Orders

review hearing will reconsider the interim order in full.

### **Information placed before panels**

Due to the urgent nature of our applications for interim orders, it is not always possible for us to apply the same principles for redaction to interim order documents as those we use with substantive hearing documents. Our approach to redaction is explained in our [Information handling guidance](#). The case material documents will be given in a form that enables the nurse or midwife to comment on the concerns. We will redact sensitive information out of the case material but otherwise these documents will generally be un-redacted.

### **Reasons for applying**

Whenever we apply for an interim order the reasons for the decision must be clear. The nurse or midwife will be given these reasons with the documents we send to give notice of the interim order hearing. Some cases will be referred for interim order consideration more than once. In these cases, we must set out clear reasons why the case should be considered again by a panel, when one or more decisions have already been made.

## Interim orders and multiple referrals

Reference: INT-4 Last Updated: 13/09/2019

### In this guide

- Reviewed every six months unless new evidence available
- Interim orders at final hearings
- Duration of orders
- Interim order extension applications to the courts
- Multiple referrals
- Disclosure of interim orders

### Reviewed every six months unless new evidence available

Interim orders must be reviewed by a panel every six months. Reviews must also be held if new evidence relevant to the interim order becomes available after it is made. Nurses and midwives can request that a review should be held because new evidence is available.

### Interim orders at final hearings

If, at the end of their final hearing, a nurse or midwife is made subject to a substantive conditions of practice order, suspension order or striking-off order, the order will not take effect for at least 28 days or, if the nurse or midwife appeals, until the appeal is withdrawn or otherwise finally disposed of. The panel may consider it necessary to impose an interim order to cover the intervening period until the order takes effect for the protection of the public or otherwise in the public interest, or in the interests of the nurse or midwife. The panel should first hear representations from both parties (where present) on whether or not an interim order should be made.

### Duration of orders

A panel can impose an interim order for a period of up to 18 months. Interim orders must be reviewed every six months. An interim order [may be reviewed](#) earlier if new evidence relevant to the case becomes available.

### Interim order extension applications to the courts

If it becomes necessary to extend an interim order timeframe, we may apply to the High Court in England and Wales, the Court of Session in Scotland, or the High Court of Justice in Northern Ireland, where appropriate, for an extension.

When a final hearing is not due to conclude before the expiry of the interim order, we will apply to the appropriate court for an extension. We would not apply for an extension where new information suggests that the allegation may no longer result in a finding of current impairment. Instead, we would list the matter for an early review hearing before a panel of the Investigating Committee or Fitness to Practise Committee. If the panel decides the interim order should be revoked, the matter will not be referred to the court.

### Multiple referrals

If a nurse or midwife is the subject of two or more separate referrals, the panel considering an interim order must consider information about all of the referrals. If the panel decides that an interim order is necessary, it should not automatically impose an interim suspension order, but should first consider whether an interim conditions of practice order would be sufficient and proportionate.

If further concerns are raised in relation to a nurse or midwife who is already on an interim order, a panel will

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nearly always need to review that order at a [review hearing](#) and consider the new concerns. This is because interim orders restrict or suspend a nurse or midwife's registration in relation to all their practice and not just the concerns from the initial referral. Any new concerns or evidence will normally always be relevant to the order already in place.<sup>1</sup>

There can only ever be one interim order in place at a time. So it's important that a panel is aware of all the relevant concerns relating to a nurse or midwife's practice when reviewing an interim order. This is so that it can make a proper assessment of the risk of harm (whether to the public, the reputation of the profession or the nurse or midwife themselves), and if necessary, impose a more restrictive interim order than the one already in place.

In cases where an interim order is in place and covers more than one referral, the order doesn't automatically end once the initial, or any of the other referrals, has been dealt with. Being 'dealt with' could be that the nurse or midwife has agreed undertakings with the case examiners, the case examiners have found 'no case to answer' in relation to one of the referrals, or that a panel of the Fitness to Practice Committee has made a final decision in the case.<sup>2</sup> The order will still be in place, but we list a review hearing as soon as possible so that a panel can assess the risk of harm following one of the cases being concluded. A panel will consider whether there needs to be a more restrictive order, no change to the order, a less restrictive order, or no order at all.

### Disclosure of interim orders

Interim order hearings will generally be held in public. Details of any interim order made will be disclosable, although hearings (or parts of hearings) that relate solely to the nurse or midwife's health are always held in private. Similarly, details of any part of a hearing that is held in private for reasons other than health are not disclosable to enquirers.

<sup>[1]</sup> Article 31(6)(b) of the Order requires the panel reviewing an existing order to take account of the new concerns as part of new evidence relevant to the order.

<sup>[2]</sup> For example, rule 6E(2)(c) of the Rules states that once undertakings have been agreed, any interim order in place ceases to have effect. This will require a panel to carry out a review hearing, taking into account that the order no longer has effect in respect of the concerns that led to undertakings being agreed, but it does not mean that an interim order also covering concerns in different cases about the same nurse, midwife or nursing associate, will automatically come to an end. This is because the order would not automatically come to an end if case was dealt with through any of the other possible methods identified above.