

# AHCS

# Interim Orders

# Guidance

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## Interim orders

### 1. Introduction

- 1.1 The Academy has the power to apply to the Interim Orders Panel for an interim order to be imposed on registrants. In addition, an interim order may be made if a restrictive sanction is imposed by the Fitness to Practise Panel.
- 1.2 An interim order is a temporary measure that restricts a registrant's ability to practise while the Academy investigates a concern about a registrant and/or pending the final outcome of any fitness to practise proceedings including the outcome of any appeal.
- 1.3 The guidance below sets out the general principles applicable whenever consideration is being given to whether an interim order should be made, varied, revoked or extended.

### 2. Discretion for making an Interim Order

- 2.1 When considering whether to make an interim order, a Panel should consider the following in sequence: Grounds; Nature; Duration.

#### **Grounds for an Interim Order**

- 2.2 A Panel may make an interim order if it is satisfied that:
  - It is necessary for the protection of the public; and/or
  - It is otherwise in the public interest; and/or
  - It is in the interests of the registrant.
- 2.3 Careful consideration must be given to the imposition of an interim order solely on public interest grounds (i.e. When the Panel does not identify a need for the protection of the public or the registrant); there must be a real risk of serious damage to being done to public confidence in the professions if an order is not made, and the Panel's reasons should set out why it considers this to be the case.

2.4 In *Christou v NMC*<sup>1</sup>, the court discharged an interim order imposed on a registrant who had accepted a caution for assault and failed to report it to the NMC, on the basis that it was difficult to identify why the Panel thought an interim order was needed to reflect public concern, given that this could be done appropriately when the case was finally heard.

2.5 In contrast, in *NH v GMC*<sup>2</sup> the court upheld a decision to impose an interim order on a registrant who was awaiting trial for allegedly assaulting and falsely imprisoning his younger sister for bringing 'dishonour' on their family. In that case, the court said that the question to be answered is:

*"would an average member of the public be shocked or troubled to learn, if there is a conviction in this case, that the [registrant] had continued to practise whilst on bail awaiting trial?"*

#### **Nature of the Interim Order**

2.6 If a Panel determines that it is appropriate to make an interim order, it must then decide whether to make either:

- An interim conditions of practice order, or
- An interim suspension order.

2.7 Where a Panel decides that an interim order should be made, the Panel should start by considering whether an interim conditions of practice order would be sufficient to address the Panel's concerns

2.8 It is the responsibility of the Panel to decide what interim conditions (if any) should be imposed but any conditions must be:

- Relevant to the regulatory concerns identified by the Panel
- Proportionate: the conditions should go no further than reasonably necessary to address any identified risks to the public, public confidence in the professions and/or the registrant's own interests. The Panel must consider what impact any conditions would have on the registrant concerned.

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<sup>1</sup> [2016] EWHC 1947 (Admin)

<sup>2</sup> [2016] EWHC 2348 (Admin)

- **Workable:** conditions may make it difficult for a registrant to find or remain in employment; this does not mean the conditions are unworkable. However, any conditions should be practical and realistic and should not amount to a suspension by the backdoor.
- **Measurable:** conditions should be set out in clear language. The question of whether a registrant has complied with a particular condition should be capable of a simple 'yes' or 'no' answer. Compliance should be capable of being determined objectively.

2.9 Normally, a Panel should not impose conditions of a kind which may be more appropriate after an allegation has been determined to be well founded at a final hearing, such as conditions requiring the registrant to undertake additional training.

2.10 As indicated above, it is always for a Panel to decide what specific conditions (if any) should be imposed in a particular case. However, the Academy considers that, where an interim conditions of practice order is made, it is often helpful for the following conditions to be imposed irrespective of any other conditions:

- a condition requiring the registrant to provide the Academy with the name and contact details of their employer(s), prospective employer(s) or any other organisation for whom they provide relevant professional services
- a condition requiring the registrant to provide a copy of the interim conditions of practice to their employer(s), prospective employer(s) or any other organisation for whom they provide relevant professional services
- a condition requiring the registrant to notify the Academy of any new employment or position involving relevant professional services within 7 days of appointment
- a condition requiring a registrant to allow the Academy to communicate with their employer(s), prospective employer(s) or any other organisation for whom they provide relevant professional services for the purpose of investigating any concern or monitoring compliance with any conditions

- a condition requiring the registrant to provide a report from any employer(s) or any other organisation for whom they provide relevant professional services in advance of any interim order review

2.11 An interim suspension order should be imposed only if the Panel considers that a conditions of practice order would not adequately address the concerns identified by the Panel

### **Duration**

2.12 The Panel must determine the duration of any interim order. No Panel can make an interim order of more than 18 months in duration, although an interim order made by the Interim Orders Panel may be extended in accordance with the Academy's Fitness to Practise Procedure.

2.13 Panels should not regard 18 months as the 'default' position: an interim order should be imposed only for as long as the Panel considers reasonably necessary.

## **3. General considerations**

3.1 In determining whether to impose an interim order before a final hearing has taken place, a Panel is not determining any allegation. Of course, where consideration is being given to an interim order after findings of fact have been made, the relevant Panel should pay close regard to the relevant findings.

3.2 The decision to make an interim order is one that must not be taken lightly and will depend upon the circumstances in each case.

3.3 Panels may have regard to the overall strength of the evidence, whether the allegation is serious and credible and the likelihood of significant harm or further significant harm occurring (whether to the public, public confidence in the professions or to the registrant's interests) if an interim order is not made.

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

- the registrant may pose an ongoing risk to service users, such as allegations involving violence, sexual abuse or other serious misconduct;
- a registrant with apparent serious health problems is practising and may pose a serious risk to service users or others, or be at risk of self-harm;
- although there may be no evidence of a direct link to professional practice, the allegation is so serious that public confidence in the profession and the regulatory process would be seriously harmed if the registrant were allowed to remain in unrestricted practice (for example, allegations of murder, violence, rape, the sexual abuse of children or other very serious offences);
- there may be an ongoing risk to service users from the registrant's serious or persistent competence failures or serious lack of professional knowledge or skills;
- the registrant has breached an existing suspension or conditions of practice order.

3.5 The Panel must balance the need for an interim order against the consequences for the registrant and ensure that they are not disproportionate to the risks identified. However, the financial and other impacts which an interim order may have on a registrant should not prevent an order being made if one is necessary.

#### **4. Interim orders imposed at final hearings after a sanction has been imposed**

4.1 Once a final decision in respect of a substantive allegation against a registrant is made, any pre-existing interim order terminates. The Registrant will then not be subject to any practice restrictions unless and until a restrictive sanction order is made and comes into effect. Sanctions do not come into effect until either (a) the expiry of the appeal period (28 days from service of the determination), or if there is an appeal, (b) the determination of that appeal. NB: in the case of a decision made by the Registrar to remove a registrant in accordance with the Accepted Outcomes procedure, any interim order continues until the decision comes into effect (until after the appeal period or until any appeal is determined), subject to review in the usual manner.

- 4.2 Where a restrictive sanction is imposed, namely a Removal Order, a Suspension Order, or a Conditions of Practice Order, a Panel has the power to make an interim order to cover the period of any appeal.
- 4.3 If present at the final hearing, the registrant must be given the opportunity to make representations regarding the application for an interim order. It will usually be appropriate for the Panel to adjourn the hearing for a brief period to allow a registrant to consider the Panel's substantive determination and prepare to address the Panel about interim orders.

## 5. Reasons

- 5.1 A Panel must be very clear in its decision as to why an interim order is necessary and, if applicable, why an interim suspension order has been imposed rather than interim conditions of practice. The reasons should specify the concerns and risks identified by the panel and explain why any interim order made is necessary and proportionate. Where evidence or information is provided about the potential impact an interim order might have on a registrant, the reasons should demonstrate that this has been considered and explain how the Panel has weighed this information with the concerns and risks it has identified.

## 6. Terminating an interim order

- 6.1 Interim orders are brought to an end in the following circumstances:
- by a decision of the Interim Orders Panel or the Fitness to Practise Panel to revoke the order
  - by the Fitness to Practise Panel currently dealing with the allegation to which the interim order relates;
  - automatically, following the expiry of the period for which an order was made (unless extended);
  - where the Fitness to Practise Panel determines that a registrant's fitness to practise is not impaired
  - where the Fitness to Practise Panel imposes a sanction (although a further interim order may be made at that time);
  - in the case of an interim order made following a sanction imposed by the Fitness to Practise Panel, after the expiry of the appeal period or determination (or withdrawal) of any appeal