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Interim order guidance

Introduction

- 1 An interim order is an order of a panel of the NMC's Practice Committee (Conduct and Competence Committee, Health Committee, or Investigating Committee) restricting a nurse or midwife's practice.¹ A panel can impose an interim conditions of practice order or suspension order for a period of up to 18 months.²
- 2 We can refer a nurse or midwife to a Practice Committee for consideration of an interim order at any stage of the fitness to practise process, and prior to the Committee reaching a final decision on the allegation.
- 3 A Practice Committee will also consider whether to impose an interim order when:
 - 3.1 a hearing is adjourned before completion
 - 3.2 the order is reviewed³
 - 3.3 an entry in the register has been fraudulently procured or incorrectly made⁴
 - 3.4 a substantive conditions of practice, suspension or striking-off order is made.⁵
- 4 An interim order cannot be made unless the nurse or midwife has been given an opportunity to appear before the Practice Committee panel and heard on the question of whether or not such an order should be made.⁶
- 5 Any new interim order made must be reviewed within six months and further reviewed every six months thereafter.⁷ An interim order may be reviewed earlier if new evidence relevant to the interim order becomes available.⁸
- 6 The primary purpose of any interim order is to protect the public ahead of a final decision being made by a Practice Committee panel, or before a substantive order comes into effect.⁹ Interim order hearings should not be about 'testing the facts'. A nurse or midwife is not required to give evidence before the panel regarding the regulatory concern.¹⁰
- 7 This guidance is intended to assist:
 - 7.1 NMC staff who consider whether to refer a case to a Practice Committee for an interim order application

7.2 decision-makers and NMC staff involved in interim order hearings, reviews and High Court extension applications

7.3 nurses and midwives whose registration is subject to an interim order, or under consideration for an interim order.

Referring a case for an interim order

8 Interim orders protect the public and the public interest while we investigate allegations of impaired fitness to practise or fraudulent or incorrect entries to our register. It is important to public safety and the public interest that cases are correctly identified by our teams and referred for interim order consideration as early as possible.

9 We can refer a nurse or midwife to a Committee to consider imposing a new interim order during screening, or further along the investigation process.¹¹ When we receive new information relating to a case, a case officer will carry out a risk assessment and may seek to refer a case for interim order consideration. An initial interim order hearing will be listed after seven days' notice, or enough notice as is reasonable in the circumstances.¹²

Decision making

10 When deciding whether to refer a case for an interim order consideration, we will first conduct a risk assessment and decide whether it is likely that the panel will impose an interim order based on one or more of the three statutory grounds:¹³

10.1 it is necessary for the protection of members of the public

10.2 it is otherwise in the public interest

10.3 it is in the interests of the nurse or midwife.

11 An assessment of the risk to the public considers the seriousness of the regulatory concern and how likely it is that the conduct set out will be repeated if no order were in place.¹⁴

12 Whenever we decide to refer a case for interim order consideration, the reasons for the decision must be clear. Some cases will be referred for interim order consideration more than once. In these cases, the decision maker must set out clear reasons why the case should be considered by a panel again.¹⁵

Proceeding in the absence of a nurse or midwife

13 A nurse or midwife, or a representative on their behalf, can appear before an interim order panel and address the panel on the question of whether an interim order should be made.¹⁶ The nurse or midwife is entitled to be represented, whether by a

legally qualified person or by someone else.¹⁷ If the nurse or midwife is unable to attend, a panel can impose an interim order in their absence.

- 14 In contrast with final hearings, where a panel will make findings of fact on the evidence, interim order hearings require a panel to conduct a risk assessment. Considerations which may have a bearing on whether it is fair to proceed in the absence of a nurse or midwife at a final hearing do not necessarily apply in the same way at an interim order hearing.
- 15 To proceed in the absence of a nurse or midwife, a panel must be satisfied that all reasonable efforts have been made to serve the nurse or midwife with notice of the hearing, and that the notice is reasonable.¹⁸ When assessing reasonableness, a panel should consider the nature of the allegation, the primary objective of public protection and the fairness of the interim order procedure as a whole.¹⁹
- 16 A panel can also impose an interim order in the absence of the nurse or midwife if the nurse or midwife has informed the NMC that they do not wish to attend the hearing.²⁰
- 17 If the nurse or midwife has not attended or provided full representations we will generally still ask a panel to consider imposing an interim order on the grounds outlined in the application.²¹ We do this because the overarching purpose of the NMC's fitness to practise function is to protect the public.²² A case will have been referred for interim order consideration because of identified risks that indicate that an order is necessary for the protection of members of the public or is otherwise in the public interest or the nurse or midwife's own interests. Referring a case for interim order consideration as soon as possible ensures that we are properly fulfilling our statutory duty.
- 18 A nurse or midwife can request a review of any interim order made, if new evidence relevant to the order becomes available after it is made.²³ When a nurse or midwife has indicated that they are unable to attend for a particular reason or that they have asked for further time to secure or prepare representations, a panel should consider the merits of the application for the interim order. Should the panel decide that the test has been met (by it satisfying one or more of the statutory grounds);²⁴ the panel should make the order but direct that it is listed for an early review within the next 14 days.

Panels considering whether to make an interim order

- 19 Panels can consider making an interim order at all stages of the fitness to practise process, including when a panel of a Committee adjourns a matter before reaching a final decision. The test²⁵ applied and the powers available to a panel are the same at all stages.

Information placed before panels

- 20 Due to the nature of our applications for interim orders, it is not possible for us to apply the same principles for redaction as those we use with substantive hearing bundles.
- 21 The case material documents will be provided in a form that enables the nurse or midwife to comment on the allegations, but we will redact sensitive information out of the case material. Otherwise, interim order bundles will generally be un-redacted.

Decision-making

- 22 An interim order can be imposed if a panel is satisfied that such an order is:²⁶
- 22.1 necessary for the protection of members of the public²⁷
 - 22.2 otherwise in the public interest
 - 22.3 in the interests of the nurse or midwife.

A panel can make an order on more than one statutory ground.

- 23 Panels must take into account the impact an interim order may have on the nurse or midwife. For example, an interim order will impact upon the nurse's or midwife's right to practise their profession. It may also have a financial impact for the nurse or midwife, or an impact on their reputation. A panel should be satisfied that the consequences of an interim order are not disproportionate to any risk it has identified.²⁸
- 24 When considering an interim order, a panel is not making findings of fact. It is sufficient for a panel to act if it takes the view that, on the evidence put before them at the time of the application, an interim order is required on one or more of the grounds set out above.²⁹
- 25 When a panel makes a new interim order or a decision at an interim order review hearing it will notify the nurse or midwife concerned, setting out its reasons for its decision and the right to apply to the appropriate court to contest the order.³⁰

Public protection

- 26 For an interim order to be necessary for the protection of the public, a 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. It is not enough for the panel to consider that an order is merely desirable. The following factors are especially important to this consideration.
- 26.1 The seriousness of the regulatory concern. This will depend upon how much harm the alleged conduct has already caused, or could have

caused to the public. Cases which 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.³¹

26.2 The likelihood of the alleged conduct being repeated if an interim order were not imposed. If the regulatory concern is serious and appears likely to be repeated, then there is a greater risk of harm to members of the public in the future.³²

27 Each case will be considered on its own facts and there may be other relevant factors when considering whether to make an interim order on public protection grounds.

Otherwise in the public interest

28 The panel should bear in mind that the primary purpose of an interim order is to protect members of the public. It will be relatively rare for an interim order to be made solely on the ground that it is in the public interest (for example, to maintain public confidence in the profession).³³ However, a panel should give full consideration to all elements of the public interest in conducting its risk assessment.³⁴

29 Where the regulatory concern does not raise any risk of harm to patients or the public a conditions of practice order is unlikely to be appropriate. However, a panel should consider whether there would be serious damage to the reputation of the professions if a nurse or midwife was not suspended pending the final outcome. This will depend on the particular facts of each individual case. A panel should consider proportionality by assessing the degree of risk and the likelihood of serious damage to public confidence in the profession and to the reputation of the profession if the nurse or midwife were allowed to continue to work until a final determination is made. A panel must specify the nature and seriousness of the damage to the reputation of the professions that would result if no order was made.³⁵ The interests of the nurse or midwife do not override the public interest.

30 The types of regulatory concerns where the public interest is likely to be engaged include:

30.1 criminal charge or conviction for a serious offence or currently serving criminal sentence for non-patient related incidents, for example, sexual misconduct such as rape, child pornography, or child abuse

30.2 serious dishonesty

30.3 fraudulent or incorrect entry to the register.

The interests of the nurse or midwife

- 31 In some cases a referral will raise concerns about a nurse's or midwife's health and its potential impact on their ability to practise safely. There may be some evidence that the nurse's or midwife's work is adversely affecting their health. This may suggest that an interim order is in the interests of the individual to protect their health.

Powers of a Practice Committee on making an interim order

- 32 If a panel decides that an interim order is needed it may:³⁶
- 32.1 make an interim order directing the Registrar to suspend the nurse or midwife's registration
 - 32.2 make an interim order imposing conditions with which the nurse or midwife must comply.

Any suspension order or conditions of practice order cannot exceed 18 months.

- 33 If the panel imposes an interim order, it must specify the length of the order. The panel should not automatically impose the maximum period of 18 months, but should consider what period is appropriate and proportionate in the circumstances. The panel should take into account the amount of time which is likely to be needed to complete any investigation into the allegations and for the case to be listed for hearing. Once a period has been chosen, it can only be extended if the NMC applies to the High Court.³⁷
- 34 The panel must give clear and adequate reasons for its decision, whether or not it decides to impose an interim order. Reasons should include:
- 34.1 the ground(s) on which the panel has made its decision
 - 34.2 what impact an interim order might have on the nurse or midwife, and how the panel has balanced that impact against the need for an interim order
 - 34.3 why an interim order is (or is not) proportionate to any risks the panel has identified and proportionate (or not) to the consequences for the nurse or midwife
 - 34.4 if an interim order is imposed, the reasons why the panel has chosen the period of time for which the order should be imposed.

Post-adjudication interim orders

- 35 When a nurse or midwife is made subject to 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.

Reviews of interim orders

- 36 The interim order review process must involve a full reconsideration of the initial interim order in the light of all the circumstances which are before the panel at the review hearing. These will include the circumstances at the time the order was made, as summarised in the decision of the panel, any other relevant documentation, and any change of circumstances since then.³⁸
- 37 A panel will review an interim order at a private meeting, or a public hearing and may:³⁹
- 37.1 revoke the interim order or revoke any condition imposed by the interim order
 - 37.2 confirm the interim order
 - 37.3 vary any condition imposed by the interim order
 - 37.4 replace an interim conditions of practice order with an interim suspension order for the remainder of the duration of the order
 - 37.5 replace an interim suspension order with an interim conditions of practice order for the remainder of the duration of the order.
- 38 Interim suspension orders will usually be reviewed at meetings unless there has been a material change of circumstances, or unless the nurse or midwife requests a review hearing. Interim conditions of practice orders will usually be reviewed at hearings unless a full consideration of all the information before us suggests that the order can be confirmed at a review meeting.

Early reviews

- 39 Where new evidence relevant to the order has become available after it has been made, the order must be reviewed by a panel of the Committee. In these

circumstances we will refer the matter to a panel for consideration at a review hearing ahead of the usual six month review date.⁴⁰

40 Examples of cases where we would schedule a review are:

40.1 we receive information which suggests that conditions imposed as part of an order are unworkable

40.2 the nurse or midwife was unable to attend the initial hearing or provide detailed submissions to the panel and is now in a position to do so

40.3 we receive information which suggests that the order has been breached

40.4 we receive new information about the regulatory concern or charge, which affects the risk previously identified.

41 The notice of the early review hearing that is sent to the nurse or midwife must clearly set out the reasons why an early review is required. If the panel is being asked to consider imposing a more restrictive interim order than the one already in place the notice should clearly set out the reasons for this request with reference to one or more of the three grounds on which an interim order can be made.⁴¹

42 At an early review hearing, the panel will consider the grounds for an interim order in full. The panel will hear full representations and will undertake a full reconsideration of the grounds for an interim order, ensuring that all relevant matters are taken into account.

43 The need for an interim order is kept under review. We will continue to risk assess any new information and will refer a case for an early review if it is required.

Particular considerations

44 A panel can impose an interim order when a nurse or midwife's entry onto the NMC register has been incorrectly or fraudulently obtained. It can also consider making an interim order during or following a substantive hearing, and when we receive a new referral about a nurse or midwife who is already subject to an interim order.

Incorrect and fraudulent entry

45 A panel of the Investigating Committee has the power to consider referrals of allegations about entries in the register that have been fraudulently procured or incorrectly made and whether or not to impose an interim order.⁴²

46 A panel should consider the public interest in maintaining the integrity of the register. It should also carefully consider proportionality, balancing the risk of serious damage to the reputation of the profession against the impact of suspension order on the

nurse or midwife. The impact on the nurse or midwife might include financial hardship if their practise is suspended, pending a final outcome.⁴³ If it is considered that there would be serious damage to the public interest due to the impact on the integrity of the register, this evidence should be specifically identified.

- 47 An example of when an interim conditions of practice order may be appropriate is if an individual is dual registered and the allegation of fraudulent or incorrect entry relates to only one of their entries in the register. The interim conditions of practise order would serve to restrict the individual from working in the area to which the allegation relates.

Determination stage

- 48 At the determination stage, if the panel of the Investigating Committee finds the allegation proved and makes an order for removal, any interim order in place will lapse. Additionally, any order for removal will not take effect until the end of the appeal period (28 days after the date on which the decision letter is served) or, if an appeal has been lodged, before the appeal has concluded.
- 49 At this stage the panel has the power to impose an 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.

Where the nurse or midwife is already subject to a substantive order

- 50 When we receive a new referral for a nurse or midwife who is already subject to a substantive order and the risk assessment indicates the matter should be referred for interim order consideration, the matter will be dealt with at an interim order hearing, rather than an early substantive order review.⁴⁴
- 51 An interim order will not automatically come to an end if the substantive order is revoked or allowed to lapse. However, any panel reviewing the interim order should be made aware of such a change so that it can consider its effect on the need for an interim order.

Multiple referrals

- 52 Where a nurse or midwife is the subject of two or more separate referrals, the panel considering an interim order must consider information about all 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 to the allegations made.
- 53 If a new referral is received in relation to a nurse or midwife who is already on an interim order, a panel may need to review the existing interim order at an early review hearing.⁴⁵ This will usually be required if the matters contained within the new referral raise serious public protection or public interest concerns, meaning it might

be necessary for a panel to impose a more restrictive interim order than the one already in place. In this situation, the panel should take account of all relevant matters when considering the effectiveness of the present interim order in place.

- 54 If the information contained within the new referral does not raise new public protection or public interest concerns and is unlikely to result in a change to the existing interim order (because for example, the nurse or midwife is already on an interim suspension order), the contents of the new referral should be brought to a panel's attention at the next scheduled interim order review hearing or meeting.

Interim order extension applications to the High Court

- 55 If it becomes necessary to extend an interim order timeframe, the NMC may apply to the High Court, Court of Session, or High Court of Justice in Northern Ireland, where appropriate, for an extension.
- 56 When a substantive hearing is not due to conclude before the expiry of the interim order, we will apply to the appropriate court for an extension.⁴⁶ We would not seek 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. If the panel decides the interim order should be revoked, the matter will not be referred to the appropriate court for an application to extend.

Disclosure of interim orders

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

Approved by Director of Fitness to Practise 27th March 2017

Effective from 31st March 2017

¹ Article 31(1) of the Nursing and Midwifery Order 2001 ('the Order')

² Article 31(2) of the Order

³ Article 31(6) of the Order

⁴ Article 31(1)(b) and 31(3) of the Order

⁵ Article 31(1)(c) and 31(3) of the Order

⁶ Nurses and midwives must be given reasonable notice in advance of the hearing. We do not specify timeframes regarding what constitutes reasonable notice, but usually a nurse or midwife is given seven days' notice. This timeframe may on occasions be shorter. See rule 8 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (the Rules)

⁷ Article 31(6)(a) of the Order

⁸ Article 31(6)(b) of the Order

⁹ Substantive orders do not come into effect until 28 days after the date on which the order is imposed. During these 28 days, a nurse or midwife can appeal the decision to impose a substantive order. The panel may consider it necessary to impose an interim order to cover the 28 days 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. A panel should hear representations from both parties (where present) on whether or not an interim order should be made. See Article 29(10) of the Order and rule 24(14) of the Rules

¹⁰ In *Perry v Nursing and Midwifery Council* [2013] EWCA Civ 145, the Court of Appeal held that ‘fairness’ does not require the nurse or midwife to have the opportunity to give evidence before the panel, that goes to the substance (truth or otherwise) of the allegation. This would not infringe the European Convention of Human Rights (ECHR) of the nurse or midwife under Article 6 or Article 8.

¹¹ It is important that cases are correctly identified and referred for interim order consideration as early as possible in the fitness to practise process. The screening team aims to refer cases for interim order consideration within 28 days of receiving of a referral. Case examiners have the power to recommend an interim order when they are considering whether there is a ‘case to answer’ in relation to an allegation of impaired fitness to practise, see rule 6C(5) of the Rules

¹² See endnote 6. If the allegations are particularly serious, then the notice may be sent with less than seven days’ notice, and clear reasons behind this will be documented in the notice of hearing.

¹³ Article 31(2) of the Order

¹⁴ The seriousness of the allegation and risk of repetition are 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 important when considering seriousness. This could include physical, mental, emotional or financial harm. If the allegation is serious and appears likely to be repeated, then there is a greater risk of harm to members of the public in the future.

¹⁵ When we receive new information about a referral we will conduct another risk assessment. The risk assessment may indicate an increased or decreased need for an interim order in light of the new information. If so, the case will be referred to a panel for consideration.

¹⁶ Article 31(15) and (16) of the Order

¹⁷ Article 31(16) of the Order

¹⁸ There is no definition of what amounts to reasonable notice. We endeavour to give at least seven days’ notice. However, this may be shorter in certain cases where we consider it is reasonable in the particular circumstances of a case.

¹⁹ Rule 8(6) of the Rules. The requirement for notice must be considered against the background of the requirement on the part of the practitioner to provide an up-to-date address for the register: *General Medical Council v Olufemi Adeyinka Adeogba, General Medical Council v Evangelos-Efstathios Visvardis*, [2016] EWCA Civ 162, paragraphs 21-23.

²⁰ Rule 8(3) of the Rules. The notice of hearing invites representations from any nurse or midwife who does not wish to attend the interim order hearing.

²¹ Rule 8(6) of the Rules

²² Article 3(4) of the Order

²³ Article 31(6)(b) of the Order

²⁴ See paragraph 22 for the statutory grounds

²⁵ See paragraph 22 for the statutory grounds

²⁶ Article 31(2) of the Order

²⁷ Article 3(4) of the Order states the over-arching objective of the NMC’s fitness to practise function is to protect the public. Article 3(4A) states that this is achieved by undertaking to a) protect, promote and maintain the health, safety and well-being of the public b) promote and maintain public confidence in the professions regulated under this Order, and c) promote and maintain proper professional standards and conduct for members of those professions.

²⁸ See paragraph 50, *Madan v General Medical Council* [2001] EWHC 577. A panel’s reasons should disclose why it has concluded that the chosen remedy is proportionate to the consequences known to the Committee.

²⁹ *R (George) v General Medical Council* [2003] EWHC 1124, paragraph 42. The High Court has also indicated that, where a registered professional has been charged with a criminal offence, the panel will not always be obliged to hear evidence or submissions as to any alleged weaknesses in the criminal case. The panel can proceed on the basis that the Crown Prosecution Service has concluded there was sufficient substance in the matter to justify charges being brought, see *Fallon v Horse Racing Regulatory Authority* [2006] EWHC 2030.

³⁰ Article 21(14) of the Order. The appropriate court is the same as the “appropriate court” in article 38 of the Order.

³¹ The greater the potential harm to a member of the public, the greater the need for the case to be referred for interim order consideration

³² A risk of repetition may be made out where: there is more than one allegation, the nurse or midwife has not been working in a clinical context since the incidents, the allegation occurred recently and the nurse or midwife has not had an opportunity to remediate, a poor disciplinary record, poor insight by the nurse or midwife into the seriousness of the allegation, or previous refusals to accept or comply with measures designed to remedy the problems. This list is non-exhaustive and the risk of repetition is assessed upon the particular facts of each case.

³³ *R (Sheikh) v General Dental Council* [2007] EWHC 2972

³⁴ Namely, protecting patients and the public, maintaining and promoting public confidence in the nursing and midwifery professions including the declaring and upholding of professional standards, and maintaining and promoting public confidence in the NMC’s performance of its statutory functions.

³⁵ *Houshian v General Medical Council* [2012] EWHC 3458 QB, *Patel v General Medical Council* [2012] 3688 Admin).

³⁶ Article 31(2)(a)(b) of the Order

³⁷ The High Court, the Court of Session, or High Court of Justice in Northern Ireland, where appropriate

³⁸ A transcript of the first full interim order hearing at which the nurse or midwife made representations can be made available to panels sitting on later interim order review hearings if necessary. They are not provided as standard. If the nurse or midwife has never attended in person or via a representative and made representations, future panels will not need a transcript and the previous decision notice will suffice.

³⁹ Article 31(7)(a-e) of the Order

⁴⁰ Article 31(6) of the Order

⁴¹ See paragraph 22 for the statutory grounds

⁴² Article 26(11) of the Order

⁴³ *R (Sheikh) v General Dental Council* [2007] EWHC 2972, *Madan v General Medical Council* [2001] EWHC 577. See also *Christou v NMC* [2016] EWHC 1947 (Admin) in which a nurse was alleged to have acted fraudulently in securing entry to the register in not declaring a criminal caution. The Court emphasised the need for panels to consider whether the integrity of the register could be properly maintained through sanctions imposed at the culmination of proceedings.

⁴⁴ This allows any potential public protection concerns to be dealt with more quickly at an interim order hearing than an early substantive order review, where 28 days’ notice of any hearing or meeting is required. For further guidance on interim orders when a substantive order is in place, please see the NMC’s [Substantive order review guidance](#).

⁴⁵ As an interim order attaches to a nurse’s or midwife’s registration, as opposed to a referral, it is not necessary to schedule a new interim order hearing.

⁴⁶ In order to apply to the court for an extension, we need to ensure we address the principle matters set out by the Court of Appeal in *General Medical Council v Hiew* [2007] EWCA Civ 369. The court will look at the reasons and justifications for unacceptable delays, the seriousness of the original allegations, address the nature of the evidence available, evidence of the risk of harm to patients, the prejudice to the nurse or midwife caused by the interim order remaining in place (i.e. inability to practise financial difficulties); and the risk to the public.