

**MUCKAMORE ABBEY HOSPITAL INQUIRY  
WITNESS STATEMENT**

**Statement of Andrea Sutcliffe  
Date: 9 May 2024**

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I, Andrea Sutcliffe, make the following statement for the purpose of the Muckamore Abbey Hospital (MAH) Inquiry.

The statement is made on behalf of the Nursing and Midwifery Council (NMC) in response to a request for evidence by the Inquiry Panel.

This is my second statement to the Inquiry.

I will continue the numbering of exhibited documents from my first statement so the first exhibit will be 'Exhibit 31'.

**Background**

1. I submitted my first statement to the Inquiry on 20 March 2024.
2. In paragraphs 135 and 159 of that statement I made reference to seven nurses who had interim suspension orders imposed who then appealed against the imposition of those orders at the High Court of Northern Ireland on 11 September 2018. The appeal was upheld and all seven of the interim suspension orders were revoked. I am now exhibiting the transcript from that appeal hearing which took place on 8 February 2019 (**Exhibit 31**). The transcript is redacted as there remains a restriction order in place on reporting the case (see page three of the judgement).
3. In paragraph 117 I stated that our revised interim order guidance would be published on 25 March 2024. The Inquiry has asked that I exhibit this revised guidance and I have also taken the opportunity to provide context for those revisions below.

## Interim orders guidance

4. We published our updated 'INT-2 Decision making factors for interim orders' guidance on our website on 25 March 2024 (**Exhibit 32**). A further minor change was made to INT-2 on 10 April 2024, clarifying that our normal process is for the evidence relied on in relation to an interim order application to be shared with the professional concerned. Exhibit 32 includes this small amendment.
5. The update to the interim order guidance is part of a rolling programme of guidance updates based on our commitment to keeping our fitness to practise guidance library under continuous review. Factors that led us to review the interim order guidance included:
  - a. concerns that the reference in our previous guidance to the need for 'a prima facie case' before an interim order could be sought, might be unnecessarily restrictive;
  - b. concerns that our approach to interim orders might be inconsistent with that taken by other regulators (notably the General Medical Council);
  - c. concerns about our interim order decision-making in relation to a specific criminal investigation.

## The substantive effect of the changes made

6. Our previous guidance invited decision-makers to adopt a two staged approach when deciding whether or not to impose an interim order. The first stage was to consider whether there was 'sufficient evidence' or a 'prima facie case' of a regulatory concern; only then would panels move on to consider whether one or more of the three potential grounds for making an interim order set out in Article 31(2) of the NMC Order was met<sup>1</sup>.
7. Our new guidance moves away from the two staged approach, adopting instead a more holistic approach. Decision-making panels are invited to consider the following three principles when making their decision:

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<sup>1</sup> The three potential grounds set out in Article 31(2) of the NMC Order are 1) it is necessary for the protection of members of the public or 2) is otherwise in the public interest, or 3) is in the interests of the person concerned.

### **Evidence of the concern**

- a. Panels are advised to consider all the evidence presented before them when evaluating the concerns surrounding a professional's fitness to practise. The guidance states explicitly that there is no evidential threshold in the NMC Order but advises that there must be 'some evidential basis' for the concern. Panels will need to be satisfied that the evidence of any concern is cogent, and is not fanciful, not frivolous, not obviously contradicted by other evidence or entirely misconceived.

### **Nature and seriousness of concern**

- b. Panels are advised to look at the nature and circumstances of the concerns relating to the professional's fitness to practise to understand the gravity of what has been alleged. Panels should then consider the risks going forward in allowing a professional to continue to practise without restrictions.

### **Proportionality and applying the Article 31(2) grounds**

- c. Having carefully looked at the risks in a particular case, panels are invited to weigh these against the professional's interests and consider whether one or more of the three potential grounds set out in Article 31(2) of the NMC Order applies.
8. The three principles summarised above and set out in the new guidance will be applicable to all interim order applications. The new guidance goes on to give specific advice about the factors to be considered when the panel is considering serious criminal allegations. The guidance gives examples of situations where an application for an interim order may be justified prior to criminal charges being brought. This is a significant shift in emphasis compared to the previous guidance, which suggested that, where no criminal charges had been brought, there would need to be 'underlying evidence which satisfies the test required for an interim order'.
  9. The new guidance also includes a completely new section on discrimination and interim orders. This section emphasises the seriousness with which we take allegations of discrimination and the potential risks not only to public confidence,

but also of harm to those receiving care, that deep-seated discriminatory attitudes may pose.

10. The new guidance also includes sections on not having the necessary knowledge of English, freedom of expression and incorrect or fraudulent entry allegations. These sections largely replicate material contained in the previous version of the guidance, although some minor amendments have been made for the purposes of clarity and consistency. For example, a reference to “the prima facie test” has been removed from the section on freedom of expression.

### **Conclusion**

11. In summary, the major substantive changes introduced by the new guidance are:

- a. A move to a more holistic approach to decision-making in relation to interim orders; the new guidance no longer insists that there must be ‘sufficient evidence’ or a ‘prima facie case’ before an interim order can be considered.
- b. Express guidance in relation to serious criminal offences that ‘in cases of the utmost seriousness, the panel may be satisfied that there is cogent evidence of a serious risk, even on the basis of limited information’.
- c. New guidance highlighting the circumstances in which an interim order based on allegations of discrimination may be justified.

### **Declaration of Truth**

The contents of this witness statement are true to the best of my knowledge and belief. I have produced all the documents which I have access to and which I believe are necessary to address the matters on which the Inquiry Panel has requested me to give evidence.

Signed:



Date: 9 May 2024

**List of Exhibits (Andrea Sutcliffe)**

| <b>Exhibit</b> | <b>Description</b>                                       |
|----------------|--|
| 31             | Transcript of hearing on 8 February 2019                 |
| 32             | Updated interim order guidance (published 25 March 2024) |



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

Reference: INT-1 Last Updated: 25/03/2024

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

### Interim suspension order

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

### What is the purpose of interim orders?

Interim orders protect the public, and occasionally the professional themselves, from risk by restricting or suspending a nurse, midwife or nursing associate's practice while we investigate concerns about them. This means that an interim order will be imposed before a panel has made any findings of fact about the concerns raised. An interim order will be needed in cases where the concerns about a nurse, midwife or nursing associate's practice are so serious that:

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



- there are concerns that the professional themselves could suffer serious harm if they continued to practise without some kind of restriction.

If a nurse, midwife or nursing associate deliberately breaches an interim order, this may in itself require regulatory action. Such matters are likely to be taken seriously as they show a disregard for the steps the NMC has put in place to keep the public safe or uphold confidence in the professions<sup>1</sup>. We explain this in more detail in our guidance [here](#).

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

Panels of the Investigating Committee and the Fitness to Practise Committee are able to restrict or suspend a nurse, midwife or nursing associate'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, midwife or nursing associate's right to practise.<sup>2</sup> So for example, if we've referred a concern to the Case Examiners<sup>3</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>4</sup> So our Case Examiners, who 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 the Fitness to Practise Committee starts considering the case at a hearing or meeting.<sup>5</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>6</sup>

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<sup>7</sup>.

### When can interim orders be considered?

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, midwife or nursing associate 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, midwife or nursing associate and refer their case to the Fitness to Practise Committee
- the Investigating Committee directs that a nurse, midwife or nursing associate'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, midwife or nursing associate'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

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period up to 18 months to cover any potential appeal.

1 See GMC v Donadio [2021] EWHC 562 (Admin) in relation to the serious nature of deliberate breaches of interim orders.

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

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

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

5 Article 26(11) of the Order

6 Article 31(6) of the Order

7 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.

## Decision making factors for interim orders

Reference: INT-2 Last Updated: 10/04/2024

### In this guide

- [Overview](#)
- [Guiding Principles for Interim Order Consideration](#)
- [Interim Orders and Criminal offences](#)
- [Discrimination and Interim Orders](#)
- [Interim Orders and not having the necessary knowledge of English](#)
- [Freedom of expression and Interim Orders](#)
- [Interim orders and incorrect or fraudulent entry allegations \(“IEFE” allegations\)](#)

### Overview

The test that a panel uses when deciding whether to impose an interim order is found in A.31(2) of the NMC Order 2001. The panel may make an order if they are satisfied that:

- (a) it is necessary for the protection of members of the public; or
- (b) it is otherwise in the public interest; or
- (c) it is in the interests of the person concerned.

The panel’s role involves conducting a risk assessment in the light of the three grounds above. The panel is asking themselves “In this particular case, what would be the risk or risks involved in allowing this person to keep practising without restriction?”

A panel may decide that they are satisfied that more than one of the three grounds above applies in a particular case (for example an order may be necessary to protect people receiving care, and may also be in the nurse, midwife or nursing associate’s own interests). We have set out below some guiding principles to assist panels when conducting this assessment of risk.

### Guiding Principles for Interim Order Consideration

It is important that panels consider each individual case on its own circumstances and merits. They will need to identify and weigh up the risks specific to that case and decide whether they are satisfied that one or more of the three grounds is met. If they are satisfied that one or more grounds is met, they will then need to consider what type of interim restriction is appropriate for that particular case.

The panel should have in mind the following principles when making their decision:

#### (a) Evidence of the concern

As part of their consideration of the case as a whole, it will be necessary for the panel to look at the evidence which relates to the concerns we have about the professional’s fitness to practise. Whilst there is no evidential threshold in the NMC Order, there needs to be some evidential basis for the concern in order for the panel to then go on to decide what risks the concern presents, and whether they need to take any action in relation to those risks.

So how should the panel approach this part of their consideration? The panel would need to be satisfied that the evidence is cogent, and is not fanciful, not frivolous, not obviously contradicted by other evidence or entirely

misconceived.

The panel will need to examine the evidence before it critically and keep the following in mind in doing so:

- The interim order panel cannot and must not attempt to make findings of fact.
- 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. This could include any written accounts about the concerns raised, or any video footage relevant to the alleged incidents. 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>1</sup>
- The source of the evidence. Where the evidence comes from may affect whether it's reasonable for the panel to rely on it when deciding whether to impose an interim order.
- The accuracy of the information and whether it's sufficiently clear for the professional to understand the basis of the concern. If all of the available evidence is vague or tenuous, the professional 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.
- Whether the nurse, midwife or nursing associate has seen or been given an opportunity to see the evidence given to the panel so that they are able to give a fully informed response to the interim order request. If the professional has not seen the evidence, the panel would need to carefully consider the reasons why and whether it is fair to take that evidence into account as part of their decision. The normal process will be for all the evidence relied on to be shared with the professional concerned. Circumstances where it may be fair to proceed without the evidence being shared could include, for example, situations where the professional has voluntarily absented themselves from a hearing and relevant new evidence comes to light either at or very close to the hearing.

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, midwife or nursing associate.

### (b) The nature and seriousness of the concern, and associated risks:

The panel will need to assess the nature and circumstances of the fitness to practise concern or concerns, so that they can understand the gravity of what is alleged to have happened in that specific case.

Having established the seriousness of what is said to have happened, the panel can then focus on the implications going forward in terms of risk. The panel will consider the potential risks of allowing the professional to continue to practise without restriction whilst the NMC look into the concerns alleged against the professional, whether or not those concerns are ultimately found to be true.

The panel should have regard to the following when assessing each case:

- Whether there is a direct link between the concern and the professional's clinical practice
- How much harm the alleged conduct has already caused, or could have caused, to the public. This could include physical, mental, emotional or financial harm
- How likely it is that the conduct would be repeated if some form of restriction was not put on the professional's practice
- The professional's past or current fitness to practise history
- Whether there are existing restrictions in place imposed by the police (bail conditions), an employer or another regulator
- How likely is it that there would be serious damage to public confidence in the professions, if their practice was not restricted whilst the concerns were investigated
- If they are considering an order in the professional's own interests, how likely it is that the person concerned would suffer harm if their practice was not restricted.

We have separate guidance on [seriousness](#) and [insight and strengthened practice](#) which the panel may find helpful to consider when thinking about seriousness, or how likely it is that incidents may reoccur.

### (c) Proportionality and applying the test:

When the panel has established the risks they think are involved in a particular case they will then need to weigh those risks up against the professional's interests.

Considering the interests of the nurse, midwife or nursing associate includes considering their right to practise unrestricted, damage to their 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, midwife or nursing associate's clinical ability).

The panel conducts this balancing exercise with the three grounds of the interim order test in mind. When considering the three grounds, the panel would need to bear in mind the following:

- 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.
- 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 the public, so the threshold for imposing an interim order solely on this ground is high<sup>3</sup>. The High Court has made it clear that some criminal charges are so serious that the professional should not be allowed to continue practising while they await trial, even where those charges are unrelated to professional practice<sup>4</sup>. For further discussion of the concept of 'public interest' please see our [Impairment guidance](#).
- It is a significant step to place restrictions on a professional's practice on the basis that it is in that person's own interests. The panel would have to very carefully assess the risk of harm to that individual, including the likelihood and seriousness, and balance that against any other competing interests the person might have.

If the panel concludes that an interim order is required in a particular case, it will then need to give careful consideration to what kind of restriction is required, bearing in the mind that any interim order should be proportionate to the risk identified in that particular case.

### Interim Orders and Criminal offences

In addition to the guiding principles above, this section provides supplementary guidance in relation to interim orders where there is a concern linked to criminal offending or suspected criminal offending by the nurse, midwife or nursing associate.

There are different circumstances in which we receive referrals which raise concerns that a nurse, midwife or nursing associate has been involved in some form of criminal offence. The referral may suggest that a professional on our register:

- has been charged with a criminal offence and is facing criminal proceedings in court,
- has already been convicted of a criminal offence and is either awaiting sentence or has already been sentenced,
- has been arrested for an offence and is under investigation, but has not yet been charged with anything, or
- is under investigation but has not in fact been arrested.

A criminal charge may well provide cogent evidence of a concern, particularly if we are satisfied that the decision to charge and prosecute the person was made following a robust consideration of the evidence.<sup>5</sup> However, we do not always need to wait until a person has been charged before applying for an interim order, and in appropriate cases we may decide that a case should be put before a panel for interim order consideration prior to charge.

Our decision will be based on the information available to us, including the seriousness of what is being investigated, and any implications that has in respect of public safety or public confidence. In cases of the utmost seriousness, the panel may be satisfied that there is cogent evidence of a serious risk, even on the basis of limited information.

For example:

- We receive information from the police that a midwife is being investigated for theft. The police will not reveal

any further information at this stage, including what the theft is about or the status of the criminal investigation. Without additional information, this is unlikely to be a basis upon which we could suggest there is cogent evidence of a concern which requires interim order consideration.

- We receive information from the police that a nurse has been arrested in connection with an assault at work, but has been immediately released whilst the police conduct further investigations. They won't tell us any information about the venue, people involved or the nature of the assault as they are yet to take statements from possible witnesses. Without additional information, this is unlikely to be a basis upon which we could suggest there is cogent evidence of a concern which requires interim order consideration.
- We receive information from the police that a nurse has been arrested in connection with allegations of serious sexual assault at work but has been immediately released whilst the police conduct further investigations. The police have imposed bail conditions on the person to keep away from their place of employment and not to attempt to contact any members of staff or patients. They are due to go back to the police station in two weeks' time. The police cannot release any detailed information at present as they are concerned that this could potentially prejudice their investigation. However, they are prepared to tell us that the allegations are in respect of at least two vulnerable adult patients with learning difficulties and, in the words of the officer investigating the case, involve "very intimate touching" of the people concerned. This information alone could provide cogent evidence of a concern which requires interim order consideration.
- We receive information from the police that following a two-year investigation, a nursing associate has been arrested for participating in a paedophile network where images and videos of child patients have been circulated. Even without any further information these allegations are incredibly serious and have implications in respect of both the safety of people receiving care and public confidence. This information alone could provide cogent evidence of a concern which requires interim order consideration.
- We receive information that a nurse has been arrested, interviewed and released by the police in relation to an investigation into multiple allegations of murder of elderly patients in various care homes. The police refuse to disclose any further information about the alleged offences. Even though the information is extremely limited, the offences being investigated clearly raise very serious issues in relation both to the safety of people receiving care and public confidence. As such this information alone could provide cogent evidence of a concern which requires interim order consideration.

In some circumstances the police or the Criminal Court may impose bail conditions on a professional which they have to keep to whilst the criminal proceedings are in progress. The imposition of bail conditions (especially bail conditions relating to clinical practice) could be an indicator that an interim order should be considered, on grounds both of public protection and public interest.

## Discrimination and Interim Orders

[We are clear that no form of discrimination should be tolerated within health and social care.](#)

In addition to the guiding principles above, this section provides supplementary guidance in relation to interim orders linked to concerns of discrimination, or misconduct closely linked to discriminatory views.

We are likely to apply for an interim order in cases of this kind where

- Either the allegations suggest deep-seated discriminatory attitudes and a consequent risk of harm to the public<sup>6</sup> that makes an interim order necessary, and/or
- The alleged conduct is so serious that if there is no restriction on the professional's practice the public may not feel able to trust the professions we regulate (bearing in mind that it will be relatively rare for an interim order to be justified solely in the public interest).

A panel should assess risk according to the specific circumstances of each case. Factors which could strengthen the need for an interim order in cases involving discrimination include:

[The existence of a criminal charge or conviction for a hate crime](#)

A criminal charge or conviction for a [hate crime](#) is itself capable of increasing the public interest in taking action.

[The use of discriminatory slurs, making of threats, or the use or endorsement of violence based on protected characteristics](#)

Whilst not all discriminatory language or conduct will include these features, such conduct can be particularly



damaging to public confidence or trust, and form strong evidence for the existence of deep-seated discriminatory attitudes that could put the public at risk<sup>7</sup>.

### Discriminatory conduct within professional practice

Discriminatory behaviour is capable of harming the public or undermining confidence in the professions we regulate wherever it occurs and whoever it is directed towards. [That is why we always take it seriously.](#)

However, when considering interim orders in particular, it is important to note that (i) evidence of discrimination against people who use services is a strong indication both that a professional could pose an immediate risk to the public and that their continued practice without restriction is likely to undermine public confidence in the profession; discrimination that involves poor care is likely to necessitate an interim order. (ii) in some circumstances, discriminatory behaviour towards colleagues in professional practice can have a serious effect on workplace culture, and therefore patient safety, if it is not dealt with<sup>8</sup>. We will always focus closely on the specific conduct and its relationship to a person's practice as a registered professional.

We receive allegations suggesting that a professional holds deep-seated discriminatory attitudes towards Muslims that could directly and negatively impact the care they provide to Muslims in their care. We would be likely to apply for an interim suspension order in these circumstances.

### Multiple incidents

Although a single incident of discrimination may require consideration of an interim order, repeated incidents may be a strong indication of deep-seated discriminatory attitudes and a real risk of repetition, and therefore strengthen the case for an interim order.

## Interim Orders and not having the necessary knowledge of English

In addition to the guiding principles above, this section provides supplementary guidance in relation to interim orders where there is a concern linked to the professional not having the necessary knowledge of English.

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 people receiving care, which is related to the alleged lack of knowledge of English.
- The results of any language assessment taken by the nurse, midwife or nursing associate, and
- any refusal or persistent failure to undergo an assessment.

If they have decided that an interim order is required, panels should always assess whether workable and proportionate conditions can be applied to deal with the risks presented by the nurse, midwife or nursing associate's knowledge of English.

In doing this, the panel should bear in mind our power to direct the nurse, midwife or nursing associate to take a language test and provide us with the results by a specific date<sup>9</sup>.

Panels considering Interim Orders for cases where English Language is a concern may find our guidance "[not having the necessary knowledge of English](#)" to be helpful.

## Freedom of expression and Interim Orders

There are some very specific considerations which will apply if an interim order has the effect of restricting freedom of expression directly or indirectly. These considerations therefore apply to both interim conditions or interim suspension.

If a panel is considering imposing an interim order which might impact a nurse, midwife or nursing associate's freedom to express themselves they must first need to be satisfied that at a full hearing the NMC is likely to succeed in establishing that a finding of impairment should be made for expressing the views that the interim order is seeking to restrict.<sup>10</sup>

So, what is meant by "likely to succeed"? This depends on the circumstances of the individual case, but a panel should be to make an interim order if we have not satisfied them that it is "more likely than not" that the NMC will succeed. However, there may be some cases where it is appropriate for the panel to

depart from this general approach and consider a lesser degree of likelihood. For example, this could be the right approach to take in circumstances where the potential adverse consequences of the person continuing to express the views are particularly grave.<sup>11</sup>

How will an NMC panel approach this part of an interim order application in practice? The panel will focus on what information they have before them at the time of the Interim Order application and consider what is the most likely outcome based on what they know at that point. They are not being asked to speculate on what might happen in the future on matters which are not before them. For example, if the NMC doesn't have any evidence to indicate that the professional has taken steps to strengthen their practice then the panel is not being asked to consider how likely it is they will do so before a substantive hearing.

They will in practice be asking themselves "If I was hearing the case today what would be the likely outcome, on the basis of what I know now?" This would involve them considering the following:

- (1) "Is it likely that the NMC would succeed in establishing the facts of the case in respect of the allegations relating to freedom of expression?" and if so then;
- (2) "Is it likely that the NMC would succeed in establishing that those facts amount to misconduct?" and if so then;
- (3) "On the basis of what I know today would I be likely to find the professional's fitness to practise impaired?"

These are the requirements we must satisfy when we are applying for an interim order that has the effect of restricting freedom of expression in order to comply with section 12(3) of the Human Rights Act 1998. We have separate guidance on freedom of expression which can be found [here](#).

As with any other interim order decision, the panel must, in addition to these matters, indicate on what grounds they are putting the interim order in place (i.e. it is necessary to protect the public, is otherwise in the public interest, or is in the nurse, midwife or nursing associate's own interests).

If the NMC is applying for interim conditions some of which restrict freedom of expression, and some of which do not (for example a requirement to undergo further training or supervision) the additional requirements of section 12(3) of the Human Rights Act 1998 will only apply to those proposed interim conditions that restrict freedom of expression.

If a panel is considering an interim order application where s.12 of the Human Rights Act 1998 is engaged, then they must also be alive to the specific notice provisions of the Act if the person is neither present nor represented at the interim order hearing. These provisions can be found at s.12(2) of the Human Rights Act 1998.

### Interim orders and incorrect or fraudulent entry allegations ("IEFE" allegations)

In cases of concerns about the legitimacy of the nurse, midwife or nursing associate's entry in the register, the Investigating Committee can make an interim order while the concerns are being resolved. In addition to the guiding principles above, this section provides supplementary guidance in relation to IEFE allegations.

One of the specific considerations for a panel deciding on whether to make an interim order for an IEFE allegation is the public interest in maintaining the integrity of the register.

If they consider that there would be serious damage to the public interest in maintaining the integrity of the register, by allowing the person to continue to practise without restriction, the panel will need to identify the specific risk in that particular case. Court decisions<sup>12</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.

If they decide an interim order is required, the Investigating Committee can impose either:

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

The decision on which order is proportionate is likely to be dependent on the circumstances of the particular case.

If an individual has more than one entry on the register (e.g. they are 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 in relation to the entry of concern, may be appropriate.

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

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 See Shiekh, R (on the application of) v General Dental Council [2007] EWHC 2972 (Admin)

4 See NH v The General Medical Council [2016] EWHC 2348 (Admin), a case involving charges of false imprisonment and assault

5 See Fallon v Horseracing Regulatory Authority [2006] EWHC 2030 where Mr Justice Davis held that the regulatory body and the appeal board were right to proceed on the basis that the Crown Prosecution Service had concluded that there was sufficient substance in the matter to justify charges being brought. See also R (on the application of Walker) v GMC [2003] EWHC 2308 (Admin).

6 By its very nature, discrimination raises the possibility of differential treatment. The Professional Standards Authority's September 2022 report [Safer Care for All](#) highlighted the impact that discrimination can have on patient safety. In the PSA's 2023 report [Perspectives on discriminatory Behaviours in health and care](#), members of the general public and health service users themselves highlighted the risk of mental and physical harm due to discrimination.

7 Discriminatory slurs are insults based on protected characteristics or membership of a group

8 For example, see p.30 of the PSA's report [Safer Care for All](#)

9 Rule 6B(3B) of the Fitness to Practise Rules 2004

10 The root of these considerations is s.12 of the Human Rights Act 1998. See White v GMC [2021] EWHC 3286 (Admin) where the application of s.12 was specifically considered in the regulatory context of interim orders.

11 See Cream Holdings Ltd v Bannerjee [2004] UKHL 44 judgement of Lord Nicholls of Birkenhead at paragraphs 19-22 (and in particular para.22)

12 See Christou v Nursing and Midwifery Council [2016] EWHC 1947 (Admin)

## Applications for interim orders

Reference: INT-3 Last Updated: 25/03/2024

### In this guide

- [When will we apply for an interim order?](#)
- [Nurses, midwives or nursing associates already under conditions or suspension orders](#)
- [Arrangements for interim order hearings](#)
- [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, midwife or nursing associate'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, midwife or nursing associate'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, midwives or nursing associates already under conditions or suspension orders

When we receive a new referral for a nurse, midwife or nursing associate 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 risks we have identified 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, midwife or nursing associate 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.

### Arrangements for interim order hearings

We will normally list interim order hearings for a virtual hearing, but we will always consider requests from the nurse, midwife or nursing associate for the hearing to be held physically at a hearings centre. We'll expect such requests to be supported by clear reasons for the request. We'll be guided by the principle of fairness and will do what we can to ensure that people can engage effectively in the hearing. Before we hold a case virtually, we'll check to find out if participants have the right technology to participate effectively and are able to use it.

Where an application is made for a new Interim Order, this will often be on the grounds that there is an urgent

public protection risk. This means that it may be difficult to accommodate a request for a physical hearing, particularly if it is made close to the scheduled hearing time. As noted above, where the nurse, midwife or nursing associate has been prevented from participating in an Interim Order hearing, the panel should direct that the matter be listed for a [review hearing](#) within the next 14 days, to give the nurse, midwife or nursing associate a further opportunity to attend. The review hearing will reconsider the interim order in full.

### Notice

If we are asking a panel to consider imposing an interim order on a nurse, midwife or nursing associate's registration, we need to give the nurse, midwife or nursing associate 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, midwife or nursing associate 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, midwife or nursing associate a further opportunity to attend. The 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, midwife or nursing associate 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, midwife or nursing associate 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: 02/10/2023

### 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. This could include information that the nurse, midwife or nursing associate has breached the interim order. Nurses, midwives or nursing associates can request that a review should be held because new evidence is available.

We will normally list interim order review hearings for a virtual hearing, but we will always consider requests from the nurse, midwife or nursing associate for the hearing to be held physically at a hearings centre. We'll expect such requests to be supported by clear reasons for the request. We'll be guided by the principle of fairness and will do what we can to ensure that people can engage effectively in the hearing. Before we hold a case virtually, we'll check to find out if participants have the right technology to participate effectively and are able to use it.

### Interim orders at final hearings

If, at the end of their final hearing, a nurse, midwife or nursing associate 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, midwife or nursing associate 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, midwife or nursing associate. 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.

Generally, we apply for interim orders lasting for the maximum period of 18 months. This makes sure that the length of each order adequately covers a case until it reaches a conclusion. This minimises the need for applications to the High Court for interim order extensions. As noted above, if a change of circumstances occurs meaning that an interim order is no longer appropriate, the professional can always apply for an interim order review hearing and ask for the interim order to be lifted.

### 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, midwife or nursing associate 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, midwife or nursing associate who is already on an interim order, a panel will 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, midwife or nursing associate'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, midwife or nursing associate'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, midwife or nursing associate 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, midwife or nursing associate 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 Practise 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, midwife or nursing associate'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.