

# **General Dental Council**

## **GDC Fitness to Practise: Guidance for the Interim Orders Committee**

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## Guidance for the Interim Orders Committee

### Introduction and background

1. The General Dental Council (GDC) is the UK-wide statutory regulator of dental professionals. Its overarching objective is the protection of the public and, in pursuit of this, it aims:
  - (i) to protect, promote and maintain the health, safety and well-being of the public
  - (ii) to promote and maintain public confidence in the dental professions
  - (iii) to promote and maintain proper professional standards and conduct for members of those professions<sup>1</sup>.
2. One of the ways it pursues its objective is through the investigation of concerns which are raised about dental professionals' fitness to practise.
3. When a fitness to practise concern about a dental professional is raised, depending on the nature of the allegations, it may be necessary for the registrant's practice to be restricted for the purposes of public protection, where it is otherwise in the public interest, or where it is in the interests of the registrant concerned<sup>2</sup> while the investigation is underway. In these instances, a referral to the Interim Orders Committee (IOC) will be made.
4. The aim of this Guidance is to promote consistency of approach, transparency and proportionality in decision making by the IOC, when it is considering a matter referred to it. It does not seek to fetter the IOC's discretion.
5. A registrant's case can be referred to the IOC in accordance with the Dentists Act 1984 (the Act) and the General Dental Council (Fitness to Practise) Rules 2006 (the Rules) by:
  - (i) the Registrar<sup>3</sup>
  - (ii) the case examiners<sup>4</sup>
  - (iii) a practice committee<sup>5</sup>.
6. The Rules govern the procedure of the IOC and are referred to throughout this Guidance. This Guidance is periodically revised, and the current version is published on the [Interim Orders Committee page of the GDC's website](#). It should be read in conjunction with the IOC Conditions Bank, provided as an appendix to this Guidance.
7. This Guidance is intended for use by the IOC. However, it may also be helpful to:
  - (i) registrants whose cases are referred to the IOC
  - (ii) legal representatives appearing before the IOC

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<sup>1</sup> Section 1(1ZA) and section 1(1ZB) of the Dentists Act 1984 (the Act).

<sup>2</sup> Section 32(4) of the Act.

<sup>3</sup> Section 27(5)(b) of the Act.

<sup>4</sup> Rule 5(4) of the Rules.

<sup>5</sup> Rule 26(1)(c) of the Rules.

- (iii) a practice committee, when considering whether to impose an interim order as an alternative to referring the matter to the IOC
  - (iv) legal advisers who advise the IOC and/or a practice committee.
8. Due to the role and nature of IOCs – as set out at paragraph [3] above – these hearings predominantly take place at an early stage of the investigation. IOCs conduct a risk assessment rather than a fact-finding exercise. Where its test is met<sup>6</sup>, the IOC can make an order to impose conditions on, or suspend, a registrant's registration for a period of up to 18 months<sup>7</sup>.

## Preliminary issues

### Notice of hearing and proceeding in absence

9. The IOC may impose an interim order only if the registrant has been given an opportunity to attend and to make representations on whether an order should be made.
10. However, the IOC may proceed in the absence of the registrant if it is satisfied that the registrant has been served with notice of the proceedings. The Rules specify that the notice must be sent to the registrant in such time in advance of the IOC hearing that 'may be reasonable in all the circumstances of the case'<sup>8</sup>. The Rules do not, however, require the GDC to prove that the notification was received or read, only that it has been served upon the registrant.
11. Given the nature of an IOC referral, in practice the GDC will aim to give registrants at least seven days' notice of the IOC hearing, but in cases of exceptional urgency, the notice period may be shorter.

### Postponements and adjournments

12. A central principle, well-established by legal precedent, is that any culture of adjournment is to be discouraged, recognising that – while the discretion on whether to grant a delay must be exercised fairly and should take account of all relevant factors – the efficient and expeditious running of fitness to practise hearings is of significant public interest<sup>9</sup>. Given the urgent nature of IOCs (see paragraphs [23] to [24] below), this public interest is even more significant.

#### Postponements

13. A postponement is a decision to delay the start of a hearing that has been formally listed i.e. the Notice of Hearing has been served on the registrant, but the hearing itself has not yet started. Applications for postponements can be made either by the registrant or the GDC, or the IOC can postpone the hearing of its own volition<sup>10</sup>.

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<sup>6</sup> Section 32(4) of the Act.

<sup>7</sup> Sections 32 (for dentists) and 36V (for dental care professionals) of the Act.

<sup>8</sup> Rule 35(2) of the Rules.

<sup>9</sup> [General Medical Council v Adeogba \[2016\] EWCA Civ 162](#).

<sup>10</sup> Rule 58(1) of the Rules.

14. An application for a postponement should be made in writing by the party requesting it and should be supported by good reasons, and evidence where possible.
15. The written application should be sent to the Dental Professionals Hearing Service which will forward it to the parties to proceedings and seek their representations. Both the written application and any responses will then be provided to the IOC for consideration. Such applications will then be considered as a preliminary issue by the IOC.
16. The postponement decision is at the discretion of the IOC. Such discretion must be exercised fairly, after taking account of any representations from the parties and any legal advice. The IOC's decision must be notified to all parties providing sufficient reasons explaining the rationale behind their decision<sup>11</sup>.
17. If a postponement is refused, the hearing will proceed as originally planned, unless the request is renewed at the hearing itself, and the application granted.
18. If a postponement is granted, a new date for the hearing will be set, which may be before a differently constituted panel of the IOC.

### **Adjournments**

19. Once a hearing has begun, the IOC may, at any stage during the proceedings, decide to adjourn those proceedings. Such a decision can be made following an application by the registrant, the GDC or on the IOC's own volition<sup>12</sup>.
20. If either party seeks an adjournment, they will need to explain why it should be granted. An application for adjournment must be supported by good reasons, and evidence where possible.
21. An adjournment should only be granted provided that no injustice is caused to the parties and the decision is made after hearing representations from the parties (where present) and taking advice from the Legal Adviser<sup>13</sup>. Such discretion must be exercised fairly. The IOC's decision must be notified to all parties providing sufficient reasons explaining the rationale behind its decision.

### **Considerations on whether to postpone/adjourn**

22. In deciding whether to grant a postponement or an adjournment, the IOC should first explore with the party making the application whether the issue can be resolved by a short adjournment (minutes or hours) within the current listing timeframe. If not, then the IOC should consider all relevant factors when deciding whether to grant a longer postponement or adjournment, including<sup>14</sup>:

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<sup>11</sup> [Dover District Council v CPRE Kent \[2017\] UKSC 79.](#)

<sup>12</sup> Rule 58(1) of the Rules.

<sup>13</sup> Rule 58(2) of the Rules.

<sup>14</sup> Rule 58(4) of the Rules.

- (i) The public interest in running fitness to practise hearings efficiently and expeditiously. There is a public interest in considering fitness to practise allegations swiftly, protecting the public and maintaining confidence in dental professionals and the GDC as a regulator.
- (ii) The potential inconvenience caused to a party. Postponing or adjourning a hearing may cause inconvenience to all parties who have made themselves available to attend on the original hearing date, and who may be unable to attend a hearing at a later date.
- (iii) Fairness to the registrant, taking into account the individual circumstances of their particular case.

**Additional considerations on whether to postpone/adjourn – of particular relevance to the urgent nature of IOC hearings**

23. An interim order hearing is an urgent measure. Unless there are good and compelling reasons, postponements or adjournments should not ordinarily be granted.
24. In considering a request for a postponement or adjournment, the IOC should balance fairness to the registrant with the potential risk arising out of the proposed postponement/adjournment. In addition to the considerations set out at paragraph [22] above, the IOC should have in mind and give such weight as is appropriate to factors which may be of importance in the context of interim order hearings, including:
- (i) Public protection and risk. The need to safeguard the public against ongoing or future risk should carry considerable weight when deciding whether to postpone or adjourn. Whilst each case must be considered on its merits, the overarching objective to protect the public, and the public interest requirement to hear an interim order case as soon as possible, are likely to be persuasive factors in support of proceeding with a hearing. This is particularly so where the risk to the public or the wider public interest is high (an initial view as to risk may take into account the nature of the allegations, how likely the risk is to occur going forward, and what the consequences would be if it did occur). The higher the degree of risk, the less likely it may be that a postponement or adjournment will be appropriate.
  - (ii) Additional time to prepare. Interim order hearings are arranged at short notice in order to provide immediate protection to the public or in the public interest. They are not fact-finding hearings but rather the IOC conducts a risk assessment based on the information available. Applications for a postponement or adjournment may be made on the basis that further notice should be provided or that further time should be allowed to prepare for a hearing. When considering a request for these reasons, the IOC should bear in mind that the Rules provide for such notification in advance ‘as is reasonable in the circumstances of the case’<sup>15</sup>. Seven days’ notice is considered to be a reasonable period of time in most instances, unless a case is particularly urgent, or complex (in which case, rarely, additional time may be needed for the registrant’s representatives to read into the case and take instructions). The IOC should also bear in mind action taken by the registrant since notice of the hearing was given, in obtaining representation or preparing for the hearing.

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<sup>15</sup> Rule 35(2) of the Rules.

- (iii) Further evidence. The role of an IOC is to carry out a risk assessment based on the information available to it so far. It is not to decide whether the allegations are true, or found proved, or to make any findings of fact. Unlike for a substantive hearing, a request to postpone or adjourn an interim order hearing so that further evidence can be obtained is unlikely to amount to a good reason for a delay – particularly where the request is related to testimonial evidence, which carries limited weight<sup>16</sup>. When considering a postponement or adjournment request for this reason, the IOC should take into account that in the event the hearing proceeds and an order is imposed, there is a safeguard in place which permits the registrant to apply for an early review hearing where new evidence has become available<sup>17</sup>.

### **Postponements/adjournments on the grounds of ill health**

25. Where an application for a postponement or adjournment is made on the ground that the registrant is unable to attend due to ill health, medical evidence must be presented to the IOC that the individual is unfit to participate in the hearing. That evidence should be from a medical practitioner with familiarity with the registrant's medical condition, must clearly demonstrate the individual's condition, and explain how and why that condition prevents their participation in the hearing<sup>18</sup>.
26. Where the medical evidence meets the criteria set out in paragraph [25], the decision on whether to proceed in the absence of the registrant is at the discretion of the IOC. This discretion must be exercised fairly, following consideration of the factors described in Paragraphs [22] and [24].

### **Postponements/adjournments on the grounds of seeking legal representation**

27. Registrants appearing before the IOC have the right to a fair hearing which includes representation where appropriate. The Rules<sup>19</sup> provide that any party may be represented before a committee by counsel or a solicitor. However, a registrant does not have an unfettered right to insist on instructing a legal representative, regardless of the consequences for the public interest and the other parties involved<sup>20</sup>.
28. Where an application for a postponement or adjournment is made at the outset of the hearing on the ground that the registrant wishes to obtain legal representation in the first instance (or new representation) to assist them at the hearing, the considerations to which the IOC must have regard, remain those set out at paragraphs [22] to [24] above.
29. If the IOC decides to refuse such an application at the outset of a hearing, it is open to it to keep that decision under review throughout the proceedings if it subsequently considers that a registrant cannot properly put forward their case, or properly represent themselves without further assistance from a legal representative. In those circumstances, fairness to

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<sup>16</sup> The limited weight of testimonial evidence is discussed in detail at paragraphs [99] to [102].

<sup>17</sup> Section 32(5)(b) and 36V(5)(b) of the Act.

<sup>18</sup> [Levy v Ellis-Carr & Ors \[2012\] EWHC 63 \(Ch\)](#).

<sup>19</sup> Rule 52 of the Rules.

<sup>20</sup> [Hussain v General Pharmaceutical Council \[2016\] EWHC 656 \(Admin\)](#).

the registrant may require a short adjournment to be granted to enable the registrant to seek legal representation.

### **Joint IOC hearings**

30. There is no specific provision in the Rules which allows for a joint IOC hearing to take place where the concerns relate to more than one registrant. However, the courts have held that the Rules are constructed with the intention of providing a framework for the fair, economical, expeditious and efficient handling of allegations<sup>21</sup>.
31. As a result, there may be circumstances in which a joint hearing relating to two or more registrants is considered to be in the public interest and is convened by the GDC. This is most likely to occur where the issues relating to the registrants concerned are similar. For example, they relate to management issues surrounding a practice which is jointly run by the registrants concerned or where there is alleged to be joint misconduct.
32. In those circumstances, the GDC may make one set of submissions covering both cases and/or may make separate submissions highlighting any particular or separate concerns about each registrant.
33. The IOC should, however, have in mind considerations of fairness to the registrants concerned. It should consider each case on its individual merits and should give a separate determination for each case.

### **Registrants with existing restrictions on registration**

#### **Registrants with existing restrictions**

34. The IOC may exercise its functions only in relation to a person whose case has been referred to the IOC by the Registrar, the case examiners, or a practice committee. Because there are different routes of referral, and because it is possible that one registrant will have multiple separate fitness to practise investigations at different stages of the GDC's processes, the IOC may, on occasion, be asked to consider imposing an interim order where a registrant has an existing interim or substantive order of conditions or suspension.
35. In relation to new matters referred to it, the IOC should consider whether one or more of the statutory grounds for the imposition of an interim order has been met. In doing so, they must take account of the evidence available in that case, as well as the degree to which the risk to the public, the public interest, or the registrant's own interests, is mitigated by the existing restrictions.

#### **Existing substantive order of conditions**

36. Where there is an existing substantive order of conditions, the IOC's assessment of risk should include an analysis of:

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<sup>21</sup> [Zia v General Medical Council \[2011\] EWCA Civ 743](#)

- (i) the new concerns, and the risk occasioned to the public, the public interest, and the registrant's own interests
  - (ii) what the existing restrictions are (including which areas of the registrant's practice are currently restricted) and why they were imposed
  - (iii) the term of those restrictions (i.e. the period until the next practice committee review)
  - (iv) the time period to which the new concerns relate, i.e. have the new concerns arisen when the registrant's practice was already restricted?
37. If the new concerns predate the imposition of the substantive conditions, then the IOC should consider whether any risks identified are wholly mitigated by the substantive order. If so, it may not be necessary for the protection of the public, otherwise in the public interest, or in the interests of the registrant for a further interim order to be imposed.
38. However, the IOC should bear in mind that any substantive restrictions upon registration will in due course be reviewed by a practice committee whose primary focus will be determining whether the registrant's fitness to practise remains impaired on the ground(s) previously identified. Although the reviewing practice committee may be made aware of the existence of new concerns about the registrant's fitness to practise, those new concerns are – bearing in mind their unproven nature - unlikely to play a significant role in the practice committee's decision making on impairment or sanction.
39. In such cases, the IOC should consider the remaining term of the substantive order and whether it is possible that, following review, any substantive restrictions will fall away during the lifetime of the new case, leaving an unmitigated risk until a further referral to the IOC can be made. In those circumstances, the IOC may, if its test is met, consider it appropriate to impose an interim order to run in parallel with the substantive conditions to avoid any gap in the protection afforded to the public, the public interest, or the registrant's own interests<sup>22</sup>.
40. If, on the other hand, the concerns have arisen during the term of the existing substantive conditions, or they relate to different or wider concerns, then those existing restrictions may be insufficient. In those circumstances, where the IOC considers that the test for imposing an interim order is met, it should first consider whether to impose more wide-ranging or more stringent conditions in order to address the risks identified. If, however, it determines that conditions are not suitable or workable, then it should go on to consider whether to impose an order of interim suspension.

### **Existing substantive order of suspension**

41. Where the registrant is subject to an existing substantive order of suspension, then the issue of current or future risk should be considered carefully by the IOC.
42. As with existing substantive conditions, the IOC should bear in mind that a substantive order of suspension with review will, in due course, be reviewed by a practice committee whose primary focus will be determining whether the registrant's fitness to practise remains impaired on the ground(s) previously identified. Although the reviewing practice committee may be made aware of the existence of new concerns about the registrant's fitness to

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<sup>22</sup> The Act provides the IOC with discretion to make parallel interim orders.



practise, those new concerns are – bearing in mind their unproven nature – unlikely to play a significant role in the practice committee’s decision making on impairment or sanction.

43. As a result, it is possible that a substantive suspension will fall away during the lifetime of the new case, leaving an unmitigated risk until a further referral to the IOC can be made. In those circumstances, the IOC may, if its test is met, consider it appropriate to impose an interim order to run in parallel with the substantive suspension to avoid any gap.

#### **Existing interim order**

44. Where a registrant has an existing interim order of conditions or suspension, and a further IOC referral is made relating to a separate case, there are two possible approaches:
- (i) To consider whether to make one order covering both the existing concerns and the new referral.
  - (ii) For a further/parallel interim order to be made, covering the new referral alone.
45. In order for option [43](i) to be available to the IOC, an early review of the existing order must be convened on the basis that there may be new evidence relevant to the existing order (that new evidence being the new concerns) and the notification of hearing sent accordingly<sup>23</sup>. If it has not been, the IOC may consider adjourning in order for the matter to be relisted so that both matters may be considered together. However, in making that assessment the IOC should consider whether the benefit of making one order covering both the existing concerns and the new referral, is outweighed by the risk created in delaying its consideration of the matter.
46. Option [43](i) may be appropriate where the concerns about the registrant have a common nexus (for example, the registrant’s health) or where there is a possibility that the new concerns may ultimately be joined to the existing concerns and considered at the same substantive hearing. In those circumstances, the IOC should conduct a holistic risk assessment and should determine whether, based on the totality of the concerns before it, the test for imposing an interim order is met. If it is, then any order imposed will run for the remaining period of the existing order, to be extended in the High Court if required.
47. Alternatively, option [43](ii) may be considered where the existing concerns and the new referral are separated in time and/or are unrelated in subject matter. In those circumstances, the IOC should consider whether the new matter referred to it meets one or more of the statutory grounds for the imposition of an interim order, taking into account the evidence available in that case, as well as the degree to which the risk to the public, the public interest, or the registrant’s own interests, is mitigated by the existing restrictions.
48. As with cases where there is a substantive order in force, the IOC’s assessment of risk should include an analysis of:
- (i) the new concerns, and the risk occasioned to the public, the public interest, and the registrant’s own interests

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<sup>23</sup> Section 32(5)(b) of the Act.

- (ii) what the existing restrictions are (including which areas of the registrant's practice are currently restricted) and why they were imposed
- (iii) the term of those restrictions (i.e. the period until the next IOC review)
- (iv) the time period to which the new concerns relate, i.e. have the new concerns arisen when the registrant's practice was already restricted.

49. Even where there is an interim order already in place that appears to address the risks identified by the IOC, the IOC should bear in mind that that order will have been imposed in relation to a separate case, and therefore may fall away if the risk assessment for that case changes or the case is closed. In those circumstances the IOC may, if its test is met, consider it appropriate to impose a further interim order to run in parallel with the existing interim order, to avoid any gap should the existing interim order lapse.

## IOC hearing proceedings

### Hearing in public

50. In principle, IOC hearings are held in public, although the IOC has discretion to allow a hearing to proceed in private in certain circumstances, which include:<sup>24</sup>
- (i) Where it is necessary to protect the interests of the parties, or the private and family life of the registrant (for example, where the registrant's health is concerned) or any other person (for example, where the allegation relates to sexual misconduct and holding the hearing in public might lead to identification of the alleged victim).
  - (ii) Where the IOC is of the opinion that publicity would prejudice the interests of justice.
51. The IOC should, in private session, invite representations from the registrant and the GDC and take advice from the legal adviser before making a decision to hear a case in private.
52. Even where all or part of the hearing is held in private, the IOC should still ensure that its decisions are recorded and that reasons are given. A shortened determination is read out in public when any part of the hearing is held in private.

### Mode of hearing

53. IOC hearings are predominantly held remotely using video conferencing facilities.
54. IOC review hearings are routinely conducted 'on the papers' unless an oral hearing is requested by either party.

### Test to be applied and approach

55. As a statutory committee of the GDC, the IOC has a duty to act in accordance with the overarching objective, the protection of the public<sup>25</sup>, when exercising its functions. The pursuit of the overarching objective includes:

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<sup>24</sup> Rule 53 of the Rules.

<sup>25</sup> Section 1(1ZA) of the Act

- (i) Protecting, promoting and maintaining the health, safety and wellbeing of the public.
- (ii) Promoting and maintaining public confidence in the dental professions.
- (iii) Promoting and maintaining proper professional standards and conduct for the dental professions<sup>26</sup>.

56. The IOC can impose an interim order where it is:

- (i) necessary for the protection of the public
- (ii) is otherwise in the public interest
- (iii) is in the interests of the person concerned<sup>27</sup>.

57. An interim order may be made for a period of up to 18 months.

58. The need for a referral to the IOC may arise at any time during an investigation. For example this could be upon receipt of a concern, upon notification of criminal proceedings or criminal conviction, upon receipt of a witness statement or an expert report, or when the matter is considered by the case examiners.

59. The IOC conducts an assessment of the risks to the public, public interest, and/or the registrant's own interests, if the registrant were able to continue to practise on an unrestricted basis until the matter is determined by a practice committee. The IOC may make an order when a decision has not yet been made that there is a case to answer<sup>28</sup>. It is the current risk that is important, and risk should be considered at the time of making or reviewing an order. However, the IOC should exercise caution before attaching weight to any offer by the registrant to provide voluntary undertakings as, unlike an interim order, these cannot be monitored or enforced by the GDC.

60. In conducting a risk assessment, the IOC should not engage in fact finding or resolve conflicts of evidence. As the IOC will often be considering a matter at an early stage of the investigation, it may only have limited information available. This will include circumstances where allegations of criminal conduct have been referred to the police, and the GDC is not able to obtain further information due to the risk of prejudicing the ongoing criminal investigation.

61. The IOC should conduct a risk assessment on the basis of the information before it and should weigh the cogency and credibility of that information.

62. The registrant's previous or current fitness to practise history with the GDC may also be a relevant factor for the IOC to take into account when conducting its risk assessment.

### **Grounds for imposing an order: necessary for the protection of the public**

63. The IOC must be satisfied on all the available information before it that an order is necessary for the protection of the public. That is to say that there is a real risk of harm to

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<sup>26</sup> Section 1(1ZB) of the Act

<sup>27</sup> Section 32(4) of the Act.

<sup>28</sup> [Perry v Nursing and Midwifery Council \[2013\] EWCA Civ 145](#).

the health, safety or wellbeing of a patient, visitor, colleague or other member of the public if the registrant is allowed to practise without restriction.

64. In assessing the risk to members of the public, the IOC will consider the seriousness of the matter, the cogency and weight of the evidence, including evidence about the likelihood of repetition should the registrant continue to hold unrestricted registration while the matter is investigated.
65. An interim order is an urgent measure. A referral should be made promptly after the receipt of information that a registrant may pose immediate risk. The IOC should, however, recognise that such information may be received at the time the GDC became aware of a concern or at any time thereafter. A delay without good reason could reduce the likelihood of the order being made. The longer it takes a regulator to make an application for an interim order (without good reason) from the receipt of information that suggests a registrant may pose an immediate risk to the public, the less likely it will be that an order based on the need to protect the public will be made<sup>29</sup>.
66. Categories of cases where it may be necessary for the protection of the public to impose an interim order include:
  - (i) Clinical cases.
  - (ii) Where there are concerns that the registrant does not have appropriate indemnity cover.
  - (iii) Where the registrant is not cooperating with the GDC's investigation.
  - (iv) Where there are concerns that the registrant has acted outside their scope of practice.
  - (v) Where there are concerns about the registrant's personal conduct including sexual misconduct, sexual harassment, or violence.
  - (vi) Where the registrant is unwell and that poses a risk in and of itself, or where the registrant is not following medical advice and so the risk is not appropriately mitigated.

### **Clinical cases**

67. Clinical concerns which may cross the threshold for IOC consideration include:
  - (i) Allegations of deficiencies in the standard of care provided to patients, particularly where there is said to have been a lack of basic clinical knowledge or skills (which may include evidence of failings in basic and fundamental aspects of dentistry), and/or that the registrant is alleged to have provided treatment which they were not competent to provide.
  - (ii) Allegations of other aspects of care which are said to have caused risk to patients or colleagues, including failure to wear appropriate personal protective equipment, or failure to otherwise take adequate precautions in respect of cross-infection control.
  - (iii) Where restrictions (suspension or conditions) have been imposed by the NHS or by national care services regulators, Care Quality Commission (England), Health

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<sup>29</sup> [Bradshaw v General Social Care Council \[2010\] UKFTT 3 \(HESC\)](#).

Inspectorate Wales, Care Inspectorate/Healthcare Inspectorate Scotland, and Regulation and Quality Improvement Authority (Northern Ireland), and there is a need to consider whether those restrictions should be replicated to protect patients or colleagues in other settings.

68. In those circumstances, the IOC should consider the current risk, which will include an assessment of whether the allegations are current or historic, and whether there is evidence to suggest that the conduct will be repeated.

### **Indemnity**

69. All dental professionals must, by law, be covered by an indemnity arrangement which provides appropriate cover. That is so any patient who suffers harm can recover any money they might be entitled to through compensation, in the event of a successful claim.
70. Where a registrant does not hold appropriate indemnity cover, it creates a risk of financial harm to patients, who may not be able to claim any compensation to which they may be entitled, should there be issues with their treatment. As a result, such cases may be referred to the IOC for consideration.
71. When considering a case involving an alleged lack of indemnity cover, the IOC should assess the current risk by considering factors including:
- (i) Whether there is evidence that the registrant has indemnity providing cover to current patients and to those who have had past treatment (so that a patient can seek compensation if they suffer harm).
  - (ii) If there are periods where a registrant has allegedly practised without cover, what the reasons were for that. The risk of repetition is likely to be lower in circumstances where the lack of cover was inadvertent than where it was deliberate.
  - (iii) Whether there are any associated alleged probity concerns, such as misleading or dishonest behaviour towards patients or the GDC (for example, where an inaccurate disclosure about indemnity status was made at the point of renewal of registration) which, again, may raise the risk of repetition.
  - (iv) If there are any allied alleged scope of practice issues (see below) or other clinical concerns.
  - (v) Any relevant fitness to practise history.

### **Non-cooperation**

72. The GDC's [Standards for the Dental Team](#) ("the Standards") require registrants to cooperate with any relevant formal or informal inquiry and give full and truthful information. Further, the Standards require that if a registrant receives a letter from the GDC in connection with concerns about their fitness to practise, they must respond fully within the time specified in the letter.
73. Failure by a registrant to cooperate with a GDC investigation is likely to have the effect of depriving the GDC of the opportunity to investigate the underlying concerns about the registrant's fitness to practise. For example, it may mean the GDC is unable to investigate:

- (i) where the allegations concern the registrant's health (or have the potential to concern the registrant's health, if they relate to a drug or alcohol related conviction or caution), if there is an underlying health issue which might impair the registrant's fitness to practise
- (ii) whether the registrant has appropriate indemnity cover
- (iii) whether there are any other concerns about the registrant's conduct, performance or health which might be raised by employer enquiries
- (iv) where the case relates to clinical treatment, whether the standard of care provided to the patient(s) concerned was at, below, or far below the standard to be expected.

74. As a result, failure to cooperate with a GDC investigation may itself be a risk to the public. However, again, the IOC should assess the current risk. That risk may be mitigated if the registrant is, by the time of the IOC hearing, cooperating with the GDC.

#### **Conduct concerns including sexual misconduct, harassment or violence**

75. Sexual misconduct encompasses a wide range of conduct, from criminal convictions for sexual offences (sexual assault, child sexual abuse including possession or distribution of images of child sexual abuse, physical contact, or online contact) to sexual misconduct with patients or colleagues.

76. In assessing the current risk to the public (patients, colleagues, or visitors), the IOC should consider whether the allegations are recent or historic. The IOC should also consider whether there are any aggravating factors relating to the specific allegation, including, but not limited to, whether:

- (i) there is alleged to have been abuse of a position of trust
- (ii) the registrant is alleged to have otherwise used their professional position to pursue a sexual or improper emotional relationship with a vulnerable patient
- (iii) the alleged victim was under 18 years of age at the time
- (iv) there was an imbalance of power between the registrant and the alleged victim by reason of their respective professional positions, age, and/or physical stature<sup>30</sup>
- (v) the alleged incident was premeditated, calculated, or deliberate
- (vi) the alleged incident took place in circumstances where the victim was isolated
- (vii) there was an impact upon the alleged victim's physical or emotional wellbeing either immediately after the alleged incident or subsequently
- (viii) the alleged incident was part of a course of conduct
- (ix) the alleged incident involved physical contact or exposure.

77. The IOC should also consider, in assessing the risk of repetition, whether the registrant has any similar history either with the GDC, or at the practice or NHS trust level at the registrant's place of work, or otherwise.

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<sup>30</sup> [Professional Standards Authority for Health and Social Care v General Medical Council & Anor \[2021\] EWHC 588 \(Admin\).](#)

78. In terms of risk, even if the likelihood of repetition is perceived to be low, the impact of repetition may be high and the overall risk to the public may reasonably be judged to be high, such that an order is necessary for the protection of the public.
79. In addition to these public protection considerations, and as reflected in paragraph [88] below, sexual misconduct by dental professionals has the potential to seriously undermine public confidence in the dental professions. As a result, cases relating to sexual misconduct are inherently serious<sup>31</sup> and, therefore, the need to promote and maintain public confidence, and to promote and maintain proper professional standards and conduct, may require an interim order to be imposed, even where the risk of repetition is considered to be low.

### Scope of practice

80. The Standards state that dental professionals must work within their knowledge, skills, professional competence and abilities. This principle is reiterated in the GDC's [Scope of Practice Guidance](#) which, establishing the boundaries within which each title must work, states that dental professionals must only carry out a task or a type of treatment if they are appropriately trained, competent and indemnified.
81. Undertaking work outside scope of practice is a fundamental breach of a registrant's regulatory responsibilities, puts patients at risk, and may undermine public confidence in the professions. The issue for the IOC is whether the risk to the public and wider public interest is a current risk.
82. In assessing current risk, the IOC should consider whether:
- (i) the registrant's alleged actions are said to have resulted in actual or potential patient harm
  - (ii) the allegations are current or historic
  - (iii) the registrant's alleged actions were accidental or inadvertent, or a deliberate breach
  - (iv) the alleged incident was isolated, or took place on more than one occasion
  - (v) there is other evidence to suggest that the alleged conduct will be repeated, which may include an assessment of any relevant fitness to practise history.

### Health concerns

83. Where there are health concerns, the IOC should consider whether these present a risk to the public. In that regard, the IOC may be guided by any health assessment report which is available, and which may comment upon whether the registrant is fit to practise unrestricted. Otherwise, factors which may point towards an interim order being imposed on public protection grounds include:
- (i) Where it is alleged that the registrant has attended their practice unfit for work, through alcohol, drugs or otherwise.

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<sup>31</sup> [Arunachalam v The General Medical Council \[2018\] EWHC 758 \(Admin\)](#).

- (ii) Where it is alleged that the registrant is not following medical advice which impacts their ability to practise safely.

## Grounds for imposing an order: otherwise in the public interest

### Public interest

84. As well as protection of the public, the public interest includes:

- (i) Promoting and maintaining public confidence in the dental professions.
- (ii) Promoting and maintaining proper professional standards and conduct for members of the dental professions<sup>32</sup>.

85. In practice, there may be some overlap between cases in which an interim order is necessary for the protection of the public, and where an interim order may also be otherwise in the public interest.

86. However, there will also be cases where an interim order solely on the basis of the public interest is sought in order to maintain public confidence in the dental professions and uphold proper professional standards, pending the final outcome of fitness to practise proceedings.

87. In deciding whether to impose an interim order, the IOC will consider whether serious damage will be caused to public confidence in the dental professions and the maintenance of good standards if an order is not imposed, and whether an informed member of the public looking on would be shocked or troubled, if the IOC did not make an order in respect of a matter that was later found proved.

88. Concerns which have the potential to damage public confidence in the dental professions include allegations of:

- (i) serious and/or persistent dishonesty
- (ii) sexual assault (see also paragraph [79] above)
- (iii) harassment on the grounds of any protected characteristic
- (iv) discriminatory behaviour on the grounds of any protected characteristic
- (v) serious cross-infection control breaches
- (vi) scope of practice concerns, particularly where the alleged breaches are deliberate and/or persistent
- (vii) failure to hold appropriate indemnity cover
- (viii) financial or other exploitation of elderly and/or vulnerable patients.

89. It will be a relatively rare case where an interim suspension order is made solely on the basis of the public interest. Although the Act does not use the word 'necessary' for this ground, it does at least carry some implication of necessity and desirability<sup>33</sup>.

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<sup>32</sup> Section 1(ZA) and 1(ZB) of the Act.

<sup>33</sup> [Shiekh v General Dental Council \[2007\] EWHC 2972 \(Admin\)](#).



### **Criminal proceedings**

90. In any case where there are ongoing criminal proceedings, the IOC should consider the seriousness of the underlying offence as well as whether, in the event that the registrant is later convicted, it will damage public confidence that they have been able to continue working unrestricted in the meantime.
91. Cases where there is likely to be serious damage to public confidence should the registrant ultimately be convicted include allegations of:
- (i) child sexual abuse (including, but not limited to, possession or distribution of images of child sexual abuse, physical contact, or online contact)
  - (ii) rape or sexual assault
  - (iii) serious violence
  - (iv) serious dishonesty or other fraud (particularly on patients or the public purse).
92. The IOC may also wish to take into account, when considering the public interest, whether there is any history of similar allegations, or allied probity concerns, for example a failure to be open and honest with an employer, the NHS or the GDC, about the criminal matters.
93. When considering a case where the registrant has been convicted and is still subject to a criminal sentence (including a suspended sentence of imprisonment, or a community penalty), the IOC should take account of the principle referenced in the case of *Fleischmann*, that as a general principle, where a registrant has been convicted of a serious criminal offence, or offences, they should not be permitted to resume practice until they have satisfactorily completed that sentence. Only circumstances which plainly justify a different course should permit otherwise (for example, time allowed by the court for payment of a fine, or disqualification from driving)<sup>34</sup>.
94. Such cases are therefore likely to require an interim order which runs alongside the criminal penalty. Where the IOC determines that an alternative course of action is appropriate, it must give clear reasons for that decision.
95. However, case law has also made clear that notification requirements (such as those set out in sections 80 - 103 of the Sexual Offences Act 2003) may be distinguished from a court-imposed sentence<sup>35</sup>. As such, notification requirements may not - without other reasons - warrant interim restrictions on practice.

### **Grounds for imposing an order: registrant's own interests**

96. This ground may apply where the registrant is ill and does not recognise it, or there are other factors suggesting a lack of insight, where the registrant needs to be protected from themselves.
97. This may include where the registrant is suffering from drug or alcohol related issues, or has mental health issues which are particularly severe (for example, where the registrant

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<sup>34</sup> [CHRP v \(1\) GDC and \(2\) Fleischmann \[2005\] EWHC 87 \(Admin\)](#).

<sup>35</sup> *Obukofe v The General Medical Council* [2014] EWHC 408 (Admin)

has been admitted as an in-patient for psychiatric treatment), and/or there is evidence to suggest that the registrant is not complying with medical advice.

98. The IOC should look at the risk of harm in the future if there is no restriction on registration.

### **Assessment of risk: testimonial evidence**

99. The IOC may be asked to consider testimonial evidence from colleagues, and others, regarding the registrant's character and/or clinical competence.

100. However, the IOC is conducting a risk assessment. The fact that a registrant has on many occasions been a competent practitioner and has made a good impression on colleagues and patients, is not inconsistent with the same registrant having performed below a level of competence on other occasions<sup>36</sup>, and is not determinative of the question of current risk to the public.

101. Equally, the fact that a registrant's personal behaviour has made a good impression on many occasions, is not inconsistent with the personal behaviour of the same registrant having fallen below acceptable standards on other occasions, and is not determinative of the question of current risk to the public.

102. As a result, testimonial evidence is likely to be of limited weight in respect of the risk assessment to be conducted by the IOC.

### **Proportionality**

103. As set out above, the IOC should first consider whether an order is:

- (i) necessary for the protection of the public
- (ii) is otherwise in the public interest
- (iii) is in the interests of the registrant concerned.

104. Once one or more of the statutory grounds for the imposition of an interim order has been met, the IOC must carefully consider the proportionality of its response. The IOC must balance the need to protect the public and the wider public interest against the registrant's own interests, including the impact of any order on the registrant both professionally and financially<sup>37</sup>. The IOC should therefore impose the minimum restriction necessary and take appropriate steps to address the concerns identified.

105. As such, the IOC should first consider whether to impose interim conditions of practice on the registrant's registration. If it considers that interim conditions of practice are inappropriate, the IOC must consider whether to impose an interim suspension order.

106. An interim order for conditions of practice can only be appropriate when there is reasonable confidence in the registrant's ability to comply with them. That judgement may be related to circumstances and practicalities which prevent the registrant from complying with interim

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<sup>36</sup> [Kumar v General Medical Council \[2013\] EWHC 452 \(Admin\)](#).

<sup>37</sup> [Houshian v General Medical Council \[2012\] EWHC 3458 \(QB\)](#).

conditions, or where there is evidence of previous issues with compliance on the part of the registrant.

107. If the IOC cannot be reasonably confident in the registrant's ability to comply with conditions, it must consider whether to impose an interim suspension order.
108. When imposing interim conditions of practice, the IOC will have regard to the 'IOC Conditions Bank 18 December 2023'. In general terms however, interim conditions of practice should be:
- (i) effective at mitigating the identified risk(s)
  - (ii) workable
  - (iii) enforceable
  - (iv) clear
  - (v) relevant
  - (vi) addressed to the registrant (not to third parties)
  - (vii) proportionate to the issues identified
  - (viii) formulated so that the interim conditions are not in effect an interim suspension
  - (ix) written in such a way that compliance can be monitored.
109. The purpose of imposing interim conditions of practice is to ensure that the public is protected, pending final determination of a matter. It is not to impose conditions for the purpose of remediation.
110. If, however, conditions are not suitable or workable, an order of interim suspension may be imposed. Furthermore, in certain circumstances, the allegations may be so serious that conditions are insufficient to protect the public and/or the wider public interest. Again, in those circumstances, an interim suspension order may be the appropriate response.

## Period of order

111. Where the IOC imposes an interim order, it must specify the length of the order and give reasons for the period of time imposed. The maximum period for which an initial order may be imposed is 18 months. However, 18 months is not the default position, and the question of proportionality also arises in respect of the term of the order<sup>38</sup>.
112. In considering the period for which an order should be imposed the IOC should consider the time that is likely to be needed before the matter is resolved (for example, the time needed to complete the fitness to practise investigation and for the case to be listed for hearing by a practice committee).
113. Where the initial term of the interim order is approaching expiry, in order for the restrictions to continue, the GDC will need to apply to the relevant court to seek an extension to the order<sup>39</sup>.

<sup>38</sup> [Harry v GMC \[2012\] EWHC 2762 \(Admin\)](#).

<sup>39</sup> Section 32(8) and 32(9) of the Act. On each application, the Court (the Court of Session where the registrant's registered address is in Scotland, the High Court in Northern Ireland where the registrant's address is in Northern Ireland, or for any other person, the High Court in England and Wales) may extend - or further extend - for up to twelve months the period for which the order has effect.

## Reasons for decisions

114. When it announces its decision, the IOC is required to give reasons for that decision, including a decision not to impose an order<sup>40</sup>.
115. While the courts do not expect an IOC to give detailed reasons, the reasons given must be clear and explain how any decision was reached, including identifying the interest(s) for which the order is considered necessary, so it is clear that the proper test has been applied on the basis of the information before the IOC.
116. Although IOC decisions should be concise, they ought to include the following details, with specific reference to the particular facts of each individual case:
- (i) The risk to patients so as to demonstrate the proportionality of any action taken.
  - (ii) The risk to public confidence in the dental professions if the registrant was able to continue working without any restriction on their registration, and the matter is later proved, to demonstrate the proportionality of any interim action taken.
  - (iii) Where an order is made primarily because it is desirable in the public interest to uphold public confidence and there are no public protection concerns, specific reasons should be given for why this is appropriate.
  - (iv) Reasons for the period of time for which an interim order is imposed.
  - (v) Where no order is imposed, the reasons for this.

## Review and revocation

117. The IOC must review any order it makes within six months of it being made, and thereafter within six months of the previous review<sup>41</sup>. The IOC must also review an order at the registrant's request, if at least three months have elapsed since the previous review.
118. In addition, an order may be reviewed if new evidence relevant to the order has become available to the making of the order. From the registrant's perspective, that new evidence may include evidence that an order is no longer required, for example, where parallel regulatory restrictions imposed by another regulator or the NHS - and which were a primary factor in the interim order being imposed and/or continued - have been lifted.
119. The fact that a police investigation has now concluded with no further action being taken against the registrant is also a change of circumstance which may lead to an order being reviewed. However, the fact that criminal proceedings have been discontinued is not necessarily itself a reason for an interim order to be lifted if the GDC's investigation is ongoing.

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<sup>40</sup> Rule 36(d) of the Rules.

<sup>41</sup> In addition, Section 32(11)/36V(11) of the Act provides that where an order which has not yet been reviewed is extended by the court or replaced by the IOC, it must be reviewed within six months of the date of extension/replacement. If the order had previously been reviewed, a further review must take place within three months of that previous review.

120. From the GDC's perspective, that new evidence may include evidence that the order previously imposed is no longer suitable or workable, including where there has been a breach of conditions or further concerns have otherwise arisen during the term of the order.

121. Upon review the IOC may:

- (i) revoke the order
- (ii) add to, vary or revoke any conditions imposed by the order
- (iii) replace an interim suspension order with an order for interim conditional registration, or vice versa, to have effect for the remainder of the order<sup>42</sup>.

122. A review hearing may be conducted orally. In addition, a review may be conducted on the basis of the papers alone provided:

- (i) Both parties are in agreement that the IOC hearing may proceed in the absence of the parties and on the basis of written submissions.
- (ii) There is no material change in circumstances and both parties are in agreement that they are content for the current interim order to continue without any changes (e.g. provided no information has been received since the last IOC hearing which indicates that the order ought to be varied or changed from an Interim Suspension Order to an Interim Conditions of Practice Order, or vice versa).
- (iii) That, where an Interim Conditions of Practice Order has been imposed, the registrant has complied with the interim conditions of practice and where necessary, has demonstrated compliance (e.g. a supervisor's report should be provided by the registrant/on behalf of the registrant if one of the interim conditions requires that this is provided in advance of any IOC review hearing).
- (iv) The registrant/the registrant's representative confirms in writing that the registrant:
  - a) is not opposed to the continuation of the interim order and understands it is likely in the circumstances that the order will continue
  - b) will not be attending the review hearing
  - c) will not be represented at the review hearing
  - d) understands that the hearing will proceed in their absence
  - e) agrees to the IOC considering the continuation of the interim order 'on the papers' rather than at a hearing.

123. If those requirements are not met, then the order will instead be reviewed at an oral hearing.

124. At each review, the IOC should conduct a fresh risk assessment to determine whether the grounds for an order are now met. Where the grounds are no longer met, the order should be revoked.

125. In addition, the Act and Rules provide for revocation of an interim order in circumstances where:

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<sup>42</sup> Sections 32(6) and 36V(6) of the Act.

- (i) an interim order has been made in respect of an allegation or allegations which are then closed by the case examiners, either initially (including by way of undertakings) or upon review<sup>43</sup>
- (ii) an interim order has been made in respect of an allegation or allegations which are then the subject of a substantive determination by a practice committee<sup>44</sup>.

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<sup>43</sup> Rule 6(5) of the Rules (initial consideration), Rule 6A(3)(b) of the Rules (undertakings) and Rule 6E(3) of the Rules (review).

<sup>44</sup> Section 27B(9) of the Act.