

Interim orders:
guidance on the
application process
and committee
decision-making

July 2019

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1. Introduction

What this guidance is about

1.1. This guidance explains:

- what an interim order is
- how the GPhC makes an application for an interim order, and
- the role of the Fitness to Practise Committee in deciding interim order applications

1.2. The overall aim of this guidance is to promote consistency and transparency in decision making relating to interim orders.

Who this guidance is for

1.3. This guidance is intended to be used by the Fitness to Practise Committee (FtPC) to help with decision making. It is also intended to help give a broader understanding of the interim order process, and may be helpful to:

- pharmacy professionals who are subject to an interim order, or an application to make one
- the representatives of pharmacy professionals subject to an interim order, or under consideration for an interim order
- decision-makers and GPhC staff involved in interim order hearings, reviews and High Court extension applications

- patients and the public
- employers or others who may be impacted by an interim order

1.4. We will regularly review this guidance to take account of changes to legislation and case law and make sure it stays consistent with other relevant guidance documents.

Equality and diversity

1.5. The GPhC is committed to promoting equality, diversity and inclusion when it does its work. We value diversity and individuality in our staff, the profession and our Council. Our aim is to make sure that our processes are fair, objective, transparent and free from discrimination, and that all stakeholders receive a high level of service. We keep to the principles set out in the Equality Act 2010 and have developed an equality, diversity and inclusion scheme.

1.6. All GPhC staff are expected to demonstrate our values and to work towards these aims at all times during the fitness to practise process. The GPhC will act in accordance with the rights set out in the European Convention on Human Rights (ECHR) as incorporated into domestic law by the Human Rights Act 1998.



2. About the fitness to practise process

- 2.1. Our role is to protect the public and give them assurance that they will receive safe and effective care when using pharmacy services. We do this by making sure that pharmacy professionals are fit to practise by demonstrating the skills, knowledge, character and health needed to do their job safely and effectively. One of the ways we make sure that pharmacy professionals on the register are fit to practise is to investigate the concerns we receive about them.
- 2.2. The GPhC is committed to investigating concerns efficiently, effectively and proportionately. This means investigating concerns to make sure the right regulatory action is taken. The majority of concerns that we receive are closed during the initial inquiry and investigation stage of the fitness to practise process. Only the most serious cases are referred to either the investigating committee (IC) or the fitness to practise committee (FtPC).
- 2.3. Once we receive a concern, or if information comes to light during **the fitness to practise process**, we may need to make an application to the FtPC for an interim order (IO). This is an urgent action which can either suspend a pharmacy professional from practising or can restrict their practice in some way by putting in place conditions for a limited time.
- 2.4. The GPhC can apply for an IO at any stage of the fitness to practise process. Once an application is made the investigation will continue. **IO hearings are held by the FtPC** but are different to principal hearings . This means that the committee will not make any decision other than whether to make, confirm, vary, replace or revoke an interim order.

3. About interim orders

3.1. We will consider applying for an IO if we receive a concern that a pharmacy professional's behaviour, practice or health presents a serious, continuing, immediate and real risk to either themselves or the public. The IO can only be imposed by the FtPC. There are two different types of IOs which can be imposed depending on the nature of the concern.

Type of IO*	What does this mean?	How is it applied ¹ ?
Conditions	An 'interim conditions order' restricts a pharmacy professional's ability to practise.	If conditions apply to the pharmacy professional's registration, they are only able to practise as a pharmacy professional if they abide by the conditions set by the committee that made or varied the order. For instance, this could mean the pharmacy professional is only allowed to practise if they are supervised, or they may have to avoid particular tasks for as long as the conditions remain in place. An interim order for conditions ² is only appropriate when the FtPC is satisfied that the pharmacy professional in question can comply with them and where the FtPC is satisfied the pharmacy professional is able to work safely and effectively with the conditions in question.
Suspension	An 'interim suspension order' prevents pharmacy professionals from practising.	If the FtPC considers an interim order for conditions would not adequately deal with the risk it has identified, it must consider whether to suspend the pharmacy professional's registration for the duration of the order.

*The FtPC may also decide to take no action where they consider there is no risk to the public or from the pharmacy professional continuing to practise without restriction.

¹ At a review hearing, the FtPC can replace an interim conditions order with an interim suspension order, and vice versa, for the remainder of the duration of the order.

² When imposing an interim conditions order, the FtPC will consider the **conditions bank**.

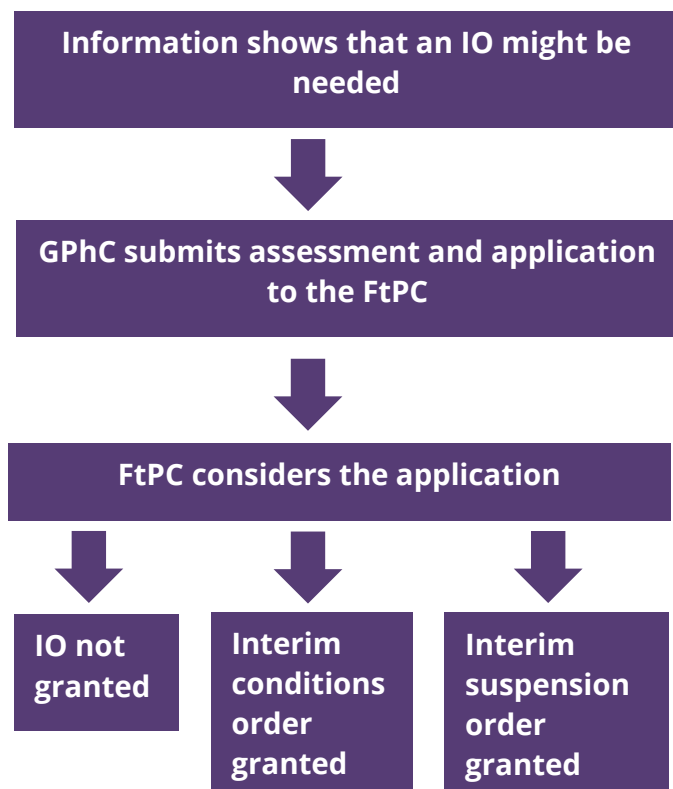


When can an application be made?

3.2. The GPhC can apply for an IO at any stage of the fitness to practise process. When an application is made, it will be brought to the FtPC as soon as possible. It does not need to be considered by the IC, as only the FtPC can consider an application and impose an order³. **The IC itself can refer a case to the FtPC to consider an IO**, as set out in our guidance.

The IO application process

A GPhC investigation will continue during the IO application process.



³ Article 56 of the Pharmacy Order 2010

IO applications

3.3. The GPhC will consider whether to make an IO application if one or more of the following apply:

- it is necessary to protect the public
- it is otherwise in the public interest
- it is in the interests of the pharmacy professional

3.4. If the GPhC applies for an IO, it does not mean that we have made a final decision on the concern raised about a pharmacy professional who is under investigation. When considering whether or not an application for an IO should be made, it is important to keep in mind that an IO primarily involves an assessment of risk. The assessment of risk is based on the evidence available which may not be of the same nature and quality as that eventually relied upon at a principal hearing. The committee should not make any findings of fact based on the evidence.

When is an IO necessary to protect the public?

3.5. An IO is necessary to protect the public if there is information available that indicates there is a risk to patients, colleagues or other members of the public if the pharmacy professional continues to practise without any restrictions.

3.6. The first step is to consider the nature and extent of the risk. There might be a risk to

the safety of patients, for example, if we have received evidence that the pharmacy professional:

- has made a large volume of dispensing errors in a short period
- is experiencing an alcohol or drug dependence which has affected their ability to practise safely and effectively

3.7. The second step is to consider what action needs to be taken to deal with the identified risk. If the risk of the pharmacy professional repeating their behaviour is low, or if the level of harm which might result is low, it might not be necessary to restrict the pharmacy professional's ability to practise. If the only way to properly deal with the identified risk is to restrict the pharmacy professional's practice with conditions, or to stop the pharmacy professional from practising, it is likely that an IO is necessary to protect the public.

When is an IO in the public interest?

3.8. It is relatively rare for an IO to be made only on wider public interest grounds. An IO can be justified as being in the public interest if there would be serious damage to the reputation of the profession as a whole if a pharmacy professional was not restricted in their practice, before the final outcome of the case⁴.

3.9. An IO might be justified for this reason if, for example, a pharmacy professional is charged by the police with a serious

criminal offence. Even if we assess that there is no ongoing risk of harm to the public, we might consider that the public's confidence in the profession as a whole could be seriously damaged if no order was made. This is the case even though the police or GPhC investigation has not finished and the case against the pharmacy professional has not been considered by the FtPC⁵.

When is an IO in the interests of the pharmacy professional?

3.10. An IO may be in the interests of the pharmacy professional if, for example, they are addicted to a controlled drug. As a pharmacy professional, they will have privileged access to medication. It might be in the interests of the pharmacy professional's health for this access to be restricted or removed. In these circumstances, an IO may well also be necessary to protect the public.

3.11. It is important to note that an IO might be in the interests of the pharmacy professional, even if the pharmacy professional does not want it to be imposed. For example, this could be because the pharmacy professional has limited insight into their state of health.

⁴ R (Shiekh) v General Dental Council [2007] EWHC 2972 (Admin)

⁵ NH v GMC [2016] EWHC 2348 (Admin)

What happens once an application has been made?

- 3.12. If the GPhC decides to apply for an IO, the GPhC's hearings team will write to the registrant to tell them the hearing date, time and location. If the registrant consents to the interim order, the hearings team may cancel the hearing, and may forward the consent form and all relevant papers (including the bundle of documents relied on by the GPhC in support of its application) to the panel of the FtPC. The FtPC will then consider the application for an interim order 'on the papers', without the need for a hearing. The decision whether or not to hold a hearing rests with the panel.
- 3.13. If the registrant does not consent to the interim order, the GPhC will serve the relevant documents including the GPhC's evidence and its skeleton argument on the registrant or their representative(s) as soon as possible in preparation for the impending hearing.
- 3.14. To protect the public, IO hearings are generally scheduled at short notice. The committee can impose an IO even if the pharmacy professional is not present. If a pharmacy professional is unable to attend an IO hearing, they can make written submissions for the committee to consider or make an application to be heard via telephone or video link.
- 3.15. If the IC makes a recommendation that an interim order should be imposed, the GPhC will consider whether an interim order hearing is appropriate. If not, the GPhC will apply to rescind the recommendation the IC has made⁶.

⁶ Rule 38 - The General Pharmaceutical Council (Fitness to Practise and Disqualification etc Rule) Order of Council 2010

4. Interim order hearings

4.1. IO hearings and reviews usually take place in private unless the FtPC is satisfied that the interests of the pharmacy professional concerned, or of a third party, in maintaining their privacy are outweighed by the public interest⁷. They are heard by a panel of three people (a chair, a pharmacy professional member and a lay member). Other people may also be at the hearing including a legal adviser, GPhC case presenter and the pharmacy professional's representatives. If the hearing or review is held in private, members of the public will not be allowed to attend. See our guidance for **more information on our fitness to practise hearings**.

4.2. At an IO hearing, the pharmacy professional and representatives acting on their behalf can appear before the committee and address the FtPC panel on the question of whether an IO should be made.

What happens at an IO hearing?

4.3. At the beginning of an IO hearing the case presenter will provide some background to the case. The order of proceedings at an IO hearing will then usually be as follows:

- the FtPC panel will hear and consider any preliminary legal arguments

- the GPhC case presenter will tell the panel why an IO might be required, and will set out the grounds on which the GPhC is making the application and the evidence which supports an IO
- the pharmacy professional may present their case and set out any evidence to support it
- the panel may question the pharmacy professional if they are present and willing to give evidence
- the panel will announce its decision and will give its reasons for the decision

Factors to consider

4.4. In reaching a decision whether to impose an IO the FtPC should consider:

- the gravity of the concern
- the nature of the evidence
- the seriousness of the risk of harm to patients, including information about the likelihood of a further incident or incident being repeated
- the seriousness of risk to members of the public if the pharmacy professional continues to practice unrestricted

⁷ Rule 39(2) - The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010



- whether public confidence in the pharmacy professions is likely to be
- seriously damaged if the pharmacy professional continues to practise without any restrictions before the final hearing in the case
- whether it is in the pharmacy professional's interests to hold unrestricted registration- for example, the pharmacy professional may clearly lack insight and need to be protected from him or herself
- whether the pharmacy professional has any previous fitness to practise findings

4.5. In weighing up these factors, the FtPC must carefully consider the proportionality of the outcome. They should consider if it is proportionate in terms of dealing with the risk to the public (including patient safety and public confidence) and in terms of the impact of any action on the pharmacy professional's own interests.

4.6. If the FtPC decides that an IO is required, it must then consider whether an IO with conditions would be a sufficient and proportionate response to the risk it has identified. It should only impose an IO with a suspension if an IO with conditions would not meet its concerns adequately.

Making a decision on an outcome

4.7. Once a committee has considered all the information available to it, it will make a decision on whether to impose an order. In making its decision, the FtPC will not:

- make any findings of fact when it considers whether or not to make, or to continue, an interim order
- make any decision on current impairment
- decide whether or not the case against the pharmacy professional is proved

Available outcomes

4.8. Once the panel has considered all the information available, it will decide on an outcome. It can decide to:

- take no action and decide not to impose an IO
- impose an IO with conditions
- impose an IO with a suspension

Determining the length of an order

4.9. If the FtPC decides that an order is appropriate, it should also decide how long the order should be in place. An IO can be made for any length of time up to 18 months (it can only be extended beyond this time by the High Court, or the Court of Session if the registrant lives in Scotland). It will be reviewed after the first six months

(see below for further information on reviews).

4.10. The decision on length should be based on what period of time is appropriate and proportionate in the circumstances.

4.11. In deciding how long the order should be in place, the FtPC should consider how long it is likely to take to resolve the GPhC investigation, and any subsequent fitness to practise proceedings. The committee should consider, for example, the time needed to complete an investigation. This could include getting health assessments, or for the police to finish any criminal proceedings. If there is a police investigation taking place, the GPhC investigation may be put on hold until the outcome of the police investigation is known. The committee must balance this against any impact on the pharmacy professional as a result of an IO being put in place for a longer time.

Giving reasons

4.12. The amount of detail a committee gives in an IO hearing depends on the type and complexity of the concern. In every case, the reasons should be enough for the decision to be easily understood by the pharmacy professional, the GPhC and any other interested party, for example the person that raised the concern or the **Professional Standards Authority (PSA)**.

It should be clear why a particular decision has been made.

4.13. The FtPC panel must give clear and adequate reasons when it announces its decision. Reasons should include:

- the ground(s) on which the panel has made its decision
- what impact an IO might have on the pharmacy professional, and how the panel has balanced that impact against the need for an interim order
- why an IO is (or is not) proportionate to any risks the panel has identified and proportionate (or not) to the consequences for the pharmacy professional
- if an IO is imposed, the reasons why the panel has chosen the period of time for which the order should be imposed
- where no order is imposed, the reason for this

5. After a decision has been made

- 5.1. If the FtPC imposes an IO at the hearing, the order will take effect immediately. While an IO is in place, the GPhC will continue to investigate the concerns raised about the pharmacy professional through our normal fitness to practise processes. We will keep the pharmacy professional informed about the progress of the investigation.
- 5.2. We publish and disclose information on the register and on our website throughout the fitness to practise process, including when an IO has been made against a pharmacy professional. **For further information on what will be published when an IO is imposed**, please see the GPhC publication and disclosure policy.

Appealing against the decision

- 5.3. A pharmacy professional may appeal against an IO being made or changed within 28 days of the written reasons for the decision being given⁸. The pharmacy professional should appeal to the High Court, or if they live in Scotland, to the Court of Session⁹. The IO will remain in force until the appeal is decided, unless the relevant Court directs otherwise¹⁰. If the appeal is successful, we will remove all

reference to the IO from the register and our website.

Review of an IO

- 5.4. An IO must be reviewed within six months of the order first being made, and every six months after that. It can also be reviewed after three months if extended by the High Court in England and Wales or the Court of Session in Scotland. An order may also be reviewed at any time when new relevant evidence which may affect it becomes available¹¹.
- 5.5. At a review hearing, the committee has the power to:
- revoke¹² (remove) an IO or any condition imposed by the IO
 - vary any condition imposed by the IO
 - replace an interim conditional entry with an interim suspension order¹³, for the rest of the time the order is in force
 - replace an interim suspension order with an interim conditional entry, for the rest of the time the order is in force
- 5.6. The FtPC will consider the continuing need for an interim order as part of the review.

⁸ Article 56(8) of the Order

⁹ Article 56(11) of the Order

¹⁰ Article 56(8) of the Order

¹¹ Pharmacy Order 2010 (part 6 article 56)

¹² Information about an interim order is removed from our website if the order is revoked at a later date.

¹³ Any new order may also be subject to review.

The panel will take into account any new, relevant evidence or information which has come to light since the order was made. It will consider the evidence using the same factors as when the IO was initially made - that is, where it is necessary to protect the public, is otherwise in the public interest, or is in the interests of the pharmacy professional. At a review hearing, the FtPC will also consider whether any form of IO is necessary and proportionate based on any of the grounds set out in Article 56 of the Order.

Extending an IO

- 5.7. If the period of the IO is coming to an end and the case is not yet concluded, the GPhC can apply to the High Court in England and Wales or the Court of Session in Scotland for an extension of the IO. The Court can extend the IO for up to 12 months at a time. The case presenter should monitor and should obtain confirmation from the relevant Court as to when the extension is granted.
- 5.8. If an application to extend the interim order is to be made, eight weeks before the expiry of the interim order, the case presenter should contact the registrant or their representative(s) to ask if they are prepared to consent to the extension of the order.
- 5.9. If a decision is made not to apply for an extension, the interim order will lapse upon its expiry. The case presenter will inform the

registrant or their representative(s) of the decision not to apply for an extension as soon as possible. The case presenter will continue to prepare the case for the principal hearing.

Breach of an IO

- 5.10. If there is a breach of any IO with conditions, an early review hearing may take place. This will depend on the type and circumstances of the breach. An early review is necessary if the committee needs to decide whether to continue, modify or end the conditions, or impose another more appropriate measure.
- 5.11. If a pharmacy professional practises while an interim suspension order is in place, they may be prosecuted for illegal practice. This may constitute a separate allegation for consideration by the FtPC.

Rescinding a request for an IO

- 5.12. Although it is rare, there may be an occasion when the IC recommends that an IO application should be made but the GPhC makes an application for it to be rescinded. This will cancel a referral of the matter to the FtPC. The GPhC may rescind an application if it considers that the recommendation is fundamentally flawed or has the potential to have a serious adverse impact on the health of the pharmacy professional, where health is the

key component of the fitness to practise concerns.

- 5.13. Once a rescission application is made, the IC will consider it. The IC may accept the application and withdraw the recommendation for an IO, or it may decline the application and request an IO hearing. If the IC declines the application and goes ahead with its referral, but the FtPC decides that the case should not go forward to a hearing, the FtPC may, in the exercise of its general powers, decide to close the matter without a hearing.

Ending an IO

- 5.14. Interim orders can be brought to an end in three ways:
- by the relevant court, on the application of the person who is subject to the order;
 - by the FtPC dealing with the allegation to which the interim order relates; or
 - automatically, when it lapses

6. Support and advice

6.1. Support and advice can be accessed through several channels including:

- Pharmacists' Defence Association
www.the-pda.org
- Pharmacist Support
0808 168 2233 (freephone)
www.pharmacistsupport.org
- Association of Pharmacy Technicians UK (APTUK)
www.aptuk.org/
- Royal Pharmaceutical Society
www.rpharms.com
- MIND
0300 123 3393
www.mind.org.uk/



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25 Canada Square, London E14 5LQ
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www.pharmacyregulation.org