



Policy and Education Committee

8 March 2023

Draft Interim Order Guidance and Draft Practice Note on Undertakings

Classification	Public
Purpose	For discussion
Issue	This paper invites members of the Committee to consider the revised Guidance on Interim Orders and the Practice Note on Undertakings.
Recommendation	<p>To consider:</p> <ol style="list-style-type: none">1. the revised Guidance on Interim Suspension Orders at Annex A2. the revised Practice Note on Undertakings at Annex B
Financial and resourcing implications	Within existing budget
Equality and diversity implications	An EDI Impact Assessment will be carried out prior to a consultation being undertaken.
Communications implications	A public consultation will also be required to be undertaken.
Annex	<ol style="list-style-type: none">A. Draft Guidance for the Fitness to Practise Committees on imposing Interim Suspension OrdersB. Draft Practice Note on Undertakings
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Key messages from paper

- Both the Investigating Committee and Professional Conduct Committee can impose an interim suspension order over a registrant's registration while a fitness to practise investigation is undertaken.
- Both the Investigating Committee and Professional Conduct Committee can accept undertakings from a registrant. An undertaking is a voluntary written promise.
- We commissioned an external audit which was undertaken in August and September 2021 of all Investigating Committee and Professional Conduct Committee applications for an interim order between January 2020 - March 2021.
- No concerns regarding patient safety were identified within the audit report.
- The detailed recommendations from the audit included refreshing GOsC's guidance on imposing interim orders and the practice note on undertakings in relation to risk assessment and proportionality. It also recommended making the procedure around undertakings clearer.
- We have also taken the opportunity to enhance the interim order guidance to make it clearer that the Investigating Committee and Professional Conduct Committee are under a duty to have regard the overarching objective within the Osteopaths Act when considering interim order applications.

Background

1. Under sections 21 and 24 of the Osteopaths Act 1993, a Fitness to Practise Committee of GOsC has the power to impose an interim suspension order on a registrant, if it considers it necessary to do so in order to protect the public.
2. An interim suspension order can be imposed by either the Investigating Committee for up to two months or by either the Professional Conduct Committee or the Health Committee up until the final hearing has concluded. The Professional Conduct Committee or the Health Committee may also impose an interim suspension order to cover the 28 appeal period after a final hearing has concluded.
3. The Guidance for the Fitness to Practise Committees on imposing Interim Suspension Orders was last reviewed in 2015 and agreed by Council in 2016.
4. Undertakings are defined as solemn written promises which are made by the registrant to the fitness to practise committee considering allegations against them which set out the terms on which the registrant will voluntarily restrict their practice during a fitness to practise investigation. They are either agreed by the Investigating Committee or the Professional Conduct Committee at an interim order application hearing. The GOsC Practice Note on Undertakings was introduced in 2014.

5. In July 2021, the Audit Committee agreed to an assurance audit of fitness to practise interim order decisions made by the Investigating Committee and Professional Conduct Committee. The audit was undertaken by Rosemary Rollason, a legal consultant, in August and September 2021. The scope of the audit looked at all IC and PCC applications for an interim order between January 2020 - March 2021.
6. In that period, the IC considered eight applications for an interim order and imposed an ISO in only two cases. They accepted undertakings in a further two cases and rejected the ISO application in the remaining four cases. Over the corresponding period, the PCC imposed only one ISO up to the conclusion of the hearing. The findings / recommendations from the report were reported to and discussed with Audit Committee and Council in October and November 2021. In summary, it recommended that:
 - Refresher training for Committees on risk assessment, proportionality undertakings, consistency of decisions and the requirement to give adequate written reasons.
 - The Interim Orders Guidance and the Undertakings Practice Note should be amended to set out the procedure for Committees considering an offer of undertakings by the Registrant.
 - The relevant sections of the Interim Orders Guidance, in relation to risk assessment and written reasons, could be refreshed to place enhanced focus on the issues of risk assessment and proportionality and the need to adequately explain the committees' decisions on these aspects within their written determinations.
7. In parallel with the external audit, we conducted an internal audit / review of all the current GOsC caseload to ensure that risk assessments are clearly documented both at receipt and throughout the lifecycle of an investigation, (including at the point after a case is referred by the IC). This review revealed no concerns in relation to risk assessing. All risk assessments were up to date and correctly reflected the level of risk in each case. All cases classed as high risk had interim orders, aside from one case in which we are actively chasing and await further information from a third party.
8. At the IC and PCC training day in 2021, the key findings from the audit were presented to panellists and legal assessors. At the most recent IC training day on 30 November 2022, panellists and legal assessors undertook a case-based discussion facilitated by the legal auditor who had conducted the audit. The case studies focused on assessing risk, proportionality, undertakings and providing adequate written reasons in interim order applications. Attendees were also provided with a revised draft Interim Suspension Order guidance setting out the amendments to the guidance and were also provided with an opportunity to provide feedback on its development.

9. Unlike some other healthcare regulatory regimes, the GOsC's statutory scheme as set out in the Osteopaths Act 1993 (the Act) and the associated rules provides for only one statutory ground for the imposition of an interim order. This is that is necessary to do so in order to protect members of the public. The current¹ legislation of some other healthcare regulators provide three separate statutory grounds. For example, public protection, that it is otherwise in the public interest and also that is in the registrant's own interests.²

Discussion

10. Section 1(2) of the Act provides that it is the duty of the Council to regulate and develop the profession of osteopathy. The Health and Social Care (Safety and Quality) Act 2015 amended the Act by inserting a new over-arching objective for the Council in the exercise of its functions which is 'the protection of the public'. This involves the pursuit of the following objectives:
- to protect, promote and maintain the health, safety and well-being of the public
 - to promote and maintain public confidence in the profession of osteopathy; and
 - to promote and maintain proper professional standards and conduct for members of that profession.
11. Paragraph 34B of the Schedule requires that the Professional Conduct Committee (PCC) must have regard must have regard to the over-arching objective when determining restoration hearings and substantive hearings. The Health Committee (HC) has a corresponding duty contained in Paragraph 38B. This creates a mandatory obligation on both the PCC and HC to have regard to public protection and the wider public interest during substantive final hearings.
12. However, the Schedule is silent on parallel provisions for both the Professional Conduct Committee and the Investigating Committee on the exercise of their statutory functions at interim order application hearings. Equally, there is no equivalent provision for the Investigating Committee or the Professional Conduct Committee to have regard to the overarching objective in its functions in determining whether there is a case to answer or during interim order hearings.
13. One view is that the absence of an express provision that the Investigating Committee and Professional Conduct Committee have regard to the overarching objective, is by design rather than oversight, i.e. that it was Parliament's explicit intention to exclude from consideration the overriding objective.

¹ DHSC is currently running a consultation until May 2023. This consultation seeks views on the anaesthesia associates and physician associates order. This consultation paves the way for full scale reform of the regulatory frameworks of all the healthcare professional regulators.

² For example, the legislative framework for Social Work England does not have the 'otherwise in the public interest' ground for imposing an interim order.

14. The better view is that a specific provision in the Schedule is unnecessary given that both section 21(2) and section 24(2) enable both the Investigating Committee and Professional Conduct Committee to impose an interim suspension order if satisfied that it is necessary to do so in order to protect members of the public.
15. Axiomatic to this is what is referred to as the wider public interest (namely, maintaining public confidence in the profession of osteopathy and promoting and maintaining proper professional standards and conduct for members of the osteopathic profession). Therefore, by virtue of the Health and Social Care (Safety and Quality) Act 2015, protection of the public also encompasses the wider public interest.
16. We have therefore taken the opportunity to enhance the guidance to make it clearer that the Investigating Committee and Professional Conduct Committee are under a duty to have regard the overarching objective when making interim order decisions.
17. The revised interim suspension order guidance together with the revised practice note on undertakings are both aligned to the GOsC strategic objective to promote public and patient safety through proportionate, targeted and effective regulatory activity.
18. The draft guidance on interim orders will provide greater assistance to Committees in the task of deciding whether an interim suspension order is appropriate. The draft practice note on undertakings will enhance transparency and will enable both the Investigating Committee and Professional Conduct Committee to utilise greater flexibility when deciding whether undertakings are sufficient in any given case and will assist other users of the guidance including legal assessors and registered osteopaths and their advisers on the process involved.
19. We intend to seek Council's approval of both the revised guidance and Practice Note at its meeting in May, prior to undertaking a public consultation on the proposed amendments. We would welcome feedback from the committee to inform this discussion with Council.

Recommendation:

To consider:

1. the revised Guidance on Interim Suspension Orders at Annex A.
2. the revised Practice Note on Undertakings at Annex B