

GMC Applications to the High Court to Extend Interim Orders

Doctors
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Challenging a GMC Interim Order Extension Application

The GMC may apply to the High Court of England or Wales, or Northern Ireland (or Court of Session in Scotland) for an extension to an [interim order](#) where the original order, or a previous extension of the duration of an interim order, is coming close to expiration. A doctor who wishes to resist the GMC's application must participate in the court process, lodge 'defence' case papers, and should attend to present argument in person or through their appointed lawyer. Here at **Doctors Defence Service** we advise and represent doctors who wish to consider resisting such a proposed extension. We can provide advice on the merits and prospects of such an application.

The [Medical Act 1983](#) (as amended) permits an interim orders tribunal (IOT) to impose an order of up to 18 months duration. In some instances, as a consequence of applying case law, the tribunal may have imposed an order of shorter duration. Prior to the end of the period imposed the tribunal, the GMC must apply to the High Court for an extension or let it lapse.

A *conditions of practice order* or *suspension order* must be 'necessary' as a matter of law. Interim orders can be imposed in the public interest, the doctors interest, or for public protection, or on all three grounds.

On application by the GMC a High Court judge ([pursuant to the s41A of the Medical Act 1983 \(as amended\)](#)) judge will read the papers that the GMC and those that the doctor places before the court, if they submit any.

If a doctor is seeking to challenge the proposed extension, they will need to submit relevant documents to the High Court within a prescribed time-frame. If they fail to do so they will not be able to participate in the hearing unless given permission by the judge.

It needs to be borne in mind that extensions of interim orders are imposed after an assessment by the High Court judge of the risk to others, with and a weighing up the totality of the evidence, rather than being a fact finding exercise. If a doctor is to seek to persuade the judge that another course of action should be adopted they will need to take the judge through the defence case, setting out the points of opposition to the GMC application, also setting out the impact of the current order and any financial hardship that is being caused. This all needs to be evidenced sufficiently, while bearing in mind that the hearing is not a fact finding exercise on the central themes of the allegations the doctor is facing.

On occasions, [GMC investigations](#) can take a long time because of the amount of evidence that needs to be collated or because of the number of allegations that have been made and the sheer number of witnesses that need to be interviewed to provide witness statements. It may, therefore, be a long time before an investigation leads to the closure of a case or a referral to and disposal of a fitness to practise hearing. Three or four years has been the norm in complex cases.

A doctor may be suspended or be subject to a conditions of practice order on an interim basis, during such time. This can have a negative effect on a doctor's ability to obtain suitable work, if they can obtain work at all.

GMC/MPTS Interim Order Extension Applications

Interim orders can have a negative impact on a doctor's ability to earn a living or to progress in their chosen field or at their chosen grade. While interim orders of conditions may appear workable at first, in some cases a doctor is hampered in obtaining work in medicine.

Here at **Doctors Defence Service**, on instruction, we will undertake a merits and prospects assessment and advise a doctor on the strength of bringing a challenge to the interim order in place. If the doctor then wishes to proceed we will assist the doctor in compiling, filing and serving a suitable bundle of evidence, a skeleton argument, case law, and any other documentation that is required. We will also attend a hearing to make oral argument, advancing the merits of the doctor's case, providing analysis and constructive criticism of the GMC's application material.

If the application is successful, the High Court (or Court of Session) judge might impose a shortened extension, informing the GMC that a longer extension is unlikely to be granted in light of the history or delay. Alternatively, they may impose an order of some months, up to 12 months. While the judge hearing the challenge has the power to make changes to conditions that have been imposed by a tribunal, some amendments to conditions might be better left to the interim orders tribunals to determine, rather than a judge, due to the greater experience of the tribunal in medical regulation, in comparison to the judge's experience and training – in what are often termed esoteric medical and policy matters. See our

[interim orders case law page](#) for some examples of interim orders that have been challenged in the past.

Should the High Court judge decide to extend the interim order, the IOT tribunal will *usually* need to review the order within three months, but this is dependent on the history of reviews. The Medical Act 1983 (as amended) sets out the criteria.

It is sometimes better to apply at a review hearing for the order to be amended (rather than challenge a GMC extension application), and then appeal that tribunal decision to the High Court, if the suggested changes are rejected by the tribunal hearing the application. A doctor can also apply for an Early Review to the tribunal where there is a change of circumstances (with some limits being imposed by legislation), and the GMC has a wide discretion to refer matters back for an Early Review.

Where a doctor is unsuccessful in challenging the extension application, they will likely be liable to pay the GMC's costs. This can be in the region of £1,500 to £2,500. The costs of lawyers acting for the doctor will be of a similar figure. These costs are estimates and each case will have its own complexities and document page count that could lead to higher or lower fees being charged. Costs are at the discretion of the court. If a doctor were to win on all of the issues there is a good chance that they would recover their costs from the GMC but this is not always the case. Where a doctor wins on some issues but not all the judge may decide to make no order to costs or order a proportion of each party's costs be met by each of the parties. To avoid the costs risks a doctor can merely consent to an extension being imposed, but a doctor will have to do this promptly, at the earliest opportunity. The GMC will usually write to the doctor giving them this option. The option may be lost if the doctor delays in responding.

The legislation states that the order of the High Court (or Court of Session) is 'final'. The ability to appeal thereafter may therefore be limited. Judicial review may, however, be possible as an alternative to an appeal, where legislation appears to block a formal appeal. It should be noted that the GMC would also be able to consider going this route, if they were unhappy with the judge's decision.

One of the problems faced by doctors is the delay in their case progressing at the GMC/MPTS to a prompt resolution. The GMC may (and often do) make repeated extension applications and a High Court judge will usually order an extension unless there are good reasons not to do so. An interim order may therefore be in place for many years. This can be very frustrating.

In such circumstances it may be appropriate for a doctor to challenge the extension proposal altogether or ask for a shorter length or a variation to the terms of the order. Yet, the GMC may be unable to move forward because they are waiting for a third-party to take a step. Delay that third-parties cause is not the fault of the GMC. Examples could be: a long-drawn-out police investigation and criminal prosecution; or an overseas body taking some considerable time to resolve fitness to practise, or criminal, or civil processes. On occasions, the GMC may be at fault and their delays might increase the prospects of success of resisting a GMC application at the High Court.

The main problem for a doctor is the issue of public protection and the upholding of the reputation of the profession. The doctor will need to satisfy the High Court that an order is not necessary to meet those public policy requirements. This is not an easy task.

If the doctor is facing an allegation that is so serious that it would undermine public confidence in the profession, and potentially put members of the public at risk – whether they

be patients, colleagues or others – if an order were not to be imposed, the prospects of success will diminish.

By way of example, an allegation of a sexual offence, an allegation of significant dishonesty, an allegation of a lack of competence, or of ill-health (such as mental illness that makes the doctor unsafe to be working without supervision or at all), could each lead to the risk assessment being found to be in favour of an order.

The High Court would have to take into account the strength of the evidence for and against the doctor, as well as matters of public policy, when determining whether to extend the interim order. A doctor may need, therefore, to be pragmatic in requesting a variation to the order rather than a total termination of the order. Suspension to conditions, perhaps; or varied conditions that make it easier for a doctor to obtain work. It should be remembered, and this is often overlooked, that an interim order is not imposed following a fact finding assessment by the tribunal or the judge. They are imposed after a weighing up the strength of the evidence overall, the weighing up the risk to others of not imposing an interim order, and weighing up the rights of the doctor to practise. Erring on the side of caution is therefore an in-built bias. But the order must be necessary.

If you are a doctor seeking advice or guidance on **challenging an application** made by the GMC to **extend the length of an interim order**, give **Doctors Defence Service** a call without obligation and in strict confidence on **0800 10 88 739**.