OUTER HOUSE, COURT OF SESSION

[2026] CSOH 75

P271/26

OPINION OF LADY TAIT

in the Petition of

THE GENERAL MEDICAL COUNCIL

Petitioner

for

an order in terms of section 41A(6) and (7) of the Medical Act 1983

Petitioner: Young; Anderson Strathern LLP
Respondent: Reid KC; BTO Solicitors LLP

14 August 2026

Introduction

[1] The petitioner is the General Medical Council ("GMC"). The respondent is a medical practitioner who is registered with the GMC. The GMC has responsibility for keeping a register of medical practitioners and for supervision and regulation of their fitness to practise. The petitioner seeks an order in terms of section 41A(7) of the Medical Act 1983 ("the 1983 Act") extending an interim order made by its Interim Orders Tribunal ("IOT").

[2] The respondent is the subject of a fitness to practise investigation, initiated after Police Scotland deemed him to be unsuitable to work with children or vulnerable adults and he was charged with a contravention of section 52A(1) of the Civic Government (Scotland) Act 1982, that is possession of indecent images of children. The respondent referred himself

to the petitioner on 10 September 2024 prior to Police Scotland contacting the petitioner. On 15 October 2024, the IOT made an order for interim conditional registration for 18 months. The order was reviewed and conditions maintained on 8 April and 9 October 2025.

[3] On 16 January 2026, a plea in bar of trial was sustained and the summary criminal proceedings concluded. On 18 February 2026, the IOT reviewed the order for interim conditional registration and continued it without variation. The order was due to expire on 14 April 2026 and the petitioner now seeks its extension for 12 months until 14 April 2027. The order has been extended *ad interim* until determination of the present petition.

[4] Notwithstanding the conclusion of criminal proceedings, the petitioner submits that it must still assess whether the respondent can return to unrestricted practice while the fitness to practise investigation remains current. A further extension is necessary and proportionate.

Applicable law

[5] Part V of the 1983 Act makes provision for the regulation of the fitness to practise of doctors. Section 41A(1) provides:

> "Where an Interim Order Tribunal … are satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of a fully registered person, for the registration of that person to be suspended or to be made subject to conditions, the Tribunal may make an order –
> (a) that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding eighteen months as may be specified in the order (an 'interim suspension order'); or
> (b) that his registration shall be conditional on his compliance, during such period not exceeding eighteen months as may be specified in the order, with such requirements so specified as the Tribunal think fit to impose (an 'order for interim conditional registration')."

[6] Where an interim order is made, it must be reviewed by the IOT at least every 6 months: section 41A(2). Once an interim order has been in place for 18 months, it can only be extended by the "relevant court": section 41A(6). The "relevant court" can extend (or further extend) an interim order for no more than 12 months at any one time: section 41A(7).

[7] In *GMC* v *K* 2023 SC 1 at [6], the Inner House set out the applicable principles when considering whether to extend an interim order as enunciated in *General Medical Council* v *Hiew* [2007] 1 WLR 2007 and applied in *B* v *General Medical Council* 2022 SLT 961 at [9]. The court must be satisfied that one of the conditions for making the original interim order set out in section 41A(1) is satisfied, that is: it is necessary for the protection of the public; otherwise in the public interest; or in the interests of the relevant clinician (the threshold test). The criteria for extension are the same as the criteria for the original interim order. The court may take account of the gravity of the allegation, the nature of the evidence, the seriousness of the risk of harm to patients, the reasons why the case has not concluded, and the prejudice to the practitioner. The onus is on the petitioner. The standard of proof is on the balance of probabilities. The court does not require to make findings of primary fact about the alleged conduct. Its task is limited to deciding whether the allegations and the material presently available justify continuation of the interim order. It does not need to decide the truth or falsity of the allegation. The court acts as the primary decision-maker. It is not reviewing the decision of the IOT. Whilst the opinion of the petitioner and the IOT as to the need for an interim order is not one which the court is bound to follow, it should give those opinions such weight as it thinks fit.

[8] An interim order may only be imposed where necessary, which requires a proportionality analysis as explained in *Bank Mellat* v *HM Treasury (No.2)* [2014] AC 700 at

paragraph 74 (the proportionality test). There must be a rational connection between the measure imposed and its objective; and the court should consider whether there is a less intrusive measure to achieve the legitimate objective.

[9] As set out in *GMC* v *K* above at [21], in a case where only public interest is relied upon, the threshold for making or extending an interim order is a high one. The test is likelihood of serious damage to public confidence in the medical profession if the relevant clinician were permitted to practise without registration during the period of investigation: *ibid* and *GMC* v *MM* 2022 SLT 600 at [11]. In considering the public interest, and in particular the view that the public would take of a set of circumstances, the person in mind ought to have attributed to them knowledge of all the relevant facts. Otherwise, the danger is of proceeding on a superficial analysis or even mere prejudice: *Patel* v *GMC* [2013] 1 WLR 2694 at paragraph 28.

[10] Further, in *GMC* v *K* above at [21], the court continued:

> "The reasonable and properly informed member of the public would be aware that the allegation against the appellant has no connection to clinical practice and that the GMC has not sought to identify any clinical risk to the appellant's patients. He or she would be aware that the charge against the appellant has been the subject of a criminal trial and that the appellant has been acquitted by the verdict of a jury. He or she would be aware that the appellant is subject to an obligation to inform the GMC of details of his employment without the imposition of a condition to that effect, and it is not suggested that there is any history of non-compliance by the appellant with his obligations to the GMC. We note that he reported the charge against himself to the GMC.
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> [22] In the circumstances of this case, the question is whether a reasonable and properly informed member of the public would be concerned if the appellant was allowed to resume his career without an order imposing conditions which, *inter alia*, require him to report details of changes of employment to the GMC, and to disclose the existence of interim conditions to any new employer. We consider it more likely that such a member of the public would be concerned that a doctor who has been acquitted after trial of the charge against him, and against whom no allegation relating to clinical practice has been made, would be the subject of interim conditions which could render it difficult or even impossible for him to return to practice pending the outcome of the GMC's investigation."

Submissions for the petitioner

[11] Notwithstanding the conclusion of the criminal proceedings, the petitioner must assess whether the respondent can return to unrestricted practice while the fitness to practise investigation remains live. A further extension of the conditions imposed by the IOT is necessary and proportionate. The petitioner seeks to extend an order for interim conditional registration and not an order for interim suspension. The existing conditions preserve the respondent's ability to practise but with oversight and restrictions, including in relation to consultations with patients under age 18.

[12] On 20 January 2026, Police Scotland informed the petitioner that the respondent had been acquitted on 16 January 2026. The police understanding was that the device in question was not new and that it had not been possible to prove conclusively to whom it belonged, hence the acquittal.

[13] On 18 February 2026, the IOT reviewed and maintained the order. The IOT held that the substantive allegation (possession of indecent images of children) remained; the proceedings before it were not criminal proceedings; the issue before it was one of risk assessment rather than fact-finding; and an interim order remained necessary for the protection of the public and in the public interest. The IOT treated the allegation as serious; considered that the nature of the concern had the potential to place young and vulnerable patients at risk; and considered that the public would be shocked if the respondent were permitted to practise unrestricted while the matter was investigated by his regulator.

[14] The petitioner requires to make further enquiries in relation to the police investigation in order fully to investigate any risk posed by the respondent. The result of those investigations will be relevant to further proceedings (if any) against the respondent.

While the period since January 2026 is relevant to proportionality, it does not, of itself, answer the question of whether the existing conditions should remain pending final investigative steps. The scope of further enquiries would likely be limited to: the basis and material upon which the search warrant was obtained; an explanation of the conclusion that images were inaccessible without specialist data recovery software; a more detailed explanation of which files were accessed by the user of the device as police noted that certain files were found to have been accessed (but no dates could be attributed to that access); whether the respondent provided the PIN for physical access to the device; and how the file-sharing programme worked. These matters are submitted to be relevant to the petitioner's statutory function and whether the existing conditions remain necessary.

[15] Such an approach is consistent with the petitioner's "Supplementary guidance on assessing concerns based on police cases resulting in acquittal or a decision not to proceed to trial" (updated May 2025). The guidance provides: criminal proceedings and regulatory action serve different purposes; case examiners may have different information, different evidential rules and a different standard of proof; and an acquittal or decision not to proceed does not necessarily show that there is no ongoing public protection issue requiring restrictive action. The same proposition is supported by *Ashraf* v *General Dental Council* [2014] ICR 1244 wherein it was held that an acquittal does not, of itself, make disciplinary proceedings abusive: paragraph 22. The focus of the regulator is on standards, integrity and public confidence: paragraph 34.

[16] The respondent places reliance on the Inner House's decision in *GMC* v *K* above. The Inner House held that the public would know that the allegation had no connection to clinical practice, that no clinical risk had been identified, that the doctor had been acquitted after trial, and that there was no history of non-compliance. It held that the public would be

more concerned that an acquitted doctor was subject to conditions which could make return to practice difficult or impossible. It also held that the particular conditions lacked rational connection to the public interest concern. It is submitted that the present case has different features. The concern is alleged possession of indecent images of children. Police Scotland expressly asked the petitioner to review the respondent's responsibilities and access to children and vulnerable persons. The police bail conditions contained specific restrictions in relation to the respondent's contact with children and his use of the internet. The existing interim conditions include a condition preventing consultations with patients under age 18 except in life-threatening emergencies. The public interest in maintaining confidence in the profession and proper professional standards is therefore directly engaged.

[17] The gravity of the allegations are self-evidently serious. If established in regulatory proceedings, it would be capable of amounting to serious misconduct with any sanction consequently being severe. The Medical Practitioners Tribunal Service ("MPTS") guidance recognises that cases involving alleged harm to children may carry high public interest concerns. The order has a rational connection to the concern. The key restriction relates to patients under age 18. The order also preserves oversight of any return to practice. The respondent states that there is no clinical risk. The allegation did not arise in a clinical setting but the conditions imposed do include a restriction directly concerned with patients under age 18. The potential risk to patients is an important factor in the court's overall assessment. The prejudice also has to be balanced against the position if the order lapses immediately. Lapse would mean unrestricted practice before the petitioner has concluded its investigations. That would leave the petitioner without the limited safeguards which are presently directed to patients under age 18. In a case of this seriousness, that is not the proportionate course. The order is also less intrusive than suspension. It permits practice

subject to conditions. The IOT found those conditions to be proportionate, appropriate, workable and measurable. While the court is not bound by that assessment, it is entitled to give it such weight as it considers appropriate. In the context of the seriousness of the allegations and the consequently weighty public interest, it is submitted that the court should give that assessment substantial weight in its overall assessment.

[18] The court is invited to grant the prayer of the petition and extend the order for interim conditional registration until 14 April 2027 because the wider investigatory process may take time and the order will be subject to statutory review. *Esto* the court considers that period too long, it is invited to grant a shorter extension sufficient to allow the petitioner to obtain any responses to its investigations, conduct any further enquiries and to decide whether further evidence is required.

Submissions on behalf of the respondent

[19] On 16 January 2026, a plea of oppression was sustained and the summary prosecution of the respondent for possession of indecent images of children was concluded. Notwithstanding instruction of a cybercrime report, the plea was based on the absence of evidence of the respondent having used or being in possession of the device upon which the images were found or being able to access the images. The motion to sustain the plea of oppression was not opposed by the Crown.

[20] The cogency of the available evidence is a material consideration. In the absence of cogent evidence, an interim order cannot properly be made. The evidence relied upon by the petitioner is no more than a charge the Crown accepted it would be oppressive to prosecute. That is an inadequate basis upon which to justify the continuation of the interim order. That order is not a proportionate interference with the respondent's rights.

The question of oppression was clearly relevant to the issue before the IOT. The IOT was wrong to say otherwise. The absence of any evidence to support the charge is plainly relevant to risk. There is no risk to public protection where there is no evidence to support the charge. Separately, it would not cause shock to members of the public to know that a person against whom there was no evidence of wrongdoing was allowed to practise unrestricted.

[21] It is neither necessary nor proportionate to extend the order for interim conditional registration on the ground of risk of harm to the public. The threshold test is not met. There is no risk of harm to the public in the non-extension of the interim order. The allegations against the respondent have no connection to clinical practice. The petitioner has not sought to identify any clinical risk to the respondent's patients. In any event, any assessment of the evidence should lead to a conclusion that there was no risk. That is because there was no evidence to support the allegation as was accepted by the Crown. The petitioner has no evidential foundation for suggesting otherwise. If the IOT proceeded upon an assumption to the contrary, it was wrong to do so.

[22] It is neither necessary nor proportionate to extend the order for interim conditional registration on public interest grounds. The threshold test is not met. There is no risk to the public interest in the non-extension of the interim order. The reasonable and properly informed member of the public would be aware that the charge against the respondent has been the subject of consideration by a criminal court and that the criminal case against him was disposed of after a successful plea in bar of trial. Such a person would understand that the Crown did not oppose the plea. Such a member of the public would be concerned that a doctor, who has had the criminal case against him disposed of and against whom no allegation relating to clinical practice has been made, would be the subject of interim

conditions which could render it difficult or even impossible for him to return to practice pending the outcome of the petitioner's investigation. A reasonable and properly informed member of the public would be aware that the respondent is subject to an obligation to inform the petitioner of details of his employment without the imposition of a condition to that effect, and it is not suggested that there is any history of non-compliance by the respondent with his obligations to the petitioner. The respondent reported the charge against himself to the petitioner.

[23] The imposition of an order for interim conditional registration fails the proportionality test. In the first place, it is a fundamental aspect of that test that any intrusion into a party's rights must be rationally connected to the reasons said to justify the intrusion: *Bank Mellat* above. The conditions imposed on the respondent do not address or regulate the issues which gave rise to his referral. The allegations against him have no connection to his clinical practice and it is not supportable for the petitioner to contend that there is any clinical risk. In the second place, they have had an excessively damaging effect on his reputation and on his ability to pursue remunerative employment. In the third place, and as a result of the impairment of his ability to pursue remunerative employment, they have caused him financial difficulties.

[24] It is unclear why the petitioner's further investigations should take up to a year from 14 April 2026. The petitioner has known since 20 January 2026 that the criminal proceedings against the respondent had concluded.

[25] *GMC* v *K* above is submitted to be significant for its parallels to the present case. It involved a doctor charged with a sexual offence of which he was acquitted. There is no material difference between acquittal after trial and a plea of oppression being sustained. Both conclude the criminal proceedings and leave the accused free from further prosecution.

The petitioner has no evidence against the respondent. The interim order is based upon the fact that the respondent had been charged with an offence on summary complaint. The petitioner has undertaken no investigations of substance. In the 5 months since the plea of oppression was sustained, it is not clear that anything has been done. There is no evidence of a risk of harm to patients. That being so, there is no basis for conditions 4 (GMC approval for a non-NHS post) and 5 (not to consult a patient under age 18). The remaining conditions serve no purpose beyond putting a black mark against the respondent. As was recognised in *GMC* v *K*, they reflect obligations that the respondent was already under. Accordingly, they cannot be said to be necessary. Essentially, for the reasons given by the Inner House in *GMC* v *K* at [24], the conditions are not proportionate and thus not necessary. The court is invited to refuse the petition with the consequence that the interim order comes to an end.

Decision

[26] In the present application for extension of an order for interim conditional registration, the court requires to be satisfied that the order is necessary for the protection of the public and/or in the public interest. It requires to be satisfied that the order is proportionate. As is agreed between parties, this court exercises an original jurisdiction.

[27] The facts are that the respondent referred himself to the petitioner following upon his arrest. He was charged with possession of indecent images of children and appeared on summary complaint on 8 October 2024. After sundry procedure and instruction of a cybercrime report, a plea in bar of trial was sustained on 16 January 2026 and the summary criminal proceedings came to an end. The submissions advanced in support of the plea were that there was no evidence of the respondent using the device to access the images; no evidence of his being able to access them, as that was dependent upon specialised software;

nowhere was it suggested that the respondent accessed the hard drive at any point; and there was no continuing history of use of the device to establish the respondent's possession of the device so that his control of the images could properly be inferred (7/2).

[28] On 20 January 2026, the petitioner was notified by Police Scotland that the respondent had been acquitted. The court minute for the hearing on 16 January 2026 has not been produced. Since that date, the petitioner has had some contact with Police Scotland, Crown Office Procurator Fiscal Service ("COPFS") and Scottish Courts Tribunal Service ("SCTS") to ascertain precisely what took place and the implications thereof. That contact may be characterised as limited ending initially on 24 March 2026 and resuming with a single email request two days prior to the hearing on the present petition and answers. By email dated 24 March 2026, COPFS confirmed that the case had been closed with no further action due to insufficient admissible evidence (6/8). Counsel for the petitioner fairly accepted that more should have been done since the present petition was lodged. Pressed on what further investigation may be undertaken, he referred to the petitioner's powers under section 35A of the 1983 Act to require disclosure of information. He conceded that the petitioner had invoked those powers already to no effect in terms of its emails dated 12 and 17 March 2026 to COPFS. The further steps which the petitioner envisages taking (but has not taken) are set out at [14] above. There is much force in the submission of senior counsel for the respondent that the petitioner's focus to date has been on why the criminal proceedings were brought to an end and not on the substance of any complaint against the respondent.

[29] It is understandable that the petitioner awaited the outcome of the summary criminal proceedings before progressing its own investigation. The petitioner appears to have been derailed by the conclusion of the criminal proceedings and to be uncertain how to proceed,

focusing on why the proceedings ended, why the plea in bar of trial was not opposed and whether further criminal proceedings can be taken. The petitioner appears ill-equipped to advance its own investigation of the respondent.

[30] The petitioner is correct to observe that criminal proceedings and regulatory action serve different purposes; case examiners may have different information, different evidential rules and a different standard of proof; and an acquittal or decision not to proceed does not necessarily show that there is no ongoing public protection issue requiring restrictive action. However, in seeking an extension of the respondent's interim conditional registration, the petitioner bears the onus of satisfying the court that the criteria for extension are met. The court can take into account the gravity of the allegations, the nature of the evidence, the seriousness of the risk of harm to patients, the reasons why the case has not been concluded and the prejudice to the practitioner if an interim order is continued. It is the function of the court to ascertain whether the allegations made against the respondent justify the extension, rather than their truth or falsity. The petitioner identifies the correct criteria (namely the protection of the public and/or the public interest) but fails to apply them to the respondent's circumstances. In general terms, an allegation of possession of indecent images engages public protection and public interest but the petitioner fails to address the available evidence or lack thereof. The petitioner asserts that the order is necessary for the protection of the public but does not identify any evidence in support of that nor realistically how that might be obtained standing the conclusion of criminal proceedings. In taking into account the nature of the evidence, the court can have regard to the sheriff's acceptance of the submission (and the lack of any opposition by the Crown) that there is no evidence from which the respondent's possession of the indecent images can be inferred. The petitioner offers no more than to review the criminal investigation which

failed to establish an evidential link. There is currently no basis for the assertion that interim conditional registration is necessary for the protection of the public.

[31] In the same circumstances, the petitioner has not established why the order is in the public interest. The test is likelihood of serious damage to public confidence in the medical profession if the relevant clinician were permitted to practise without registration during the period of investigation. Again, the petitioner proceeds in general terms that possession by a medical practitioner of indecent images of children engages the public interest. The petitioner does not identify why that is so in the respondent's case where criminal proceedings have concluded. It is unnecessary to rehearse the submission on behalf of the respondent at [22] as to the likely attitude of an informed member of the public.

[32] On the foregoing basis, I am not satisfied that the petitioner has met the threshold test either of protection of the public or of public interest. In any event, I would not be satisfied that extension of interim conditional registration would be proportionate. I do not agree fully with the respondent's submission that the conditions imposed do not address or regulate the issues which gave rise to the referral. The condition preventing consultations with patients under age 18 does seek to regulate the substance of the referral. However, as in *GMC* v *K,* the allegations had no connection to the respondent's clinical practice, and the petitioner does not set out the basis for any clinical risk. The respondent's practice does not relate to children. As fairly acknowledged by the petitioner's counsel, any delay is relevant to proportionality. The respondent has been subject to interim conditional registration since 15 October 2024. I am told that the respondent is not practising at present and that the interim order will impact upon any prospective employment. The petitioner has known since 20 January 2026 of the conclusion of the criminal proceedings. It has been afforded an interim extension since 14 April 2026 and has been unable to demonstrate any urgency or

focus in its investigation since January 2026. While the court is mindful of the volume of the petitioner's cases, the petitioner does not seek to rely on any such factor in progressing the present case.

[33] Weighing the gravity of the allegation (prosecuted on summary complaint) and any potential risk of harm to patients against the insufficiency of evidence (after criminal investigation), the lack of focus of the petitioner's continuing investigation and the prejudice to the practitioner, I am not satisfied that the order is necessary for the protection of the public and/or in the public interest nor that the order is proportionate. I have had regard to the views of the IOT as to the need for an interim order in the foregoing analysis but they do not indicate a contrary conclusion.

[34] I reserve expenses meantime.