



OUTER HOUSE, COURT OF SESSION

[2025] CSOH 51

P407/25

P396/25

OPINION OF LADY POOLE

In the Petitions of

THE NURSING AND MIDWIFERY COUNCIL

Petitioner

for

extension of time periods of interim orders

**Petitioner: Reid KC; Shepherd and Wedderburn LLP**

19 June 2025

**Introduction**

[1] This opinion gives reasons for the court’s decisions in two petitions on behalf of the Nursing & Midwifery Council (“NMC”) for extensions of time periods of interim orders affecting registered nurses. They are two of many such petitions brought in the Court of Session each year by professional bodies regulating medical and related professions. The petitions tend to arise when a professional body is investigating or taking regulatory proceedings against a member. The professional body has imposed interim suspension or conditions while it carries out its internal processes. Once interim orders have been in place for some time, the court has a supervisory role over their continuation.

[2] There may be good reasons for there to be interim orders, such as public safety, public interest, or the member’s interests. Nevertheless, interim orders are likely to have a

serious effect on the member's ability to work in a profession for which they have trained. Services provided by medical, nursing, dental, and other professionals are of importance to the public. If a member's registration is suspended, they become unable to work in their professional role while that order lasts. Or if a member is subject to conditions of practice, the work they are permitted to carry out may be severely curtailed. Experience shows that fitness to practice or other proceedings before regulatory bodies are not always concluded speedily. If interim orders continue until those proceedings are concluded, their adverse effects on the member may be felt for long periods. In those circumstances, secondary legislation sets out particular tests which must be met before a member is made subject to interim suspension or conditions, or an extension of time order. Those tests may affect not only whether or not an interim order should be in place, but also the duration of any such order, whether it should be an order imposing practice conditions rather than suspension, and the nature and extent of any conditions imposed.

[3] The court's role in petitions of this nature is not merely to rubber stamp the decision of the regulatory body. It must apply the statutory tests for itself when making decisions. Petitions for extensions of time are rarely defended, but the court still has to apply the statutory tests, because of the effect of interim orders on a member concerned. (The prayer of the present petitions seek expenses from the member, but only if they offer opposition to the petition). The court is grateful for the additional information and submissions provided by the NMC after motions in the petitions were starred, which enabled it to carry out its function.

[4] The outcome in both petitions is that, although an interim order remains necessary, the court is not prepared to extend the time period of the interim orders in their current form. Interim orders which are less restrictive of the member concerned are capable of

achieving the legitimate aims of public protection and public interest. Further procedure is ordered, to enable the formulation of interim conditions of practice orders which would be justified. Below, the governing law applied in determining the petitions is set out. Each petition is then considered in turn, with the facts set out and the governing law applied.

### **The governing law**

[5] The Nursing and Midwifery Order 2001 (the “Order”) governs interim suspension and conditions for those subject to regulation by the NMC. Under the Order, the overarching objective of the NMC in exercising its functions is the protection of the public.

Where allegations are made about members, the Fitness to Practice Committee of the NMC (the “Committee”) is to consider them. If the Committee considers an allegation is well founded, there are a variety of outcomes, such as mediation, no further action, or under article 29(5) it may:

- “(a) make an order directing the Registrar to strike the person concerned off the register (a ‘striking-off order’);
- (b) make an order directing the Registrar to suspend the registration of the person concerned for a specified period which shall not exceed one year (a ‘suspension order’);
- (c) make an order imposing conditions with which the person concerned must comply for a specified period which shall not exceed three years (a ‘conditions of practice order’); or
- (d) caution the person concerned and make an order directing the Registrar to annotate the register accordingly for a specified period which shall be not less than one year and not more than five years (a ‘caution order’)”.

[6] It is worth noting that where the NMC decides an allegation is well founded, the maximum period for suspension is 1 year, and for conditions of practice 3 years. However, extensions can be made to those periods under article 30, and there is an appeal process under article 30(11) if they are. There is no express provision allowing periods already spent subject to interim suspension or conditions to be offset against the final sanction of a

regulatory body, although any such periods might be a consideration in a decision about the appropriate sanction if an adverse finding is made at the conclusion of the regulatory proceedings.

[7] Article 31 of the Order gives powers to the Committee to make interim suspension or interim conditions of practice orders for up to 18 months if, under article 31(2), it is

“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 the person concerned, for the registration of that person to be suspended or to be made subject to conditions.”

“Protection of members of the public” is likely to be an issue if behaviour of a professional potentially compromises patient safety. “Public interest” may arise if a professional is charged with a serious criminal offence (*IB v General Medical Council* 2024 SLT 172), although it is rare for there to be interim suspension on this ground alone (*R (on the application of Shiekh v General Dental Council* [2007] EWHC 2972 (Admin) paragraph 16, approved in *General Medical Council v K* 2023 SC 1 at para [21]). The “interests of the person concerned” may arise if the professional has health difficulties. The NMC must review interim orders which have been put in place every 6 months, or where new evidence has become available.

[8] Paragraphs (8) and (9) of article 31 of the Order allow the NMC to apply to the court for extensions of time periods of interim orders as follows:

- “(8) The Council may apply to the court for an order made by a Practice Committee under paragraph (2) or (7) to be extended, and may apply again for further extensions.
- (9) On such an application the court may—
  - (a) extend (or further extend) for up to 12 months the period for which the order has effect;
  - (b) replace an interim conditions of practice order with an interim suspension order having effect for the remainder of the term of the order as extended;
  - (c) replace an interim suspension order with an interim conditions of practice order having effect for the remainder of the term of the order as extended”.

[9] Accordingly, as this is an application by the NMC, the court's powers are to refuse the order sought, grant an extension up to 12 months, or replace an interim suspension order with an interim conditions order or vice versa. If the court refuses the order sought, that has no effect on the NMC's internal fitness to practice proceedings; they may still continue to their conclusion. If the court decides that a member currently suspended should instead be subject to interim conditions under article 31(9)(c) of the Order, it may be appropriate for the court to seek input from the regulatory body in formulating the terms of those conditions.

[10] The principles to be applied by the court when deciding which order to grant are summarised in *General Medical Council v K* 2023 SC 1 at paragraph 6:

- “(i) The criteria for the exercise by the court of its power to extend an interim order ... are the same as for the making of the original interim order..., namely the protection of the public, the public interest or the practitioner's own interests;
- (ii) 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;
- (iii) The onus of satisfying the court that the criteria are met falls on the petitioner, as it is the applicant for the extension, and the standard of proof is on a balance of probabilities;
- (iv) It is not the function of the court to make findings of primary fact about the events which had led to the suspension or to consider the merits of the case for suspension;
- (v) Rather, it is the function of the court to ascertain whether the allegations made against the practitioner justify the extension of the suspension, rather than their truth or falsity;
- (vi) If the practitioner contends that the allegations are unfounded, he should challenge by judicial review the original order for suspension or the [regulatory body's] failure to review it...;
- (vii) The court has to reach its decision on the basis of the evidence on the application, which includes evidence as to the opinion of the [regulatory body] as to the need for an interim order;
- (viii) The court is not bound to follow or defer to these opinions, but should give them such weight as in the circumstances of the case it thinks fit.”

The court's task is not to determine whether the making of the order by the NMC was legally justified, but rather to decide for itself whether the statutory test for extending the order has been met.

[11] The statutory wording requires the relevant regulatory body, or the court, to be satisfied the order is “necessary”. That requires a proportionality analysis (*B v General Medical Council* [2022] CSIH 38 at para [13], *IB v General Medical Council* 2024 SLT 172 paras [21] and [26]). In considering proportionality, the risk to the public, or public interest, or interest of the member, must be weighed together with the potential adverse consequences for the member, the seriousness of the charges and the potential public response. The court should consider whether there are less intrusive means that can be adopted, such as workable conditions short of suspension which would meet the concerns, or orders of a shorter duration.

[12] Both the court, and the NMC, are public authorities subject to section 6 of the Human Rights Act 1998 (the “1998 Act”), which makes it unlawful for them to act incompatibly with Convention rights. It is accepted by the NMC that the orders sought in petitions of this nature engage rights under articles 8 and article 1 of protocol 1 of the European Convention on Human Rights, and may in some circumstances engage article 6. If public authorities act incompatibly with these rights, remedies may be available under section 8 of the 1998 Act, including damages in certain circumstances. By virtue of section 3 of the 1998 Act, the Order must be read and given effect compatibly with Convention rights so far as it is possible to do so. As a result, the way that necessity and proportionality are approached when considering interim orders or their extension may be influenced by the approach to proportionality under the Convention. The Convention approach is summarised by Lord Reed in *Bank Mellat v HM Treasury (No 2)* [2014] AC 700 at paragraph 74 as follows:

“it is necessary to determine

- (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right,
- (2) whether the measure is rationally connected to the objective
- (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and
- (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter”.

[13] The requirement to act compatibly with Convention rights has the effect that the decision maker has to consider the terms of the particular order sought to be imposed. It is not enough that public protection, public interest, or the interest of the member, indicate an interim order is appropriate. The terms of the order actually imposed must be proportionate. If a measure less intrusive to the member can be used to achieve the legitimate objective, that is what should be done. If the legitimate aim can be achieved by a shorter order, the imposition of conditions rather than suspension, or the continuation of an order with fewer conditions than currently in place, the less restrictive alternative should be chosen. Any practice conditions being imposed should be directed towards the particular situation and the particular individual, and be no more than necessary to achieve the legitimate objective. The court will take into account the cumulative effect of conditions; if they are so extensive and restrictive that it is difficult to envisage any employer being prepared to employ the member, that will be a more serious interference requiring commensurate justification (*Nursing and Midwifery Council v Persand* [2023] EWHC 3356 (Admin) at paragraph 22 at paragraph 47).

[14] The judge determining a petition for an extension of time has powers to determine appropriate procedure (Rules of the Court of Session, Rules 14.8 and 14.9(1)). Appropriate procedure will depend on the circumstances of a particular petition. In some cases, and not

only in defended cases, it may be appropriate for the court to be addressed on the statutory tests before determining the petition. In other cases, for example where there is evidence before the court that the member has actively consented to the order sought, and sufficient information and evidence has been provided by the petitioner for the court to be able to apply the statutory tests itself, it may be possible to determine motions on the papers.

## **Decision on the applications before the court**

### *General comments*

[15] The NMC has a high volume of cases. Information before the court suggested that at the end of March 2025, the NMC's total caseload stood at 6,357 cases, of which 2,337 were at the screening stage, 2,454 at the investigation stage, 345 awaiting a decision by case examiners about proceedings, and 1142 at final adjudication stage. Interim orders are not imposed by the NMC in all cases before it, and tend to be features of more serious cases.

[16] Fitness to practice proceedings before the NMC may take significant amounts of time. An affidavit before the court detailed the steps the NMC is taking to try to address the problem of delay. It acknowledges that "...some people are waiting longer than they should for cases to be resolved". In the two cases under consideration in this opinion, JH's case was referred to the NMC on 5 September 2022. The petition sought an extension of interim orders until 12 June 2026, although that was amended at the bar to 12 February 2026. JF's case was referred to the NMC on 19 April 2024. The NMC sought an extension of interim suspension until 6 June 2026. So far this is less of a delay than in JH's case, but it is of note that the NMC is not even in receipt of their investigation report into the allegations against JF. A decision about whether there is a case to answer, the drafting of charges, and any adjudication of those charges are still to come.



[17] Delay in the internal proceedings before the NMC may be relevant to the court's role in determining petitions for extension of time of interim orders in various ways. The reasons why a case has not been concluded is a factor for the court when considering whether or not to extend the time period of an interim order. Put another way, the balance of rights in a proportionality assessment may alter. The absence of any repetition, coupled with the passage of time, may mean risk is sufficiently reduced that an interim order is no longer justified. The severity of the effects of the interim order on the rights of the member may no longer be outweighed by the importance of the objective.

*The facts of JH's case*

[18] JH is a registered nurse. She was working as a disability assessor for Personal Independence Payment ("PIP") claims. She was referred to the NMC by her employer, a company working with the Department of Work and Pensions, on 5 September 2022. 19 of her PIP assessment reports, between 14 July 2022 and 4 August 2022, had been found to contain identical wording. She was dismissed by her employer on 24 August 2022 for gross misconduct. Her record had previously been unblemished, and there were no other concerns about her practice.

[19] On 13 December 2022, the NMC imposed an interim conditions of practice order on JH for a period of 18 months from 13 December 2022 to 12 June 2024, following a hearing at which JH was not present. It did so on the basis that there was a risk of harm to the public due to inaccurate record keeping, suspected dishonesty, and a risk of repetition, as well as the wider public interest. It wrote to JH saying she could continue to practice, but only under 11 conditions. The conditions covered a variety of matters, such as limiting her practice to a single employer, not being the nurse in charge of any shift, being supervised,

undergoing training in record keeping, asking her line manager to audit her record keeping, sending reports about record keeping from a line manager to the NMC before reviews, providing information to the NMC about where she is working and studying, telling her case officer of incidents and investigations against her, giving copies of the conditions to people she worked for, and allowing her case officer to share information about her with employers, education establishments, and people involved in her retraining. On 31 May 2024, the Court of Session extended that interim conditions of practice order for a further 12 months to 12 June 2025. On 28 February 2025, the NMC reviewed the interim conditions order, and added a further condition. This required JH to send the NMC “a written reflective piece that recognises the importance of keeping clear and accurate records as required by the NMC Code”.

[20] The history of the NMC’s internal regulatory proceedings has been that after the referral on 5 September 2022 an investigation was carried out. There were lengthy periods when little happened due to the investigator being on sick leave. A new investigator was appointed on 12 April 2024, and eventually an investigation report was served on JH on 19 February 2025. On 3 April 2025, a case to answer was found in relation to poor record keeping and whether dishonesty was involved, and the case was referred to the NMC’s Fitness to Practice Committee for determination. On 20 May 2025, a legal review was completed and a charge drafted. A substantive hearing has provisionally been scheduled for 16 to 19 December 2025.

[21] Meantime, JH has not practised as a nurse since 4 April 2021. She has started a new career in a different role. The NMC has been told by JH she is not working as a nurse and has no plans to do in the future. JH states that burn-out due to Covid-19 and working in a care home took serious effects on her mental health. She has admitted the regulatory

concerns, and that her fitness to practice as a nurse is impaired. She has requested agreed removal from the NMC's register on a number of occasions. That has been refused by the NMC, on the basis the allegations are sufficiently serious that they need to be looked at by a fitness to practice panel, so it can consider striking off as well as other options open to it. If the extension of time for the period now sought is granted, JH would be subject to interim conditions of practice for a period well in excess of 3 years.

### *Decision in JH's case*

[22] The court was satisfied that both the protection of the public, and to a lesser extent the public interest, were engaged by the allegations against JH. PIP is assessed using the same daily living and mobility descriptors for all claimants, and PIP assessment reports cover those criteria. Some of the content of PIP assessment reports is therefore likely to be similar, but other parts should be personalised to the functional ability of the particular claimant being examined by a healthcare professional. If PIP assessment reports are identical in areas where they should not have been, there may be inaccuracies relating to particular people being examined. The reports might be used as part of the evidence to decide a claim for PIP. Although both the Department of Work and Pensions and the tribunal system have the power to consider other forms of evidence to contradict any inaccuracies, incorrect contents of reports of healthcare professionals have the potential to give rise to wrong decisions on PIP claims. That might adversely affect a claimant, if they had relevant functional limitations but did not qualify for a benefit. Alternatively, the public purse might have to pay out on a benefit which should not have been awarded. Less directly, if the copying and pasting was found to be part of a general pattern of bad record keeping extending to other nursing activities, or dishonesty (and not just an inappropriate

way to try to meet employer requirements in terms of the numbers of reports), that might create risks to patients. These considerations gave rise to a need to protect the public and the public interest. The court gave less weight to a consideration relied on by the NMC of the need to maintain confidence in the professions and the NMC as regulator. That was likely to be a factor common to all cases and could not of itself justify an interim order (*Persand*, paragraph 22).

[23] Next, the court required to consider the various factors listed in *General Medical Council v K* 2023 SC 1 at paragraph 6(ii), set out in the governing law section above. On one side of the balance, the nature of the evidence was relatively strong. The court had not seen the terms of the admission by JH, but was informed by the NMC that she had made one in terms set out above. The PIP assessment reports themselves were independently verifiable sources of evidence. The allegations were undoubtedly serious. However, the gravity of the allegations, and the risk of harm to the public, were not at the top level of seriousness. The potential harm to the public was less direct than arising in many cases. On the other side of the balance, NMC's reasons why the case had not concluded were not strong. JH had been referred to the NMC in September 2022. It seemed extraordinary that an investigation report was not served on JH until February 2025, given the relatively straightforward nature of the allegations. Nearly 3 years had elapsed since the reference to the NMC. JH had worked elsewhere, without any adverse reports about her record keeping or honesty both prior to and after the reference. The NMC produced no recent evidence of a continuing risk. Although JH was no longer working as a nurse, she was still prejudiced by an interim order being in place. The conditions of practice order shows up in internet searches against her name, and is likely adversely to affect her reputation. The conditions of practice to which she is subject are relatively onerous, and would be unlikely to make her attractive to

employers upon whom additional burdens would be placed by the conditions. JH had already been subject to interim orders since 13 December 2022. If the order sought were to be granted, the period for which she would be subject to interim conditions would be longer than the 3 year period specified in article 29(5)(c) of the Order (although that period can be extended under article 30). Refusing to grant a further extension would not prevent the fitness to practice proceedings being concluded.

[24] Weighing these various matters, JH's case is close to the stage where an interim order would no longer be justified. However, particularly given the admission by JH and the fact that a hearing has been listed, the court is narrowly satisfied that an extension of time, allowing some interim conditions to continue, remains necessary for a short period while fitness to practice proceedings are concluded. But the court is not satisfied that it is necessary for the protection of the public or in the public interest to grant an extension of time allowing all of the conditions in the interim order to which JH is currently subject to continue, even giving due regard to the opinion of the NMC. JH is not working as a nurse and has not been doing so since 2021. She has an otherwise unblemished record, and the NMC produces no evidence of any repetition or inadequate record keeping other than when preparing PIP assessments. Some conditions impose obligations on third parties, which would be discouraging to potential employers, for no sufficient countervailing benefit to public safety. For example, condition 4 requires line managers to carry out audits of random samples of record keeping, and condition 5 requires them to submit reports to the NMC about JH's record keeping. The severity of their effects on JH, given the lapse of time without any adverse incident, outweighs any contribution of those conditions towards public safety or the public interest. Condition 6, requiring training in record keeping, has been there since 2022 and continued on each review, and it cannot be necessary repeatedly

to have to do training in record keeping. Condition 7, in effect requiring submission of an essay on the importance of record keeping, appears more appropriate to a case where a member wishes to continue nursing and proceedings have concluded with an adverse finding, and is not sufficiently connected with the legitimate aim of protecting the public and the public interest to be necessary as an interim condition. A less intrusive measure capable of achieving the legitimate aim is available, namely an interim conditions order omitting these various conditions.

[25] The outcome is that the court finds that an extension of time for an interim conditions order containing only conditions 1-3 and 8-12 of the current conditions, for a limited additional period until 12 February 2026, is necessary within the meaning of the statutory test.

### *The facts of JF's case*

[26] JF was a registered nurse working in the community mental health team. She was suspended from her job on 10 January 2024 by her NHS employer. A patient had made an allegation that JF had engaged in an inappropriate relationship with him for a number of months while she was his community practice nurse. On 4 January 2024, JF was told to have no contact with the patient. The patient sent the NHS employer video footage of JF outside his house, allegedly taken on 10 January 2024. The matter had been reported to the police, who decided to take no further action. JF was referred to the NMC by her NHS employer on 19 April 2024, on the basis of a breach of professional boundaries.

[27] On 10 June 2024, the NMC sent JF a letter confirming that, following an interim order hearing on 3 and 7 June 2024 at which JF was present but not represented, she was subject to an interim suspension order. The letter stated “You can’t work as a nurse or midwife in any

of the four countries of the UK, nor as a nursing associate in England, for as long as this order is in place". The panel considered the allegations were "attitudinal in nature". At the hearing, JF had not accepted all of the allegations against her. She referred to support from her fiancé and friends. She spoke about her upcoming wedding and her wish to do bank shifts to help pay for that. It was recognised that JF would be prevented from working as a registered nurse and as a consequence she might be caused financial hardship.

Nevertheless, the order was imposed in the interests of public protection, because of a risk of repetition, and also the NMC relied on it being in the public interest to maintain confidence in the profession and the NMC as a regulator. The interim suspension was reviewed in November 2024 and April 2025. The order was continued on the basis that there was no material change in circumstances.

[28] Meantime the NMC continued with its internal processes following the referral on 19 April 2024. It initially decided to do nothing while it awaited the outcome of the NHS employer's investigation. An external firm of solicitors was instructed to carry out an investigation for the NMC on 25 June 2025. The parameters of the investigation were to obtain the NHS employer's investigation report, and witness evidence of six witnesses (later reduced to four), including the patient with whom JF was alleged to have had a relationship if appropriate and necessary. So far the solicitor's firm has asked for and been granted four extensions. (It is maintained that the investigation is exceptionally complicated, although it is not clear to the court why that should be, given the nature of the allegation and the remit of the investigation entrusted to the solicitor's firm). The investigation by the NHS employer has not yet concluded, partly because they wanted to speak to JF, and as she was on maternity leave they wanted to wait until 2 weeks after the birth. The NMC appear to have acceded to the request of the solicitor's firm to "put the case on hold" until 22 July

2025, pending the outcome of the NHS employer's investigation. The upshot is that it has been 14 months since the case was referred, and the NMC is still investigating. Once it has its investigation report, it will still take time for the NMC to decide whether there is a case to answer, to draft charges, and proceed to a hearing and determination.

[29] From the papers, it can be seen that on 10 June 2024 JF had a fiancé and an impending wedding. In June 2025 she is on maternity leave, and may by now have given birth.

### *Decision in JF's case*

[30] The court was satisfied that both the protection of the public, and to a lesser extent the public interest, were engaged by the allegations against JF. Crossing of boundaries in the ways alleged could give rise to a risk of harm to patients, and the public needed to be protected from the risk of that happening again. The NMC also relied on the public interest in maintaining confidence in it as a regulator and the profession, and public expectations that a person such as JF should not be allowed to practice without any restrictions. Again, those conditions are capable of general application and would not of themselves justify an interim order. In assessing public interest, it had to be taken into account that the police had elected not to take any criminal proceedings against JF. It is also in the public interest that services of trained professionals are not lost, if risks can be sufficiently mitigated by practice conditions.

[31] Turning to the factors listed in *General Medical Council v K* 2023 SC 1 at paragraph 6(ii), on one side of the balance the allegations were serious and, if found established, were an abuse of professional trust. The nature of the evidence, although the court had not seen it, was said to include not only the testimony of a patient undergoing



treatment for mental health problems and of JF, but external material such as text messages and a video. On the other hand, the seriousness of the risk of harm to patients was something that had to be assessed in the context of the lapse of time since the allegations. There was no suggestion of any repetition since 10 January 2024, now approximately 1½ years ago, or any other inappropriate behaviour by JF at other times. The out of hours texting and meetings which troubled the NMC were in the context of that particular relationship, which no longer exists. It appeared unlikely there would be repetition with that particular patient, or with another patient imminently, given that from the evidence available it seems JF has married her fiancé and given birth to their child. JF has been suspended for a year, a serious infringement on her ability to work. It is evident that little progress has been made in the NMC's investigation during that time, and a significant further time period would be necessary to complete the fitness to practice investigations. While it may be reasonable to await the outcome of the NHS employer's investigation before the NMC completes its investigation, it does not follow that interim orders should continue in their most intrusive form (of suspension) where the NMC's proceedings are taking a long time. There is prejudice to JF if she continues to be suspended, because its effect is to prevent her from working and progressing in her chosen profession, including doing bank shifts. While that might be mitigated by her currently being on maternity leave and in receipt of maternity pay, that does not remove all prejudice.

[32] Weighing the need for public protection and public interest considerations with other factors, the court is satisfied that interim orders are necessary for a further period. However, the court is not satisfied that a further period of interim suspension is necessary, as it would be disproportionate. Again, the court has carefully considered the views of the NMC, particularly those expressed by the panel imposing and reviewing the interim

suspension. The NMC attached importance to there being no material change of circumstances, but the absence of any further concerns being raised over time may of itself change the level of risk. Changes in personal circumstances, such as those in JF's personal life, may also affect risk levels. JF has already been suspended for a year. While interim suspension has a rational connection to important legitimate aims, when all the relevant factors are balanced, it is no longer the least restrictive alternative to achieve those legitimate aims. Interim suspension may be a blunt and effective instrument, but it is too severe an infringement on JF when balanced with the importance of the objective. Given the reduction in the risk of repetition due to the passage of time and JF's changed circumstances, the court considers that interim practice conditions can instead be put in place, without unacceptably compromising the achievement of the objectives of protection of the public and the public interest.

[33] Conditions which prevent JF working unsupervised, or in the community, and restricting her to working in venues where there are other people available to supervise her (such as hospitals or other medical facilities), as well as prohibiting her from approaching the patient in question, appear to the court to be adequate interim measures to address the legitimate aim. Some other standard conditions may also be justified and proportionate, so that the NMC retains oversight of JF's compliance with these core conditions. For example, conditions requiring JF to give 4 weeks' notice to the NMC of her date of return to work after maternity leave, information about where she is working or studying, and any adverse incidents at work, and requiring JF to provide copies of the interim practice conditions to any employer, may be appropriate.

[34] The outcome of the petition concerning JF is that the court finds it should replace the interim suspension order with an interim conditions of practice order under article 31(9) of

the Order. Given the relatively early stages of the NMC's regulatory proceedings, and the likely time those will take, the appropriate extension period of such an order would be until 6 June 2026.

## **Conclusion**

[35] The court is prepared to grant extension of time orders in the cases of both JH and JF, having applied the statutory tests, although not in the form sought in the prayer of each petition. In the case of JH, neither the term of the extension initially sought, nor some of the conditions sought to be continued, are necessary. However, the court would be prepared to grant an extension of time of an interim conditions of practice order until 12 February 2026, if its form was revised to take into account the court's findings set out above. In JF's case, the court does not find an extension of an interim suspension order is necessary. However, the court finds that replacing the order for interim suspension with an interim conditions of practice order, for a time period up to 6 June 2026, is justified.

[36] The court will order the NMC to provide written submissions within 3 weeks on the terms of interim conditions of practice to give effect to the court's ruling. Short extensions of time of the current interim orders have been granted, as necessary to maintain public protection and in the public interest, while that is done. A hearing date will be reserved for a date prior to the expiry of those extensions of time, should the court require to be addressed further in the light of the written submissions.