

To: Members of GDC Statutory Committees
Legal Advisers

Cc: GDC In-house Legal Presentation Service
GDC In-house Legal Advisory Service
GDC External Legal Providers
GDC Committee Secretaries
Defence Organisations

Re: **Nabeel Aga v General Dental Council [2023] EWHC 3208 (Admin)**

1. The judgment in the above case was handed down by the High Court on 13th December 2023.
2. In short, the High Court has determined that the GDC's interpretation and understanding of the interaction between, and effect of, S.27B, S29A and S.30 of the Act, relating to immediate orders and substantive suspension directions, is incorrect. The Court held that, where the PCC makes a direction for a suspension order pursuant to S.27B, and an immediate order under S.30, this does not create two separate, consecutive orders. Instead, the time spent under the immediate order must be "set off" or deducted from the time spent under the substantive order. The immediate order does not extend the period of suspension beyond that set by the PCC by way of sanction and in breach of the statutory maximum of 12 months. The Court held that the PCC's determination in Mr Aga's case was therefore wrong in law, for failing to include a direction that time spent under the S.30 immediate order was to be "set off" or deducted from the total suspension order.
3. This judgment departs from an earlier line of High Court authorities, wherein it has been held that the language of the statute does not permit the regulatory tribunal to take account of a period of immediate suspension served prior to determination of a registrant's High Court appeal (see Mr Justice Bean in *R v (Ghosh) v General Medical Council* [2006] EWHC 2743 (Admin) at [27], and most recently, the Scottish High Court in *W v Health and Care Professions Tribunal* [2022] CSIH 47 at [37]-[38]).
4. In light of this conflict of authorities, and the need for clarity on this important point, the GDC have instructed Leading Counsel and has filed an application for permission to appeal to the Court of Appeal.
5. It is a matter for Practice Committees to determine whether an immediate order is necessary under section 30, and further, to make any directions they consider appropriate in relation to the operation of the immediate and substantive orders. The GDC's submission in such cases will be that the commencement and expiry of immediate and substantive orders should operate as it has done previously, applying our Guidance for the Practice Committees at paragraphs 6.35 to 6.37.
6. Practice Committees may be assisted on this point by the recent Court of Appeal decision in *Adil v General Medical Council* [2023] EWCA Civ 1261. Whilst that case concerned the relevance of time spent on an interim order, prior to a substantive hearing, to sanction, the Court of Appeal has provided helpful guidance for Committees to consider

the underlying purpose of the substantive sanction, in assessing whether it is appropriate to make any deduction for time spent subject to another order [paragraphs 96-101].

7. The substantive sanction, immediate order and/or any directions are a matter for the Practice Committee to determine in each case as they consider appropriate.
8. All stakeholders will be provided with updates on the Council's appeal in due course.

12 January 2024