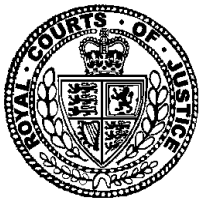

Neutral Citation Number: [2023] EWHC 3208 (Admin)

Case No: AC-2023-LON-000128

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13th December 2023

Before :

Mr Justice Ritchie

- -

Between :

NABEEL AGA	**Claimant**
- and –	
THE GENERAL DENTAL COUNCIL	**Defendant**

- -
- -

Andrew Kennedy KC (instructed by **Weightmans**) for the **Appellant**
Peter Mant instructed by the **Respondent**

Hearing dates: 5th December 2023

- -

Approved Judgment

This judgment was handed down remotely at 14.00pm on Tuesday 13th December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Ritchie:

The Parties

1. The Appellant is a registered dental practitioner with an MSC in orthodontics.

2. The Respondent is the regulatory body for dentists.

The Appeal

3. This is an appeal against a ruling of the Professional Conduct Committee (PCC) of the Respondent. The Appellant was found to have stalked and harassed a woman whom he wanted to have a sexual and marital a relationship with (V) and to have failed to report his arrest and charge by the police for harassment of her. The Appellant accepts the factual findings and the rulings that his fitness to practise was impaired by his actions and attitude and accepts that suspension from registration was an appropriate sanction. He appeals the length of the suspension, which was set at 9 months. He also seeks termination of the immediate suspension order and appeals the Respondent's interpretation and practice relating to the effect of the interaction between the immediate suspension order and the direction for suspension on the total duration of his suspension.

Bundles

4. For the hearing I was provided with 1 lever arch file containing the core bundle, the supplementary bundle and the authorities bundle. I was provided with further submissions in writing after the hearing.

The Issues

5. The Grounds of appeal against sanction were framed as 4 in number, but really they were all subsumed within the one main ground: that the sentence was manifestly excessive or disproportionate. The reasons put forwards for that were as follows:
   5.1 Repetition risk: the PCC were wrong to find that there was a real risk of repetition of misconduct.
   5.2 Similar behaviour risk: the PCC were wrong to find that the Appellant posed a risk to the victim (V) and other female dental professionals, patients and members of the public.
   5.3 Evidential under weighing: the PCC failed to give sufficient weight to the evidence that: (1) the Appellant's misconduct was only towards V; (2) there had been no repetition since he had been arrested; (3) colleagues had given supportive testimonials as to his good conduct with women in his practice.

6. There was also a further Ground relating to the effect of the PCC deciding that the Appellant should be suspended immediately under S.30 of the Dentists Act 1984 and the way in which that order is treated as separate from the direction for suspension and so extends the duration of the suspension he endures when he appeals.

The evidence and findings of fact

7. In December 2016 the Appellant met V at a dentistry conference. V asked the Appellant to "pass the milk" (supplementary ABp40). They never went out on a date and never had any relationship.

The misconduct warning from the police

8. 8 months later, on 17th July 2017 the Appellant was given a harassment warning by the police at the request of V. He signed it. In the document he accepted that he was aware that V had complained to the police of his stalking and harassing her. The police advised him not to talk to her or any member of her family directly or indirectly or he would be liable to arrest and charge for harassment. The Police occurrence computer print out details noted that V reported that *"suspect subjects female victim to continued unwanted attention and contact over a long period of time" … "causing the aggrieved difficulties at work"…"she has not been interested and their families have been involved and also relayed this message at this time the male has done nothing other than pursue the female through the Imam and their families".*

The community resolution agreement through the police

9. Undeterred by the police warning, one year later, on 3rd July 2018 the police community resolution scheme was used to resolve a further complaint by V against the Appellant. The Appellant was visited by two police officers (PC Harris was one of them) and warned that he should not seek any further contact with V because she did not want any kind of relationship with him. He signed an agreement that he understood that he should have no contact with V.

The more recent harassment by social media in 2020

10. Undeterred by the misconduct warning and in breach of the community resolution agreement which he had signed, two years later, on 12th June 2020 the Appellant sent an Instagram message with a voice recording to V, along with a "friend" request. In the Police interview (chronologically referred to later below) the recorded message was played:

> "Q: PLAYED: *"Ayesha, it was really nice to see you today. It was nice to see your dad. It wasn't planned, I promise".*
> A: This is the first one.
> *Q: "Like plan of whatever happened between us, but may I please beg you to not make false complaints about me and influence the hate discrimination against(?) me because, you know, these people are opportunistic, they want either money or just entertainment or trauma at other people's expense and, you know, I know you're not at fault but neither am I and if all of that happens again I might not be able to survive it. Please. I really don't need nothing from nobody, especially not misunderstandings and what-not. Give my regards to your dad and if somebody bothers you using my name then please try and inform me and I will either look into it myself or get some lawyers instructed, I'm*

extremely ... I'm extremely sorry for whatever went down between the two of us."
It looks like it's ...
A: It's getting stuck.
Q: Yeah. *"... but please be assured that I am just a human and it's just (inaudible) feelings and the most I do is write, I write, I read it to myself. I've written twice earlier to you and then* ---
A: I've forgiven those things that I've written ---
Q: One moment. *"... about all of that. Again, as I said, it was neither your fault or mine. I write, I read it to myself and I let it go. I'd love to share it with you but if you don't want to basically I understand and I'm sorry, as I said. I'm trying to leave for good and I just don't know where to go having got stuck in lockdown in Leicester but I'll find something, you know. You take care. Give my regards to your mum as well. She was right that you were too young and (inaudible) what's happening but again it wasn't my fault and it wasn't yours. I don't want any validations, no clarifications, it's just life. Perhaps we weren't living it right. You have a nice one and, please, please, I beg you* ---
A: This is a repeat.
Q: It's a repeat. "*Do not, do not* ---
A: Yeah, those are my intentions outright there. If she would just come in and say, "*You know what, I don't like you ..."*
Q: Just one second: *"... don't want to bring disrepute to anybody or disrespect to anybody. Please take care."* Just for the reference, that was exhibit AA/8, so you – that's definitely your voice?
A: Yes, it is. That's the Instagram thingies."

11. As a result V blocked the Appellant's Instagram account. Undeterred by this, the Appellant set up another Instagram account and profile and on 15th July sent another Instagram message with voice recording and a friend request. V blocked this account as well and took a screenshot of the message. The recording was played during the police interview subsequently:

"Q: Just listen to this. (VOICE RECORDING PLAYED: *"Hello Ayesha"*
A: This is me.
Q: *"As-salamu alaikum. Hope you're well. It was really nice sort of to kind of to just bump into you on the corner yesterday. I don't know what our stories entail but I never planned it, please be assured, and, second, I think I really, really, really admire you and adore you ---"*
A: Log(?) them log them.
Q: Love(?)
A: "Yeah, I do I do. (*Please consider me, you know, please speak with me, please let's take this forward just you and me, please*)"

A: This is the second one I told you about."

The harassment by going to V's home in 2020

12. Undeterred by the police warning, his own agreement not to contact V and V blocking his two social media approaches, the Appellant then turned up uninvited to V's home on 15th July 2020. At the door he was met by her mother. She told him to go away and to stay away from her daughter.

13. Undeterred by V's mother's warning, on Friday 7th August the Appellant again went uninvited to V's home with flowers. This time V's father met him at the door and took a more robust and assertive approach (according to the police computer records). He told the Appellant that V was married so there was no point to his persistence. The Appellant persisted and asked to speak to V. The neighbours heard the commotion and took part and challenged the Appellant, telling him to leave V alone. As the Appellant left he said he was going to marry V, that they were destined to be together and that if they could not be together now then they would be "in the afterlife".

The Police Charges

14. V reported to the police that she was intimidated and distressed by all of this. The police arrested the Appellant in early August 2020 and seized his phone and computers. They searched those for images of V but found none. They took a statement from V on 9th August which took 4 hours and consisted of 7 pages. She provided exhibits and named several witnesses. The case was categorised as: stalking causing serious distress.

15. The police contacted the Appellant's work at Smile dentists in Leicester and spoke to his supervisor. Then, on 13th August 2020 the police interviewed the Appellant. The Appellant gave a confusing account of his interactions with V. He hinted at a relationship as follows:

> "her father has very heavy scrutiny on her …my concern is what she does to me, that if it is confidential between us and won't be discussed to her father so she does not get any repercussions I can discuss…"

He asserted he was stuck in Leicester during lockdown with no work, so he started to do deliveries for his family's fish and chip shop in the area near V's home. Then, after lockdown, V "*was almost bumping into my car.*" He let two such incidents go but he asserted that:

> "So we were face to face way too many times for it to be a coincidence. She was behind me, in front of me was too much to be a coincidence and I have my routine, regular routine of travelling in that area for deliveries work and what-not, yeah, but and I have witnesses but its just hard tom, you know, like its

> disappointing and embarrassing for me to bring them on but if it goes to that then we have got no choice, so then I messaged her – I found her. I don't have a phone number, she doesn't have my phone number, nothing. I found her profile on Instagram, yeah. I don't do Instagram much, and I sent her a voice recording saying "look, please don't start all the episodes again, the episodes of whatever happened before". Even my parents were disturbed a lot because some of her auntie came in-between and said "If you want this situation to go away then get your son married to the person I say" so they could make money, telling them "Oh, look, we got you an Indian dentist for your daughter". They don't know any rules and regulations over here, you're sorted, you see, and my mum went into depression when she found out that was going to happen to us and then she left, you see, so – I messaged her begging, saying that, you know, but I don't think she read it and just deleted it so I also deleted it and let it go. Now whenever I see her she's always with someone, mother, father, sister, every time it was like that. Whenever she's by herself she tries to tease me, you see."
>
> …
>
> "Smiling, looking, walking closer towards me and then I have to go away, so I got really frustrated because lockdown was not easy you see, and 18 months ago what happened was a similar thing was happening so I told a community Imam, "Can you go speak to her father, yeah, ask her what she wants. If she wants me then we can discuss because I'm still single you see…"

16. The police informed the GDC of the charges and the GDC investigation started in January 2021.

17. Before the Magistrates Court in May 2021 the Appellant accepted a 5-year restraining Order to protect V from his harassment of her which involved him being banned from entering 8 named streets in Leicester shown on a map and within which he agreed not to contact V directly or indirectly via social media or third parties. In exchange for this Order he was acquitted of harassment by the prosecution offering no evidence.

18. In May 2022 the Appellant applied to lift the restraining Order but failed. In November 2022 the Claimant attended a 4.5 hour CPD course on professionalism and fulfilling duties as a dentist. It was aimed at key areas of professionalism both at work and in private life to develop a greater understanding of dento-legal responsibilities and common areas of difficulty and to avoid regulatory and legal scrutiny.

19. The Appellant provided a witness statement to the PCC dated 18.7.2023. In that he admitted each of the charges but denied the dishonesty charge. He was subsequently

acquitted of that so I will say no more about it. He asserted that he never intended any of his actions to be a harassment of V:

> "*but on reflection I accept* ***others would think my course of conduct would amount to harassment****. I now realise that my overtures towards AA were unwelcome. I sincerely regret the fact that contact occurred between me and AA, looking back I think that I was misguided about how I went about things. Furthermore, matters were not helped by the* ***interference of third parties*** *and "marriage counsellors" within the community whose interferences were also reasons for contacting AA. However, I do acknowledge all contacts were unwelcome and regretfully caused her distress."* (My emboldening).

The Law

The right to appeal

20. Under S.29 of the Dentists Act 1984 [DA84] the Appellant had the right to appeal the decision of the PCC directing his suspension by notice delivered within 28 days:

> "**Appeals**
> S.29 (1) The following decisions are appealable decisions for the purposes of this section—
> (a) a decision of the Professional Conduct Committee under section 24—
> (i) giving a direction for erasure of a person's name from the register under subsection (3) of that section, or
> (ii) refusing an application to restore a person's name to the register, or refusing to restore his name until the end of a specified period, under subsection (6) of that section;
> (b) a decision of a Practice Committee under section 27B or 27C giving a direction for erasure, for suspension, for conditional registration or for varying or adding to the conditions imposed by a direction for conditional registration;
> (c) a decision of the Professional Conduct Committee under section 28—
> …
> (iii) giving a direction under subsection (9) of that section suspending indefinitely the right to make further applications under that section.
> (1A) In subsection (1)—
> (a) a reference to a direction for suspension includes a reference to a direction extending a period of suspension and a direction for indefinite suspension; and
> (b) …

> (1B) Subject to subsection (1C), a person in respect of whom an appealable decision has been made may, before the end of the period of **28 days** beginning with the date on which notification of the decision was served under section 24(7), 27B(8), 27C(6) or 28(7), (8) or (10) , [...] 5 appeal against the decision to the relevant court."

The powers on appeal

21. On appeal this Court has the following powers under S.29 DA84:

> "29 (3) On an appeal under this section, the court may—
>
> (a) dismiss the appeal,
>
> (b) allow the appeal and quash the decision appealed against,
>
> (c) substitute for the decision appealed against any other decision which could have been made by the Professional Conduct Committee, the Professional Performance Committee or (as the case may be) the Health Committee, or
>
> (d) remit the case to the Professional Conduct Committee, the Professional Performance Committee or (as the case may be) the Health Committee to dispose of the case under section 24, 27B, 27C or 28 in accordance with the directions of the court.
>
> and may make such order as to costs (or, in Scotland, expenses) as it thinks fit."

The PCC's power to suspend

22. Under S.27B of the DA84 the PCC had the following powers to investigate the misconduct charges against the Appellant and to consider the correct sanction:

> **"27B.— The Practice Committees**
>
> (1) Subject to subsection (4), a Practice Committee must investigate an allegation or allegations against a person referred to them by the Investigating Committee under section 27A and determine whether that person's **fitness to practise as a dentist is impaired.**
>
> (2) In making a determination under subsection (1), the Practice Committee may take into account whether the person who is the subject of the allegation or allegations has complied with any relevant parts of the guidance issued under section 26B, but that question is not of itself determinative of whether a person's fitness to practise as a dentist is impaired.
>
> …
>
> (6) If a Practice Committee determine that a person's fitness to practise as a dentist is impaired, they may, **if they consider it appropriate, direct—**

> (a) (subject to subsection (7)) that the person's name shall be erased from the register;
> (b) **that his registration in the register shall be suspended during such period not exceeding twelve months as may be specified in the direction;**
> (c) that his registration in the register shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such conditions specified in the direction as the Practice Committee think fit to impose for the protection of the public or in his interests; or
> (d) that he shall be reprimanded in connection with any conduct or action of his which was the subject of the allegation.
> (7) ….
> (8) Where a Practice Committee give a direction under subsection (6), the registrar shall forthwith serve on the person concerned notification of the direction and (except in the case of a direction under paragraph (d) of that subsection) of his right to appeal against it under section 29." (My emboldening).

23. The PCC approach sanctions in ascending order of restriction. The PCC had the power to direct erasure. If the appropriate decision is not to erase, the PCC has the power to direct suspension of the Appellant's registration during such period not exceeding 12 months as may be specified. The PCC have no power to suspend for more than 12 months. The direction must clearly state the duration of the suspension but is not fettered as to what else the direction may say about how the duration is constituted.

The default position on the "taking effect" of the suspension direction

24. The next question is: when does any suspension direction take effect? Another slightly different question is when does it start? I raise the verbal difference here because, as will be seen, it will become important. That is covered by S.29A of the DA84 which states:

> "29A. **Taking effect of directions for erasure, suspension … etc.**
> (1) This section applies to—
> (a) …;
> (b) a direction for erasure, **suspension**, conditional registration or variation of or addition to the conditions of registration given by a Practice Committee under section 27B or 27C; and
> (c) ….
> (2) A direction to which this section applies **shall take effect**—
> (a) where **no appeal** under section 29 is brought against the decision giving the direction within the period of time specified in subsection (1B) of that section, **on the expiry of that period;**
> (b) … or

> (c) **where such an appeal is brough**t and is not withdrawn or struck out for want of prosecution, **on the dismissal of the appeal**." (My emboldening)

25. It is clear from this section that the default position is that the "taking effect" of any suspension is automatically delayed by the 28 day appeal period during which the Appellant has the right to appeal. If the dentist does enter a notice of appeal then the default position is that the start of the suspension is delayed further until the end of the appeal. Thus, without another order by the PCC, any dentist can continue practising as a dentist, despite the suspension direction, for 28 days after the PCC's decision and if the dentist enters a notice of appeal, the taking effect of the suspension is further delayed for an indeterminate period until the appeal is withdrawn or heard.

The PCC's power to impose an immediate start to the suspension

26. In addition to the default position, the PCC has power to *start* the suspension immediately. I use that word intentionally. This is contained in S.30 of the DA84 and is set out below:

> "30.— **Orders for immediate suspension…**
> (1) On giving a direction for … suspension under section … 27B(6)(a) … in respect of any person, the Practice Committee giving the direction, **if satisfied that to do so is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of that person,** may **order** that his registration shall be **suspended forthwith** in accordance with this section.
> (2) ….
> (3) Where, **on the giving of a direction, an order** under subsection (1) … is made in respect of a person, his registration in the register shall, subject to subsection (6), **be suspended** …, **from the time when the order is made until** the time when—
>
> (a) **the direction takes effect** in accordance with section 29A;
> (b) **an appeal** under section 29 against the decision giving the direction **is determined** under section 29(3)(b) or (c); or
> (c) following a decision on appeal to **remit** the case to a Practice Committee, the Practice Committee dispose of the case.
>
> (4) …
> (5) ...
> (6) …
> (7) A person in respect of whom an order under subsection (1) or (2) is made may apply to the court for an order terminating any suspension imposed under subsection (1) or any conditional registration imposed under subsection (2), and the decision of the court on any such application shall be final." (My emboldening)

27. It can be seen that immediate suspension orders fill the gap between a PCC's direction to suspend and the default timing of the coming into effect of the direction to suspend, which otherwise does not bite until the 28 day appeal period is over or the appeal is resolved. The need for an immediate suspension depends on the assessment by the PCC of the necessity, if any, to protect the public or on the PCC's assessment that the public interest or the interests of the dentist give rise to the necessity. In practical terms this would prevent a dentist who is made subject to a suspension direction from appealing just for the purpose of delaying the start of the suspension.

28. Subsection (3) makes it clear that the power to make an immediate suspension order does not arise unless the PCC has first made a direction for suspension.

The GDC Guidance

29. The Guidance issued by the GDC in 2016 is of some assistance here. At para 6.21 et seq it states as follows:

> "**Suspension**
> 6.21 If the PCC finds that the withdrawal of registration is necessary but that it does not need to last the five-year term that would be the minimum period for erasure, it may suspend the Registrant. Suspension prevents the Registrant from practising as a dental professional for the length of the Suspension Order.
> 6.22 A Suspension Order should be set for the minimum amount of time that the PCC considers necessary to protect the public and may not exceed 12 months.
> 6.23 The PCC must decide whether the suspension will be lifted automatically at the end of its term or whether it will be subject to a review hearing. This must be made clear in the determination. If a review hearing is to take place, the PCC should indicate what, if any, information it would expect the registrant to be able to provide at the review hearing (for example, evidence of the successful outcome of any retraining that the dental professional has undertaken).
> 6.24 If the suspension is reviewed at the end of the given period, the PCC can:
> • renew the suspension (for up to 12 months);
> • impose conditions on registration;
> • allow the Registrant to return to unrestricted practice.
> The Registrant will be notified of the continuation of, or any changes to, the Order.
> 6.25 The dental professional is expected to continue to meet the GDC's CPD requirements during any period of suspension and make any CPD declarations or submissions to the GDC when required. The dental professional's competence may be affected by prolonged periods of suspension, which their CPD activity during this time may take into

account. They must ensure the CPD activities they undertake during any period of suspension will not lead to a breach of the suspension order.

6.26 At any time **while a Suspension Order is in force**, the PCC may following a further hearing:

• extend the period of suspension (for up to a further 12 months);

• revoke the suspension order and impose conditions on registration;

• revoke the suspension order allowing the Registrant to return to unrestricted practice. The Registrant will be notified of any changes to the Order.

6.27 A Suspension Order takes effect 28 days from the date the notification of the decision is served on the Registrant (there is a statutory appeal period of 28 days). The PCC should therefore consider whether it is necessary, in order to protect patients and members of the public, to impose an immediate suspension in addition to the substantive order (see paragraphs 6.35-6.38)

6.28 Suspension is appropriate for more serious cases and may be appropriate when all or some of the following factors are present (this list is not exhaustive):

• there is evidence of repetition of the behaviour;

• the Registrant has not shown insight and/or poses a significant risk of repeating the behaviour;

• patients' interests would be insufficiently protected by a lesser sanction;

• public confidence in the profession would be insufficiently protected by a lesser sanction;

• there is no evidence of harmful deep-seated personality or professional attitudinal problems (which might make erasure the appropriate order).

6.29 The PCC is able to specify appropriate and practical actions for the Registrant to carry out during the period of suspension. It should be possible to verify the completion or otherwise of any such actions."

"Immediate conditions and suspension orders

6.35 The dental professional can appeal against any sanction which will restrict their registration (conditions, suspension or erasure). The appeal period expires 28 days after the date on which the notification of the determination is served on the Registrant. The sanction does not come into effect until the end of the appeal period or, if an appeal is lodged, until it has been disposed of. During this period the dental professional's registration continues unaffected by the sanction unless the PCC imposes an immediate order.

6.36 …

> 6.37 When the PCC imposes suspension or erasure, it may also impose immediate suspension. This means that the Registrant is suspended straightaway. The Registrant is subject to the immediate suspension until either the appeal period expires or until any appeal is disposed of. **If the sanction is not changed on appeal, the substantive suspension or erasure then comes into effect.**
> 6.38 The basis of imposing an immediate order must be that the PCC is satisfied that such an order is necessary for the protection of members of the public or is in the public interest. An immediate order might be appropriate where:
> • the Registrant's behaviour is considered to pose a risk;
> • the Registrant has placed patients at risk through poor clinical care; or
> • immediate action is required to protect public confidence in the profession."

This Guidance creates a problem. It does not make clear whether the period of immediate suspension served is deducted from the sanction period of suspension. It may be read as implying that the full suspension takes effect (the words used are "substantive suspension") when the appeal is dismissed.

The problem

30. A consequence of the imposition of an immediate suspension order is the way in which the Respondent operates it in practice. If a dentist appeals and the appeal takes 4.5 months to be heard, as this one did, the GDC interpret the 9 month suspension direction which "takes effect" when the appeal is dismissed as the full 9 months without any deduction for the suspension already served. The Guidance omits to state this, but the Respondent submits that the direction to suspend will then run for its full term and there is no set off for the suspension already served under the immediate order. So, on the Respondent's interpretation of the DA84, that means the total suspension will be increased from 9 months to 13.5 months (in this case) which is more than the 12 month maximum permitted by S.27B of the DA84.

31. The Appellant submits that the correct interpretation of the DA84 is that the time served under the immediate suspension order is to be or should be deducted from the PCC's stated duration of the direction for suspension. Alternatively, it is submitted that it was wrong in law to fail to set off the immediate suspension against the direction for suspension. This point was raised as a concern by the Appellant but not dealt with in the parties' skeleton arguments. Therefore, I asked both parties to research the issue and provide written submissions after the end of the hearing. I am grateful to both for doing so. The case law is instructive and I shall deal with it below but I start with the normal rules of statutory interpretation helpfully summarised in *Benion* 8th ed..

32. The issue before me is whether the GDC's interpretation of the interaction between S.s 27B, 29A and 30 [the Sections] is correct.

Statutory interpretation

33. The task here is to construe or interpret the provisions of the DA84 and in particular the interaction between and the true meaning of the Sections. To do so I am required, inter alia, to consider the usual tenets of construction of legislation including:
    29.1 the intention of the legislation read in its true context;
    29.2 the presumption of the legislature being rational and reasonable and intending to pursue the legislation in a coherent and principled manner;
    29.3 the presumption that the grammatical meaning of the words is the actual meaning;
    29.4 whether a strict or more liberal interpretation is required;
    29.5 the consequences of the competing interpretations;
    29.6 construction in such a way as to implement rather than defeat the purpose of the legislation.

34. When considering a purposive interpretation, I bear in mind the mischief which the Sections in the legislation was intended to address. That mischief is misconduct and failure to remedy that. I also bear in mind that there is a presumption against absurdity, so that where a construction requires a person to do the impossible or the unworkable or something illogical or anomalous, or disproportionate, then such an interpretation is less likely to be correct.

Context

35. The context in which S.s 27B and 29A and 30 are set is the whole DA84 and in particular the overarching objectives of the Act which are set out in S.1 as follows:

> "1.— **Constitution and general duties of the Council.**
> (1) There shall continue to be a body corporate known as the General Dental Council (in this Act referred to as "the Council").
> (1ZA) The over-arching objective of the Council in exercising their functions under this Act is the protection of the public.
> (1ZB) The pursuit by the Council of their over-arching objective involves the pursuit of the following objectives—
> (a) to protect, promote and maintain the health, safety and well-being of the public;
> (b) to promote and maintain public confidence in the professions regulated under this Act; and
> (c) to promote and maintain proper professional standards and conduct for members of those professions.
> (1A) When exercising their functions under this Act, the Council shall have proper regard for—
> (a) the interests of persons using or needing the services of registered dentists or registered dental care professionals in the United Kingdom; and

(b) any differing interests of different categories of registered dentists or registered dental care professionals."

The health of the public and public confidence are therefore key objectives, but so are the maintenance of proper professional standards and conduct. Apparent unfairness in the way in which the disciplinary procedure is operated by the Respondent would be contrary to maintaining the standards of the profession and would erode those standards.

Grammatical meaning

12 month maximum

36. There can be no doubt that the meaning of S.27B(6)(b), which imposes a 12 month maximum by using the words "not exceeding twelve months" for the period for which the PCC can suspend any dentist registrant at the final hearing, is not qualified or subject to any exceptions in the Act. It is an absolute maximum and it applies to suspension.

Taking effect of the suspension direction

37. S.29A determines when the S.27B suspension direction usually takes effect. The plain and grammatical meaning of the words "*this section applies to*" indicate that it applies to directions for suspensions because these are specifically listed in subsection (1). The words "*shall take effect*" are mandatory. The timing of the taking effect is different in each of the three subsections. If there is no appeal, the taking effect is the end of the 28 days appeal period. If there is an appeal, the taking effect is the withdrawal, striking out or dismissal. What this section does is set the default date for the direction to suspend to take effect. What the section does not do is expressly state how it interacts with S.30 in relation to the duration of the suspension nor does it set any start date, a term to which I will refer below. Parliament could have made it clear how S.29A would interact with S.30 in relation to duration but did not do so in this section.

Immediate suspension

38. S.30 creates a "taking effect" date for the suspension which is different from the default date. In my judgment the plain grammatical meaning of the words in S.30 is as follows. Subsection (1) makes it plain that the power granted to the PCC under S.30 only arises "*on giving a direction for … suspension"*. Thus the S.30 power is parasitic on the S.27B direction for suspension. That is wholly logical because the need for immediate suspension can only arise after the PCC has heard the evidence and carefully measured and analysed the evidence, found misconduct, found impairment of fitness to practise, then carefully assessed the relevant sanctions and expressly chosen suspension and the duration thereof. Once the suspension direction is made, the threshold for making a different "taking effect" date from the default one is partly opened. Then, to grant the S.30 order, the PCC must be *"satisfied that to do so is necessary"*. A further assessment of the evidence is required for this necessity test. Three rationales for this necessity are expressly provided by the section: (1) it is for the protection of the public; (2) it is otherwise in the public interest; (3) it is in the interest of *"that person*", meaning the dentist/registrant. Although the section does not expressly say so, the immediacy of the

taking effect is clearly intended, in the context of the previous 3 sections, to cover the gap left by the default taking effect dates, all of which involve a gap.

39. The plain words then go on to state that the PCC *"may order that his registration is suspended forthwith"*. But it adds the caveat "*in accordance with this section*". Subsection (3) sets out that the immediate suspension order takes effect "*from the time when the order is made."* Thus, the words express that the start of the PCC's suspension decision will be *"forthwith"* if the immediate order is made. Nothing is said about the suspension being of a different kind of suspension or being a different beast under S.30, as distinct from the suspension made in the direction under S.27B. The use of the word "order" instead of "direction" needs some thought. The thrust and effect of the GDC's submissions is that the immediate suspension order is a different power and hence a different sanction from the direction for suspension (the substantive one) and so the duration of the each is unaffected by the other. The thrust of the Appellant's submission is that they are both the same sanction, suffered by the same dentist and once the suspension first takes effect, time starts to run or should be treated as running towards the end point of the suspension.

40. The end date for the immediate order is dealt with as follows: *"until the time when "(a) the direction takes effect in accordance with section 29A; (b) an appeal under Section 29 …is determined under section 29(3)(b) or (c); or …"*. Two points arise here. The use of the reference back to S.29A indicates that Parliament expressly intended for the immediate order to fill the gap left by S.29A for appeals. The default "taking effect" provisions are maintained in force awaiting their trigger dates at the end of the appeal period or the appeal itself (by failure). The second is that the reference to the S.29(3) provisions tie the end of the immediate order to the date when an appeal is successful (allowed or the appellate court substitutes its own decision in place of the PCC decision).

41. I note that nothing is said in S.30 about empowering the PCC to make the immediate suspension order as a cumulative suspension or a different suspension in addition to the direction for suspension. Nor would this be the ordinary understanding of the Section, in my judgment, because the S.30 power is wholly parasitic on the S.27B decision to apply suspension as the sanction. The S.30 power is not free standing. No express words were inserted to state that the time served under the immediate suspension was to be added to the carefully measured and titrated final sanction passed by the PCC under S.27B, after considering the aggravating factors, the mitigating factors, the remediation and the insight of the registrant. S.30 is circumspect in referring only to the ending of the immediate suspension. It does not purport to alter the length of the main suspension by its express words.

42. Once the immediate suspension order has expired, because the appeal has been dismissed (struck out or withdrawn) what happens? For this we return to S.29A, the default "taking effect" provision. It sets out at subparagraph (2) that the original direction *"shall take effect" … (b) on withdrawal or striking out … or (c) …on the*

dismissal of the appeal". So, once the appeal is dismissed the PCC's original direction for suspension "takes effect". The word used is not "starts". Nor does any section say that the suspension starts then. This is at the root of the grammatical analysis of the interaction between the Sections. It has led to confusion because "takes effect" has been interpreted as "start" for the purposes of determining the duration of the directed suspension after the end of an appeal.

43. From this analysis I conclude that the Sections do not deal expressly with the issue of whether the period of suspension served under an immediate order is to be deducted from the period of suspension served under a direction or whether one follows the other in full. Thus, I shall look at the legal and factual context and the purpose of the Sections and the consequences of the various proposed interpretations for assistance.

The case law on interpretation

44. Terminology. In this part of the judgment I shall use the following terminology:

Interim suspension order: meaning an order for suspension pending the final PCC hearing.

Direction for suspension: meaning a direction for suspension made by the PCC at the final hearing as the sanction.

Immediate suspension order: meaning an order for immediate suspension made by the PCC at the final hearing after the direction for suspension as the sanction has been made.

45. In *Ujam v GMC* [2012] EWHC 683 (Admin), Eady J was concerned with the effect of an interim suspension order (pending the final PCC hearing) on the final sanction. The GMC guidance at the time to the PCC was not to give undue weight to an interim sanction (suspension for instance) because that was to cover the interim period. Eady J ruled as follows:

> "5. There was a period, I understand, between July 2009 and February 2010 when the Interim Orders Panel had suspended the Appellant, having regard to the disciplinary complaints outstanding against him, although I was told that little was known about the reasons for this and that, in any event, there had been no evidence before the Panel in December 2010 as to why that earlier period of suspension had been imposed. Ordinarily, it was submitted, it would be right to assume that the Interim Orders Panel was concerned with different criteria from those later addressed by the Fitness to Practise Panel. It would be concerned with its own perception as to any risk in the intermediate period, rather than with imposing a sanction for the reasons taken into account by the later Panel. It would be undoubtedly right that the suspension it imposed should be borne in mind as part of the background circumstances, but it would certainly be inappropriate to regard it as analogous to a period of imprisonment served while on

> remand (which would normally be deducted from any custodial term imposed by the sentencing court)."

I bear in mind that Eady was not comparing apples with apples. He was not analysing the effect of an immediate suspension order after a final hearing and how it interacts with the direction for suspension made at the same hearing. Instead, he was analysing the effect of an interim suspension pending the final hearing with the final direction for suspension. These are two wholly different things in my judgment.

46. In 2016 in *Kamberova v Nursing and Midwifery Council* [2016] EWHC 2955 (Admin), Dingemans J set aside a PCC ruling and remitted the case. In the process he considered the interaction between what he called an "interim" suspension order, but was actually an immediate suspension order and the direction for suspension. He ruled as follows:

> "39. I should note that in its determination the Committee also imposed an interim suspension order on Ms Kamberova pending the hearing of this appeal, the effect of which is that if I had dismissed the appeal today without more Ms Kamberova would have served a period of suspension of 12 months from today's date even though she has been suspended ever since the Committee's determination and, as appears from above, even before that date.
> 40. In these circumstances, the Committee when redetermining the issue of sanction which I remit for them to determine, should have regard both to the period of interim suspension before the Committee's determination in December 2015, **and the period of suspension pending this appeal. It would be unfortunate if the effect of Ms Kamberova's success on appeal on the issue of sanction was to increase the overall length of the period of suspension.**"

I do not know what the NMC did in response to that judgment.

47. The Court of Appeal considered the question of the relevance of an interim suspension order on the final suspension direction in *Adil v GMC* [2023] EWCA Civ. 1261. In addition to making a direction for six months substantive suspension, the Medical Practitioners Tribunal had also made an order for immediate suspension order [see para. 26]. Popplewell LJ did not deal with the effects of the immediate suspension on the direction for suspension but instead considered the interaction between interim suspension orders pending the PCC hearing and final suspension directions so then decision is not directly relevant. Popplewell LJ ruled as follows:

> "**Interim suspension orders**
> 96. The GMC's Sanctions Guidance says this about interim suspension orders:

> "22. The doctor may have had an interim order to restrict or remove their registration while the GMC investigated the concerns. However, the tribunal should not give undue weight to whether a doctor has had an interim order and how long the order was in place. This is because an interim orders tribunal makes no findings of fact, and its test for considering whether to impose an interim order is entirely different from the criteria that medical practitioners tribunals use when considering an appropriate sanction on a doctor's practice."

97. This is unhelpful. There is no logic in treating the fact that interim orders are imposed before determination of the facts as something which affects the weight to be attached to them once the facts have been found. At that latter stage what matters is that the interim suspension has already occurred, with the effect that the practitioner has been excluded from the ability to practise for its duration. It is an independent question whether and to what extent the fact that the practitioner has already been deprived of the ability to practice for a period of time should be taken into account when a further period of suspension is being considered. Nor are GMC tribunals afforded any real guidance by the suggestion that they should not attach "undue weight" to interim suspension orders.

98. A previous version of paragraph 22 which was considered by Eady J in *Ujam v. General Medical Council* [2012] EWHC 683 (Admin), included the guidance that:

> "An interim order and the length of that order are unlikely to be of much significance for panels."

99. As a statement of general approach this is wrong and misleading. Insofar as the purpose of the sanction is to punish the practitioner or deter him from repetition of the conduct in question, **it is a matter of common fairness that account should be taken of the punitive and deterrent effect of having already been deprived of the ability to practice for a period under temporary suspension orders**. To that extent there is a direct analogy with sentencing for criminal conduct in which time spent in prison on remand is automatically credited against the sentence imposed for the offence.

100. It may also be appropriate to take into account periods of interim suspension insofar as the sanction is intended to mark the gravity of the offence so as to send a message to the profession and to the public. If, for example, there were a contrite practitioner with full insight into misconduct which was sufficiently serious to warrant suspension, the necessary message could be sent to the profession and the public by the tribunal making clear that the gravity of the misconduct needed to be marked by a suspension of a stated length; but that in fairness to the

> practitioner, he should be allowed to return to practice immediately, or within a lesser period, by reason of his already having been deprived of the ability to do so in the period prior to the imposition of the sanction. Messages depend upon the terms in which they are sent, and tribunals ought to be able to frame their decisions in language which enables the appropriate message to be sent whilst ensuring fairness to the practitioner in question.
> …
> 101. However where, or insofar as, the suspension is required to return the practitioner to fitness to practise, and/or to mitigate the risk of further commission of the misconduct, and/or for the continued protection of the public from harm, periods of interim suspension may have little or no relevance. In those cases the length of suspension is tailored to what is necessary for the removal of impairment, removal of risk of repetition, and maintaining the safety of the public. Time already spent suspended from practice has no direct bearing on the length of a suspension which is necessary to achieve these objectives. To give credit for time away from practice under interim suspension orders in such cases would be likely to undermine those objectives in protecting the public from harm, promoting professional standards in the profession and promoting and maintaining trust in the profession.
> 102. This is consistent with the decision of Dingemans J, as he then was, in *Kamberova v Nursing and Midwifery Council* [2016] EWHC 2995 (Admin) and his reasoning at [36] and [40]."

48. I think that the use of terminology in *Ujam* has led to confusion. It seems to me that there are three distinct issues:

> (1) when choosing a final sanction after a final hearing should the PCC take into account any interim sanction that has been suffered by or imposed on the dentist and to what extent? That is not a matter which concerns me in the appeal.
> (2) When passing a final sanction of suspension, should the PCC take into account the immediate suspension order which they may soon be making at the same time? I shall answer this question below.
> (3) Does the DA84 require that the duration of an immediate suspension order be deducted from the duration of the PCC's direction for suspension or added to it?

The relevance of the judgment in *Ujam* to the issues I have to decide is that if time spent on interim suspension has some relevance to the determination of the final sanction then time spent on immediate suspension after the final sanction cannot be irrelevant to the duration of the final sanction.

49. The Respondent submitted that the Courts have, on a number of occasions, raised concern about the potential unfairness of these or similar provisions. However, in all but

one of the identified cases, they have concluded that the effect of the statutory provisions is clear and that any unfairness is a matter for Parliament. I will now look at whether that submission is correct. So, the GDC relied on the words of Bean J in *R (Ghosh) v General Medical Council* [2006] EWHC 2743 (Admin) at para. 27:

> "I was dismayed to learn from Miss Rose that the effect of sections 38 and 40 of the Act of 1983 is that the period of suspension so far, pursuant to the order for immediate suspension under section 38(1), does not count towards the 12 months' suspension ordered by the Fitness to Practise Panel. This is in contrast to, for example, appeals by convicted prisoners to the Court of Appeal (Criminal Division) where time spent in custody pending appeal normally counts, though the court has a discretion (rather rarely exercised) to disallow it. If it is indeed the case that where a doctor, whose immediate suspension under section 38(1) has been ordered and who appeals to the High Court against the order for suspension imposed by the Fitness to Practise Panel, may be adding several months (or in this case, because of the unfortunate length of time it has taken to list the case, a year) to the period of suspension ordered by the Panel, this ought to be made widely known. **Those responsible for keeping the provisions of the Medical Act under review ought perhaps to consider whether it should be made a matter of discretion either in the Fitness to Practise Panel or in this court, or both, as to whether the period of suspension, served pursuant to section 38(1), should count towards the substantive period of suspension ordered by the Panel. Unfortunately I do not have any power to do anything about it in this case**."

50. It is not clear whether the issue was fully argued with the relevant case law and submissions on the proper interpretation of the statute from this report. I agree with Bean J's views on the justice of the issue but I am not bound by his comments on whether he had the power to do anything about it which were not the ratio of the decision in any event.

51. The GDC also relied on the comments of Kerr J in *Hill v General Medical Council* [2018] EWHC 1660 (Admin). The issue in the appeal was the length of the period of suspension. At para. 63 Kerr J stated:

> "The rules also have the unfortunate consequence that time on suspension between the determination of sanction and the outcome of any appeal does not count towards the overall period of suspension. This means that the maximum of 12 months is often little more than fiction. An attempt is then made to counterbalance the unfairness of that rule which sets a price on appealing. The doctor can apply to this court

> to lift the temporary suspension until the appeal is heard. That would be well and good if it did not take several months for such an application to be determined."

There was no ground of appeal based on the interpretation of the DA84 and the comments of Bean J were "en passant" and obiter however, I agree with his views on the injustice of the regulatory body's interpretation.

52. The GDC also relied on *Burton v Nursing and Midwifery Council* [2018] CSIH 77, in which in the Court of Session, Inner House in Scotland, was dealing with an appeal against a 12 month suspension. The terminology used confuses interim orders with immediate orders for suspension but Lady Paton observed in a post script to the judgment that:

> "Postscript
> 32. If a nurse wishes to appeal against a decision of the Nursing and Midwifery Council, an interim period of suspension is imposed, ending upon the resolution of the appeal or a period of 18 months, whichever is earlier. If the appeal is unsuccessful, the interim suspension is followed by the original sanction, which might be 12 months suspension (as in the present case).
> 33. While accepting that the rationale underlying such an approach includes the need to protect the public, **we consider that there may be an appearance of unfairness, for two reasons.** First, time spent on interim suspension does not count towards the period of suspension ultimately imposed as a sanction; **and secondly, a nurse with a valid appeal point may be discouraged from making an appeal on the view that doing so would simply prolong the unwanted absence from work. We note that in other areas of the law, where an interim sanction is imposed pending the completion of procedural steps, it is usual to have the interim period count towards the period of the final sanction, provided first, that the two are similar in nature** and secondly, that the interim period is not taken into account when the final sanction is imposed. **The underlying principle is that reasonable procedural steps taken by a party, such as a right of appeal, should not have an effect on the total sanction that is imposed.**
> 34. To counter these concerns, the Nursing and Midwifery Council might wish to consider altering the relevant part of the decision letter (page 28 in the present case) to make it clear (i) that the period of interim suspension would not exceed 18 months (unless there was an extension); and also (ii) that in terms of articles 30 and 31 of The Nursing and Midwifery Order 2001 it is always open to a nurse during suspension to seek review of interim and substantive suspension orders, on the basis of such additional information thought to be relevant and

> appropriate. For example, the nurse might rely on the completion of a training course undertaken following upon the disciplinary hearing and decision. In that way, a nurse previously thought to have demonstrated a lack of certain skills, or a lack of insight into her situation, might be able to persuade the committee that she had developed the skills or acquired a greater appreciation of her circumstances; that she had achieved what the professional tribunals refer to as "remediation"; and that there was no need for further suspension.
> **35. Consideration might also be given to the question whether time spent on interim suspension should count towards any period of suspension imposed as a sanction."**

I do not know whether that advice was accepted and acted upon. I agree with Lady Paton and adopt the comments made about the unfairness and the underlying principle that the exercise of a right to appeal should not be fettered generally by an increase in sanction. However, this was not the ratio of the case and was clearly not provided after full legal argument on the interpretation of the relevant provisions.

53. The Respondent also relied upon the word of Lord Tyre in *W v Health and Care Professions Tribunal* [2022] CSIH 47, at paras. 37-38:

> "It is difficult to see any basis upon which the court could hold that the panel was plainly wrong to impose a 12 month period of suspension without a deduction for time taken to determine this appeal. The panel could not know at the time of imposition whether an appeal would be made or, if so, how long it would take for the appeal to be determined. **It would have been impossible for the panel to fix a period which took account of the possibility of an appeal**. We accept that the factors to be addressed by a panel in deciding whether to make an interim suspension order are not on all fours with those applicable to the ultimate decision on sanction. **The Order could nevertheless have made provision for the former to be taken into account when the panel is deciding the latter.** It does not do so and it is not for the court to innovate on the statutory scheme in this regard. In the course of the hearing it was suggested that the point could be raised by a suspended practitioner in an application for review under article 30(2) of the Order. **However, we did not hear full argument on this suggestion and we express no view upon it."**

54. The reliance on this obiter dicta does not take the Respondent's arguments forwards with any substance in my judgment. Firstly, the matter was not fully argued before the Court of Session. Secondly, interpretation of the relevant acts was not addressed. I respectfully agree that the direction for suspension can and should include words to the

effect that any immediate order of suspension should be set off against the duration of the direction for suspension.

55. Quite properly counsel for the Respondent also provided a copy of *R (Sharma) v The GDC* [2010] EWHC 3184, in which Ouseley J considered an appeal against a sanction of practice conditions for 12 months duration. The conditions had been in place for 10 months under an immediate order. The appeal was dismissed but at para. 32 in discussion at the end of the judgment he ordered that the substantive sanction would end after 12 months despite dismissing the appeal in substance and said this:

> "31. MISS HARRIS: The position now is that the substantive order takes effect from today's date, the date from which the dentist is notified, and they run for a 12-month period with a review to take place after 12 months. If one looks at the conditions themselves, one can see that the review requirement is not in fact one of the conditions, it is in fact a separate order or separate requirement imposed once those conditions take effect, so in my respectful submission it would appear that there is no condition within the condition, or no requirement within the conditions, that the conditions be reviewed say in January next year, when in effect they started.
> 32. MR JUSTICE OUSELEY: Well, I do not like that. It does not seem to me, having had these interim conditions imposed, that Mr Sharma should now have to wait longer than was intended before the review take place, particularly as the nature of what is required would, my provisional view is, probably be dealt with adequately by a year's conditions, unless something very severe was shown up to the contrary. I am not inclined to regard it as appropriate simply to dismiss the appeal and allow the conditions to roll on for another year."

56. In my judgment this case law shows that the current practice of the Respondent in interpreting the Sections as imposing consecutive suspension periods has been the subject of considerable judicial adverse comment but has not yet been the subject of full argument.

The CPR

57. CPR Part 52 governs this type of statutory appeal. CPR PD52D applies, in particular para 19(1)(c). This is a "rehearing" not a review. However, in my judgment the word "rehearing" is misleading. The appellate Court does not rehear or resee any live witnesses. Instead, what the appellate Court does is re-analyse the transcript of the evidence and the bundles of evidence put before the PCC. So, it is actually an appeal by way of reanalysis, not a full rehearing.

58. The power which this Court has to set aside the PCC's rulings and findings is set out in CPR r.52.21(3). If this Court considers the PCC rulings to be wrong or unjust due to

serious procedural irregularity or other irregularity this Court can allow the appeal, substitute any decision which the PCC could have made or remit to the PCC for further consideration.

59. The correct approach to findings of fact and PCC reasoning in appeals by way of reanalysis was considered by Sharp LJ and Dingemans J in the Divisional Court in *General Medical Council v. Jagjivan* [2017] 1 WLR 4438. The following principles were set out (at para. 40):

1) It is not appropriate to add any qualification to the test in CPR Part 52, for instance that decisions are 'clearly wrong': see *Fatnani v GMC* [2007] EWCA Civ 46, at paragraph 21 and *Meadow v GMC* [2007] 1 WLR 1460 at paragraphs 125 to 128.

2) The court will correct material errors of fact and of law: see *Fatnani* at paragraph 20.

3) The appeal court must be extremely cautious about upsetting findings of primary fact, particularly where the findings depended upon the assessment of the credibility of the witnesses, who the Tribunal, unlike the appellate court, has had the advantage of seeing and hearing, see *Assicurazioni Generali SpA v Arab Insurance Group* (Practice Note) [2002] EWCA Civ 1642; [2003] 1 WLR 577, at paragraphs 15 to 17, cited with approval in *Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] UKHL 23, [2007] 1 WLR 1325 at paragraph 46, and *Southall v GMC* [2010] EWCA Civ 407 at paragraph 47.

4) Where the question is: "what inferences are to be drawn from specific facts?" an appellate court is under less of a disadvantage. The court may draw any inferences of fact which it considers are justified on the evidence: see CPR Part 52.21(4).

5) A failure to provide adequate reasons may constitute a serious procedural irregularity which renders the Tribunal's decision unjust (see *Southall* at paragraphs 55 to 56).

60. During submissions I was helpfully referred to other relevant cases providing guidance on various aspects of how to approach the task of reanalysing the evidence before the PCC and deciding whether the PCC was wrong or procedurally unjust.

Guidance on appeal against sanction

61. In *Ghosh v General Medical Council* [2001] UKPC 29, Lord Millett ruled in relation to appeals against sentence as follows at para. 34:

> "34. It is true that the Board's powers of intervention may be circumscribed by the circumstances in which they are invoked, particularly in the case of appeals against sentence. But their Lordships wish to emphasise that their powers are not as limited as may be suggested by some of the observations which have been made in the past. In *Evans v General Medical Council* (unreported) Appeal No 40 of 1984 at p. 3 the Board said:"
>
> > "53 The principles upon which this Board acts in reviewing sentences passed by the Professional Conduct Committee are well settled. It has been said time and again that a disciplinary committee are the best possible people for weighing the seriousness of professional misconduct, and that the Board will be very slow to interfere with the exercise of the discretion of such a committee. … The Committee are familiar with the whole gradation of seriousness of the cases of various types which come before them and are peculiarly well qualified to say at what point on that gradation erasure becomes the appropriate sentence. This Board does not have that advantage nor can it have the same capacity for judging what measures are from time to time required for the purpose of maintaining professional standards."
>
> "For these reasons the Board will accord an appropriate measure of respect to the judgment of the Committee whether the practitioner's failings amount to serious professional misconduct and on the measures necessary to maintain professional standards and provide adequate protection to the public. **But the Board will not defer to the Committee's judgment more than is warranted by the circumstances.** The Council conceded, and their Lordships accept, that it is open to them to consider all the matters raised by Dr Ghosh in her appeal; to decide whether the sanction of erasure was appropriate and necessary in the public interest or was excessive and disproportionate; and in the latter event either to substitute some other penalty or to remit the case to the Committee for reconsideration." (My emboldening).

62. This ruling involved consideration of the amount of deference which the appellate Court should give to the professional expertise and professional disciplinary experience (the equipment) of the PCC in relation to the issue raised on appeal. In *Marinovich v General Medical Council* [2002] WL 1446216 Privy Council, Lord Hope stated that:

> "28 …But it has been said many times that the Professional Conduct Committee is the body which is best equipped to determine questions as to the sanction that should be imposed in the public interest for serious professional misconduct. This is because the assessment of the seriousness of the misconduct is essentially a matter for the Committee in the light of its experience. It is the body which is best qualified to judge what measures are required to maintain the standards and reputation of the profession.
> 29. That is not to say that their Lordships may not intervene if there are good grounds for doing so. But in this case their lordships are satisfied that there are no such grounds. This was a case of such a grave nature that a finding that the appellant was unfit to practise was inevitable. The committee was entitled to give greater weight to the public interest and to the need to maintain public confidence in the profession than to the consequences to the appellant of the imposition of the penalty. Their Lordships are quite unable to say that the sanction of erasure which the committee decided to impose in this case, while undoubtedly severe, was wrong or unjustified."

63. The sense in these pieces of guidance is apparent. The PCC members include dentists who are trained and experienced in the profession, its practices and how best to uphold its reputation. They deal with different forms of misconduct week by week. The appellate Court does not. The PCC pass sanctions for misconduct week in and week out, this appellate Court does not. However, this guidance, which is sometimes called the "deference rule", is not absolute as Lord Millett made clear in *Ghosh*, far from it.

64. Five years later, in *Rashid and Fatani v General Medial Council* [2007] 1 WLR 1460, Laws LJ summarised the two competing principles underlying the approach as follows at paras. 16-20:

> "16 …As it seems to me there are in particular two strands in the relevant learning before 1 April 2003. **One differentiates the function of the panel or committee in imposing sanctions from that of a court imposing retributive punishment. The other emphasises the special expertise of the panel or committee to make the required judgment.**
> 17 The first of these strands may be gleaned from the Privy Council decision in *Gupta v General Medical Council* [2002] 1 WLR 1691, para 21, in the judgment of their Lordships delivered by Lord Rodger of Earlsferry:
>
> > "It has frequently been observed that, where professional discipline is at stake, the relevant committee is not concerned exclusively, or even primarily, with the punishment of the practitioner concerned. Their Lordships refer, for instance, to the judgment of Sir Thomas Bingham MR in *Bolton v Law Society*

> [1994] 1 WLR 512, 517—519 where his Lordship set out the general approach that has to be adopted. In particular he pointed out that, since the professional body is not primarily concerned with matters of punishment, considerations which would normally weigh in mitigation of punishment have less effect on the exercise of this kind of jurisdiction. And he observed that it can never be an objection to an order for suspension that the practitioner may be unable to re-establish his practice when the period has passed. That consequence may be deeply unfortunate for the individual concerned but it does not make the order for suspension wrong if it is otherwise right. Sir Thomas Bingham MR concluded, at p 519: "The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price." Mutatis mutandis the same approach falls to be applied in considering the sanction of erasure imposed by the committee in this case."

18 The panel then is centrally concerned with the reputation or standing of the profession rather than the punishment of the doctor. This, as it seems to me, engages the second strand to which I have referred. In *Marinovich v General Medical Council* [2002] UKPC 36 Lord Hope of Craighead, giving the judgment of the Board, said: …
(see above, Ritchie J)

19 There is, I should note, no tension between this approach and the human rights jurisprudence. That is because of what was said by Lord Hoffmann giving the judgment of the Board in *Bijl v General Medical Council* [2002] Lloyd's Rep Med 60, paras 2 and 3, which with great respect I need not set out. As it seems to me the fact that a principal purpose of the panel's jurisdiction in relation to sanctions is the preservation and maintenance of public confidence in the profession rather than the administration of retributive justice, particular force is given to the need to accord special respect to the judgment of the professional decision-making body in the shape of the panel. That I think is reflected in the last citation I need give. It consists in Lord Millett's observations in *Ghosh v General Medical Council* [2001] 1 WLR 1915, 1923, para 34:
(see above Ritchie J)

> …

20 These strands in the learning then, as it seems to me, constitute the essential approach to be applied by the High Court on a section 40 appeal. The approach they commend does not emasculate the High Court's role in section 40 appeals: **the High Court will correct material errors of fact and of course of law and it will exercise a judgment, though distinctly and firmly a secondary judgment, as**

> **to the application of the principles to the facts of the case**." (My emboldening).

65. I glean from this guidance that the sanctions directions of the PCC are not focused on punishment in the way criminal sanctions are, but instead on the protection of the reputation and standards of the profession and of the public and on remediation if that is appropriate. I bear in mind that criminal sentences are also focussed on protecting the public to an extent. Deference is given to such PCC directions on sanctions but it is not absolute. Errors of law or fact will be resolved and secondary judgment will be exercised by the appellate Court based on the reappraisal of the evidence before the PCC. Assessment of what is in the public interest is a field in which dentists do not hold "special equipment", but Courts do.

66. Nearly a decade later, in *Khan v General Pharmaceutical Council* [2016] UKSC 64, Lord Wilson gave the judgment for all 5 members, ruling on the proper approach to appeals against sanctions and the diffidence afforded to PCCs as follows:

> "36 An appellate court must approach a challenge to the sanction imposed by a professional disciplinary committee with diffidence. In a case such as the present, the committee's concern is for the damage already done or likely to be done to the reputation of the profession and it is best qualified to judge the measures required to address it: *Marinovich v General Medical Council* [2002] UKPC 36 at [28]. Mr Khan is, however, entitled to point out that (a) the exercise of appellate powers to quash a committee's direction or to substitute a different direction is somewhat less inhibited than previously: *Ghosh v General Medical Council* [2001] 1 WLR 1915, para 34; (b) on an appeal against the sanction of removal, the question is whether it "was appropriate and necessary in the public interest or was excessive and disproportionate": the *Ghosh* case, again para 34; and (c) a court can more readily depart from the committee's assessment of the effect on public confidence of misconduct which does not relate to professional performance than in a case in which the misconduct relates to it: *Dad v General Dental Council* [2000] 1 WLR 1538, 1542—1543."

67. This guidance on appeals against sanction is instructive for this Court. On questions of damage done or likely to be done to the profession, deference is due to the PCC members. However, on matters of the assessment of the public interest, less deference is due in particular in cases concerning erasure of the professional from the relevant register.

68. In relation to decisions on public confidence, in *Bawa-Garba v General Medical Council* [2018] EWCA Civ. 1879, Lord Justice Burnett added this further guidance:

> "96. We see no conflict between that approach and the observation of Collins J in *Giele v General Medical Council* [2005] EWHC 2143 (Admin) [2006] 1 WLR 942 at [33] that public confidence in the profession must reflect the views of an informed and reasonable member of the public, or the statement of Holgate J in *Wallace v Secretary of State for Education* [2017] EWHC 109 (Admin), [2017] PTSR 675 (at [92] and [96(v)]) that public confidence in the profession must be assessed by reference to the standard of "the ordinary intelligent citizen" who appreciates the seriousness of the proposed sanction, as well as the other issues involved in the case"

69. The recent case bringing these authorities together is *Sastry v General Medical Council* [2021] EWCA Civ. 623, in which Nicola Davies LJ summarised the approach thus:

> "102. Derived from *Ghosh* are the following points as to the nature and extent of the section 40 appeal and the approach of the appellate court:
> i) an unqualified statutory right of appeal by medical practitioners pursuant to section 40 of the 1983 Act;
> ii) the jurisdiction of the court is appellate, not supervisory;
> iii) the appeal is by way of a rehearing in which the court is fully entitled to substitute its own decision for that of the Tribunal;
> iv) the appellate court will not defer to the judgment of the Tribunal more than is warranted by the circumstances;
> v) the appellate court must decide whether the sanction imposed was appropriate and necessary in the public interest or was excessive and disproportionate;
> vi) in the latter event, the appellate court should substitute some other penalty or remit the case to the Tribunal for reconsideration.
> 103. The courts have accepted that some degree of deference will be accorded to the judgment of the Tribunal but, as was observed by Lord Millett at [34] in *Ghosh* , *"the Board will not defer to the Committee's judgment more than is warranted by the circumstances*". In *Preiss*, at [27], Lord Cooke stated that the appropriate degree of deference will depend on the circumstances of the case. Laws LJ in *Raschid* and *Fatnani*, in accepting that the learning of the Privy Council constituted the essential approach to be applied by the High Court on a section 40 appeal, stated that on such an appeal material errors of fact and law will be corrected and the court will exercise judgment but it is a secondary judgment as to the application of the principles to the facts of the case ([20]). In *Cheatle* Cranston J accepted that the degree of deference to be accorded to the Tribunal would depend on the circumstances, one factor being the composition of the Tribunal. He accepted the appellant's submission that he could not be "completely blind" to a

> composition which comprised three lay members and two medical members"

70. The final case which I consider assists me in the current appeal is *Hawker*. When approaching denials of wrongdoing and whether these give rise to a lack of insight and a risk of repetition, Eyre J in *Hawker v The Health and Care Professions Council* [2022] EWHC 1228 (Admin), was dealing with a paramedic who was struck off the register. The Panel's decision involved an assessment of his lack of credibility when giving evidence and denying misconduct and of their finding that his attitude had not changed and he had not addressed the factors which had led to his misconduct. He lacked insight and presented a risk of repetition. Eyre J ruled on the issue in this way:

> "37. Considerable weight is to be attached to the judgement of a specialist tribunal as to the presence or absence of insight and as to the consequences of such presence or absence and those are *"classically matters of fact and judgment for the professional disciplinary committee in the light of the evidence before it"* (per Lindblom LJ in *Doree* at [38]). This is in part because of the opportunity which the panel will have had to assess the evidence of the professional in question. It is also because the specialist knowledge of the members of such a panel means that they will be best-placed to form an assessment of what is and what is not required for such insight to be present. Again, however, the court on an appeal is not bound by the findings of such a panel. Thus the court can conclude that a panel erred in automatically equating a denial of the allegations with an absence of insight or in concluding in the particular circumstances that an absence of insight indicated that there was a risk of repetition (see *R (Abrahaem) v General Medical Council* [2004] EWHC 279 (Admin) per Newman J at [39]; *R (Onwuelo v General Medical Council* [2006] EWHC 2739 (Admin) per Walker J at [33] – [36]; and *R (Vali) v General Optical Council* [2011] EWHC 310 (Admin) per Ouseley J at [46]) . Although such a denial is not conclusive as to the lack of insight it can be indicative of a lack of insight or can mean that the panel has no material from which it can find that the professional in question has the necessary insight. Much will depend on the facts of the particular case and on the evidence actually advanced in each case. The questions of the presence or absence of insight and of the risk of a repetition of the conduct in question are distinct. They are, however, closely connected and an absence of insight can be a potent indication that there is a risk of repetition (see per Collins J in R (Bevan) v General Medical Council [2005] EWHC 174 (Admin) at [37] – [39] expressing those points rather more succinctly)."

71. In the present case, the Appellant admitted the misconduct, so denial of guilt was not a fact which gave rise to the risk of repetition, instead it was pure lack of insight and remediation due to attitude. Thus, the merry-go-round which Eyre J had to untangle is not involved in my consideration in this appeal.

The Tribunal's Judgment

72. The PCC hearing took place between 18th and 21st July 2023. The Appellant was represented by solicitors and leading counsel. V did not wish to give evidence and did not provide a witness statement. The police evidence of what V told them was partially blanked out. The Appellant give evidence.

73. The findings of facts (Stage 1) are set out above. I have fleshed each finding with a few direct pieces of evidence. The PCC found the Appellant guilty of all of the charges save for the dishonesty one. So, each of the 4 attempted contacts in July and August 2020 were found to be harassments. The charge by the police was found to have occurred but not to be any breach of the regulatory standards (innocent until proven guilty). The Magistrates Court restraining Order was a breach of the regulatory standards. The Appellant's failure to inform the GDC of the charge was also a breach of the regulatory standards.

74. At Stage 2, there was the determination of whether the Appellant's conduct amounted to misconduct. The PCC found that it did and this finding is not appealed. The PCC found that the Appellant knew he was harassing V and his breaches of the standards were serious.

75. The PCC then considered whether the Appellant's fitness to practise was impaired as at the date of the hearing and going forwards. In doing so they considered his insight into his actions and whether he had understood what he had done and the effects on V and whether he had remedied his risk of misconduct and the rationale for having behaved wrongly in the first place. This process inherently involved an assessment of the Appellant's insight into his wrongdoing. I set out below certain important parts of the reasoning.

76. No additional witness statement was provided by the Appellant for this part of the hearing, which was a missed opportunity to prove his insight and remediation. The PCC noted that the Appellant accepted that "others" would view his conduct as harassment but denied at the hearing that he knew it was harassment when he acted as he did (paras. 70-71). The PCC found that, contrary to his evidence, the Appellant knew that he was harassing V (para. 72). This is a damning finding which is not appealed. His conduct was in the context of repetition over 4 years. It continued in the face of and contrary to his own signed documents provided by the police in which he had promised not to harass V.

77. The PCC found (at para. 73) that the Appellant demonstrated a lack of insight into the seriousness of his conduct and the impact it had on V. This was a further damning finding, which was not appealed, although in submissions the Appellant sought to water it down by reference to some parts of the evidence which he gave in his witness statement and in cross examination. The PCC found that the Appellant deflected responsibility onto other (aunts, the Imam, the families) and that the Appellant was self-centred, focussing on himself and the effects of the interactions with the police and V on him, rather than the effects on V. Taking into account the guidance set out above, in law, in my judgment this Court is in no position to overturn these findings on lack of insight. They had the benefit of seeing and hearing the Appellant give evidence and the PCC had first hand knowledge of professional dental standards and of the necessary insight required to remedy any wrongful behaviour which this Court does not have. The PCC went further.

78. In paras. 73-75, when considering insight and remediation, the PCC noted that the Appellant had applied to revoke the restraining order in May 2022 which they found indicated an ongoing lack of understanding. The PCC also put little weight on the CPD course which was the only remediation put forwards by the Appellant in the 3 years since his arrest. In submissions the Appellant sought to suggest that this remediation was more substantial than the PCC gave credit for but produced no evidence in support of that assertion. Taking into account the guidance on the correct approach to such appeals, in my judgment the PCC were in a better position than this Court to determine whether that CPD course was at the top or the bottom of the scale for insightful remediation involving learning to do better, self-analysis, then adjustment of thinking, then remorse and resolution to do better with better knowledge and understanding. The PCC have no doubt gained considerable experience of the gold standard processes for learning and re-educating errant dentists. What is clear to me is that the Appellant did not put before the PCC any evidence of help from his GP, the community psychiatrist nurse, a counsellor, a clinical psychologist or a psychiatrist for treatment for his misguided approach to pursuing the object of his marital or sexual desires. He appears to have lacked the emotional intelligence to understand the effect of his actions on V.

79. In para. 76 the PCC considered that the Appellant displayed a "*stark lack of any meaningful insight and reflection."* They relied on the Appellant's limited acceptance of his conduct constituting harassment; the absence of any evidence provided by the Appellant at stage 2 about his insights; lack of substantial retraining; lack of reflection on his actions; lack of understanding of where he went wrong; lack of real appreciation of the impact of his actions on V; his steps taken to address his attitude to V and his own actions and his insufficient steps taken to avoid repetition. Whilst the Appellant sought to rely on "duress" in his evidence, this deflection of responsibility dissolved in cross examination. He sought to rely on the interference of others, but the PCC did not accept this blame shifting. The Appellant submitted that his answers in cross examination at page 218 of the supplementary AB evidenced far more insight and self-reflection than the PCC gave him credit for. I have carefully read the answers given.

He asserted that he had considered the professional boundaries with his cultural and religious boundaries. He admitted he had struggled to differentiate and he had been on a big learning curve. But then he asserted that he should have been able to get legal advice and because he was under duress and his boss had recently died, he asserted that he was hasty in signing the police non harassment warning in 2017. The PCC did not find that much, if any, evidence of a reduction of the risk that he would not behave the same way again towards his next marital or romantic target and I can find no fault in their approach to his evidence.

80. The main paragraph which the Appellant says highlights the unfairness of the PCC's reasoning is para. 77. In that the PCC found that the Appellant's conduct was attitudinal, it would be difficult to remedy and that the Appellant had not demonstrated remediation. They stressed the prolonged nature of the harassment over 4 years despite police warnings. They then considered whether the Appellant would pose an immediate and future risk to other women. They found that any woman chosen by the Appellant could be subject to the same course of harassment. They then listed examples of women whom the Appellant might meet: other dental professionals, patients and members of the public. They found that all could be put at risk by the Appellant's attitudes and behaviours should he decide to seek romance or marriage with any of them. The Appellant submits that the PCC were procedurally wrong to make such a finding because the case was not opened on that basis, it was only raised by the GDC at stage 2 and was based on sex and accompanied by a submission that the Public Sector Equality Duty (PSED) under the *Equality Act 2010* was engaged. I reject that submission. Firstly, because the PCC decided that the PSED was not engaged. Secondly, because the actions of the Appellant were not related to gender or sex per se. It mattered not whether the object of his affections was a women or a man or an LGBT+ identifier, the point was that there was a cohort of members of the public who were put at risk by the Appellant's modus operandi for pursuing romance or marriage. In this case, because the Appellant is heterosexual, the potential victims are women. The Appellant further submitted that widening the scope of the risk from just V herself to all women was not justified on the evidence. The PCC found that the Appellant was a risk to anyone whom he chose to pursue. Having reviewed the evidence before the PCC I do not consider their finding was outside the range of findings which were justified.

81. On sanction, the PCC rejected erasure and chose suspension from the register for 9 months. They also decided that it was necessary to impose immediate suspension. They acknowledged that the purpose of sanction was not punitive although the effect would be. They weighed up the aggravating factors and set them out at para. 82 and balanced those with the mitigating factors set out at para. 83. The aggravating factors were: actual harm suffered by V (including the serious distress and the need for a chaperone when she went out for a period, as shown in the evidence); premeditated misconduct set against a sustained history of similar conduct and repetition. What they did not stress in that paragraph, but had already found, was that the Appellant had twice agreed to sign police warnings/Community Resolution agreements not to harass V and ignored both.

As for mitigation, the PCC considered the Appellant's expressions of remorse but were unpersuaded by them. They had the benefit of seeing and hearing the Appellant's evidence and comparing it with other registrant dentists who have shown substantial remorse, so were in a better position that this Court to judge where it was substantial or not.

82. As for the testimonials put before the committee, the point is not that there was any evidence that the Appellant is a sex pest or disrespectful to women generally. The focus of the PCC was to protect the reputation of the profession and to protect women who might become the object of the Appellant's romantic or marital desires.

Applying the law to the facts - Sanction

83. In my judgment the PCC's approach on sanction was correct. They understood that punishment was not the objective, instead protection of the public and of the profession were relevant, as was giving the Appellant time to reform himself. The PCC clearly had all three in mind. They considered the relevant factors which included the seriousness of the misconduct, the repetition of it in the face of clear signed police warnings and community agreements, the serious effects on V, the Appellant's lack of real, substantial insight and lack of real, substantial remediation. I find no error in the facts found in relation to sanction, lack of insight and the risk to any woman who may in future become the object of the Appellant's desires for romance or marriage. When a woman says "no", it means "no". Until the Appellant understands that and more importantly until the Appellant accepts that with his heart and his mind, the risk persists, as the PCC found.

84. The findings and the sanction decision of the PCC are, in this case, given due deference by this Court. On matters of insight and attitude, the approach of the Appellant to his evidence in chief and cross examination and his demeanour and attitude were matters best assessed by the first instance tribunal who had the necessary "equipment" to do so. I do not say that this will be the approach in every case. It will not, but in the circumstances of this appeal, in my judgment this Court is not in any better position to assess those aspects of the Appellant's conduct, thinking and social and professional boundaries, than the PCC were.

85. The decision of the PCC on the length of the sanction took into account the guidelines and was below erasure. The length of the suspension direction was reasonable on the evidence in my judgment.

Each Ground

86. **Ground 1.** In my judgment, on the evidence before the PCC and taking into account the law set out above, the PCC were not wrong or unjustified when finding that the Appellant presented a real risk of repetition. This was a conclusion which they were entitled to reach. The repetition of harassment before the arrest was the real concern. The 3 years since the arrest were harassment free but two factors were in play. Firstly,

the Magistrates Court's restraining Order and secondly, the chilling effect of the GDC's investigation and forthcoming hearing. Yet, despite those, the Appellant applied to revoke the restraining order. His four 2020 repetitions arose despite two signed agreements with the police not to harass V. The evidence was sufficient for the finding that the Appellant remained a risk to V and other women with whom he has some future interaction as simple as being asked to "pass the milk" or more complex than that.

87. **Ground 3.** The Appellant asserts that the PCC gave inadequate weight to 4 stated factors. True it is that there was no evidence that the Appellant had harassed any other woman whom he wished to marry or be romantically involved with. However, his lack of insight in contacting V and turning up at her parent's house; the serious effects on V herself and the ignorance of the importance of signing two agreements recognising the adverse effects on V, led to the decision on risk in combination with his lack of insight into the need for effective remediation and reflection. The PCC decision makes it clear that they considered the 4 factors listed in the grounds. They took into account that V was his only victim to date; that he had not repeated his harassment since being arrested and made subject to a 5 year restraining Order and the positive testimonials he put before them. In my judgment these criticisms made of the PCC are not born out. The testimonials proved his probity at work at the very times when he was pursuing harassment out of work of someone he had met on a course related to his work.

88. **Ground 4.** In relation to the length of the suspension, I consider that it was well judged. The maximum by statute is 12 months. Due to the Appellant's lack of insight into the seriousness of his behaviour and lack of substantial effort to gain treatment, counselling or re-training on his own attitude to the effects of his repeated actions on V, a shorter period of suspension would have been open to public criticism as insufficient to protect women. I do not consider the sanction direction to be manifestly excessive or excessive at all.

89. **Ground 2 The application to terminate the immediate suspension.** This application became irrelevant by the time of the rolled up hearing.

The Proper interpretation of the DA84

Just interpretation taking into account the consequences

90. I refer back to paragraphs 21-56 on interpretation of the Sections and the case law. The purpose of the Act is to regulate the profession. The objectives are set out above in S.1 of the DA84. The Act creates a structure for regulation which involves education and training, registration, professional conduct and fitness to practise and many other necessary matters. The sections dealing with fitness to practise set out a structure for charging registrants with suspected misconduct, detailed investigation of the charges and then a final hearing, often with live evidence and the right to make submissions. The PCC are empowered to erase or suspend or to impose a lesser sanction. The assessment of sanction is a weighty and difficult task, as is shown in this appeal. The registrant has an unfettered right to appeal against a sanction of suspension and other

matters. Appeals involve detailed analysis of the rectitude of the PCC's fact finding, determination of fitness to practice, any impairment thereof and of their decisions on sanctions.

91. Specifically in relation to suspension, the PCC is not permitted to pass a sanction of over 12 months suspension. On appeal the duration of the suspension may be reduced. However, any appeal may fail and the period of suspension determined by the PCC may stand. If there is no s.30 immediate suspension order in place, then the dentist will serve the suspension which will start after the appeal is lost. All of that makes good sense.

92. The problem which has been identified is the effect of an immediate suspension order when an appeal is dismissed. If the GDC's interpretation of the Sections is correct, for this Appellant, he will have served 4.5 months of suspension already and will then have to serve another 9 months if the appeal is dismissed. That is a total of 13.5 months. In my judgment, such an interpretation breaches the statutory ban on any suspension being over 12 months and is in effect a punishment for appealing which is contrary to established principle. The effects of the interaction of the Sections does not permit for a longer duration of suspension. Parliament fixed the maximum duration in S.27B(6)(b) of 12 months and did not legislate for that to be ignored or breached by the interaction between Sections 29A and 30. The latter are subservient to the former. I consider that the GDC's interpretation of the Sections drives a coach and horses through the statutory 12 month maximum on the PCC's power to impose suspensions which cannot have been the intention of Parliament.

93. I consider that GDC's interpretation of the Sections is unfair to the Appellant. It effectively increases the PCC's carefully measured and titrated sanction just because he has appealed. I do not consider that professional conduct and standards are maintained by such an approach, which results in registrants considering that they are being treated unfairly in relation to appeals because their sanction is increased by the very act of appealing. Therefore, I consider that this interpretation is contrary to one of the main objectives of the Act. Furthermore, in my judgment it is contrary to natural justice to penalise an appellant just for the act of appealing (not the substance of the appeal), when the right to appeal is provided by statute.

94. Taking into account the wording of the Sections, the purpose of the Act, the context and the objectives of the Act, the consequences of the various possible constructions and the case law, in my judgment there is a difference between the words "takes effect" and "start". In the Sections the legislators used the words "takes effect" so as to distinguish between the ending of the effect of the immediate order for suspension and the commencement of the effect of the direction for suspension. However, there was only one suspension and it only started once.

95. That suspension could have started either when it took effect: (1) by default under S.29A after 28 days or at the end of an unsuccessful appeal, or (2) when, under S.30 an order

for immediate suspension was made. In this case (2) applied and the suspension started immediately.

96. In my judgment, after a final hearing, when a direction for suspension is made and an immediate order for suspension is made, there is only one suspension made under the Act. The Sections do not expressly state that a suspension starts only when the direction for suspension "takes effect", so I do not consider that the express words determine when the suspension starts. In my judgment, applying a normal and sensible interpretation of the words "takes effect" in S.29A, in accordance with the 12 month maximum in S.27B(6)(b), and to match the true context in which a S.30 order is made, which is parasitic, the Appellant's suspension started when the immediate suspension order took effect.

97. For all of these reasons I consider that the correct construction of the Sections in the context of this appeal is that: (1) the start of the suspension was when it actually started, namely when the immediate suspension order took effect. (2) When the immediate suspension order ceases to have any effect (when the order on this appeal is made) then the direction for suspension will "take effect". The change over from the order having the effect to suspend to the direction having the effect to suspend makes no difference to the suspension, it remains exactly the same. In my judgment the end of the suspension occurs after 9 months of suspension have been served and it does not matter which piece of paper had the effect of causing the suspension.

98. In any event, I consider that the only correct and lawful way for the PCC to pass a direction for suspension, when they may be going on to consider an immediate suspension order, is to ensure that it is worded so as to credit any time served under any immediate order for suspension against the duration of the direction for suspension.

99. Thus, in my judgment, the proper interpretation of S.29A, after an appeal like this, when it is determined that the sanction was not wrong and when a direction order then "takes effect", does not result in the suspension starting again. It means that the suspension already in place under the immediate order continues under the directions order and expires at the time which has been determined by the PCC, in this case 9 months from when it started.

100. Thus, in law I consider that the PCC fell into error when drafting the sanctions direction at the same time as passing an immediate suspension order. In my judgment it is wrong in law for the PCC to impose a suspension direction and to ignore the soon to be made immediate suspension order in the light of the effects of the latter. It is wrong and unjust to make a direction for suspension and an immediate suspension order which together have the effect of increasing the length of the suspension, beyond the statutory maximum, just because the dentist appeals. So, I set aside the direction for suspension for 9 months because, in conjunction with the immediate suspension order made by the

PCC, without without clear wording of set off, it was being interpreted by the GDC as effectively becoming a suspension of 13.5 months, which is more that the statutory maximum and wrong in principle.

101. I should make it plain that I have made no ruling in relation to the effect of interim suspensions (imposed before the final hearings) on the assessment of final sanctions. That is an issue for another case.

Conclusions

102. The appeal is dismissed on the Grounds put forwards in relation to the duration of the sanction. The appeal is granted on the ancillary ground relating to the GDC's practice or interpretation of making the duration of the direction for suspension consecutive to the duration of the duration of the immediate order for suspension.

103. The direction for suspension for 9 months shall be set aside and in its place I direct that the Appellant shall be suspended for a total of 9 months, from which the duration of suspension already served by the Appellant under the immediate suspension order made by the PCC shall be deducted.

END