

Agenda item:	3
Report title:	Influence of previous interim orders of suspension on substantive orders
Report by:	Anna Rowland , Assistant Director, Policy, Business Transformation and Safeguarding anna.rowland@gmc-uk.org , 020 7189 5077
Action:	To consider

Executive summary

The public consultation in 2014 on changes to the Sanctions guidance included a question as to whether, in cases where a substantive suspension is being imposed solely to uphold public confidence in the profession, the tribunal should be able to take into account any time a doctor has been suspended under an interim order when determining the length of the substantive sanction. The proposal received support from 60% of respondents, and we undertook to consider it further.

A recent High Court judgment examined this issue as part of an appeal against a decision by the General Pharmaceutical Council (GPC). The analysis contains a robust rationale for why, in view of the differing purposes and functions of interim orders in the context of the role of regulatory proceedings, an interim order should have no influence on the substantive order imposed. In light of this judgment, we do not intend to consider this proposal further.

Recommendations

The Strategy and Policy Board is asked to:

- a** Note the recent High Court judgment.
- b** Approve our intention not to consider further the proposal to allow an interim order of suspension to be taken into account by tribunals considering the imposition of a substantive suspension.

Background

- 1 The guidance which tribunal members use to determine the appropriate sanction when a doctor's fitness to practise is found to be impaired, sets out the following with regard to interim orders:

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.

- 2 In 2014, we publicly consulted on whether it would be appropriate for tribunals to take into account the time a doctor had been subject to an interim order suspension when determining the length of a substantive suspension. This possibility was proposed only in cases where the substantive suspension was being imposed in order to maintain public confidence and not in cases where a suspension was considered necessary for the purposes of public protection. The proposal received support from 60% of respondents, and we undertook to consider it further. We have not however given any commitment to its implementation.

Further consideration

- 3 The primary argument in favour of this proposal is that, if there is no risk to patients, then qualified doctors should be suspended for as short a time as possible, in order to minimise the loss of skills and length of time needed to get back up to date, and ensure they are back practising safely quickly. An interim suspension prevents a doctor from practising for a period of time as a direct result of the concerns about their fitness to practise, and could therefore be argued to meet the requirements of public confidence.
- 4 However, an interim order suspension cannot be said to uphold public confidence in the same way that a substantive order can. Interim Order Tribunals are heard in private with no press release. While any order imposed does appear on a doctor's online record, there is no publication of the allegations or reasons for the decision, and no substantive findings. If a substantive suspension is not imposed or is shortened as a result of the interim order, this may not adequately uphold public confidence in the profession.
- 5 There is also a concern that it is unfair to treat an interim order of conditions differently to one of suspension. While it could be argued that under the former a doctor can still work, in practice this is often not the case for some doctors with conditions. A doctor who received an interim order of conditions and then a

substantive suspension on public confidence grounds could be in a worse position than one who received an interim order of suspension.

Legal background

- 6 The different bases on which interim orders and substantive orders are determined has been accepted by, and informed, previous High Court judgments. *Yeong v GMC* (2009) held that, due to the different purposes of the two types of order, the non-existence of an interim order of suspension should not be taken to mean a tribunal should not impose a substantive one. In *Ujam v GMC* (2012) the judge stated that an interim suspension '*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*'.
- 7 A [recent High Court judgment](#) (*Abdul-Razzak v GPC* (2016)) has now considered more specifically the issue of whether time spent under interim orders should influence the length of a substantive sanction. The judgment applies the principles from earlier judgments on the differing purposes of interim and substantive orders. The judge states that '*the task for the Committee when deciding on the appropriate sanction in a disciplinary case is radically different from that of a sentencing judge in criminal proceedings*'. The judgment does not just highlight the role of the Committee in deciding whether a registrant is safe to practise, but also cites a comment from an earlier judgment that '*the Committee, unlike a sentencing judge, has to follow the golden rule that "the reputation of the profession is more important than the fortunes of an individual member."*'
- 8 The judgment concludes that the differences between the roles of a sentencing judge and a fitness to practise committee mean that '*time spent subject to an interim order need not be deducted from the period of suspension...*'.

Conclusion

- 9 The *Abdul-Razzak* judgment found that there is no requirement for time spent subject to an interim suspension to be deducted from a substantive suspension. This would not necessarily preclude the possibility of it being so. However, the court's analysis includes a robust rationale for why such an approach is problematic and, in light of that, we do not intend to proceed with this proposal.