



Neutral Citation Number: [2025] EWCA Civ 68

Case No: CA-2024-000115

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
THE HONOURABLE MR JUSTICE RITCHIE
[2023] EWHC 3208 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/02/2025

Before :

LADY JUSTICE NICOLA DAVIES
LORD JUSTICE STUART-SMITH
and
LADY JUSTICE WHIPPLE

Between :

THE GENERAL DENTAL COUNCIL
- and -
NABEEL AGA

Appellant

Respondent

Ivan Hare KC (instructed by **General Dental Council In House Legal Advisory Service**) for
the **Appellant**

Andrew Kennedy KC (instructed by **Weightmans LLP**) for the **Respondent**

Hearing date: 16 January 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 4 February 2025 by circulation to
the parties or their representatives by e-mail and by release to the National Archives.

.....

Lady Justice Nicola Davies:

1. The issue in this appeal is whether Ritchie J (“the judge”) misconstrued the provisions of the Dentists Act 1984 (“the 1984 Act”) in setting aside the direction of the appellant’s Professional Conduct Committee (“PCC”) made on 21 July 2023. Following a fitness to practise hearing, the PCC determined that the facts admitted or found proved in respect of the respondent amounted to misconduct and made a further finding that his fitness to practise was impaired. Pursuant to section 27B(6)(b) of the 1984 Act, the PCC directed that the respondent’s registration be suspended for a period of 9 months (“the substantive suspension”) and further ordered that pursuant to section 30 of the 1984 Act, the respondent’s registration be suspended forthwith (“the immediate suspension”).
2. Following the hearing of the respondent’s appeal, in an order dated 28 December 2023, the judge quashed the direction for a 9 months’ suspension under section 27B(6)(b) and substituted for it a direction that the respondent be suspended for a total period of 9 months, from which the duration of the suspension already served under the immediate suspension order shall be deducted. The judge treated the period of substantive suspension and the period of immediate suspension as one continuous period of suspension, which he stated should be subject to an aggregate upper limit of 12 months.
3. I am satisfied that the judge did misconstrue the relevant sections of the 1984 Act in treating a substantive period of suspension and the immediate period of suspension as if they were one continuous period of suspension.

Relevant background

4. The factual background is of limited relevance to the merits of the General Dental Council’s (“GDC”) appeal. In summary, the respondent was found to have harassed a dental nurse; he failed to inform the GDC until January 2021 of his arrest and charge by the police with an offence under the Protection from Harassment Act 1997. Before the PCC, the respondent admitted the underlying conduct but denied: (i) that he knew that his conduct was harassing (Head of Charge 1) and (ii) that he acted dishonestly in failing to inform the GDC of a criminal charge (Head of Charge 4). Having considered the evidence, which included oral evidence from the respondent and submissions from counsel, the PCC determined that all of the Heads of Charge save for the dishonesty charge were proved and that this amounted to misconduct on three grounds: (i) the course of harassing conduct; (ii) the failure by the respondent to inform the GDC promptly of the criminal charge and (iii) the restraining order imposed by the magistrates court in May 2021 following agreement between the prosecution and defence that no evidence would be offered against the respondent in exchange for him agreeing to be made subject to a five year restraining order.
5. Following its determination that the respondent’s fitness to practise was impaired by reason of misconduct, the PCC then addressed the issue of substantive sanction and concluded that the respondent’s misconduct was too serious for the imposition of conditions to be sufficient or appropriate. It determined that a period of suspension would be sufficient to protect patients and the public and to maintain public confidence in the profession. The PCC concluded that a 9 months’ suspension, with a review, was sufficient to mark the seriousness of the respondent’s misconduct and to permit him to complete the necessary remediation. It made the section 27B(6)(b) direction. The PCC

then invited submissions on the issue of whether or not to impose an immediate order of suspension under section 30 of the 1984 Act, following which it ordered that it was necessary for the protection of the public and otherwise in the public interest to suspend the respondent's registration immediately.

6. The respondent exercised his right of appeal under section 29(1)(b) of the 1984 Act. He did not challenge the proportionality of a sanction of suspension but contended that the 9 months' period of suspension was too long as there was no real risk of repetition or of similar behaviour and further, that the PCC had attached insufficient weight to the facts. The respondent's grounds of appeal were rejected by the judge. During the hearing, the judge raised the issue of whether the substantive sanction of suspension should run from the date on which the respondent's appeal was determined. The parties were invited by the judge to make written submissions upon the issue and did so. Following consideration of those submissions the judge made the determination which is the subject of this appeal and included the same in his judgment of the entirety of the appeal.
7. In accordance with the judge's order, the respondent subsequently appeared at a hearing before the PCC on 17 April 2024, the purpose being to review his suspension. Upon review, the PCC determined that the respondent's fitness to practise remained impaired as he had yet to address and remediate the concerns which had led to his initial suspension. The PCC directed that the respondent's suspension should be extended by a further 4 months in order for him to have sufficient time to address its concerns. At a further review hearing on 26 July 2024, the PCC concluded that, in the light of the evidence of the respondent's insight and remediation, his fitness to practise was no longer impaired and revoked the respondent's suspension.
8. I granted permission to appeal on 18 April 2024.

The relevant legislation and rules

The Dentists Act 1984

9. The relevant sections of the 1984 Act state:

1. Constitution and general duties of 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.

...

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.

...

(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.

...

(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.

27C. Resumed hearings

(1) Where a Practice Committee have given a direction under section 27B(6)(b) or subsection (2)(d) or (3) of this section that a person's registration should be suspended, they may direct—

(a) that the suspension shall be terminated;

(b) that the current period of suspension shall be extended for such further period, specified in the direction and not exceeding twelve months, beginning with the date on which it would otherwise expire;

...

29. Appeals

(1) The following decisions are appealable decisions for the purposes of this 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;

...

(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), appeal against the decision to the relevant court...

29A. Taking effect of directions for erasure, suspension, conditional registration etc

(1) This section applies to—

...

(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;

...

(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) where such an appeal is brought but is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of the appeal; or

(c) where such an appeal is brought and is not withdrawn or struck out for want of prosecution, on the dismissal of the appeal.

....

(4) In this section—

(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; ...

30 Orders for immediate suspension and immediate conditional registration

(1) On giving a direction for erasure or for suspension under section 24(3), section 27B(6)(a) or (b) or section 27C(2)(d) or (3) 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.

...

(3) Where, on the giving of a direction, an order under subsection (1) or (2) is made in respect of a person, his registration in the register shall, subject to subsection (6), be suspended or made conditional, as the case may be, 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) Where a Practice Committee make an order under subsection (1) or (2), the registrar shall forthwith serve on the person in respect of whom it is made notification of the order and of his right to make an application under subsection (7).

...

(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....

33 Supplementary provisions relating to fitness to practise cases

...

(3) Where any such direction as is mentioned in section 27C(1)(b), (c) or (d), (2)(b) or (d), (3) or (5)(c) is given while a person's registration is subject to conditions or suspended by virtue of a direction under this Part, his registration shall continue to be conditional or suspended throughout any period which may intervene between the time when (but for this subsection) his registration would cease to be conditional or suspended, as the case may be, and 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) If, on the determination of an appeal under section 29, a direction extending the current period of suspension or conditional registration for a further period takes effect after the time when (but for subsection (3)) the current period of suspension or conditional registration would have ended, that further period shall be treated as having started to run at that time.

General Dental Council (Fitness to Practise) Rules 2006

10. The rules state:

Interpretation

2

“resumed hearing” means a hearing for the purpose of reviewing directions given, or orders made, by a Practice Committee, at which a Practice Committee are to consider whether to give a direction under section 27C or 36Q of the Act (resumed hearings).

...

Determination

21

(1) A Practice Committee shall, on conclusion of the address and submissions by the respondent or the respondent's representative, withdraw to deliberate in private, and shall determine—

(a) whether the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired; and

(b) if the Practice Committee determine that the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired, whether to give any direction under section 27B(6) or 36P(7) of the Act (the Practice Committees).

(2) The parties and the public shall be re-admitted and the Chairman of a Practice Committee shall announce the determination of the Practice Committee and the reasons for it in their presence.

...

22 Orders for immediate suspension and immediate conditional registration

(1) Before making any order for immediate suspension or immediate conditional registration under section 30(1) or (2) or 36U(1) or (2) of the Act (orders for immediate suspension and immediate conditional registration), a Practice Committee shall invite the presenter and the respondent or the respondent's representative to make submissions as to whether such an order should be made and, if so, on what terms the order should be made.

(2) After hearing the submissions a Practice Committee shall withdraw to deliberate in private and determine whether to make an order for immediate suspension or immediate conditional registration.

(3) The parties and the public shall be re-admitted and the Chairman of a Practice Committee shall announce the determination of the Practice Committee and the reasons for it in their presence.

The judgment of Ritchie J

11. The judge concluded: (i) that the PCC’s approach on sanction was correct. They understood that punishment was not the objective, the protection of the public and of the profession was relevant as was giving the respondent time to reform himself; (ii) on the evidence, the findings of fact by the PCC and the length of the substantive suspension direction were reasonable. [83] – [85].
12. At [30] the judge identified what he considered to be a ‘problem’, namely that as a consequence of the imposition of the section 30 immediate suspension order, should a dentist appeal and should the appeal take 4.5 months to be heard (as this one did) the GDC interprets the 9 months’ suspension direction, which “takes effect” when the appeal is dismissed, as 9 months without any deduction for the suspension already served. Thus, on the GDC’s interpretation of the 1984 Act, the total suspension will be increased from 9 months to 13.5 months which is more than the 12 months maximum permitted by section 27B(6)(b) of the 1984 Act. The judge identified the issue as being “whether the GDC’s interpretation of the interaction between [sections] 27B, 29A and 30 is correct.”
13. At [36] the judge noted that the imposition of the maximum of 12 months suspension in section 27B(6)(b) is not qualified or subject to any exceptions in the 1984 Act. He described it as “an absolute maximum and it applies to suspension.” At [37] the judge observed that section 29A determines when the section 27B suspension direction “usually” takes effect. The timing of the taking effect provision differs in each of the subsections of section 29A. He noted that what the section does is “set the default date for 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 this suspension nor does it set any start date,”
14. In interpreting the section 30 provision for immediate suspension the judge identified the ‘plain grammatical meaning’ of the words as follows: [38] and [39]

“...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 powers is parasitic on the S.27B direction for suspension.... 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....

The plain words [of section 30] 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.”

15. At [41] the judge noted that nothing is said in section 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. He continued [41] – [43]:

“41. 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.”

16. The judge reviewed authorities which considered the approach of professional health care tribunals to the imposition of consecutive suspension periods and observed at [56] that it had been the subject of “considerable judicial adverse comment, but had not been subject of full argument.”

17. At [92] the judge observed that if the GDC’s interpretation of section 30 is correct, the respondent will have served a period of 13.5 months’ suspension. He stated:

“92. ... 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."

18. At [93] the judge stated that the GDC's interpretation was unfair to the appellant which effectively increased the PCC's carefully measured and titrated sanction just because he has appealed.
19. Drawing the strands together the judge concluded:

"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.”

The judgment of Morris J in *Professional Standards Authority for Health and Social Care v General Dental Council and Arthif Danial* [2024] EWHC 2610 (Admin) (*‘Danial’*)

20. Since Ritchie J delivered judgment in this case, Morris J considered two distinct appeals from the GDC in which the PCC had determined that the registrant’s fitness to practise was impaired and directed a 5 months’ suspension with review and also ordered immediate suspension. One of the appeals was by the registrant and included an appeal against the imposition of the sanction. The appeal in respect of sanction required Morris J to determine whether the 5 months’ suspension direction would take effect from the conclusion of the appeal or whether the period during which the registrant had been suspended pursuant to the immediate suspension order should be deducted from the 5 months of the suspension direction. The effect of this would be that the registrant would no longer be suspended and could return to practice.
21. At [205] Morris J noted that until the decision in *Aga*, the authorities had supported the former position namely that the suspension direction takes effect from the determination of the appeal and there is no deduction for time spent suspended under an immediate suspension order. One issue which Morris J was required to determine was whether he agreed with the analysis of Ritchie J and, if he did not, whether there was a powerful reason for him to depart from Ritchie J’s decision in *Aga*.
22. The analysis and determination of Morris J is set out at [253] – [271]. He identified the issue as being a question of statutory construction, primarily of section 29A and section 30 of the 1984 Act. Morris J concluded that Ritchie J’s decision in *Aga* is wrong. He noted that the issue was raised late in the case and Ritchie J did not have the benefit of oral argument whereas he had received seven sets of written submissions and had listened to a day of oral argument. The reasoning of Morris J is as follows:

“264. First the issue of the relationship between a suspension direction under section 29A and an immediate suspension order is a question of statutory interpretation (for this Court). It is not a question of judgment or discretion for the Court, nor a matter of “the current practice of the [GDC]” or other regulators (as suggested at §§3, 30, 56 and 102). Further whilst fairness in the operation of the disciplinary procedure is necessarily required (not least by virtue of CPR 52.21(3)). I do not agree that this forms part of the express objectives of the Act, either expressly or impliedly, as suggested §35 of the judgment.

265. Secondly, the central element of Ritchie J’s construction of the statutory provisions is that there is a distinction to be drawn between the suspension direction *starting* and it *taking effect*. At the heart of his analysis is, first, that there is only ever one suspension and, secondly, the words “take effect” (at least in some cases) means something different from “start”(but not in others). I do not agree. In my judgment the words “take effect” where they appear in sections 29A and 30 mean “start” or “commence”. The words used are not merely “have effect” (or “are effective” or “are in force or in operation”). Moreover, the *Aga* judgment does not give a consistent meaning to the words “take effect”. For example, within §97 of the judgment itself, the reference to “took effect” in (1) means “start”, yet the reference to “take effect” in (2) means “have effect/ are in force”. The *Aga* judgment makes numerous references to the word “start”, seeking to distinguish it from “take effect” (see §§43, 94-97); yet that word does not appear at all in the statutory provisions.

266. Thirdly, *Aga* does not address the position in relation to erasure and the fact that the immediate suspension order provisions apply to erasure in the same way as they apply to a suspension direction. In *Aga* it is accepted that in the case of erasure, the dentist is not struck off until the end of, and following on after, the immediate suspension order has ended. On the other hand, it finds that a suspension direction effectively commences from the date of the immediate suspension order. It is notable that the *Aga* judgment omits the references to erasure in section 30(1) and (3).

267. Fourthly, at §39 the *Aga* judgment expressly notes that “the use of the word “order” instead of “direction” needs some thought”. In fact at no point thereafter does the judgment address the clear distinction made in the Act between a direction for suspension and an order for immediate suspension. That distinct terminology used in the words of the statute means that it is not the case there is only ever “one suspension” (which is central to the analysis in *Aga* at §§94 and 96). Whilst the concern about a registrant being suspended from practice for more than the 12 month maximum for an initial suspension direction is

understandable, it is based on the premise that there is only one suspension and that the direction and the order are one and the same thing.

268. Fifthly, *Aga* does not address the different purpose of a suspension direction and an immediate suspension order. The former is intended to give the registrant the opportunity to remediate his conduct and re-establish fitness to practise; the latter is a measure for the protection of the public pending appeal.

269. Sixthly, as regards the previous case authorities, whilst it is the case that some of the passages supporting the GDC's interpretation are obiter and whilst there are judicial observations as to the apparent unfairness of that interpretation, those cases all suggest that the solution to the problem lies with Parliament to legislate. Significantly the *Aga* judgment did not refer to the important §36 of *W v Health and Care Professions Council*. Secondly, whilst the case of *Khan* is cited elsewhere in the *Aga* judgment, there is no reference to the important §22, an obiter dictum of the Supreme Court.

270. Finally, if *Aga* is correct, then whenever there is an immediate suspension order, every suspension direction is in practice for a period less than the amount specified in the direction itself. This will inevitably be the case where there is an appeal, but it will also be the case where there is no appeal (because of the 28 days allowed to appeal). The effect, on the *Aga* basis, is that there is only ever one suspension and the suspension direction runs from the first day of the order under section 30 and either section 29A has no meaning or the suspension direction runs for 28 days less than ordered under the direction.

271. For these reasons I conclude that the decision on this issue in *Aga* is wrong and I decline to follow it.”

Ground of appeal

23. There is one ground namely that the judge erred in law in allowing the respondent's appeal upon the basis that the period of suspension under the order of immediate suspension should be deducted from the length of the substantive direction of suspension (contrary to the established practice of the GDC and that of other regulators applying cognate provisions). It was accepted by the appellant and the respondent that this ground of appeal raises a point of law of general public importance which is not confined to this case or to the GDC.

The appellant's submissions

24. The primary contention of the appellant is that the judge was wrong to treat a direction for substantive suspension and a section 30 immediate order of suspension as forming

one continuous suspension. In law and in fact they are distinct: they are made under different sections of the 1984 Act; one is a direction and the other is an order; they are made at different stages of the fitness to practise process; each is made applying a different test albeit there is some overlap; they serve different purposes and are subject to different mechanisms of challenge.

25. The appellant submits that the 1984 Act makes no provision for an immediate order to be “set off” against the substantive sanction, a view consistently adopted in the authorities when the matter has been canvassed (*R (Ghosh) v General Medical Council* [2006] EWHC 2743 (Admin) at [27] per Bean J and *W v Health and Care Professions Tribunal* [2022] CSIH 47 at [37] – [38]).
26. In particular, the appellant relies upon the fact that an immediate order of suspension differs from an interim order made prior to the PCC hearing as the PCC determining the fitness to practise case and any resulting sanction will know how long the registrant has served by way of interim suspension (*Adil v General Medical Council* [2023] EWCA Civ 1261).
27. The appellant also relies upon the anomalies created by the judge’s decision which include the following: if no appeal is brought by the registrant, the substantive sanction will start on the expiry of the 28 day time limit for bringing an appeal (section 29A(2) of the 1984 Act). If the judge is correct, the result is that even when a registrant does not appeal, where an immediate order has been made, 28 days should be deducted from a substantive suspension of 12 months. If a substantive sanction of 6 months suspension was directed with an immediate order but determination of the registrant’s appeal took longer than 6 months, the direction of suspension would never take effect notwithstanding the clear and mandatory language in section 29A(2). It is the substantive section which serves to maintain professional standards and public confidence in the profession. It would also mean that a review would not be able to take place before the registrant’s return to practice which would prevent the PCC from assessing whether the registrant’s fitness to practise remained impaired. It could also prevent any review period being extended.
28. The appellant contends that the judge’s conclusions undermine one of the aims of professional disciplinary sanctions namely to provide an opportunity for the registrant to remediate their failings. If the judge is correct, there may not be time for the registrant to engage in any meaningful remediation during the remaining period of the substantive sanction once the appeal has been dismissed.

The respondent’s submissions

29. With commendable frankness, Mr Kennedy KC informed the court that the point which is the subject of this appeal was not taken by him on behalf of the respondent before Ritchie J. He was right not to do so. As the outcome of this appeal will not affect the registration of the respondent because the effect of the PCC’s order of 26 July 2024 is that the name of the respondent is no longer suspended on the Register of Dentists, Mr Kennedy made his submissions upon the basis that the matters raised in this appeal are of concern to the dental and other healthcare professions. Clarity is required, not least because of the fundamental disagreement between the interpretations of Ritchie J in this case and Morris J in *Danial*.

30. In essence, the respondent's submission is that the standard practice hitherto adopted by the GDC can produce an unfair result in that the immediate consequence of an unsuccessful appeal can be that a registrant is given a period of suspension longer than that directed by the PCC and longer than the statutory maximum of 12 months under section 27B(6)(b). A further consequence is the tendency to discourage or caution a registrant to exercise an unqualified right of appeal. Even if the registrant does not exercise their right of appeal, the effect of the standard practice is to increase the total period of suspension by 28 days, because it begins on day 0 and ends 12 months and 28 days later.
31. The only means of challenging an immediate suspension order is pursuant to section 30(7) of the 1984 Act which entitles a registrant to seek a termination of the immediate suspension order. In section 10 of the Appellant's Notice to the High Court, the respondent sought such an order but the application could not be listed in advance of the appeal and fell to be determined by the judge.
32. Mr Kennedy described the judge's decision as a humane attempt to resolve the problems which have been identified. He stated that it was open to the court to say that the judge's decision was not wrong.
33. The respondent contends that the judge was correct to conclude that an order for immediate suspension is "parasitic" upon the substantive direction for suspension. Both actions are taken at the same stage of the fitness to practise process and both actions serve the same purpose namely protection of the public interest. The judge was entitled to conclude that the combined effect of the direction and the order was wrong in principle and gave rise to the potential outcome that the respondent's registration could be suspended for more than the 12 months statutory maximum. Further, the judge was entitled to conclude that the PCC should have had in mind the potential for injustice and that once it had determined that an immediate order was necessary it should have directed that the time suspended by virtue of immediate order should be set off against the substantive direction for suspension.
34. The judge's approach does not frustrate the purpose of remediation. It will be for the registrant to assess the merits of any appeal and to decide whether or not to engage in or delay undertaking any remediation. In the event that the appeal is unsuccessful, the registrant who has delayed undertaking remediation and then finds there is insufficient time in which to complete the same will be unsurprised were a PCC at a resumed hearing to impose a further period of suspension.
35. As to fairness to the registrant, there is no undermining of public confidence. The public will be concerned to know that the registrant has been suspended not whether the suspension was achieved by operation of section 27C or section 30 of the 1984 Act.
36. The alternative mechanism of seeking an early review during a period of suspension does not counterbalance the unfairness of the established practice. Neither the 1984 Act nor the Rules provide a mechanism whereby a registrant can seek, nor is there a power whereby the Registrar can direct an early review.

Discussion and conclusion

The PCC process and determination

37. The determination of the PCC is detailed, focused and clear. It made findings of fact pursuant to the admissions of the respondent and made determinations of fact having considered the evidence. It found that the facts proved under Heads of Charge 1, 3 and 5 were serious and individually met the threshold for misconduct.
38. In considering whether the respondent's fitness to practise as a dentist was impaired by reason of misconduct, the PCC had regard to whether the misconduct was remediable, whether it had been remedied and took account of the respondent's insight and the risk of repetition. It also had regard to the wider public interest which includes a need to uphold and declare appropriate standards of conduct and behaviour, so as to maintain public confidence in the profession and its regulation (para 69). The PCC considered the respondent's conduct to be so serious that a fair minded and well informed member of the public would lose confidence in the profession and its regulation if no finding of impairment were to be made. Accordingly, the PCC determined that the respondent's fitness to practise as a dentist was currently impaired by reason of misconduct on both public protection and wider public interest grounds. (para 78).
39. As to sanction, the PCC stated that to conclude the case with no further action or reprimand would be inappropriate owing to the risk of repetition and the seriousness of the misconduct. (para 85). Further, conditions could not be formulated which would be workable, measurable and proportionate and could not meaningfully address the attitudinal concerns to which the misconduct related nor would they protect the public. (para 86). The PCC concluded that erasure would be disproportionate as the respondent's misconduct was remediable through further learning and reflection. A period of suspension with a review would be sufficient to protect the patients and the public and to maintain wider public confidence in the profession. Such a period would be sufficient to mark the seriousness of the respondent's misconduct and to allow him further time within which to demonstrate further reflection and remediation and to develop insight into the impact into his behaviour. (para 89).
40. Following the section 29B(6)(b) direction for substantive suspension, the PCC invited submissions on the issue of an immediate order of suspension. Following a short adjournment, the submissions were made. The PCC determined that under section 30(1) of the 1984 Act it was necessary for the protection of the public and was otherwise in the public interest to order that the respondent's registration be suspended forthwith. (para 92).
41. The procedure followed by the PCC was in accordance with the relevant provisions of the 1984 Act. It reflected the overarching objective namely the protection of the public which includes promoting and maintaining public confidence in the profession and promoting and maintaining proper professional standards and conducts for members of the profession. (section 1ZA and 1ZB of the 1984 Act).

The ground of appeal

42. The determination of the issue contained in the single ground of appeal is a matter of statutory interpretation of sections 27B, 29A and 30 of the 1984 Act. It is from the statutory language that the intention of this legislation can be derived. In my judgment, and as a matter of law and of fact, a direction for suspension and an order for immediate suspension are distinct. The judge was wrong to treat the two periods resulting from a direction and an order as one continuous period of suspension.

43. The means whereby the two periods of suspension are imposed differs. A substantive suspension imposed under section 27B(6)(b) is pursuant to a direction whereas the imposition of immediate suspension under section 30 is by means of an order. The direction and any order are made at different stages of the fitness to practise process. Until a direction has been given for erasure or for suspension (section 27B), the PCC has no power to make an order for immediate suspension (section 30).
44. As to the appellant's contention that different tests are involved in the making of the direction and the order, I do not regard the point as clear cut. The trigger for a direction under section 27B(6)(b) is the PCC's determination that a person's fitness to practise as a dentist is impaired. The imposition of a direction of suspension would require consideration of the overarching objective namely the protection of the public which encompasses maintaining public confidence in the profession and promoting and maintaining proper professional standards. An order is made under section 30 if the PCC is satisfied that to do so is necessary for the protection of the public or is otherwise in the public interest or is in the interest of the registrant. I do not think there is a clear distinction between the two sets of considerations, as they can and do overlap.
45. When a direction for suspension takes effect is relevant. Section 29A(2)(a)(b) and (c) identify when such a direction for suspension "shall take effect". The language is clear and mandatory. Three events are identified as prescribing when the direction will come into effect practically, and each identifies the start of the period of suspension. In my view there is no meaningful distinction between the words 'take effect' and 'start'. I do not accept that the absence of the word 'start' creates the difficulty envisaged by the judge.
46. As to the judge's description of the section 30 powers as being "parasitic" on the section 27B direction for suspension, I disagree. In my view, a better interpretation is that a direction made under section 27B, whether for erasure or suspension, is a condition precedent and until it is satisfied the powers under section 30 do not arise. That they are wholly separate sections of the 1984 Act and dealt with at different stages of the fitness to practise procedure, is demonstrated by the language of the 1984 Act, the relevant Rules and by the procedure followed at the respondent's fitness to practise hearing.
47. The language of section 30(1) indicates that the trigger for the immediate order of suspension is a direction under specific sections which includes section 27B(6)(b). It states that registration shall be suspended forthwith, ie. when the suspension is to start. There is nothing in section 30 which identifies a time limit for the duration of an order. When such an order will end is set out in sections 30(3)(a), (b) and (c). It follows and I find, that the wording of section 30 identifies the start and end dates of a period of immediate suspension.
48. The judge placed reliance on the point that section 27B(6)(b) identifies a maximum period of 12 months' suspension. That, however, is in respect only of a direction made under that section. Section 27C(b) provides for an extension of the original period of substantive suspension and states that such further period should not exceed 12 months beginning on the date on which it would expire. The purpose of this provision is to permit a PCC at a resumed/review hearing, should it determine that the fitness to practise of the dentist remains impaired, to impose a further period of suspension. That

is a course which is consistent with the overriding objective namely the protection of the public.

49. The 1984 Act makes no provision for an immediate order of suspension to be “set off” against the substantive sanction of suspension, a matter canvassed in the authorities of *Ghosh* and *W v Health and Care Professions Tribunal* (above). Some judicial concern has been expressed as to the prolonging of the original suspension period but the courts have acknowledged that if this issue is to be ameliorated or altered it is a matter for Parliament. In *Khan v General Pharmaceutical Council* [2017] 1 WLR 169 Lord Wilson recognised that a period of ‘interim’ (in fact immediate suspension) could not ‘count towards’ a period of substantive suspension when applying for restoration to the Register (para 22).
50. I accept the respondent’s point that once a section 30 order is made there is nothing in the statutory scheme which confers a power to direct a review of the suspension. In practical terms, both the registrant or the GDC could apply to the PCC for an early review, the outcome of which would involve the exercise of discretion.

Conclusion

51. In my judgment the correct interpretation of the language of sections 27B, 29A and 30 of the 1984 Act is inconsistent with the reasoning of the judge and his conclusion that only one period of suspension is imposed. If the judge was correct in his interpretation of the sections, it would undermine the overriding objective which underpins the provisions governing PCC hearings. It has the potential to undermine the ability of a registrant to remediate the failings which led to the finding of misconduct, one purpose of a review hearing. It could also negate the purpose of a review directed under section 27B(6)(b) as such a review may not occur if the combined period of a directed and ordered suspension exceeded 12 months. Thus, a dentist subject to a review, could return to practice without satisfying a PCC that their fitness to practise was no longer impaired. This would ride roughshod over the carefully drafted provisions of the 1984 Act which at their core reflect the need to protect the public. Put shortly, the judge’s interpretation of these provisions of the 1984 Act was wrong. It follows that Morris J was correct in his interpretation of these sections.
52. Finally, should a judge choose to raise a point not advocated for by either party, which is contrary to the established practice of a professional disciplinary tribunal and which has implications which go beyond the parameters of the instant case, the fair and sensible course would be to invite the parties to provide both written and full oral submissions before any determination is made by the court.
53. Accordingly, and for the reasons given, I would allow this appeal.

Lord Justice Stuart-Smith:

54. I agree that this appeal should be allowed for the reasons given by Nicola Davies LJ and in accordance with the analysis of Morris J in *Danial*. I only add to them because we are differing from the Judge below in circumstances where there are conflicting decisions at the level of the High Court.

55. Briefly, there is no basis for aggregating the substantive suspension and the immediate suspension and then treating the aggregated period as if it had been passed as a single substantive suspension. They are clearly different. The substantive suspension is imposed by a direction pursuant to section 27(B)(6)(b) and it is that direction that is not to exceed 12 months (though, as Nicola Davies LJ has pointed out, there are other provisions by which the initially directed period may be extended pursuant to section 27C). An appeal against such a direction may be brought pursuant to section 29.
56. I do not understand what the Judge meant by saying that an order for immediate suspension is “parasitic” upon a direction imposing a substantive suspension. I agree with Nicola Davies LJ that a direction imposing a substantive suspension is a necessary pre-requisite to an order for an immediate suspension; but that does not seem to me to give meaning to the word “parasitic” in this context.
57. An order for immediate suspension is made pursuant to section 30 and is not subject to the time limit of 12 months mentioned in section 27B(6)(b), which is specific to a direction under that subsection that there should be a substantive suspension. The duration of an immediate suspension is determined by section 30(3) There is a clear difference between the two procedures. With a substantive suspension pursuant to section 27B(6)(b), what is done is that the registrar is directed to amend the register. With an immediate suspension, the order does not require any action by the registrar for the order to be effective. An order for immediate suspension is not susceptible to an appeal pursuant to section 29; but it is open to a dentist in respect of whom an immediate suspension has been ordered to apply to the court for an order terminating it: see section 30(7), which has been set out by Nicola Davies LJ above.
58. The word “start” does not appear in the operative provisions of the Act. Instead, the Act uses the phrase “take effect” on multiple occasions. We are directly concerned with its use in section 29A and 30. Section 29A(2) provides that a direction imposing a substantive suspension shall “take effect” (a) where no appeal under section 29 is brought on the expiry of 28 days and (b) where an appeal is brought then, depending on the outcome of the appeal, either on it being withdrawn or struck out or dismissed. To my mind this provision is entirely clear: “take effect” means that the substantive suspension (in this case, of 9 months) would become effective and start to run from 28 days after the direction was made (if no appeal was brought) or on determination of the appeal (if, as happened, there was one). There is no basis for adopting a different meaning for “take effect” in section 30(3). It therefore means that, in a case where an order for immediate suspension is made, the substantive suspension will still become effective and start to run in accordance with the provisions of section 29A, and the immediate suspension will simply last until that date. There is nothing in these provisions to suggest that there should be any form of set off against the duration of the substantive suspension attributable to the gap-filling effect of the immediate suspension. To my mind, these provisions are directly contrary to the interpretation adopted by the Judge and there is no basis for the court to go behind them. I should add for completeness that there are numerous other occasions where “take effect” is used, and their meaning is, to my mind, obviously the same as I have paraphrased above: see sections 27B(10), 27C(1)(a), 29A(3), 30(5), 32(7), 33(3), 33(4) and 33A. It is not necessary to set them all out here.
59. I agree that there is a degree of overlap between the criteria for making a direction for a substantive suspension and the criteria for imposing an immediate suspension. That

is not surprising given the overarching objective of the Council: see Section 1 of the Dentists Act, as set out by Nicola Davies LJ above. That does not suggest that the two provisions for suspensions should be aggregated and treated as if they were all imposed pursuant to a direction for a substantive suspension.

60. Finally, although I accept that the interpretation that we are endorsing may have the effect of extending the period during which a dentist's registration is suspended, that does not seem to me to be either unfair or contrary to the public interest. It is always open to the dentist to request a review of his case before the conclusion of the period of the substantive suspension or for the Council in an appropriate case to initiate the review itself. As always, the touchstone will be the protection of the public.
61. For these reasons, which are essentially the same as those explained by Nicola Davies LJ, I too would allow the appeal.

Lady Justice Whipple:

62. I agree with both judgments and would allow the appeal.