

Appeals Circular A03/25

11 March 2025

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General Dental Council v Nabeel Aga [2025] EWCA Civ 68
Aga v The General Dental Council [2023] EWHC 3208 (Admin)
Danial v GDC [2024] EWHC 2610 (Admin)

Learning points

- ▶ A direction for suspension and an order for immediate suspension are distinct; the former is a direction, and the latter is an order.
- ▶ There is no provision for an immediate order of suspension to be 'set off' against the substantive sanction of suspension. A substantive order therefore runs consecutively to an immediate order, as opposed to concurrently¹;
 - ▶ whilst this may have the effect of extending the period during which a registrant is suspended [ie to over 12 months], that is neither unfair or contrary to the public interest. It is always open to the registrant or the regulator to request a review of their case before conclusion of the substantive suspension.
 - ▶ the alternative interpretation has the potential to undermine:
 - ▶ the purposes of a review hearing including the ability of a registrant to remediate their failings which led to a finding of misconduct and/or to allow

¹ This confirms the MPTS' approach. Although this case concerns provisions of the Dentists Act 1984, The Medical Act 1984 ('the MA') contains similar provisions ie if a practitioner receives an immediate order of suspension (pursuant to s38 of the MA), they will remain suspended until the substantive direction to suspend their registration (as directed under s35D of the MA) takes effect. This will be after the end of the 28-day appeal period, if no appeal is brought, or upon the withdrawal or dismissal of the appeal, if one is brought (in accordance with Schedule 4 Paragraph 10(1) of the MA).

a registrant to return to practice without satisfying a tribunal that their fitness to practise is no longer impaired;

- ▶ the regulatory function is of protection of the public, which underpins the provisions governing regulatory hearings.

- ▶ if this position is to be altered it is a matter for Parliament.

Background

- ▶ **High Court appeal:** [Aga v The General Dental Council \[2023\] EWHC 3208 \(Admin\) \('Aga'\)](#)

This was an appeal brought by Mr Aga ('Mr A'), pursuant to s29 of the Dentists Act 1984 ('the Act') against a Professional Conduct Committee ('PCC') decision dated 21 July 2023 to suspend his registration for a period of nine months with immediate effect. At the appeal hearing, he argued that the GDC'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 was wrong in law.

At the time of the appeal hearing in December 2023, Mr A had been suspended under the immediate order of suspension for approximately five months. Mr Justice Ritchie noted that on the GDC's interpretation of the Act, the total suspension will be increased from 9 months to 13.5 months which is more than the 12 months maximum permitted by the Act [30]. He concluded that the s30 immediate order power is parasitic on the s27B direction for suspension [38], there is only one suspension made under the Act and A's suspension started when the immediate suspension order took effect." [96]. He therefore stated that GDC should not have made the duration of the direction for suspension consecutive to the duration of the immediate order for suspension [103] and that the duration of the suspension already served by Mr A under the immediate suspension order be deducted from the substantive suspension order [103].

The GDC appealed this decision.

- ▶ **High Court appeal:** [Danial v GDC \[2024\] EWHC 2610 \(Admin\) \('Danial'\)](#)

This appeal was brought by Mr Danial ('Mr D') pursuant to s29 of the Act against a PCC decision dated 12 January 2023 to suspend his registration for a period of five months with immediate effect. He argued the analysis in Aga was correct and that the judge was bound to follow it [208], and therefore that the PCC ought to have directed that his overall suspension be for a total of five months and that, at the end of the unsuccessful appeal hearing the immediate order for suspension should be terminated (as five months had now passed).

Mr Justice Morris concluded that Mr Justice Ritchie's decision in Aga was wrong [262] and that the period of suspension under an immediate suspension order does not fall to be deducted from the period of a suspension direction [261]. Mr D's suspension therefore took effect from the dismissal of the appeal [273].

Grounds of Appeal to the Court of Appeal

The GDC was given permission by Lady Justice Nicola Davies to appeal against the High Court decision on a single ground; that Mr Justice Ritchie was wrong to treat a direction for substantive suspension and an immediate order of suspension as forming one continuous suspension [24].

Judgment of the Court of Appeal

Judgment was given by Lady Justice Nicola Davies ('the Judge'), with whom Lord Justice Stuart-Smith and Lady Justice Whipple agreed. The Judge stated that:

- "A direction for suspension and an order for immediate suspension are distinct" [42]. "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" [43].
- "Section 29A(2)(a)(b) and (c)² identify when such a direction for suspension "shall take effect".... Three events are identified as prescribing when the direction will come into effect practically, and each identifies the start of the period of suspension". [45].
- Section 30 powers are not "parasitic" on the Section 27B order for suspension; they are wholly separate sections of the Act and are dealt with at different stages of the fitness to practise procedure [46]. "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)³. It follows...that the wording of section 30 identifies the start and end dates of a period of immediate suspension" [47].

² S29A(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.

³ 30 (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.

- ▶ The 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 *R (Ghosh) v General Medical Council*⁴ and *W v Health and Care Professions Tribunal*⁵. 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”[49].
- ▶ “[T]he correct interpretation of the language of sections 27B, 29A and 30 of the Act is inconsistent with the reasoning of [Mr Justice Ritchie] and his conclusion that only one period of suspension is imposed. If he 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. Put shortly, the [Mr Justice Ritchie]’s interpretation of these provisions of the [Act] was wrong” [51].
- ▶ As there were conflicting decisions at High Court level, Lord Justice Stuart-Smith added to the reasons given by the Judge, stating that:
 - ▶ “[a]n 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” [57] Although this may have the effect of extending the period during which a dentist’s registration is suspended [ie in Mr A’s case to 13.5 months], “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” [60].

Accordingly, the GDC’s appeal was allowed.

Whilst there was no direct consequence on Mr A’s registration (whose suspension had lapsed by the time of the appeal), the judgment provides welcome judicial clarity on the issue.

Kind regards

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⁴ [2006] EWHC 2743 (Admin)

⁵ [2022] CSIH 47