First-tier Tribunal Primary Health Lists

The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008

IN THE MATTER OF THE NATIONAL HEALTH SERVICE (PERFORMERS LISTS) (ENGLAND) REGULATIONS 2013

Case [2021] 4352.PHL

Heard at Barrow in Furness County Court

On 28 (reading day), 29, 30 November and 1 December 2022

BEFORE
Miss Siobhan Goodrich (Judge)
Mr Martyn Green (Specialist member)
Mrs Lorna Jacobs (Specialist member)

BETWEEN: -

Mr George David Bell

Applicant

And

The National Health Service Commissioning Board
("NHS ENGLAND")

Respondent

DECISION AND REASONS

Representation
The Appellant: in person
The Respondent: Mr Peter Anderson, counsel, instructed by Hill Dickenson LLP

Introduction

1. Mr Bell appeals against the decision made in a written decision dated 18 June 2021 by the Performers List Decision Panel (the "PLDP") to remove his name from the Dental Performers List (DPL) by reference to regulation 14(3)(d) of the National

Health Service (Performers List) (England) Regulations 2013 ("the Regulations") on the grounds that he is unsuitable to be included in the list.

The Background

2. Mr Bell is a dentist who has practised NHS dentistry throughout his career. In 2002 he moved from Somerset to Cumbria. For some years his work has been on a locum basis. In order to practise as a dentist he is required to be included in the General Dental Council's (GDC) register of dentists. In order to provide dental services in NHS primary care he is also required to be included in NHS England's dental performers list (the DPL).

3. A decision to remove Mr Bell's name from the DPL on grounds of unsuitability was made by the PLDP on 18 June 2021. That decision does not take effect pending the outcome of this appeal.

4. It is common ground that Mr Bell has not worked as a dentist in any formal capacity since March 2020. He has been suspended by the GDC on health grounds (i.e. impairment of fitness to practise by reason of his adverse health) since September 2020.

5. There is a long and complex history. For immediate purposes we summarise the background since 2015 only. This includes:

    1) At an NHSE PLDP decision on 18 December 2015 Mr Bell's inclusion in the Dental Performers List was made subject to conditions on "efficiency" grounds under regulation 10 (the 2015 conditions).
    2) The 2019 PLDP reviewed the 2015 conditions. This resulted in a variation resulting in different conditions being imposed (the 2019 Conditions).
    3) Mr Bell appealed to the First-tier Tribunal (the FtT). On 12 August 2020, the Tribunal decided to maintain the 2019 Conditions, and, in some instances, strengthened individual conditions.
    4) Mr Bell applied for permission to appeal the FtT's decision of 12 August 2020.
    5) On 29 September 2020 Judge Khan decided not to set aside the decision or review the decision and refused his application for permission to appeal.
    6) In September 2020 Mr Bell's fitness to practise by reason of impairment to his health was being reviewed by the Fitness to Practice (Health) Committee of the GDC.
    7) On 7 September 2020 the HC revoked the conditions imposed on Mr Bell's registration and suspended his registration for four months.
    8) This was reviewed in January 2021 and his suspension was extended by six months.
    9) At review on 20 July 2021, the HC extended Mr Bell's suspension for a further six months.
    10) At review on 19 January 2022, the HC extended Mr Bell's suspension for 12 months.
    11) The HC continues to monitor the position and will review the suspension prior to its expiry.

6. Mr Bell's conduct since August 2020 (including allegations of unreasonable communications, challenging behaviour and failure to declare criminal proceedings in breach of condition and the National Health Service (Performers Lists) (England) Regulations 2013 (the Regulations)), was considered by NHS England's Performance Advisory Group (PAG) on 4 March 2021. The PAG recommended that the case was referred to a PLDP with a view to the removal of Mr Bell's name from the Dental Performers List (DPL).

The PLDP decision under appeal

7. The PLDP held a meeting which Mr Bell attended on 10 June 2021. In its written decision dated 18 June 2021 the PLDP decided on to remove Mr Bell's name from the DPL on the grounds that he is unsuitable to be included in the list under Regulation 14(3)(d). The reasons given are a matter of record and the facts then found by the PLDP are included in the Scott Schedule now before us.

The Appeal

8. In the Notice of Appeal Mr Bell refers to his health conditions and states, amongst other matters, that: his reaction of "prominent intolerances" to bullying is normal; he was refused access to appropriate medical resources; the NHS failed to follow the advice of Professor Tantam and Dr Bernadette Dalton; they (i.e. the NHS) wasted and continue to waste thousands of pounds of public monies; they (i.e. the NHS) failed to diagnose his speech disorder or make reasonable adjustments for his PTSD as required under the Equality Act - which has been referred to an Employment Tribunal; they ignored the statutory guidance in the "Better Lives Autism Good Practice Guide"; they failed to consider his personal circumstances in November/December 2020 when he lost his father; they presented false and misleading evidence to the Tribunal on a particular occasion.

   Furthermore, in section 4.2.1.3 (of the decision letter) the panel said that he had "refused to accept occupational health and mental health assessment re fitness to practice. This is a lie. No appointment was offered."

Documents

9. We had received and read in advance of the hearing a paginated and indexed hard copy also provided in an electronic bundle (PDF pages 1-848), and the Respondent's skeleton dated 26 February 2022.

Late Evidence

10. On 24 November 2022 Mr Bell submitted (within the body of 2 emails) a brief statement and a brief response to the Scott Schedule. He said also that he intended to call some 8 witnesses whose names only were provided. On or about 25 November he sent 22 further emails which either contained links to/or attached: extracts from guidelines, literature, books and articles as well as an emails from:
    - Ms Colcombe, a specialist Speech and Language Therapist, dated 24 November 2021.
    - Dr Sourabh Singh, Consultant Psychiatrist, of Berkeley Psychiatrists, dated 4 October 2022 regarding his recommendation for an increase in dosage of Sertraline prescribed to Mr Bell.

11. The panel had read all of the above before the hearing commenced. We expressed, and repeat now, our thanks to the Respondent's solicitor who had done her best to print and collate the 22 emails into an additional bundle(s) for the use of the panel and Mr Bell. We mark this as Appellant's Bundle 1 (AB1).

12. Mr Bell had provided therein a letter from one witness and draft statement which was not yet complete. Mr Anderson said that he would be happy to consider the same when complete.

13. Mr Anderson did not object to the late reception of any of the above evidence. Mr Bell said he had not provided this before because he had been busy with another case at the GDC. It emerged that this was a Professional Conduct Committee hearing at the GDC concerning alleged misconduct held on 17 November 2022. The allegation was found not proven. The Respondent had not been informed of this hearing.

14. We noted that the hearing of this appeal had been listed to be heard at Blackpool beginning on 8 March 2022 and that the Respondent's hard copy bundle had been provided to Mr Bell on 23 February 2022, a date that had been pre-arranged with Mr Bell so that he was at home. On 16 February 2022 Mr Bell had applied for the fixed hearing date to be vacated and re-fixed to be heard at Barrow in Furness by way of a reasonable adjustment. His application was granted on 2 March 2022**.** On 3 May 2022, the final hearing was listed for 4 days commencing on 28 November 2022 in Barrow in Furness. On 3 May 2022 further directions were issued requiring skeleton arguments by 21 November 2022.

15. It seemed to us that there had been very ample time indeed for the Appellant to consider the Respondent's case and to prepare and lodge his evidence. However, we decided that it was in the interests of justice, and consistent with reasonable adjustments, to receive the late evidence and that we would thereafter consider its relevance to the issues we have to decide and/or issues regarding weight.

16. Mr Bell had not brought the paginated lever arch bundle delivered to him but he had brought a large bundle of papers. He did not dispute that he had received the hard copy bundle. It was arranged that he would use the bundles provided for the use of witnesses so that he was better able to locate any pages when needed.

17. Whilst being cross examined on the second day of the hearing Mr Bell also mentioned a medical report from Dr Singh which he had at home. When this was produced the next day Mr Anderson did not object and we duly received it.

18. On 30 November the panel also asked Mr Bell to list the particular paragraph numbers of Mental Health Act Code of Practice (2015) (MHA CofP) that he considered relevant. When he provided his list on 1 December, the court clerk assisted by photocopying the pages for the panel all of which we have considered.

19. In his evidence the Appellant said that the fact that he is treated with Sertraline establishes a diagnosis of PTSD. He said also that the fact that he has been offered EMDR therapy (eye movement desensitization and reprocessing) establishes a diagnosis or PTSD. In the interests of transparency and fairness the

judge explained it was not the panel's general understanding that the simple fact of treatment with Sertraline should be regarded as necessarily diagnostic of PTSD. Mr Bell said this was clear in documents he had read. The panel gave Mr Bell the opportunity to provide any documentary evidence about Sertraline and/or EMDR on which he sought to rely on the next day. The panel duly received this and also received a sheaf of correspondence between him and the GDC.

20. There has never been any suggestion that the Appellant lacks capacity. We were satisfied that he had the mental capacity to conduct his appeal.

Reasonable adjustments

21. Mr Bell has Autistic Spectrum Disorder (ASD) of Asperger's type, and a speech disorder, "cluttered speech". He is also Diabetic and requires insulin. Mr Bell also considers that he suffers from Post-Traumatic Stress Disorder (PTSD).

22. The panel had considered the guidance in the Equal Treatment Handbook (May 2022) and with particular regard to Autism, diabetes and PTSD. Whilst it did not appear to us that there was formal medical evidence to substantiate a diagnosis of PTSD we decided to pay full regard to the symptoms Mr Bell described when considering reasonable adjustments. One symptom in particular is that he said that painful memories and stress were re-triggered by recalling some events. We also took into account the contents of the late evidence provided by the Appellant when considering the impact of Autism, diabetes and PTSD type symptoms on his ability to participate in the hearing.

23. We made arrangements with the court clerk who familiarised Mr Bell with the hearing room in advance. He did not wish to have his own consultation room for breaks. The position of some curtains was changed in the hearing room at his request, and he confirmed that he was comfortable with the lighting and where he was sitting (in the representative's bench along with Mr Anderson). The judge explored with Mr Bell the further adjustments that might assist him. It was agreed that a break would be taken if needed after the evidence of each of the Respondent's witnesses to enable Mr Bell to gather his thoughts if needed, and that, in any event, a break of at least 10 minutes would be taken every hour or so, or earlier if needed. The judge assured Mr Bell that if he needed a further break at any time he need only say so. We would not sit before 10 am or after 4pm and would take a lunch break of one hour at a time that suited.

24. The judge explained to Mr Bell that he did not need to make eye contact with the panel but should feel free to look in whatever direction was comfortable for him.

25. The judge also asked Mr Bell about his medication regime and was assured that no breaks were needed for this purpose. Mr Bell explained that he has a mobile phone application that enables him to easily check his blood sugar levels (which may well be affected by stress.) He did this at intervals during the hearing. He had glucose tablets with him.

26. The judge spent some time explaining the nature of the process in the context of the nature of the appeal (i.e. by way of redetermination and based on evidence available as at today). She also explained that evidence in witness statements

stood as the evidence as if every word had been spoken before us, and he therefore needed to challenge any evidence he disagreed in the Respondent's witnesses statements. Mr Bell confirmed that he understood what had been said, and also that if he needed assistance or further explanation he need only ask.

27. Mr Bell asked some pertinent questions of the Respondent's witnesses. His mode of asking questions involved him providing lengthy explanations of his perspective that he has been the victim of bullying behaviour since the late 1990s. The judge helped to rephrase the questions asked by Mr Bell as needed.

28. When the time came for Mr Bell to give evidence we suggested that he remain in his seat because he was comfortable in that position, and it was more convenient in terms of his documents. The judge assisted Mr Bell to give his evidence in chief by way of general introductory questions before he was cross-examined by Mr Anderson. The cross examination, whilst inevitably challenging, was conducted in an appropriate manner and the questions asked were fair. In the course of his evidence the judge also summarised what he had said from time to time in order to check understanding. At the end of the second day Mr Anderson helpfully provided a list of the page numbers of those emails in the bundle that he intended to ask Mr Bell about that he thought might upset Mr Bell, so that he could look at these overnight.

29. We did not make an anonymity order because it was clear from Mr Bell's appearances in the GDC that he strongly opposed proceedings being held in private. However, when referring to circumstances in this decision that bear on the interests of his wife and (now adult) children we have been appropriately circumspect.

Oral Evidence

30. We heard oral evidence on oath from:

- Ms Maureen Kirwan: now retired but formerly Head of Medical, Professional Standards and Professional Leadership Development at NHS England and NHS Improvement in the North West.

- Mr Richard Bove: the Programme Manager (Professional Performance) who had been involved with Mr Bell as his case manager since January 2019.

- The Appellant.

We do not set out the oral evidence received but will refer to key parts when making our findings below.

Character Evidence

31. We agreed to receive the written evidence of Mr Dean and Ms Rashid as character witnesses.

32. Mr Dean Evans has known Mr Bell for 17 years. They initially met when Mr Bell treated him. They are now friends who have provided mutual support in practical ways. Mr Dean regards Mr Bell as honest and trustworthy. Mr Dean has been

through difficult times but talking to Mr Bell has made him realise that he has features of PTSD as well.

33. Ms Rashid is a trainee solicitor, LLM student and the mother of three severely autistic children. She has known Mr Bell as a fellow advocate of disability rights for over 2 years. Mr Bell has spent a great deal of time advocating disability rights and in educating himself in the law in this field. She has the utmost respect for him and the good work that he does. He has been a very good friend to her offering unwavering understanding and support, and a sympathetic ear. She is extremely impressed by the work that Mr Bell has done in collaboration with Professor Scaler Scott and Dr Yvonne Ban Zaalen on cluttered speech which she says has now been recognised as a formal diagnosis. In her experience, Mr Bell is a very affable, kind, generous, sensitive and compassionate person who has had a positive impact on her life and those of her children.

The Respondent's Submissions

34. The Respondent's case was set out in the Response to the appeal, the issues identified in the Scott Schedule, and in the skeleton argument. We need not repeat all the points made in those documents as they are in the bundle. In summary, the Respondent's case is that the facts alleged in the Scott Schedule should be found proved and that to remove the Appellant on the grounds of "unsuitability" was, and remains, reasonable and proportionate. Aspects of the evidence showed that the Appellant had made deliberate choices to behave in the way that he had. He submitted that some parts of the Appellant's evidence were untruthful. Whether the panel agreed with this or not, the evidence clearly showed that Mr Bell is unsuitable and removal is necessary to protect the public interests engaged.

The Appellant's submissions

35. No criticism is intended when we say that Mr Bell's submissions largely reprised his oral evidence. He believes that the provision of treatment for people suffering from Autism across the NHS is inadequate and discriminatory. He referred to various inquiries in this regard such as Winterbourne. He was wrongly diagnosed with bipolar disorder when he was sectioned under the Mental Health Act (MHA) in 2018. He considers that the provision of a speech and language therapy (SaLT) assessment was essential before he was assessed by the sectioning doctor, and also by any psychiatrist asked by the GDC to assess his health. The MHA section was extremely traumatic for him. He relies upon various paragraphs in the Mental Health Code of Practice (MHA CoP) to support his claim that the treatment provided by the NHS has been substandard, and also contrary to guidance issued by the Royal College of Psychiatrists. He believes that treatment provided and/or diagnoses made have been reached in breach of the MHA CoP. He believes that he also suffers from PTSD and this, in addition to ASD, is the context in which the facts should be considered and understood. He considers that his behaviour, (to the extent that he admits it), is justified because he has been treated inadequately and in a discriminatory way. He relies on the Equality Act 2010. The NHS and/or the Respondent have not made reasonable adjustments for him. He considers that he has a claim against the NHS both for treatment, or lack of it, and for what he views as discrimination by a number of bodies, (including the NHS, the GDC and the Respondent), over many years. He contends that the waste of resources on

which the Respondent relies is much less that the waste and harm caused to him by substandard and discriminatory treatment he claims he has received.

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37. Mr Bell was at pains to point out that his usual personality is that he is affable, kind, generous and thoughtful. This is supported by his character witnesses.

38. Mr Bell's case is that he is a good dentist and wants to return to work to help support himself, his wife (from whom he has lived separately since 2002, albeit they are not divorced) and his children who are now adults. There is no concern about the standards of his clinical care and no issue of risk to patients. He gets on well with his patients. We had noted that the Appellant had previously said in the GDC in 2020 that any conditions imposed should be "feather light". Asked by the panel what, if any, conditions he considered might now be appropriate he was unable to say. He does not consider that he presents any risk to patients. He contends that the decision made by the PDLP was unlawful, unjustified, unfair and disproportionate.

<u>The Burden and Standard of Proof</u>

39. The Respondent bears the burden of proof. The standard is the balance of probabilities.

<u>The Regulations</u>

40. The main regulations are as follows:

14. Removal from a performers list

(1) …..
(3) The Board may remove a Practitioner from a performers list where any one of the following is satisfied—
……
(d) the Practitioner is unsuitable to be included in that performers list ("an unsuitability case").

15. The Criteria for a decision on removal
(1) Where the Board is considering whether to remove a Practitioner from a performers list under regulation 14(3)(d) (an unsuitability case), it is to consider—
(a) any information relating to that Practitioner which it has received pursuant to regulation 9;

(b) any information held by the NHSLA about past or current investigations or proceedings involving or relating to that Practitioner, which information the NHSLA must supply if the Board so requests; and

(c) the matters set out in paragraph (2).

(2) Those matters are—
(a) the nature of any event which gives rise to a question as to the suitability of the Practitioner to be included in the performers list;
(b) the length of time since the event and the facts which gave rise to it occurred;
(c) any action taken or penalty imposed by any regulatory or other body (including the police or the courts) as a result of the event;
(d) the relevance of the event to the Practitioner's performance of the services which those included in the relevant performers list perform, and any likely risk to any patients or to public finances;
….."

<u>Our Consideration and Findings</u>

41. Mr Bell brings this appeal under regulation 17 (2) (c). Regulation 17 (1) provides that the appeal is by way of "redetermination".

42. We are required to make a de novo (i.e. a fresh decision as at today's date). This may be informed by new information or material that was not available to the PLDP. The redetermination of the appeal includes consideration of all the documentary evidence provided by both sides in this appeal, and the oral evidence and submissions before us.

43. Regulation 17(4) provides that on appeal the First-tier Tribunal may make any decision which the PLDP could have made. The Respondent's case is that the facts on which it relies are such that the Appellant is unsuitable and that the only proportionate decision is that of removal. By contrast, the Appellant contends that

the facts must be considered in the context that his behaviour is due to his health conditions: ASD and PTSD. He is suitable. Removal is unlawful, unjustified, unfair and disproportionate.

44. We have considered everything before us. If we do not refer to any particular part of the evidence or submissions it should not be assumed that we have not taken these into account.

<u>The Previous Findings of the First- tier Tribunal on 12 August 2020</u>

45. The outcome of the FtT appeal was that, having made findings of fact, the FtT panel imposed specific conditions on Mr Bell's inclusion on the DPL on efficiency grounds under Regulation 10.

46. Mr Bell's application that the decision be set aside or reviewed or subject to appeal was refused by Judge Khan on 29 September 2020. We consider that the FtT decision therefore stands as the authoritative statement of the facts as then found. (That is not to say that, subject to appropriate caution and reasoning, it is not open to this panel to depart from the facts found by the FtT if the evidence now before us points in a different way.) In our view the FtT decision is the starting point in relation to our fact finding and, in this appeal, forms the immediate backdrop against which we make our findings with regard to events since August 2020.

47. We refer to, and adopt without repeating here, the background from 2014 as set out at paragraphs 5 to 11 of the FtT decision of 12 August 2020. Amongst other matters this included a summary of the opinion of:

- Dr Deeley, Consultant Psychiatrist as per her report dated 17 July 2014
- Professor Digby Tantam, Consultant Psychiatrist, who provided a report dated July 2017.
  He had been appointed as Mr Bell's medical supervisor under conditions imposed by the Health Committee of the GDC in about 2014.

48. We noted that in his report to the GDC dated 16 October 2018 Professor Tantam considered that Mr Bell has always had a strong sense of justice, a belief that he and his family have been unjustly treated and a determination to pay the authorities that he holds responsible for this back. He stated "I think that his first line of approach to frustrations in his like is to complain of ill treatment by others, and this has led to the same pattern seen in people…known as "vexatious litigants"…,or sufferers from "querulous paranoia" and sometimes a damaging degree of irrationality.
In the past, his ruminations about injustice have been put down to his ASD, but they have become a more and more dominant feature in his life. I do not think that this is because his ASD had changed, or that he has become more depressed…"

49. The main FtT findings made on 12 August 2020 included that:

   1) The Appellant harmed himself or threatened to do so several times between September 2018 and July 2020.

2) This included a number of overdoses and an incident on 5 October 2018 when the Appellant threatened to cut off one of his fingers which lead to him being detained under the Mental Health Act on 6 October 2018.
3) He made threats of self-harm to Mr Bove in July 2020.
4) He harmed himself or threatened to do so in order to waste NHS resources and pay the NHS back for his belief they had wasted his time. The FtT did not accept his suggestion that this was just to get the help he needed. Professor Tantam stated in October 2018 that the Appellant had reported to him that his overdoses, which take up NHS time, were paying back other institutions for wasting his time. The Appellant's own written evidence indicated to the FtT that he does use threats and self-harms to waste NHS resources.
5) Professor Tantam expressed the opinion that the Appellant has an established aversion to authority and an aversion to the blind application of rules and regulations as a consequence, he thought, of having been bullied in the past.
6) In his report of October 2018 Professor Tantam, who had been acting as his medical supervisor since about 2014, confirmed that the Appellant was pursuing several cases against Somerset County Council, the GDC, NHS England, individual doctors and the Trust in Cumbria. In January 2019 Professor Tantam said that, although Mr Bell's ruminations about past events cause him anger and sometimes frustration and stress, he did not consider that Mr Bell's symptoms were consistent with PTSD.
7) Mr Bell was involved in an incident with the police in October 2018 when he crawled past police officers to get his mobile phone.
8) He was involved in an incident with the police in May 2019. He stood naked in a police cell for several hours refusing to put on clothing in order to make a point. He put a bracelet which said 'never give up' into his mouth to prevent police removing it and then claimed it was a religious object. He told police he could eat his own faeces. The FtT found this behaviour to be bizarre.
9) The FtT found it concerning that during the hearing the Appellant did not see anything wrong with his behaviour with the benefit of hindsight.
10) He told a police officer that he had a track record of covering himself in petrol and approaching buildings.
11) Mr Bell made threats to NHS managers including deeply concerning threats against Mr Bove. Mr Bove's evidence, accepted by the panel, was that he became aware that Mr Bell had made threats of violence against the PDLP members and himself. The comments made by the Appellant included that: "it's about time someone broke the nose of the manager"; he knew where the manager lived; it would be funny to write a note saying the manager was a known paedophile who abuses disabled people and then post it through his neighbours' doors.
12) Ms Kirwan's evidence that the Appellant had admitted to her that he had made threats to Mr Bove and the PLDP panel on 21st May 2019 because he wanted the NHS to know what it was like to be bullied.
13) Mr Bell made further bizarre threats against professionals in March 2020 that he would use the Tribunal as a means of imprisoning Jane Conway, would kick the police in the balls, and tell Dr Gelani, a Muslim, to have a bacon sandwich.

14) He had refused to undergo an occupational health assessment (i.e. at the request of NHSE) without a valid reason for his refusal.
15) The Respondent had not failed to support Mr Bell or been discriminatory.
16) The panel considered that there was a risk to patient safety and that public confidence in the service would be significantly affected if conditions were not imposed.

50. The factual allegations on which the Respondent relies regarding events/matters since the FtT decision in August 2020 are set out in the Scott Schedule, to which we will return.

51. It is appropriate at this stage to state our overall impression of the oral evidence. We found that Ms Kirwan and Mr Bove were straightforward witnesses. Mrs Kirwan was an impressive witness, not least because she brought to bear her experience of over 21 years. She spoke to the efforts made to support Mr Bell given his health. Mr Bove, whose extensive contact with Mr Bell since the FtT decision in August 2020 is well documented, explained to us in clear terms his efforts to deal with Mr Bell's many communications and emails and the issues that have continued to arise following the FtT decision issued on 12 August 2020. Both witnesses described the effect that Mr Bell's behaviour had on them. We noted that Ms Kirwan was visibly upset and tearful when being asked questions by Mr Bell. He did not take the opportunity to apologise to her although he said to us in closing submissions that he might do so.

52. Our overall impression of Mr Bell was that he is a very intelligent and articulate person who, in the main, did his best to answer the questions posed of him. Generally in these proceedings, Mr Bell came across as pleasant, cooperative and with a sense of humour. His approach to answering questions was lengthy and circuitous in that he would "maze" i.e. go off at tangents, which is a recognised feature in ASD. Another feature of his way of answering questions was that he appeared to have a fixed view about what was important in his case. On some occasions he was impatient or irritable or upset when asked about a simple factual matter that might not fit or suit his overall narrative. These tendencies may well be features of autism. We took all these matters fully into account when assessing his evidence, as well as all the information provided by the Appellant and others regarding the impact of his condition/symptoms on his ability to participate in the hearing, and on his behaviour.

53. As referred to above, Professor Tantam gave his opinion in July 2017 that Mr Bell has ASD of Asperger's type and "cluttered speech". We record here that we had little or no difficulty in understanding Mr Bell's speech in practical terms. On occasions he spoke quickly. On a few occasions, and at a time of forensic challenge, there was the odd spoonerism, but nothing that impeded our understanding. Mr Bell's case is that he did not cooperate with the GDC assessment arrangements because, based on his research and his reading of the MHA CoP he considered that a psychiatrist could not properly assess him without the prior benefit of a speech and language (SaLT) assessment. On his evidence before us we consider it likely that his reason for wanting a SaLT assessment before seeing any psychiatrist was because of his fear that his speech pattern

would be considered to be pressure of speech and that a wrong psychiatric diagnosis might be made. He holds this fear because he had been diagnosed with bipolar disorder when sectioned in 2018. Understandably he found this very distressing.

54. We kept a very careful eye on Mr Bell's ability to fully participate in the hearing of his appeal. The breaks we had envisaged proved to be appropriate every 50 or so minutes. There were some aspects of cross-examination which plainly upset Mr Bell because it reminded him of past events. When under particular stress Mr Bell clicked his pen repeatedly i.e. stimming. He was tearful and emotional on occasions. We took breaks when this happened and only resumed when we were satisfied that he felt able to do so. We took breaks that we felt were necessary and even when Mr Bell said he was content to continue.

<u>Our Findings of Fact</u>

55. For ease of reference, we have grouped the factual allegations in the SS in *italics* below starting with 14 September 2020, using names, and also under headings broadly in line with those contained in the Respondent's skeleton.

56. At all times we took into account what the Appellant had said in the short points he had made in his statement and in his response to the SS. His responses were, however, very brief and did not respond to the facts alleged in a manner that was easy to follow. The Appellant was, however, given very full opportunity to explain his case when he gave evidence.

a) Mr Bells' dealings with the Respondent since the FtT decision on 12 August 2020.

On 14.9.20 Ms Kirwan wrote to Mr Bell stating that due to his persistent and unreasonable communications (e.g. 17 emails to Mr Bove, R's Programme Manager (Professional Performance), between Friday 4.9.20 and Monday 7.9.20) thereafter: (1) Mr Bove would be his single point of contact, (2) the Respondent would not respond to unnecessary emails, (3) telephone calls would be by appointment at a maximum of once a week for up to 30 minutes.

Between 14.9.20 and 27.8.21 Mr Bell made persistent and unreasonable contact with Mr Bove and Ms Kirwan by telephone, voicemail, email and text as set out in the schedule at C460-467 (127 emails 4 texts and 18 calls).

The contacts included insulting messages for Ms Kirwan e.g. that she was a 'smiling snake', 'physically unattractive', 'the ugly sister of a troll'. Mr Bell attempted to contact Ms Kirwan rather than Mr Bove and telephoned 17 times without an appointment contrary to the terms of R's letter of 14.9.20.

On 30.9.20 Mr Bell twice threatened to 'cut off a finger' to obtain ill health retirement.

The emails sent were rambling, often nonsensical, contained repeated threats to take various forms of legal action, and made reference to a belief that the NHS is guilty of the systemic abuse of people with autism.

15.10.20 Ms Kirwan wrote to Mr Bell regarding his failure to observe the terms of the letter of 14.9.20 by making 43 inappropriate communications including 8 telephone calls without appointment and 5 attempts to call Ms Kirwan. The letter warned Mr Bell that if he persisted R would have to consider inter alia Performers List action.

9.4.21 The Respondent notified Mr Bell of a PLDP on 10.6.21 to consider his removal from the Performers List. At that stage Mr Bell had since the letter of 14.9.20 sent 77 emails, 2 texts and made 13 attempts to call by telephone without appointment.

As at 29.10.21 (the date of Mr Bove's witness statement) Mr Bell had since 17.1.19 sent him 537 emails in addition to making numerous telephone calls lasting up to one hour at a time.

Mr Bell's said that he could not remember how many times he called or emailed the Respondent. He did not actively dispute the accuracy of the evidence given which was supported by schedules. We have no reason to doubt the accuracy of the facts alleged. We find the facts proved.

Mr Bell's essential response is that Ms Kirwan and Mr Bove saw their role as limited to the application of policy and did not treat him as an individual with clear needs. We disagree. We find that both Ms Kirwan and Mr Bove did everything they reasonably could to respond to his concerns and make reasonable adjustments to accommodate his needs. We find that Mr Bell's attitude to them was essentially hostile. In our view it was entirely reasonable to try and set appropriate boundaries to Mr Bell's contact. It was also necessary for this to occur because of the adverse effect on Mr Bove and his ability to perform his overall role. Mr Bell was still provided with the opportunity to contact Mr Bove within defined and reasonable parameters. He repeatedly ignored the requests reasonably made. In our view the extent and nature of the communication by telephone, voice mails, email and text were persistent and unreasonable. We find that the nature and extent of Mr Bell's communication was also a breach of the GDC Standard at 6.1.2 which provides that "you must treat colleagues fairly and with respect, in all situations and all forms of interaction and communication. You must not bully, harass or unfairly discriminate against them." The pattern of his behaviour also amounted to harassment in the ordinary sense of that word.

b) Mr Bell's behaviour towards Compass Medical Centre

Leading up to 22.9.20 Mr Bell made repeated calls and emails to his GP, Compass Medical Practice ('Compass'), made threats to them that he was going to end his life, and deliberately broke insulin pens prescribed to him by them. He did this to waste NHS time and money. He threatened to 'disassemble' doctors' cars.

22.9.20 Mr Bell phoned Compass 30 times in a 90-minute period. He threatened to send Compass numerous empty envelopes by post with no stamp attached so they would have the cost and trouble of collecting them

from the Post Office. He threatened to barricade the entrances to the practice on 23.9.20.

23.9.20 Mr Bell phoned Compass 25-30 times in a 90-minute period. In some of the calls he remained silent and in one he threated to pour boiling oil over himself. The practice notified the Police for welfare reasons and the Police arrested Mr Bell and charged him with harassment.

We note that, in their own words, Compass Medical Practice is a specialised outreach service provided under the NHS Special Allocation Scheme for patients who are difficult to doctor. Mr Bell relied on the fact that although he was charged with harassment this charge had been withdrawn by the CPS. He considers that this was because the necessary elements of that crime could not be proved. In his evidence to us he disputed that he had threatened to disassemble doctors' cars and said that this was a misinterpretation. He said also that he usually waited until towards the end of surgery to telephone and suggested that the number of calls was because he could not get through.

We consider that there is no reason for us to doubt the accuracy of the contemporaneous correspondence from the CMP to the Respondent which make clear what happened, and also the significant impact upon this specialist service. In our view this was a pattern of deliberate behaviour, the source of which appears to be Mr Bell's deep-seated anger with NHS services which he demonstrates by unacceptable behaviour when he does not consider that he is being helped on his terms.

Breach of Condition 5.b and regulations 9(2) (g)

c) *On 7.1.21 Mr Bell appeared in the Magistrates Court on the harassment charge and the case was listed for trial on 2.3.21. The CPS then discontinued the case circa 26.2.21.*

Mr Bell did not inform the Respondent of the harassment charge within 7 days contrary to condition 5.b of the conditions imposed by the FTT on 12.8.20 and regulation 9(2)(g) of the regulations. Mr Bove learned of the charge when it was reported in the local press.

Regulation 9 (2) (g) requires a practitioner on the list to inform the Respondent if he is charged with a criminal offence. Mr Bell said that he was unaware of this and also that he was not convicted of a criminal offence (because the CPS later withdrew the charge). The problem with his claimed ignorance of the Regulation is that this was, in any event, a specific condition (No 5.b) attached to his continued inclusion on the list by the Respondent in 2019 that he:

"must inform the Respondent of within 7 days if

a) there are any formal disciplinary proceedings against you
b) there are any criminal proceedings against you."

It is clear from para 67 of the FtT decision in 2020 that the Appellant was then aware of the condition 5 because in his evidence at that hearing he objected to the condition as unnecessary and inappropriate. He had then said that he did not object to the condition. Further at para 100 of its decision the FtT had explained the rationale for each condition "and at the Appellant's request". The FtT explained in the decision that the condition they imposed regarding notification was necessary and appropriate as NHS England need to know about any criminal charges or summons so as to manage risk.

The simple fact is that Mr Bell did not comply with the condition 5 (b). Mr Bell said in evidence that he had not read the FtT decision. This seems unlikely given that he had lodged an application for review or appeal against it. Further, as set out above, condition 5 was the subject of challenge by the Appellant, and evidence and discussion at the August 2020 hearing.

We consider it probable that Mr Bell was aware of Condition 5.

The fact that he was not convicted is not the point. The condition was to notify the respondent of any criminal proceedings.

57. Mr Bell's case is that his "bad behaviour" is due to his autism and/or PTSD and is beyond his control. He said that his understanding had been transformed when he read a book called "People with Autism Behaving Badly." We accept, of course, that people with ASD can behave in ways that can be unusual and can be seen as very challenging. We noted that when Ms Kirwan visited Mr Bell at the surgery (in itself an unusual step, let alone for someone of her seniority, and which we find was part of the tailored efforts made to support Mr Bell), he was very pleasant and cooperative. In our view the evidence as a whole tends to show that Mr Bell has made deliberate decisions to behave in a certain way because of his deep-seated and longstanding anger towards authority. We find that he has decided to waste NHS resources as part of his long standing campaign to highlight what he perceives as the inadequacies of treatment for himself, and also others with Autism and/or PTSD. His choices as to how to behave are made in the context of his firm belief that the NHS does not treat people with Autism properly and systemically discriminates against people with autism. Having seen and heard him give evidence we find that they are, nonetheless, his choices.

<u>Suitability</u>

58. Having made those findings of fact, the issue is whether the facts and circumstances regarding events since August 2020 make Mr Bell "unsuitable" to provide dental services in NHS primary care. "Unsuitable" is not defined in the Regulations. It is a plain English word, which is to be given its normal, everyday meaning.

59. We considered all the matters set out in regulation 15 (1). The extensive earlier background is addressed above and includes that since September 2014, Mr Bell had been subject to health conditions imposed by the HC, and suspension since September 2020, because his fitness to practice was/is considered to be impaired by reason of adverse physical or mental health.

60. We have every sympathy for the impact of ASD and the symptoms Mr Bell suffers (and which he attributes to PTSD) upon his health and well-being. It appears that Mr Bell has not been able to come to terms with events affecting his family life which stretch back to the late 1990s/early 2000s when his children were young. We have no doubt that these events were, and remain, extremely difficult and painful for him. We recognise that in between periods of mental illness, which included being sectioned under the Mental Health Act in 2015 and 2018, he was able to work as a dentist, and whilst subject to conditions, including medical and workplace supervision as directed by the GDC. He holds fast to his view that he has been unfairly treated, traumatised, re-traumatised and bullied by the NHS and by the Respondent in particular.

61. We find Mr Bell is unwilling or unable to draw any distinction between the NHS in general, and NHSE which is a body with very discrete functions. He appears to believe that Mr Bove should have commissioned psychiatric reports and/or commissioned treatment for him. He is unable to accept that this is outside the remit of Mr Bove's role. His attitude and his anger towards Mr Bove and Ms Kirwan are simply unacceptable and have caused each of them distress. The manner in which he expressed his anger towards Ms Kirwan, in particular, was very offensive.

62. We consider that Mr Bell's hostility towards the NHS in general, and to NHSE, is very deeply engrained. When he has perceived that he is not being assisted in the way he wishes, he has behaved in an extremely unpleasant and/or offensive manner and, on many occasions, in ways that were frightening and threatening. He has shown that he is unwilling or unable to cooperate with the Respondent which body is responsible for patient safety and for his continued inclusion on the DPL.

63. Mr Bell's behaviour to the Compass Medical Practice is of a similar pattern. When he disagrees with the practice he acts out by way of protest, and in pursuit of his objective to waste NHS resources, because of his belief that he has not been treated properly. In our view his behaviour towards CMP was frightening. It required the police to be called and he was arrested on a charge of harassment.

64. Despite being given the continued opportunity to work under conditions which were judged to be necessary by the FtT in August 2020, Mr Bell repeated his behaviour soon after and on multiple occasions. He did not cooperate with the Respondent regarding "all requests that are made in relation to his continued inclusion" (Condition 1). We say that because he failed to respect the boundaries which were reasonably put in place regarding communication with Mr Bove and Ms Kirwan.

65. Mr Bell has had the opportunity to engage with the HC assessment process at the GDC since September 2020 but he did not provide his written consent to assessment until 28 May 2021, just six or so weeks before the HC review hearing on 19 July 2021. He maintains that this was long enough for the GDC to obtain a report. We consider it improbable that Mr Bell, a highly intelligent man, did not realise that the reason the first review was fixed to be held at four months was connected to the time required for a consultant psychiatrist to be instructed to see him and to then provide a report. The overall picture is that whilst he had agreed

that psychiatric assessment is needed Mr Ball is deeply opposed to undergoing psychiatric assessment arranged by the GDC.

66. Amongst other matters, Mr Bell told us that he believed that, based on his reading of the MHA CoP amongst other documents, a SaLT assessment was required before he saw a psychiatrist. Because of his position a SaLT report was eventually arranged by the GDC. The summary assessment report by Ms Colcombe dated 24 November 2021 is before us. Ms Colcombe did not carry out a formal SaLT assessment but she allowed Mr Bell to talk and based her assessment on this. We mean no disrespect when we say that the report basically tends to confirm that which is apparent when Mr Bell speaks. Ms Salcombe did provide very useful advice regarding reasonable adjustments in the context of a hearing.

67. We tend to doubt that the value of any psychiatrist assessment of Mr Bell would be questionable on the simple basis that the psychiatrist had not been provided with a SaLT assessment. We consider it very unlikely that psychiatrists in general are unaware that people with ASD may well process information and/or express themselves in a particular way. In our experience medical professionals can also usually be trusted to say if they need any further assessments to be performed before reaching their views. Much is made by Mr Bell and Ms Rashid as to Mr Bell's claimed contribution to the international recognition of "cluttered speech" as a diagnosis. We noted, however, that Professor Tantam had made this diagnosis as long ago as 2017.

68. It appears to us from Mr Bell's evidence overall that he has not been able to trust that a psychiatrist selected in the GDC process has relevant expertise. He expressed strong views about the competence of Professor Tantam, amongst many others including those treating him in the NHS. He has said that the psychiatrists he has seen have been "incompetent at best, spiteful manipulative and dishonest at worst." In our view, the evidence as a whole tends to show that Mr Bell is very angry with, and tends to show strong contempt for all those involved in regulation, whether that is the GDC or the Respondent. It transpired that he has now been seen by a psychiatrist appointed by the GDC with whom he strongly disagrees. Mr Bell has not provided us with his report although he agreed he has been provided with it in the HC proceedings.

69. Mr Bell has sought treatment which is linked to the symptoms he attributes to PTSD. On 25 January 2022 Mr Bell sent an email to Complaints (LLSCFT) seeking confirmation that he had been discharged from EMDR therapy "due to re-traumatization from the GDC and other organisations." The service responded on 27 January 2022 stating that he had been discharged by mutual agreement on 23 July 2021. The agreement was that EMDR was not recommended at that time because of the fact that his trauma was based on a situation that was still ongoing. He was advised that he could refer himself back to the Mindsmatter service once "the situation is no longer ongoing and you feel you want to address your trauma issues."

70. Mr Bell relies on a report from Dr Singh dated 29 September 2022 to support that he suffers from PTSD. This is an important strand of evidence for Mr Bell because, as he explained to us PTSD is a "sue-able condition". He wants to sue the County

Council responsible for the decisions made regarding his children in or about the late 1990s, the NHS for the alleged continuing failure to diagnose and treat his PTSD, misdiagnosis, and the Respondent for traumatising and re-traumatising him. He told us that compensation could be awarded at 3 different levels: 20, 30 or 80 thousand pounds. It appeared to us that part of Mr Bell's focus is also that PTSD is a "curable" condition (whereas ASD is not).

71. In our view the report from Dr Singh makes clear that he recorded PTSD, in partial remission, as a "working diagnosis." The report very largely consists of Mr Bell's account of his history. It appears that 29 September 2022 was Mr Bell's first appointment as a private patient. There is no indication that Dr Singh has requested, seen or considered any previous records. There is no analysis or discussion of the presenting condition in terms of the ICD (International Classification of Diseases) nor any discussion or consideration of other differential diagnoses. We note that Dr Singh recommended an increase in the dosage of Sertraline to 150mgs.

72. In our view it is not, in any event, necessary for us to decide whether Mr Bell does, or does not, suffer from PTSD. We have taken into account the symptoms he has described when considering reasonable adjustments. Our task is to decide whether his name should be removed from the list on the grounds that he is unsuitable to provide primary care service under the NHS.

73. We considered whether it could be said that there is no risk to patient safety as the GDC HC suspension is still in place (at least to January 2023). If the suspension were to be lifted at some stage, any future return to practise would be likely to be the subject of a number of health conditions such as workplace and medical supervision in the interests of patient safety.

74. We consider that there are, differences between the roles and functions of the Fitness to Practise Committee of the GDC and that of the Respondent - although there is often an overlap. The FtP Committees of the GDC make decisions on allegations of impairment of "fitness to practise" for all registered dentists (whether they provide care on a private basis or under the NHS) on the grounds of impairment of fitness to practice due to serious deficient performance, misconduct, or health. The Respondent, is, however, the body responsible for maintaining the DPL in the context of the provision of NHS primary services. It is aptly described as a process that concerns "fitness for purpose" – the purpose being the provision of primary dental care under the NHS. In particular, when considering removal the Respondent is required to consider a number of matters under Regulation 15, one of which is the likely risk to any patients or to public finances – see Regulation 15 (2) (d). Risk to public finances is not a regulatory criteria in GDC fitness to practise hearings.

75. We noted that it is no part of the Respondent's case before us that Mr Bell has caused harm to a patient. However, we consider that we must have regard to potential consequences if a patient were to challenge Mr Bell. Mr Bell's repeated threats of self-harm, his dysregulated behaviour, and his extreme responses in situations that he finds challenging, are such that we cannot exclude the risk of harm to a patient. Harm is not confined to physical harm but includes the risk of a

patient becoming distressed and/or losing confidence in NHS services. The provision of primary care dental service frequently involves understanding of, and focus on, the needs of patients who may be anxious or otherwise vulnerable. In our view Mr Bell's return to practice presents a potential risk to patient safety.

76. We also consider that there is a clear public interest in the maintenance of public confidence in primary care services. If, despite the finding that he is unsuitable, the Appellant were to remain included on the list, a well informed and reasonable member of the public would, in our view, be likely to be lose confidence in the ability of the NHS to regulate the DPL by making make its own decisions so as to protect patient safety and also to protect public finances.

77. So far as public finances are concerned, in our view the efforts that have been made by the Respondent to try and maintain Mr Bell's position on the DPL, pending the prolonged efforts of the GDC to encourage his cooperation in its health assessment process, have been more than reasonable. We accept Ms Kirwan's evidence that in her experience over 20 years she has never seen a case where so much time and effort has been provided to a practitioner by the Respondent. We accept also Mr Bove's evidence that he done all he reasonably can to make reasonable adjustments. However, the amount of time and effort that has been absorbed trying to cope with Mr Bell's approach to NHS governance has been very extensive and disproportionate in the context of the Respondent's proper role.

78. We find that both Ms Kirwan and Mr Bove have done everything they reasonably could to respond to Mr Bell's health situation and to make reasonable adjustments. The GDC is the relevant decision maker in deciding whether there is any impairment of Mr Bell's fitness to practice due to his health. The arrangements made by the Respondent in the past included the arrangement for Mr Bell to attend an occupational health specialist (and with the offer to pay his travel expenses; redrafting conditions in language that Mr Bell found more acceptable; meeting with Mr Bell at his place of work (which is not usual practice).

79. We find that Mr Bove, supported by Ms Kirwan, made very extensive efforts after the FtT decision to try and continue to support Mr Bell within reasonable bounds. This included listening to Mr Bell when he telephoned on repeated occasions; agreeing to still hold conversations for up to one hour a week by appointment, even though the extent and nature of his contact was unreasonable and difficult to cope with; trying to explain to him on numerous occasions, orally and in writing, why his requests could not be met. We find that, in return, Mr Bell's attitude to Mr Bove (and Ms Kirwan) was, and remains, dismissive and hostile because he considers he is medically fit to practise but he has been treated by them as part of the "sausage machine." We reject that view. It is not the role of the Respondent to say whether Mr Bell is currently well enough to work as a dentist. That is the role of the GDC by its Health Committee. It is also not the role of the Respondent to arrange for care or treatment for Mr Bell. Mr Bell has access to a specialist GP practice under the Special Allocation Scheme provided by the Respondent.

80. We find that the efforts made by Ms Kirwan and Mr Bove met the objective standard of reasonable adjustments under the Equality Act 2010. We firmly reject the argument that the Respondent has acted in a discriminatory way towards Mr Bell.

81. We consider that Mr Bell appears to be focussed on his mission to show that the NHS, NHSE, and many others, have caused him, and continue to cause him, to suffer from a "sue-able condition". In our view it is very likely that Mr Bell will continue to behave unreasonably towards anyone in the Respondent's employ seeking to fulfil its proper role under the NHS Regulations. We consider that his attitude and hostility to the Respondent, as demonstrated by the repeated pattern of behaviour towards Mr Bove and Ms Kirwan, and also by his behaviour towards CMP in September 2020 which included his aim to waste NHS resources, is incompatible with his inclusion on the DPL.

82. We do not consider that, in the context of all the efforts made to date, it is reasonable or in the public interest that the finite resources of the Respondent should continue to be absorbed by Mr Bell's mode of engaging with the body responsible for his inclusion on the list.

83. For the reasons given above we find that Mr Bell is unsuitable to be included in the list.

<u>The Discretionary power to remove</u>

84. The power to remove a performer from the DPL under regulation 14 (3) (d) is a discretionary one that falls to be exercised applying ordinary principles and in the context of the Regulations, including the criteria for a decision on removal set out in Regulation 15.

85. The exercise of discretion should be informed by the purpose of the Regulations. The Respondent is responsible for admission to, or removal from, the lists of primary care performers, and has regulatory/governance oversight of the performers of primary care services, whose names are included in the relevant NHS list. In short, the continued inclusion of a practitioner's name on the DPL conveys to the public an objective degree of assurance that the practitioner is suitable to be registered as a performer of primary dental cares services.

86. We accept that the decision to remove Mr Bell's name from the DPL constitutes an interference with his rights under Article 8 of the ECHR which engages protection under Article 8 (2).

87. The strength of Ms Bell's private life interest in his ability to practise his profession and to earn his income is affected to an extent by the fact that he has formally retired and receives a pension. We recognise, however, that that he enjoys and derives satisfaction from clinical work and would like to be able to earn additional income in retirement. We can see that his work as a dentist is connected to his self-esteem and thus his well-being. If the GDC suspension were to be lifted at some stage, it is probable that there would then be a long road to return to any form of practice. Drawing on our experience, this would very probably involve elements of re-training and/or workplace supervision and/or medical supervision amongst other conditions.

88. For all the reasons we have given, the Respondent has satisfied us that the Appellant is unsuitable to be included in the DPL. It has satisfied us that a decision

to remove his name from the DPL is in accordance with the law and is necessary in pursuit of legitimate public interest aims, namely, the protection of patient safety and well-being, the maintenance of public confidence in primary care services, and to protect the financial resources of the NHS.

89. As to proportionality, we considered all of the evidence before us when assessing the impact of the decision upon Mr Bell, taking into full account the evidence regarding his disability, and balancing his private life interests against the public interests engaged.

90. The matters that weigh in favour of Mr Bell's case on proportionality is that his clinical skills are not in issue and he wants to provide a much-needed service given the national shortage of NHS dentists. We agree that Ms Kirwan and Mr Bove made clear his clinical standards are not in issue. We recognise that his continued inclusion on the DPL is, in practical terms, very important to his ability to work as a dentist in future. He has had a long career and it is in his interests that he is not removed. In short, he effectively contends that there should be room for proportionate accommodation in view of his health condition(s), and in the particular circumstances of his case. It is not within our remit to resolve his claim that he has been subject to disability discrimination by various bodies and individuals stretching back as far as the late 1990s. We have found that the Respondent has not discriminated against Mr Bell.

91. This is a very sad case. Proportionality requires that we look to see if there is any reasonable means by which the public interests we have identified can be adequately addressed, short of a decision to remove Mr Bell's name from the DPL. It is the case that conditions cannot be imposed in a case where, as we have found, the Appellant is unsuitable to provide primary care service in the NHS. It is also the case that Mr Bell has shown that he is unwilling or unable to abide by the conditions imposed by the Respondent. He has shown that he has no insight into the effect of his behaviour on those responsible for his inclusion on the DPL.

92. We recognise the impact of Mr Bell's disability on the issue of proportionality. We agree that the discretionary power regarding removal under Regulation 14 (3) (d) enables us to consider the nature of the Appellant's disability and the need to ensure that the decision is proportionate, taking into account the concerns about disability discrimination raised by Mr Bell. We have found that the Respondent has not discriminated against Mr Bell. We have considered all the arguments for and against removal. Having weighed the various factors involved we consider that the need to protect the public interests engaged far outweighs the adverse effect on the private life interests of Mr Bell.

93. We consider that that it is necessary, fair and proportionate that Mr Bell's name is removed from the Respondent's list.

<u>**Decision**</u>

The appeal is dismissed.

In our redetermination we have decided that it is necessary, fair and proportionate that Mr Bell's name is removed from the Dental Performers List.

Rights of Review and/or Appeal

94. The Appellant is hereby notified of the right to appeal this decision under section 11 of the Tribunals Courts and Enforcement Act 2007. He also has the right to seek a review of this decision under section 9 of that Act. Pursuant to paragraph 46 of the Tribunal Procedure (First- tier Tribunal) Health, Education and Social Care Chamber) Rules 2008 (SI 2008/2699) a person seeking permission to appeal must make a written application to the Tribunal no later than 28 days after the date that this decision was sent to the person making the application for review and/or permission to appeal.

Judge S Goodrich
First-tier Tribunal (Health Education and Social Care Chamber)

Date Issued: 04 January 2023