

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**

[2023] 4908.PHL

Heard at the Royal Courts of Justice

On 25 and 26 March 2024

Panel deliberations on 4 April 2024

Before:

Miss S Goodrich (Judge)

Mrs Denise Forshaw (Specialist Member)

Mr Martyn Green (Professional Member)

BETWEEN:

Mr B. NATESH SHASI

Appellant

And

NHS ENGLAND

Respondent

DECISION AND REASONS

Representation

The Appellant: in person

The Respondent: Mr Alexander DeSantos counsel, instructed by Hill Dickinson

Introduction

1. This is an appeal by Mr Natesh Shasi against the decision made by the Performers List Decision Panel (the "PLDP") on 8 February 2023 to remove his name from the Dental Performers List (DPL) by reference to regulation 14(5) of the National Health Service (Performers List) (England) Regulations 2013 ("the regulations") on the grounds that he had not demonstrated that he had performed the services, which those included in the relevant performers list perform, during the preceding twelve months.

The Decision

2. The decision letter dated 8 February 2023 included the following:
 - the PLDP decision to remove was made on the basis that Mr Shasi had not undertaken any work within NHS primary care dentistry since 2017 and therefore could not demonstrate that he had performed services, which those included in the relevant performers list perform during the preceding 12 months.
 - Mr Shasi had been given notice of the proposed action by letter dated 23 November 2023 and had been given the opportunity to provide written representations, to attend an oral hearing, or to agree to the proposal. He had not made any contact.
 - The action was taken in the public interest and for the purpose of preventing any prejudice to the efficiency of services provided.

The Hearing

3. We had received and read in advance of the hearing a paginated and indexed bundle consisting of 152 pages. We also received a supplemental bundle of some 108 pages in which, at the request of the judge, the Respondent had collated the various further emails, **T109 applications (and accompanying statements)** and late documents that had been submitted by Mr Shasi in the run up to the hearing.
4. Mr Shasi appeared in person. An interpreter in Kannada was present throughout. It soon became apparent that Mr Shasi spoke English very well but, for understandable reasons, he had requested the Tribunal to provide an interpreter in case he had difficulty in understanding the nuances of anything said and/ or could not express himself as fully as he would wish in English, his second language. In the event the assistance of the interpreter was required during the hearing on about two occasions and there were no difficulties in interpretation.
5. At the outset of the hearing the judge spent some time explaining the hearing process, the nature of a redetermination and the issues in the appeal.

Preliminary Issues

6. There was a potential issue regarding whether Mr Shasi had complied with the unless order issued on 28 February 2024 which had required him to respond to the Scott Schedule (SS) and to provide his witness statement by 12 noon on 8 March 2024, failing which his appeal would be automatically struck out. The Respondent did not actively pursue the issue of the automatic strike out before us. The panel noted that the Appellant had provided his response to the SS, albeit slightly late. Although there was still no formal witness statement we considered that the nature of the Appellant's case could be understood from his written reasons for the appeal and the information he had provided in **a number of emails and in statements connected to** his T109 applications. The panel considered that the interests of justice and the overriding objective were best met by receiving the late material submitted by the Appellant and that, if he decided to give evidence, the Appellant could be asked if the representations he had made were true to the best of his knowledge and belief, and whether he wanted them to be treated as his main evidence. The Respondent did not disagree with this approach since the late

evidence could be fairly explored and the weight to be attached to it would be assessed in the round by the panel in the ordinary way.

The Application to Adjourn

7. Towards the end of the preliminary case management discussion the Appellant sought an adjournment. He explained he was feeling stressed because of difficult personal circumstances regarding eviction proceedings relating to the accommodation he shares with others. He said that he would like to give a better argument and have time to go into the bundles in depth. He said that he needed to go through the documents in detail and this was only fair. He did not provide any medical evidence in support of any health grounds for his application.
8. The Respondent opposed the application pointing out that the additional bundle consisted of material recently generated by Mr Shasi himself which the Respondent had prepared at the request of the judge.
9. We retired to consider the application. We decided to refuse the request to adjourn and gave brief reasons which we said would be further explained in the final decision. This we now do.
10. We considered the application in the context of the overriding objective. We noted that:
 - a) The additional bundle of 108 pages did not raise any new evidence but consisted of correspondence and applications initiated by the Appellant and some documents submitted by him at a late stage.
 - b) The appeal had been carefully case managed and very ample opportunity had been provided to the Appellant to participate in and prepare his own appeal. Amongst other matters, the final hearing date was fixed as long ago as 6 September 2023. The appeal had originally been stayed at the Appellant's request in May 2023 until the next telephone case management hearing (TCMH) in August 2023. Mr Shasi did not attend the TCMH held on 10 August 2023.
 - c) The Appellant did not attend a further postponed TCMH on 28 February 2024 even though the postponement had been at his request. **We are aware that Mr Shasi states he did not know the date of this TCMH.**
 - d) **We noted from the contents of the additional bundle that Mr Shasi had requested that the date of the appeal hearing be postponed on a number of occasions:**
 - **On 19 September 2023 he wrote to the Respondent's solicitor explaining his difficult circumstances and his financial situation. He said that "until Nov/December 2024 will be an extremely busy time for me" and asked if the hearing could be postponed until December 2024.**

- **On 18 January 2024 Mr Shasi had sent a T109 application to the Tribunal seeking to postpone the date of the hearing to October/November 2024. It is not necessary to refer to further detail save to say that Mr Shasi submitted further T109 applications in early 2024 where he referred to personal difficulties, health issues, monetary issues caused by severe restrictions, poor living conditions in the UK and lack of social support. He also attached a statement in which he described out a number of unfortunate experiences whilst living in the UK.**

e) Mr Shasi had told us that he had recently sought help and support from a former mentor and had spent Saturday 23 March observing an experienced dentist in a primary care setting. This tended to suggest that the stressful circumstances regarding the ongoing eviction issue were not so overwhelming as to affect his ability to function.

11. We took into account that hearings can very stressful, and that Mr Shasi is a litigant in person. Mr Shasi was unable to point to any specific matter in support of his application other than that he felt he would be better able to prepare his case if an adjournment was granted. Whilst sympathetic to the Appellant's feelings of stress and **his difficult life circumstances** we noted that he had been able to articulate his case well that morning.

12. We concluded that it was in the interests of justice that this appeal be determined and that it was fair to proceed with the long-planned hearing of the appeal. We were satisfied that a fair hearing could be conducted. We also considered that adjustments could be made to the timetable to allow for breaks as needed and we arranged for a lunch break of one and a half hours so that Mr Shasi could familiarise himself with the additional bundle which essentially was a collection of his own documents.

The Respondent's case

13. The Respondent's case was set out in the response to the appeal, the matters identified in the SS and in its skeleton argument. We need not repeat all the points made as they are a matter of record. In summary, the Respondent's case is that the decision to remove the Appellant on the ground set out in regulation 14 (5) was/is reasonable, justified and proportionate. Particular points made by the Respondent include that proportionality has to be seen in the context that Mr Shasi can apply to be re-included in the DPL in future.

The Appellant's case

14. In summary, Mr Shasi's case is that he was not aware that the PLDP had embarked on the process of considering whether his name should be removed from the DPL. The first time he had learnt of the process was when he had read the decision letter dated 8 February 2023. He had been in India caring for his father since August 2022. Had he known of the PLDP process he would have made representations and would have attended the PLDP meeting. He believes that the PLDP decision was influenced by the fact that the Interim Orders Committee (IOC) at the General

Dental Council (GDC) made a decision to impose an interim order imposing conditions on his registration. Although he had agreed in his response to the SS that he had last performed primary care services in 2017 it became clear that he relies on some work undertaken as a primary dental practitioner since then. He also contends that the work he has undertaken as an oral surgeon in a hospital (i.e. secondary) setting is largely very similar/equates to the performance of primary dental services. He also relies on regulation 14 (7) (c) and argues that there was “good cause” that accounted for his inability to perform primary dental care services and that regulation 14 (5) was either not engaged or, if it was, it was disproportionate to remove his name from the PDL. Other points in his case regarding the exercise of discretion include that he is highly skilled in oral surgery, has a special interest in mouth cancer, and has much to offer in primary care. He has spent considerable sums of money and many years pursuing medical qualifications in the United States. It is unfair and disproportionate that his name be removed from the DPL.

15. We heard oral evidence on oath from the Respondent’s witness Mrs Yates, Professional Regulations Manager and case manager for the PLDP process, and also from Mr Shasi. With his agreement, the judge assisted Mr Shasi to provide his evidence in chief when gave evidence so as to clarify the chronology and his case. We do not intend to set out herein all the oral evidence that was given but will refer to parts of it when making our findings below.

16. Both parties conducted themselves throughout with patience, respect and courtesy. Mr Shasi was able to explain his position very fully. We were also assisted by a skeleton argument from the Appellant as well as oral submissions from both parties which we have taken fully into account even if we do not refer to every point taken.

The Regulations

17. The key provisions are as follows:

14. Removal from a performers list

.....

“(5) Where a Practitioner cannot demonstrate that the Practitioner has performed the services, which those included in the relevant performers list perform, during the preceding twelve months, the Board *may* remove that Practitioner from the relevant performers list.

.....

(7) In calculating the period of twelve months referred to in paragraph (5), the following periods are to be disregarded—

- (a) any period during which the Practitioner was suspended under these Regulations;
- (b) any period during which the Practitioner was performing whole time service in the armed forces in a national emergency (as a volunteer or otherwise), compulsory whole-time service in the armed forces (including service resulting

from reserve liability), or any equivalent service, if liable for compulsory whole-time service in the armed forces; or
(c) any period which the Board with good cause so determines.

Our Consideration and Findings

18. Mr Shasi brings this appeal under regulation 17 (2) (c). Regulation 17 (1) provides that the appeal is by way of redetermination. Regulation 17(4) also provides that on appeal the First-tier Tribunal may make any decision which the PLDP could have made. In practical terms this was either to remove or not to remove Mr Shasi's name – see regulation 14(9). It is worth noting that the effect of regulation 14 (11) is that a PLDP decision to remove a practitioner's name from a performers list does not take effect until the later of two events: the expiry of the 28 days permitted for appeal or the date on which any appeal is disposed of by the First-tier Tribunal.
19. We are required to make a de novo (i.e. fresh) decision. This may be informed by new information or material that was not available to the PLDP. The redetermination of the appeal includes consideration of the evidence provided by both sides in this appeal and the oral evidence and submissions before us.
20. As set out above, Mr Shasi's position is that he was not aware of the PLDP process until he read the decision dated 8 February 2023. Under regulation 14 (8) when the Respondent is considering removing a practitioner from a performers list, the Respondent is to give to the practitioner notice of what action it is considering and on what grounds, the opportunity to make written representations and the opportunity to the practitioner to put his case at an oral hearing. Since the nature of this appeal is a redetermination, any procedural shortfall is at least capable of being cured. However, since Mr Shasi maintains that he was not given notice of the PLDP process we will make findings on this aspect of his case.
21. It is clear from the evidence before us that the Respondent was advised by the GDC on 22 September 2022 that an interim order imposing conditions on the Appellant's registration for a period of 18 months had been made by the Interim Orders Committee (IOC) on 21 September 2022. The circumstances said to give rise to consideration of an interim order by the IOC were that an allegation of inappropriate and sexualised conduct had been made by a patient said to have been treated by Mr Shasi during his employment at University Hospitals Coventry and Warwickshire NHS Trust. It appears that the complaint was made by the patient in April 2022. The information was apparently provided by the Hospitals Trust to the GDC in June 2022.
22. The information provided by the GDC was considered by the Respondent at an Initial Case Assessment (ICA) on 28 September 2022 and it was noted that it appeared that Mr Shasi had not been aligned to an NHS primary care contract since 2017. The Respondent did not have any contact details for Mr Shasi. An email address was, however, discovered via West Midlands PCC. The paper presented by Mrs Yates to the PLDP on 8 February 2023 sets out all the efforts made to communicate with Mr Shasi. It includes that on 6 October 2022 an email was sent to Mr Shasi inviting him to attend a supportive meeting to understand his

current working arrangements and performers list status, to discuss the professional regulation process, and to ensure that he was suitably supported.

23. We have considered Mrs Yates' statement where she describes in some detail the record of the steps taken by her predecessor, Mrs Webb, to make contact with the Appellant. This includes emails to Mr Shasi in 2022 on 6 October (see above), 24 October, 3 November and 10 November. Mrs Webb also sent correspondence to the GDC with a request that it be forwarded to Mr Shasi. The GDC confirmed that the email address used by Mrs Webb was the same as that held by the GDC. (We will refer to this hereafter as the "known email address"). Mrs Yates' statement includes that copies of all emails are saved on the NHS Case Management system (Athena). Whilst we consider it would have been preferable if the Respondent had exhibited copies of the emails sent, we consider it likely that the record of all correspondence sent to Mr Shasi's email address is reliably set out in Mrs Yates' statement and the paper/proposal she provided to PLDP.
24. We noted also that the GDC had informed the Respondent that Mr Shasi had responded to the GDC on 20 September 2022 in response to an email sent by that body to his known email address.
25. Mr Shasi said in evidence that the internet connection where he was living in India was poor and he had checked his emails every month or so. In our view it was his professional responsibility to make sure that he checked his emails with sufficient regularity so as to respond to correspondence sent by NHS England. We noted that he acknowledges that he received the decision made by the PLDP on 8 February 2023 via his email address which tends to support that earlier correspondence sent to the correct address had reached his inbox, rather than a "junk" folder. In any event the requirement is to "give" notice of the matters specified to the Appellant who was, in any event, under an obligation under regulation 19 to inform the Respondent of any change of residential address. In the absence of knowledge of the Appellant's address in India we consider that the only real option was to use the last known email address which had been discovered, and which was known to be effective for the GDC communications. In our view the Respondent is not required to show that the correspondence had, in fact, been received or read.
26. We accept that telephone records provided by Mr Shasi show that he did telephone an NHS England helpline number on 28 September 2022 and that the duration of the call was for about 11 minutes. He told us, and we accept, that he informed the person answering his call that an interim order imposing conditions had been imposed on his registration on 21 September 2022 by the GDC.
27. We have dealt with the issue of notice because it has been raised. There can be little doubt that, whatever the position before, the Appellant has had the full opportunity to provide information relevant to his circumstances in the context of this appeal process. Given that the nature of our task is that of redetermination as at today's date we consider that core issues are:
 1. Has Mr Shasi demonstrated to us that he had performed the services which those included on the DPL perform during the 12 months preceding the Respondent's decision or the date of hearing?

2. What are the facts regarding the history of Mr Shasi's career and employment, and when did he last perform the services which those included on the DPL perform? Does the work that Mr Shasi has performed in a hospital setting amount to the performance of services which those on the DPL perform?
3. Does the "good cause" provision in regulation 14(7) assist Mr Shasi?
4. If regulation 14 (5) is engaged, how should the discretion be exercised today in all the circumstances? Has the Respondent met the persuasive burden of satisfying us on balance that, in all the circumstances, the decision to remove Mr Shasi's name from the DPL is in accordance with the regulations, and is justified and proportionate?

Our Consideration and Findings

28. Our task is to make an entirely fresh decision. In this context, Mr Shasi's belief that the decision **had been** improperly influenced and/or motivated by an ulterior purpose did not therefore appear to be a key issue. However, Mr Shasi's belief appeared to underpin how he put his appeal and how he views the merits of the decision taken. In short, he appeared to say that but for his concern that the timing was sinister, he could have understood and accepted the decision made, but **the timing** had caused him to question all aspects.
29. Having considered the evidence in the round we consider that the suggestion that the decision made by the GDC influenced the PDLP panel is speculative. We consider that it is more likely than not that the decision was made for the reasons stated in the decision letter i.e. that it was considered that Mr Shasi had not performed the services that those included in the DPL perform during the preceding 12 months. Consideration of the PLDP minutes of both the preliminary meeting on 23 November 2022 and the meeting on 8 February 2023 show that the information before the panel was that it appeared that Mr Shasi had not worked in primary care dental services since 2017. The PDLP considered that this posed risk.
30. An argument has been raised regarding the meaning of regulation 14 (5). In summary Mr Shasi contends that regulation 14 (5) does not apply because he has, in fact, been performing services which are similar to the services provided by a dental care practitioner in primary care. The issue raised is what is meant by the phrase "*has performed the services, which those included in the relevant performers list perform.*"
31. It is notable that regulation 3 interprets "dental performers list" as meaning, unless the context otherwise requires, the list prepared, maintained and published by the Board pursuant to regulation 3(1)(a). It could possibly be said that the wording in regulation 14 (5) is not expressly limited to performance in primary care and that this gives rise to an equivalence argument. We do not agree. These are the National Health Service (Performers List) (England) Regulations 2013 made under the National Health Service Act 2006, as amended, in order to govern the provision of primary care services in the NHS. The Regulations as a whole govern inclusion, suspension and removal from the relevant lists, and the means/routes by which various regulatory decisions by the Board may be justified in the public interest. Similar phrasing referring to "the services which those included in the performer's

list perform” is used in other parts of the regulations: see, for example regulation 7(4). It is also used in regulation 14 (3) (b) (i.e. “the Practitioner’s continued inclusion in that performers list would be prejudicial to the efficiency of the services which those included in that performers list perform”.)

32. In our view, the words “has performed the services, which those included in the relevant performers list perform” relates to the performance of dental care services in primary care.

33. In his evidence Mr Shasi told us about the main elements of his career and employment history:

- i. He obtained his BDS degree at Bangalore University in 1998. After a period as an intern, he then practiced as a dentist on a private basis in Bangalore for some years. He was one of 10 dentists to be selected from the state of Bangalore to work in the UK and came to the UK in 2006. We note that he also has a law degree.
- ii. In 2007 he passed the overseas registration examinations and went to work as a SHO in maxillo-oral facial surgery in Wales. He then undertook similar hospital posts in England usually for six months at a time. He became interested in studying for a medical degree because of his interest in oral surgery.
- iii. In the event he was unable to obtain a place at medical school. He met Mr Philip Martin who was the Chair of Leicester Dental Committee and went to work at his practice. He worked there for 1 and a half days a week for six months whilst also working full time in secondary care oral surgery. He succeeded in his application for inclusion in the DPL in 2013.
- iv. Between 2017 and 2020 he was studying a premedical degree course in the United States. He would return to the UK during the recess and worked as a locum in oral surgery posts in order to fund his studies. He was in the US when the Covid pandemic occurred in early 2020.
- v. He came to the UK in the late summer of 2020 and looked for work, but opportunities were very limited. He worked at Broomfield Hospital in Essex for about three weeks in 2020. In late 2021 he found a Locum Registrar post at Peterborough Hospital but after a month or so they said he would have to do SHO work which he declined. In 2022 he worked full time in maxilla facial surgery lists at Lister Hospital and at Coventry Hospital.
- vi. In late December 2021 he was alerted **to the process of accreditation** as a Level 2 Intermediate Minor Oral Surgery (IMOS) performer when he submitted his CV **for a locum post in specialist dental services in the Northamptonshire Hospitals Trust**. On or about 26 January 2021 he submitted the IMOS application which is before us in the additional bundle at D28-39. Mr Shasi told us that he did not succeed in **his IMOS application**, and the feedback given was that he needed to demonstrate more experience. He told us he had the necessary experience but in the short amount of time he had to make the application he was unable to collate the evidence **to show this**.

34. In cross-examination Mr Shasi agreed that his primary interest was in oral surgery and oral cancer. He said he also enjoys prosthodontics and specialist periodontal

treatment. He agreed that he had spent the majority of his career working in oral and maxillo-facial surgery. He maintained that there were elements of primary care work involved in the hospital posts he had undertaken.

35. Mr Shasi provided a large number of certificates regarding a number of courses he had attended in India in 2023 which are in the additional bundle at D67 onwards. We need not set out all the details but note that these involved lengthy courses covering such areas such as: Oral Cancer Management: Cadaveric Neck Dissection; Microvascular Anastomosis; Laryngectomy; “Harnessing the power of immunology in Medicine”; and a one-week course in “Health Research Methodology and Evidence Based Medicine.” It is clear to us from the titles of these courses that this was in furtherance of the Appellant’s desire to become a surgeon. By way of contrast the CPD courses relevant to primary care dental services that he undertook online on about 8 occasions between 1 and 15 February 2023 are relatively limited in scope. They covered: Freedom to speak up (i.e. safeguarding); Oral Cancer; clinical record keeping; Bullying and Harassment (i.e. staff and HR); Safeguarding Adults - Level 3: Complaints Handling; Radiography for dentists and dental radiographers (Course 1); Infection Control; Adult basic life support. Mr Shasi told us that the online courses were about one hour long. He said that he had undertaken regular CPD in the past but was unable to produce any documentary evidence.
36. Mr Shasi said that 95 percent of the minor oral surgery work he undertook in hospitals was also undertaken in primary care. When asked about the proportion of general dental practice that would be regarded as minor oral surgery, he said it was about 20 percent. Using our specialist experience even this much lower figure appears exaggerated. Moreover, the bulk of general dental services in primary care involves the following: examination and history taking including radiography; diagnosis and treatment planning; periodontal assessment and treatment; tooth restoration and root canal therapy; crown and bridge work; prosthetic treatment including provision of full and partial dentures; tooth extraction and minor oral surgery; appropriate referral for secondary care. We acknowledge that there will be some overlap in some skills and procedures, but the key point is that the vast bulk of Mr Shasi’s experience since 2013 has involved the performance of oral surgery that has been referred from primary to secondary care. We consider it probable that Mr Shasi’s actual practice of the routine aspects of the services that are provided in primary care is inevitably very limited.
37. We considered all the evidence as to the reasons why Mr Shasi even on his own case has not, as a matter of fact, worked in any capacity as a dentist since **June 2022**. His case is that he went to India for a short trip and then again in August/September 2022 because his father, who has a cardiac condition, was very unwell. Mr Shasi also said that at one stage he was also looking after his sister’s two-year-old in India as well for a few months. His sister is a GP working in the UK. It transpired that Mr Shasi’s mother lives with his father in India although Mr Shasi said that she had been involved in looking after her daughter’s child in the UK. It emerged in the oral evidence that the Appellant’s father came to stay in the UK in about September 2023. Mr Shasi had also returned to the UK for a period at that time but soon travelled back to India where he remained until he came back to the

UK in early 2024. Mr Shasi told us that he did not undertake any dental practice whilst in India.

38. It became clear that the main reason that Mr Shasi **had not sought work** in the UK in any capacity since the IOC decision on 21 September 2022 is that he understood from colleagues that he would not be able to find a post where his employer would be willing to be “the reporter” as required by the GDC IOC conditions. He said also that Mr Martin had told him that no one would employ him because of the harassment allegation. Mr Shasi told us that after the hearing in the High Court in March 2024 regarding the extension of the IOC interim order he again sought the help of Mr Martin, who made contact with a suitable practice. The Appellant said that he had spent Saturday 23 March 2024 observing an experienced practitioner working in primary care. He said that he was reassured that not much had changed and that this practice was willing to take him on and provide the reports required under the GDC conditions.
39. Mr Shasi makes the valid point that as removal **from the performers list under regulation 14 (5)** is not mandatory it must be envisaged that there will be circumstances where a dentist who has not, as a matter of fact, provided primary dental services in the preceding 12 months is allowed to remain on the DPL. In our view this must be right.
40. It is notable that all removal decisions under the Regulations are discretionary save those based on facts such as conviction for murder, national disqualification, death, or that the performer is no longer registered (see regulation 14 (1) (a) –(d)). Even decisions to remove based on criminal conviction (other than murder) involving sentences of more than six months, and the grounds which cover unsuitability, fraud and efficiency, provide *discretionary* grounds for removal. We mention these matters so as to emphasise that the situations in which removals are made on a *mandatory* basis are carefully limited and defined under the regulations. In our view the discretionary powers, (of which regulation 14 (5) is one example) fall to be exercised applying ordinary principles in light of all the circumstances and in the context of the Regulations.
41. In our view the 12-month provision in regulation 14 (5) provides a benchmark regarding the expectation of the performance of services within NHS primary care. The reality is that if Mr Shasi had performed even one session as a DPL performer during the preceding twelve months prior to the decision on 8 February 2023 then regulation 14 (5) would not have been in play. This, however, does not assist the Appellant because this was not the factual situation then and is it not the factual situation as at the date of the hearing before us. For the avoidance of any doubt Mr Shasi’s observation of another practitioner just before the hearing began does not amount to the performance of services under regulation 14(5). We find that regulation 14(5) is engaged on the facts. This therefore gives rise to the exercise of a discretionary decision.
42. For the purposes of this decision, we accept that the decision to remove Mr Shasi’s name from the DPL represents an interference with his rights under Article 8 (1) of the ECHR which is sufficient to engage protection under Article 8 (2).

43. The Respondent has satisfied us that the removal is in accordance with the law and is necessary in pursuit of a legitimate public interest aim, namely, the protection of the health and safety of patients. We recognise that there is no suggestion that there has been any relevant complaint regarding any primary care services provided by the Appellant. There is an obvious patient safety interest in ensuring that the practitioners included in the list have relatively recent skills and experience in the performance of primary dental care and are not de-skilled. In our view there is also a clear risk that public confidence in the provision of primary dental care services would be undermined in circumstances where someone who has not performed primary care services for such a long period were to remain on the DPL.
44. The real issue is proportionality. We considered all of the **evidence** before us when assessing the impact of the decision on the Appellant and balanced this against the public interests engaged. **We read all the material placed before us by Mr Shasi regarding his difficult experiences throughout his career in the UK and in his personal life. We acknowledge that he feels he has been treated unjustly throughout his career. We acknowledge also his difficult financial situation given the cost of his medical studies in the US, as well as the impact of Covid upon his ability to work. Our task, however, is to weigh the impact of the interference involved in removal from the DPL upon his private life interests against the public interests engaged.**
45. In our view the resumption of the provision of primary care services by the Appellant given that, on his own case, he has not worked as a primary care dental performer since late 2021 poses an obvious risk to patient safety. We agree with the Respondent that the Appellant has not presented evidence that could begin to provide us with any confidence that he is up to date with current practice in primary care. It is clear that the Appellant believes that given his experience in hospitals and his knowledge, research and studies he should necessarily be considered to be competent to provide dental services in primary care. In our view this shows a lack of insight into the value of recent experience and practice in the type and range of work undertaken in the primary care setting. It also shows a lack of insight into the importance of continuing professional development tailored to the delivery of primary care services. We do not consider that the limited amount of CPD undertaken online in February 2024 by Mr Shasi provides any reassurance that he can be considered to be up to date with the range of services provided in primary care.
46. We acknowledge that it is in Mr Shasi's private life interests that his name remains on the list as this increases the scope of work he can **seek to** undertake. That said, his main interest and goal for many years has been to work in oral surgery in secondary care. It is still open to him to seek work in secondary care because this does not require him to be on the DPL. It will also be open to him to reapply to the Board for re-inclusion on the DPL in future. In the event that he did so apply it would be open to the Board to consider whether there is a need for up to date evidence from a clinical assessor and to decide whether inclusion should be subject to conditions regarding return to primary care practice such as elements of retraining and/or a personal development plan and/or supervision. It would also be open to Mr Shasi to seek re-inclusion on the basis of restricted scope of practice.

47. We balanced all the arguments for and against the decision. Having weighed the various factors involved we consider that the public interests engaged far outweigh the interests of the Appellant. We have decided that it is necessary, fair and proportionate that Mr Shasi's name is removed from the dental performers list.

Decision

We confirm the decision to remove Mr Shasi's name from the DPL and we dismiss the appeal.

Judge S Goodrich

First-tier Tribunal (Health, Education and Social Care)

Date Issued: 18 April 2024