First-tier Tribunal Primary Health Lists

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

[2022] 4563.PHL

Heard at the Royal Courts of Justice on 12 December 2022

BEFORE:
District Tribunal Judge C Dow
Dr J Rutherford (Specialist Member)
Mrs L Bromley (Lay Member)

BETWEEN:

Dr Nicholas Arnold

Appellant

-v-

NHS England

Respondent

DECISION

The Appeal

1. This is an appeal by Dr Nicholas Armold ("the Appellant"), made pursuant to Regulation 17 of the National Health Service (Performers Lists) (England) Regulations 2013 (as amended) ("the 2013 Regulations"), against a decision made by the Respondent's Performers List Decision Panel ("PLDP") on 13 April 2022 to remove him under Regulation 14(3) (d) from the National Health Service Performers List ("Performers List") for Medical Performers.

The Hearing

2. The hearing took place on 12 December 2022. This was a hybrid hearing which had been arranged at the request of the parties to accommodate the oral evidence of the Respondent's witness to be taken remotely by video link.

3. The documents that we were referred to are in the electronic hearing bundle (391 pages) provided for the hearing, with the addition of skeleton arguments provided by Counsel for the Appellant and Respondent respectively.

Attendance

4. The Appellant was represented by Mr Andrew Hockton, Counsel. The

Appellant attended the hearing and gave oral evidence on his own behalf.

5. The Respondent was represented by Miss Natasha Tahta (Counsel). The Respondent's sole witness was Ms Emily Eason, Programme Manager for Professional Standards at NHS England.

6. Miss Niamh Abbertron (paralegal), Ms Caroline Morris (paralegal) and Ms Iona Neeve observed the hearing.

Background

7. There is a detailed history to the matter. It is set out in the papers. We have summarised some of the relevant history.

8. The Appellant obtained primary medical qualification in 2003 and registered with the General Medical Council ("GMC") in 2014. He qualified as a General Practitioner in 2008.

9. By 2016 he was practicing as a GP at the Three Checkers Medical Practice. In 2017 he was identified by CCTV evidence as presenting prescriptions in the names of fictitious patients in order to obtain opiate drugs including Tramadol. The Appellant also retained some medication when returned by patients. He was suspended by NHSE and the GMC but supported through a detoxification and rehabilitation programme.

10. A criminal prosecution under the Theft Act 1968 and Fraud Act 2006 in respect of his conduct resulted in a sentence, following guilty pleas, of 24 weeks imprisonment, suspended for 18 months, and 300 hours of unpaid work. This sentence was imposed in April 2018. However, by that time, and because of the apparent success of his detoxification and rehabilitation, Dr Arnold's suspensions had been lifted by the Respondent. In February 2018 he had taken up a role arranged by the Respondent at the Cross Plain Health Centre, as part of the GP retention scheme. In this role the Appellant was subject to the Respondent's conditions. His NHS conditions included that he must be supervised and that he must maintain a record of all prescriptions for controlled drugs issued by him and allow the Respondent to inspect that record. He was prohibited from prescribing any drug for himself, required not to self-medicate with any opoid except paracetamol and only to take drugs prescribed or administered by the registered doctor responsible for his treatment. Following his hearing before the Medical Practitioners Tribunal Service (MPTS) in April 2019 conditions were imposed on his registration. The Respondent later adjusted the conditions they had imposed to mirror those of the GMC.

11. In October 2018 the Appellant cancelled an appraisal that had been arranged and in November 2018 he took several weeks absence for ill health. He explained to the Respondent that he was suffering from anxiety.

12. In January 2019 a note audit was undertaken by the Respondent on the Appellant's patient records. No concerns were identified. All tests carried out

for the presence of opiates in the Appellant's body were negative. The Appellant underwent an appraisal in February 2019 and he was offered a salaried role within the Cross Plains Surgery partnership in March 2019.

13. In April 2019 the Appellant attended a GMC hearing where conditions were imposed on his registration for 10 months. His conditions included that he must not prescribe drugs for himself and must only prescribe, administer and have primary responsibility for drugs under arrangements agreed by his Responsible Officer.

14. In May 2019 the conditions on the Appellant's inclusion on the NHS Performers List were reviewed and amended to align with the conditions imposed by the GMC.

15. In May 2019, the Respondent was informed by Cross Plains Surgery that partners had seen evidence that the Appellant prescribed pregabalin, a controlled drug (Schedule 3 since 1st April 2019), for himself, on the surgery's prescription pad, on 24 May 2019. A further instance of the Appellant prescribing pregabalin for himself, this time on 3 May 2019, was disclosed to the Respondent on 30 May 2019. On 31 May 2019 the Appellant was sacked by his surgery for gross misconduct.

16. When interviewed by the Respondent on 6 June 2019, the Appellant initially admitted that he had created prescriptions for himself on two occasions by using a dummy patient's details on the electronic form and obscuring those details during printing so that he could insert his own details by hand in the blank box on the printed form. In a subsequent interview he admitted he may have done this between five and ten times.

17. The Respondent's subsequent investigations with the Prescriptions Pricing Authority revealed that the Appellant had self-prescribed drugs including pregabalin, lansoprazole, orlistat and venlafaxine using a surgery prescription pad between December 2018 and May 2019 on 55 occasions on 48 different dates.

18. The Appellant's registration with the GMC was suspended by an Interim Order of the MPTS on 11 July 2019.

19. A criminal prosecution brought against the Appellant relating to the self-subscribing between December 2019 and May 2019 was discontinued in February 2022.

20. In October 2022 an Interim Order of the MPTS lifted the Appellant's suspension from the GMC's register, so that the Appellant is fit to practise, subject to conditions.

The Agreed Issues for the Tribunal

21. The central issue is whether the Appellant should be removed under 2013 Regulations on the following grounds:

a) Regulation 14(3)(d) (removal of a performer on the grounds of unsuitability); and (if he should not be removed on the grounds of efficiency):

b) Whether conditions should be imposed on his registration on the grounds of efficiency.

The Respondent's position

22. The Respondent's position was that the Appellant is unsuitable to be kept on the Performers List.

The Appellant's position

23. The Appellant's case was that he should be allowed to remain on the Performers list.

The Regulatory Framework

24. The legal framework was set out in the Respondent's skeleton argument. There was no dispute between the parties as to its application except that the Appellant's Counsel urged us to treat Dr Arnold's case 'essentially as a health case'.

25. The 2013 Regulations provide a self-contained, statutory regime for maintaining the Performers Lists for NHS medical, dental and ophthalmic practitioners in England. The Regulations govern the eligibility to apply, application by practitioners for inclusion on the list and the removal of practitioners from the Performers List.

26. Under Regulation 14, grounds for "Removal from the Performers List,

Regulation 14(3) states:

(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").

27. Under Regulation 15, "Criteria for Removal" it is provided:

(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;

28. "Suitable" in this context means suitable to undertake NHS primary care services. "Unsuitable" is not defined in the Regulations. It is a plain English word, which is to be given its normal, everyday meaning.

29. While there is a power in some cases, to impose conditions on a practitioner's inclusion on the Performers List there is no power to impose conditions because a practitioner is unsuitable to remain on the list.

30. The appeal is governed by Regulation 17 of the 2013 Regulations and procedurally by the Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care) Rules 2008 ("the 2008 Rules").

31. Regulation 17(4) provides that on appeal the First-tier Tribunal may make any decision which the Board could have made. It is common ground that the First-tier Tribunal is required to make a fresh decision in light of all the information before it, which includes new information not available to the PLDP. The standard of proof is the balance of probabilities. Ultimately, the Respondent must prove to that standard that the Appellant is unsuitable to remain on the Performers List.

Evidence

32. We received an indexed bundle (including any supporting authorities) from both parties. We do not rehearse their contents as these are a matter of record. We have summarised the evidence insofar as it relates to the issues we determined.

33. Emily Eason adopted her witness statement and confirmed that she commenced her role as Programme Manager for professional standards after the PLDP decision. She said the report for the PLDP had been prepared by her predecessor, Claire Wilson. Ms Eason had not been involved in the decision to remove Dr Arnold from the Performers List. She said she was aware of the view of the medical supervisor appointed by the GMC in August 2022 that Dr Arnold is now fit to practise. She said that she had discussed developments with her line manager, including that report and the Interim Order of the MPTS to replace Dr Arnold's suspension from the GMC's register with conditions. Ms Eason said these circumstances did not affect NHSE's position that Dr Arnold remains unsuitable to remain on the NHS Performers list. She said that the issue of suitability is distinct from, and broader, than fitness to practice. In the case of his inclusion or removal from the Performers List, the issue is his suitability to undertake primary care as a GP, where a high degree of trust is expected and required from practitioners working independently.

34. Ms Eason acknowledged that GP services are stretched in England as a whole, including the South-West region and that wating lists are high. GPs work in a high stress environment and are often isolated. She said that while it is not unheard of for GPs to be subject to supervision conditions, or conditions on the type or amount of work they undertake, the proportion is quite low. Ms Eason said that such conditions are most usually imposed for health reasons. She said that Dr Arnold's case could not be readily equated with a health case because of the extensive dishonesty and breach of trust in his conduct. She said that his dishonesty goes well beyond the breach of his conditions in self-prescribing. He had subsequently lied to his mentor, his medical supervisors and the Medical Practitioners Tribunal. She said that no conditions could provide the necessary reassurance about his probity. It was not possible to impose conditions requiring a performer to be 'open and honest'.

35. Dr Arnold gave evidence on his own behalf. He said that his use of fraudulent prescriptions to obtain opiates in 2017 had been to fuel an addiction, where the main driver for that addiction had been severe anxiety and depression. Dr Arnold said his addiction to opiates had been successfully treated and that while he had taken some prescribed opiates, including cocodamol, since 2017 for gall bladder stones and lower back pain, he had only taken those opiate drugs prescribed for him by his own GP and he had not needed to use them at all recently.

36. Dr Arnold reviewed the reports from his medical supervisor, Dr Prunty. Dr Arnold said that in November 2021 he was still suffering from severe anxiety

and depression and that he was not fit to practise. Dr Arnold said that after the discovery of his opiate addiction, he had been well supported in relation to the addiction itself and supported to return to work by both the GMC and NHSE, including by funded in-patient treatment, the appointment of a clinical supervisor and mentor and the arrangement of new appointments through the GP retention scheme. Dr Arnold said that despite this support, he was not treated for his underlying anxiety and depression. Although he had been referred to community mental health services, he was not a priority and he had not thought it worth while to chase up the referral himself. His ongoing anxiety and depression had been the driver for him to self-prescribe pregabalin and other drugs in 2018 and 2019. Even after the discovery of his self-prescribing, treatment for his underlying anxiety had been slow to materialise but had increased in the last year. Dr Arnold said that by September 2022 he had been diagnosed with general anxiety disorder and his treatment for that disorder is now correct and that he expects to reduce the amount of medication prescribed for that disorder as soon as next week. As such, Dr Arnold said that he accepted and adopted Dr Prunty's view that the risk of his mental health deteriorating is much reduced and that the risk of lapse back into substance misuse is now low.

37. Dr Arnold said that he accepted his return to practice needs to be accompanied by conditions and that he would abide by any such conditions if imposed.

38. Dr Arnold was asked about his probity in respect of his return to practise following his suspension in 2017. Dr Arnold accepted that he had misled each of the consultant psychiatrists who assessed him in preparation for his hearing before the Medical Practitioners' Tribunal in 2019. When asked whether he had lied to the assessing psychiatrists, Dr Arnold said their focus was his addiction to opiates and that he had remained clear of those. Dr Arnold said he did not recall being asked about other drugs but accepted that the fact he was self-prescribing large doses of pregabalin was relevant to their assessment and that he had not told the whole truth. He accepted that he had also misled the MPTS itself, both in the contents of his witness statement and at the hearing itself because he had not disclosed his self-prescribing behaviour. Dr Arnold said he had 'pulled the wool over everyone's eyes' because he was terrified of the consequences of his addiction for his career. He maintained that while self-prescribing was clearly wrong and a breach of his conditions, it had not otherwise affected his clinical judgement. It is clear that his procurement of self-prescribed medication whilst attending his MPTS hearing demonstrated planning and premeditation.

39. Dr Arnold said he had been addicted to the calming effect of pregabalin and that higher and higher doses made him feel normal. He did not necessarily dispute Dr Prunty's conclusion that he had not been addicted to the substance itself. Dr Arnold said that at all times he had been fully responsible for his own actions. Dr Arnold described how he had produced the prescriptions using dummy patient details and covering these with a post-it note during printing, so that he could insert his own details in the blank space. He said that he had included other drugs on some of the prescriptions because he was also being

prescribed the same drugs by his own GP and the self-prescriptions would look less suspicious. He deliberately used different pharmacies to lessen the risk of detection, including pharmacies in Manchester during the time of his MPTC hearing. Dr Arnold said that he had taken some of the drugs prescribed, the rest he had stored in the boot of his car, where they could not present a risk to his children. He went on to say that on reflection, it was always obvious that he would be discovered. It was just a matter of time. He said there had been no audit of paper prescriptions between December 2018 and May 2019. If there had been, he would have been discovered instantly.

40. Dr Arnold accepted that he had not confessed to the extent of his self-prescribing when interviewed by NHSE on 6 June 2019. He said the interview had been confrontational and aggressive and had led him to 'blind panic'.

41. In relation to the ongoing medical supervision of Dr Baig then Dr Prunty, Dr Arnold accepted that he had described to them having written 'two or more than two' prescriptions for himself. He said that he had been advised by his Medical Defence solicitors not to say more because of the ongoing criminal proceedings in relation to self-prescribing. Although Dr Prunty's report of February 2020 described self-prescribing as having been ongoing between December 2018 and May 2019, Dr Arnold accepted that he had never fully disclosed how often he had written prescriptions for himself. He said, however, that it was not fair to say that he had given Dr Prunty a false impression, because Dr Prunty had drawn his own conclusions. It was the case, however, that he had given incomplete information, and this had not been corrected by the time the most recent report had been completed in September 2022.

42. Dr Arnold was referred to his appraisal in February 2019. He accepted that various statements made by him in the appraisal had been misleading, including by stating that he had refrained from all drugs of abuse and in relation to other statements in relation to 'maintaining trust' and by his making of a probity declaration.

43. Dr Arnold was asked to reflect on his lack of openness and transparency since 2018. He conceded he had not made any written reflections but had discussed his behaviour with church leaders in a process akin to a confession. He acknowledged again that he had gone against the conditions on his Performers List registration and said he deeply regretted it. He said he recognised the impact of his behaviour on trust in him personally and in GPs in general. He acknowledged that any supervisor would now struggle to trust him. He said that he had no reason now to be dishonest: he has nothing left to hide and everything is out in the open.

44. Dr Arnold said that if his removal from the Performers List is confirmed, it would be a desperate blow which would cause some financial hardship for his family because he has been receiving some financial support from the NHS during the period of his suspension. His wife (a nurse practitioner) would have to increase her hours while Dr Arnold himself would need to seek employment as a Doctor with GP experience, but clearly not as a practising GP.

The Tribunals Conclusions with Reasons

45. We took into account all the evidence that was included in the hearing and presented at the hearing.

46. We wish to place on record our thanks to Mr Hockton and Miss Tahta for their assistance at the hearing and their helpful skeleton arguments and closing submissions.

47. We concluded that in our view, having considered all the circumstances of the case, it was appropriate, pursuant to regulation 14(3)(d) of the 2013 Regulations for the Appellant to be removed on the grounds of suitability. Our reasons for doing so are set out below.

Redetermination and Procedural Unfairness

48. At the outset, we remind ourselves that our role is to make a re-determination on the basis of the evidence available to us at the date of hearing. To the extent that the Appellant relies on procedural shortcomings, inconsistency or unfairness in the Respondent's own decision making, those factors are relevant only insofar as they might help us avoid any procedural unfairness in our own approach.

The Relevance of the Appellant's 'Fitness to Practise?

49. We also observe at the outset that the Appellant has, since 20 Oct 2022 been determined as being 'fit to practise with restrictions' by an Interim Order of the MPTS. He was previously subject to an interim suspension order from July 2019.

50. The Tribunal is mindful that the GMC operates under different rules and procedures and for a different purpose than the statutory regulation for NHS performers. Equally, the Tribunal is not bound by the MPTS's determination, and must not fetter its discretion by failing to consider an application on its own merits.

51. Most importantly, the Tribunal is well aware that the present case is, primarily, a suitability case and not an efficiency case. Nevertheless, the Tribunal has kept in mind that if it were minded that the Appellant's conduct does not require his removal from the Performers List for unsuitability reasons, we should consider whether any efficiency concerns could be mitigated by the imposition of conditions which are the same as, similar to, or different from,

those which are attached to the Appellant's GMC registration.

The Facts

52. In terms of factual findings, we observe that none of the relevant circumstances of the Appellant's fraudulent prescribing in 2017 or self-prescribing in 2018-2019 were disputed. Equally, however, we observe that the Respondent does not dispute that the Appellant has not, since May 2019, engaged in any conduct which demonstrates he remains in the grip of addiction to any drug, nor that the reason for his self-prescribing pregabalin was other than to excessively self-medicate for anxiety and depressive disorder which he was then experiencing or that the disorder, which may or may not be enduring in nature, is currently in remission.

53. In relation to the Appellant's conduct in 2017, for which he was suspended and subsequently convicted, those are matters of public record. The Appellant's conduct in 2017 was, by both the Appellant's own admission and by the fact of his conviction a total of ten offences under the Theft Act 1968 and the Fraud Act 2006, dishonest. In those circumstances, the Respondent reached the view that despite a conviction for dishonesty which related directly to his performance of his primary role, the Appellant was subsequently found to be suitable to be included on the Respondent's Performers List, albeit with conditions relating to his efficiency. We note these circumstances for two reasons.

54. First, the Respondent's response to the 2017 conduct reminds us (if that were necessary) that neither addiction nor dishonesty should automatically mean that a medical performer is unsuitable to remain on the Respondent's Performers List and that in the Appellant's case, the Respondent has previously chosen to take a different course: concluding that the Appellant remained suitable for inclusion on the Performers List, while in parallel concluding that his efficiency was impaired, with the result that he could resume practice with conditions. As a result of his conduct in 2017, the Respondent adopted the same course which Mr Hockton invites us to take now.

55. Second, we remind ourselves that while our role is not in effect to revisit and sanction the Appellant for his conduct in 2017, that conduct is a relevant and aggravating factor because: (a) the Appellant's subsequent conduct occurred at a time when it must have been clear to him that his honesty, transparency and openness were in question; and (b) we must now consider whether, in light of the Appellant's admitted conduct in 2018-2019 and the extent of his openness, transparency and insight since that time as we find it to be, whether the whole of his conduct since 2017 is such that he is unsuitable to remain on the Respondent's Performers List.

56. With respect to the Appellant's self-prescribing which is the focus of our determination, we are satisfied that between December 2018 and May 2019 he breached the conditions of his registration 124 times (i.e. he obtained 124 separate doses of medication by self-prescription) in which course of conduct

he presented 57 prescriptions to 13 different pharmacies on 48 dates. By this method, the Appellant obtained a total of 55 months supply of pregabalin, more than ten times that prescribed for him by his GP over the same period, as well as supplies of other drugs which he was already prescribed by his GP. The Appellant confirmed that his GP had refused to prescribe a higher dose of pregabalin as he was already prescribed the maximum dose.

57. It is inherent in our use of the phrase 'self-prescribing' that we accept in every case the Appellant intended to obtain supplies of each drug for his own use or to store. There is no suggestion that the supplies were intended for, or were ever supplied to, anyone else.

Suitability

58. By reference to the considerations of Regulation 15(1), 15(2)(a)-(f) we reach the following findings in relation to suitability:

59. The nature of the self-prescribing events included a very substantial element of dishonesty and deception (Regulation 15(2)(b)). We find that while the method of preparing each prescription was relatively unsophisticated and prone to discovery (at least if there had been an audit of the surgery's physical prescriptions), on each occasion he prepared a paper prescription – itself an unusual event in the GP Practice- which involved both a degree of planning and concealment (at least to the point of entering a dummy patient's details on the computer and precisely covering the relevant space on the printed form so these details would not appear on the printed prescription). We also find that presenting each prescription was an act of indirect deception: although he may not have been committing a criminal offence, the Appellant knew that what he was doing was against his conditions for remaining on the Respondent's medical Performers List. With that knowledge, the Appellant attempted to conceal his primary aim – to obtain additional supplies of pregabalin over and above the dosage he was already prescribed - by adding other drugs to many of the prescriptions, also in breach of his conditions, in the hope or expectation that these other drugs would draw attention away from the invariable inclusion of pregabalin on each prescription. He also avoided duplication of the same prescription sheet as the unique identifier would have made his deception detected much sooner.

60. We also take into account that the Appellant's lack of probity during the period of his self-prescribing extended to his February 2019 appraisal and to his approach to the MPTS hearing in April 2019, whereby he sought to mislead both medical supervisors and the Tribunal Panel that he was free of addiction and was able and willing to abide by conditions on his registration. It is clear from the information provided to the Panel that he had obtained self-prescribed medication during the time of his attendance at the MPTS hearing in Manchester.

61. We place considerable weight on the circumstances that the Appellant's actions were taken in breach of the conditions imposed on his inclusion on the Performers List that he was not to self-prescribe in any way (Regulation

15(2)(f)(ii)). We take into account that these conditions were imposed in direct consequence of the Appellant's similar conduct in 2017 and that the Appellant knew these conditions were in place in order to manage the risk that he would repeat the behaviour which had brought about his suspension from the Performers List on that occasion.

62. Mr Hockton invited us to attribute the Appellant's conduct wholly to impairment caused either by addiction or underlying anxiety and depression. He summed it up neatly when he submitted that those who suffer from forms of addiction may lie from time to time and that mental illness leads to misjudgement. Although we do not reject the principle that mental illness can, of itself, lead to misjudgement, we are not persuaded that the Appellant's decision to breach his conditions in December 2018 was wholly attributable to addiction, mental illness, a *force majeure* or otherwise justifiable response to his anxiety and depression.

63. First, we cannot conclude with any confidence that between December 2018 and May 2019 the Appellant was in the grip of any physical or chemical addiction to pregabalin or any other drug he self-prescribed. We note that Dr Prunty's conclusion by September 2022 is that the Appellant was unlikely to be physically addicted. We do accept the views of both Dr Baig and Dr Prunty that the Appellant was probably dependent on the mitigating effect of pregabalin on his anxiety and depression. However, we also accept and adopt the Appellant's own evidence that despite his depression, his cognitive function was not impaired to the extent that it impacted on his clinical judgement so far as it applied to the patients he was treating at the time. He drew our attention to the information in his February 2019 medical appraisal which did not identify issues with his clinical skills. On that basis, however, and as a matter of logic, it is not open to him to argue that as a result of his depression he was unable to, or seriously impaired in his ability to, identify the risks or consequences of over-prescribing in his own case.

64. Second, we were particularly concerned by the Appellant's admission that his decision came after the Appellant's own GP had refused to increase or change his medication. In addition, although working within the same area, and referring patients to the service, the Appellant had apparently discounted as futile any attempt to expedite his own case with community mental health services as a result of the worsening of his anxiety and depression. The conclusion we reach by inference from these circumstances is that in full knowledge of the clinical risks, and fully able to appreciate the potential impact of his decision to breach his conditions, the Appellant nevertheless decided to breach those conditions. Refusing to accept the clinical judgement of his own GP, he substituted his own clinical judgement, beginning a course of self-prescribing conduct which we are sure would have continued had it not been discovered. In our conclusion, these factors reflect a very grave lack of probity which would undermine public confidence in GPs generally.

65. Nor is it the case that the Appellant's lack of openness and transparency was confined to his self-prescribing. As the Appellant acknowledged in his oral evidence, his approach to his February 2019 appraisal and April 2019 MPTS

hearing necessarily required him to mislead his interlocutors about his compliance with conditions and his probity generally. Although we view these events as somewhat parasitic and secondary to the central issue of his self-prescribing in breach of conditions, they are nevertheless an important indicator of the Appellant's capacity to suborn considerations of probity when he perceived that the consequences of doing so would be damaging to his own goal to remain in his role as a practising GP.

66. As the Appellant again accepted in his oral evidence, his lack of probity continued after his self-prescribing was discovered at the end of May 2019. First, in his 6 June interview with the Respondent, where he initially admitted having self-prescribed on two occasions and then, following a break, admitted having done so between five and ten times, a much more limited admission than was actually the case. The Appellant also accepts that he maintained that limited admission with his medical supervisors, Dr Baig and Dr Prunty, which he explained was as a result of legal advice given in respect of the criminal investigation and prosecution. However, the Appellant acknowledged that he has not actively disclosed the full extent of his self-prescribing behaviour to Dr Prunty even after the conclusion of criminal proceedings in February 2022. Both of these matters contribute to our conclusion.

67. The circumstances of these events are of clear and direct relevance to the Appellant's performance of services as a performer of primary care within the NHS (Regulation 15(2)(d)). They could hardly be more so, in our view. In our conclusion, the Appellant's self- prescribing goes to the heart of a GP's responsibility for diagnosing and prescribing appropriate doses of medication for members of the public and for being transparent, open and honest in relation to his clinical judgement and general performance.

68. We carefully weighed the public interest in whether the Appellant should remain on, or be removed from, the Performers List. We take into account, from our own knowledge and experience, the current shortage of medical performers available and willing to perform the role of GP in an NHS Surgery and the long waiting times some patients must endure before they are able to see a GP. That factor weighs heavily in favour of retaining the Appellant on the list. We accept that his clinical knowledge and judgement so far as that pertains to the treatment of other patients has not been in doubt – even during the two periods where he was self-prescribing medication.

69. However, the public could not have confidence that he would act openly and transparently about other aspects of his clinical practice, for example if he made an error of judgement in diagnosis or treatment or made a material error in accounting for medication under his control.

70. We place relatively little weight on the length of time since the events occurred (Regulation 15(2)(b)) because until quite recently the Appellant was suspended from the GMC Register and could not carry out any role as an NHS performer in any event and so we cannot assess his performance in any role.

71. To the extent that the time since the events is relevant to the Appellant's insight, we acknowledge that even following serious errors in judgement or lapses in probity, a practitioner's insight and learning from such events may be an important factor in determining their future suitability. In the present case, we took into account Dr Arnold's written evidence, including that he has '*done a lot of work psychologically to address the difficulty that I had in admitting I was struggling and asking for help'* and his conclusion that *'I am much more confident that I will now ask for more help if I need it rather than trying to manage the symptoms myself as I did before'*.

72. We also questioned the Appellant ourselves with a view to affording him the opportunity demonstrate whether he is able to reflect frankly and with insight on the serious lack of probity in his actions since 2017 and in particular, since his decision to breach the conditions of his inclusion on the Respondent's Performers List in 2018. Although his answers in oral evidence consistently acknowledged the lack of probity inherent in all of his actions, including in his decision not to reveal the full extent of his self-prescribing even after the conclusion of criminal proceedings, we found his responses to be superficial and mechanical. While we are mindful not to place undue weight on demeanour in circumstances where a vulnerable witness is under considerable pressure, we remain concerned about the depth and quality of reflection the Appellant has undertaken. We are particularly concerned that in both his witness statements and in his answers to our questions, the Appellant continues to seek to minimise the extent of his dishonesty. For example, in relation to his misleading his appraiser and the MPTS in early 2019, he was at pains to emphasise that it was true to say that he was free of opiates, rather than reflect on the extent to which he had misled his interlocutors about the extent to which he had, and continued to, breach the conditions of registration and inclusion on the Performers List. Equally troubling was his tendency to minimise his personal accountability for his lack of probity, instead seeking to explain, and to a great extent justify, all of his actions by reference to his anxiety and depression and even a 'failure' by the NHS to provide him with timely treatment for his anxiety and depression.

73. Even at the end of the oral hearing, we concluded that the Appellant continues to view his actions as a well-meaning but misguided attempt to treat his own symptoms and so remain an effective GP. For the reasons set out in the paragraphs above, that provides only a partial explanation for the events in question. In the Tribunal's findings, this self-justification so reduces his ability to reflect that it undermines the weight we can place on any assurances he can offer as to his future probity if he were permitted to return to that role in any capacity. At the very least, and despite Dr Prunty's view (on which we can place very little weight as he was unaware of the amount of self-prescribing and the deception to achieve this) and the Appellant's assertions to the contrary in his written and oral evidence, we remain unpersuaded that, in circumstances which threaten to overwhelm his capacity to cope, such as pressure of work, he would seek help or assistance from colleagues or refer himself to his regulatory bodies for support and direction. In our finding, there remains a very real risk that the work pressures and isolation inherent in any

role as a GP within the NHS will lead to a relapse in the Appellant's anxiety and that his current assertion of probity could be unsustainable in favour of harmful conduct which would facilitate his maintenance of a competent, coping façade.

Conditions

74. Since we have decided that the Appellant is unsuitable to remain on the Respondent's Performers List, the question of conditions falls away.

Proportionality

75. We take full account of the impact of this decision on Dr Arnold's career and his clear commitment to his work as a GP. We take into account that our decision will have a financial impact on him and his young family. Notwithstanding these considerations, we have concluded that he is also unsuitable to be included on the Respondent's medical Performers List at this time because we cannot be confident of his future probity. We have concluded that removal, on the grounds of unsuitability is the necessary, proportionate and reasonable response to the facts which have been admitted and found proved, taking into account Dr Arnold's professional history, ongoing risk and the public interest in the maintenance of NHS England's medical Performers List.

Decision

76. We conclude that the Appellant's appeal against the decision made by the Performers List Decision Panel ("PLDP") on 13 April 2022 to remove the Appellant from the NHS Medical Performers List shall be dismissed.

77. The decision to remove him from the NHS Medical Performers List is confirmed.

District Tribunal Judge C S Dow

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

Date Issued: 23 December 2022