

PRIMARY HEALTH LISTS

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

[2020] 3986.PHL (VKinly)

Heard by Video Link on 4-6 August 2020

BEFORE

Ms J Crisp (Tribunal Judge)
Mr Z Kapadia (Professional Member)
Ms M Tynan (Specialist Member)

Mr George Bell

Appellant

v

**The National Health Service Commissioning Board
(NHS England)**

Respondent

DECISION

1. The Appellant has appealed against the decision to vary conditions by way of an application dated 31st December 2018. (erroneously dated 2018). The Performers List Decision Panel (PDLDP) varied and imposed new conditions on the Appellant's inclusion by letter dated 18th December 2019.
2. The grounds of appeal are
 - a) Health concerns were not discussed, if decisions were made on this they amount to discrimination
 - b) How my health [not legible] affect/potentially affect pt. care was not explained. I presume discrimination
 - c) The term "attitudinal" is used. This might well be directed at the panel/NHS England for their lack of relevant knowledge. My attitude is affected by my ptsd, [not legible] and magnified by NHS England, Cumbria partnership and the GDC who misdiagnosed me
 - d) There has only been an attempt to "control" or "bully "me based on misunderstand of PTSD. The current conditions/ reflected

GDC conditions are due to incorrect information given by occupational health and Cumbria partnership

- e) The “historic” documents and records were not included in the bundle, I would be grateful if the tribunal could order unredacted records from occupational health/Cumbria partnership so it can see the evolution of these “concerns”
 - f) Retramatization is a “cruel and unusual” punishment. It is contraindicated in ptsd. I would like the conditions removed and replaced with support in record keeping and clerical work.
3. The Appellant represented himself and the Respondent was represented by Mr. Peter Anderson of counsel. Both parties had helpfully provided skeleton arguments before the hearing commenced.
 4. The Tribunal had the benefit of written evidence contained in a ring binder and heard oral evidence from the Appellant and Richard Bove and Maureen Kirwan on behalf of the Respondent.

Background

5. On the 1st September 2014 the General Dental Council (GDC) imposed conditions upon the Appellant. Those conditions were mirrored by the Respondent on the 9th January 2015 who also imposed local conditions. That decision was not appealed.
6. The GDC extended the conditions for a further period of 36 months on the 8th September 2017. The review hearing for those conditions has not yet taken place.
7. The Appellant has a history of mental health problems and has been sectioned in the past. He has convictions for offensive communications which led to the loss of his employment in 2009 and the subsequent GDC process followed.
8. The Appellant was suspended from the Performers List on health grounds from 12th July 2013 until 15th October 2014 and by the GDC for 18 months from 14th August 2013.
9. During the GDC investigation the Appellant was assessed by Dr. Deeley, Consultant Psychiatrist who provided a report dated 17th July 2014. That report provided a diagnosis that the Appellant satisfied the diagnostic criteria for Asperger’s Syndrome and was suffering with moderate depression diagnosed as a recurrent depressive disorder. The recommendation was that the Appellant was fit to practise on a limited basis, subject to conditions and/or to be subject to continuing medical supervision.

10. Professor Tantum, Consultant Psychiatrist also provided a report dated July 2017. He was appointed as the Appellant's medical supervisor in September 2014. He opined that the Appellant had a diagnosis of autistic spectrum disorder of Asperger type which was unlikely to remit. He also diagnosed a speech disorder 'cluttering' also unlikely to remit. The Appellant was also said to suffer with episodes of mixed anxiety and depression which were due to a long-standing anxiety disorder and attacks of rage which can trigger self-harm. The conditions were long standing. He did not accept that the Appellant had PTSD.

11. His recommendation was that the Appellant had complied with the conditions and used his medical supervision very effectively but that he required continued supervision to reduce the risk and that the current conditions on his practice were maintained.

Legal Framework

12. The National Health Service (Performers Lists) (England) Regulations 2013 section 10

- (1) Where the Board considers it appropriate for the purpose of preventing any prejudice to the efficiency of the services which those included in a performers list perform or for the purpose of preventing fraud, it may impose conditions on a Practitioners'
- a) Initial inclusion in a performers list; or
 - b) Continued inclusion in such a list.

13. Section 16

- (1) The Board, may and if requested in writing to do so by a Practitioner must, review its decision to
- (a) Impose or vary conditions imposed under regulation 10, 11, 12 or this regulation
- (2) On a review under paragraph (1) (a) the Board may
- (a) Maintain or vary the conditions
 - (b) Impose different conditions
 - (c) Remove the Practitioner from the relevant performers list.

14. Section 17

- (1) A Practitioner may appeal (by way of redetermination) to the First Tier Tribunal against a decision of the Board mentioned in paragraph 2
- (2) A decision of the Board referred to in paragraph (1) is a decision to

- (b) impose, maintain or vary any conditions under regulation 10, 11 12 or 16
- (4) On appeal, the First Tier Tribunal may make any decision which the Board could have made.

EVIDENCE

15. Mr. Richard Bove who is the case manager has provided two written statements. He had managed the Appellant's case since 7th January 2019 and had presented the case to the PLDP which recommended varying the conditions. He set out the conditions which were imposed following the hearing on the 18th December 2019.

1. You must agree to fully co-operate with NHS England & Improvement regarding all requests that are made in relation to your continued inclusion on the NHS (Performers' List (Dental))
2. If employed you must:
 - a) Notify NHS England within 7 days of any professional appointment you accept
 - b) Provide NHS England with the contact details of your employer or any organisation for which you are contracted to provide dental services
3. If employed you must allow NHS England and its agents to exchange information with
 - a) The GDC
 - b) Your employer
 - c) Workplace supervisor
 - d) Any contracting body for which you provide dental services
 - e) Any other person or body requesting information about your status on the NHS Performers' List (Dental)
4. At any time that you are included on the NHS Performers' List (Dental) you must
 - a) Place yourself under the supervision of a workplace supervisor
 - b) This supervisor must be a registered dentist and work at the same practice as you
 - c) Meet with your workplace supervisor every month
 - d) Provide a report of satisfactory quality (as determined by NHS England) from your workplace supervisor every three months
 - e) Advise NHS England of the name of any new supervisor within 14 days of any change.
5. You must inform NHS England & Improvement within 7 days i:
 - a) There are any formal disciplinary proceedings against you
 - b) There are any criminal proceedings against you

6. At any time that you are included in the NHS Performers' List (Dental) you must inform NHS England and Improvement of all of your absences/illnesses before returning to work
 - a) Reasons for absence/illness
 - b) Expected duration of absence/illness
 - c) If deemed necessary, you must remain absent from the workplace until NHS England has received a satisfactory fit note from your GP.
7. You must:
 - a) Not engage in a single handed dental practice
 - b) Only work at premises where another dentist would normally be working at the same time as you are working
 - c) Always be assisted by a registered dental nurse when working
8. You must co-operate with NHS England & Improvement seeking the provision of assurance within one month for fitness to work. On some occasions, it may be necessary for NHS England to seek further assurance
9. You must inform the following parties of these conditions:
 - a) Any organisation or person employing or contracting with you to undertake dental work (before the work is undertaken)
 - b) Your current (or prospective) workplace supervisor
 - c) Any prospective employer (at time of application)
 - d) Any prospective Health Board (Scotland, Wales and Northern Ireland)

16. Due to the case being an extremely long running case he had reviewed all information available to him.

17. He had been made aware that the Appellant had been hospitalised from 6- 16th October 2018 under the Mental Health Act. Whilst he was signed off on sick leave the Appellant attended for work on the 26th October 2018 and a complaint had been raised.

18. On the 23rd January 2019 he was advised by the GDC that there were new allegations from Cumbria Partnership NHS Foundation Trust that the Appellant had allegedly accessed staff details and had been contacting them personally. It was subsequently confirmed that the details had been accessed from a public website and that he had contacted the staff at work rather than privately. The CPS dropped the charges but a restraining order was imposed to prevent him contacting staff members unless for a medical emergency.

19. He had scheduled a PLDP on the 23rd May 2019 as the Appellant's conditions had not been reviewed since 20th December 2016.

20. Due to recent concerns an occupational health assessment in line with his previous voluntary undertakings was requested. The Appellant agreed to attend if his conditions of attendance were met. Whilst NHS England offered to cover travel costs the remainder were said to be disproportionate in nature.
21. On the 21st May 2019 he became aware that the Appellant had made threats of violence against the PLDP members including himself. The comments made by the Appellant included "it's about time someone broke the nose of the manager" and that he knew where this manager lived and it would be funny to write a note saying that the manager was a known paedophile who abuses disabled people and then post this through all his neighbour's doors.
22. Due to threats made a decision was made to postpone the hearing and several attempts were made to contact the Appellant to advise him.
23. On the 23rd May the Appellant attended the building in a dishevelled and agitated state. He confirmed that he had not known that the hearing had been postponed as he had been detained in a police cell overnight for fighting with police officers.
24. Due to these threats and concern about the Appellants emotional wellbeing NHS England wished to assure themselves that he was fit for work and again requested that an occupational health and mental health assessment took place. The Appellant's clinical supervisor was contacted and he reported no clinical concerns.
25. He and Maureen Kirwan attended the Appellant in his practice on the 31st May 2019. He was helpful and showed them around. The clinical supervisor confirmed there had never been any clinical concerns about him.
26. The mental health assessment was completed on the 10th August 2019 and highlighted that the Appellant had a lot of problems with psychiatrists and wrong diagnoses in the past. The report confirmed a diagnosis of ASD, a belief he had been treated unfairly in the past and tended to complain and take things to extreme.
27. Three separate occupational health assessments were organised however on each occasion the Appellant had refused to attend. One such assessment had not taken place as the Appellant had taken an overdose of paracetamol. Another provider advised that the Appellant had contacted them and threatened legal action if they contacted him again.

28. On the 23rd August 2019 he attended Mr. Bell's place of work again with a NHS dental advisor. A random check of medical records concluded that the Appellant's clinical work was of a high standard. On the 30th August he was advised that the practice was to be sold and the Appellant would be unable to continue working there.
29. The Appellant had over the next two months enquired about retirement or advised he would move from the area.
30. When the Appellant secured a new position, the rescheduled hearing took place on the 18th December 2019.
31. The panel decision was that the conditions should not be removed due to ongoing health and attitudinal concerns and the potential impact on patient safety. The panel had acknowledged the stress and difficulty he faced regarding various health issues and varied the conditions to provide a set of conditions that were clearer and more supportive to the current concerns.
32. The evidence which led to that decision was that the Appellant had been fully compliant with one condition and 4 voluntary undertakings and partially compliant with one condition and voluntary undertaking but not compliant with two conditions and four voluntary undertakings.
33. He did not accept he had ever acted in a discriminatory way and had always sought to assist and act in a fair manner. His role was to ensure patient safety. He had no concerns about the Appellants cluttered speech, the concerns were the threats he had issued to him personally and PDLP members with the potential consequences on a patient if they were to challenge the Appellant. He was also concerned about the repeated threats of self-harm and the potential impact on patient safety.
34. It was his belief that the behaviours and actions which the Appellant had exhibited had the potential to place patients and the public at risk and damage confidence in the NHS profession.
35. He refused to attend an occupational health assessment unless it provided him with the opportunity to see specific doctors to enable him to challenge their diagnoses and highlight alleged deficiencies in their practice.
36. He believed that by varying the current conditions it would give the Appellant the opportunity to demonstrate that he was meeting them more easily than the previous ones. He was generally resistant to

co-operating with NHS England and for all those reasons he believed the conditions were necessary.

37. In oral evidence he confirmed he had spoken to the Appellant by telephone on the 21st July to discuss the requirement for him to undertake an occupational health assessment. He confirmed the Appellant told him to “F off stick that in your pipe and smoke it”. He then suggested he would take an overdose at the top of Walney Island as this would make it difficult for emergency services to find him and it would cost the NHS money. He made comments about NHS staff and threats to report them to their regulatory bodies. The following day he advised that when he contacted the Appellant he told him that he was walking up to Walney Island, it was not illegal and he had sent an email to his wife and sister telling them to continue his fight. As a result of that conversation he contacted the Appellant’s GP.
38. Under cross examination he did not accept that reasonable adjustments in dealing with the Appellant had not been made. They had sourced assessments for him on three occasions and had paid for his travel which was not a normal course of practice.
39. He maintained that the conditions were related to the Appellant’s behaviour and attitude and therefore about patient safety. He accepted that the Appellant had never self-harmed in the surgery, he did not accept that he had ever bullied or sought to discriminate against him but that he could not afford to take the risk of having no conditions.
40. In relation to the specific conditions he advised that the wording on number 1 had been changed following a discussion with the Appellant. Many of the conditions mirrored those of the GDC. He said in relation to condition 4 that it was required as the Appellant had asked the GDC not to share information with them.
41. He said that the decision to request an occupational health assessment was following the Appellants recent hospitalisation. He tried to support the Appellant by providing a speech and language therapist at any potential assessment but the Appellant declined that offer after initially having asked for it.
42. He said that he found the threats to himself quite distressing.
43. He did not believe that the conditions were onerous, and in part they had been put in place to support the Appellant.

44. Maureen Kirwan provided one written statement. She is the Head of Professional Standards and Professional leadership development for the Respondent.
45. She said she was shocked and anxious about the personal threats made against Mr. Bove and the panel. She confirmed that Mr. Bove was shaken but agreed to continue. It was because of this that she agreed to supervise Mr. Bove's case management and to provide him with support which she said was a highly unusual thing to do.
46. She had met the Appellant on two occasions on the 23rd May when he arrived for the PLDP which had been cancelled. She confirmed that he was agitated and that it had taken about half an hour to calm him. She said that he told her about his mistrust of the NHS and that he had previously seen occupational health clinicians but they along with the whole of the NHS consistently bullied him and had done for years.
47. She said that he had a bruised lip which he advised was from resisting police attempts to remove a bracelet when he was in custody the previous evening. He also told her that he had deliberately acted so badly to get on a special allocation scheme so that he could have a new doctor who would allow him to go back to work.
48. She was concerned about his mental presentation and arranged to call him the next day. He repeated much of what had previously been said. She was worried about his behaviour but was advised by the clinical supervisor through Mr. Bove that this was not unusual.
49. When she met him on the 31st May she said that the visit went very well. His clinical supervisor said that he was clinically competent and that he was well liked by patients. If his behaviour became extreme they just sent him home. A further visit was arranged with a dental advisor and Mr. Bove on the 31st August to support the Appellant.
50. She fully supported the decision of the PLDP.
51. It was her evidence that the Appellant had been supported to a level she had never witnessed in 21 years of experience. The conditions were necessary to support the Appellant and ensure patient safety.
52. Under cross examination she was asked about the conditions and said that condition 2 was necessary it was a standard condition and the GDC had no requirement to notify NHS England.

53. She said that the Appellant had been invited for an interview for a post in Cornwall and had not disclosed his conditions to the prospective employer and therefore condition 3 was necessary.
54. Condition 6 was necessary as sometimes the Appellant did not appreciate that he should not be in work as sometimes the staff had to send him home although she accepted that there was no evidence that he had been asked to leave work because of behavioural issues.
55. She remained concerned about patient safety and the significant amount of resources and support that had been put in place to support the Appellant. She believed that the conditions were the bare minimum and that they had been reviewed and reworded jointly with the Appellant.
56. The Appellant's written evidence began by stating that there was a history to the case involving statutory agencies, courts, tribunals and ombudsman services. He said the case involved leading practitioners, university leads and deliberate flouting of statutory guidance. He had diabetes and autism and that defines who he is. He had read several books on the subject.
57. He confirms he saw a psychiatrist Quinton Deeley who he dismissed as not credible due to comments he made. He returned to work with conditions but was detained under the Mental Health Act in 2015 due to self-harming arising from frustration. He saw another psychiatrist Dr. Naheed who diagnosed bi-polar. Mr Bell stated that he told her it was PTSD. Dr. Naheed in his opinion was not a specialist as defined in the guidelines which he had read from the Mental Health code of practice.
58. He reports that the incident with the police in October 2018 arose due to the police not enabling him to retrieve his mobile telephone so he crawled past them. He was detained under a section of the Mental Health Act and taken to Middleton St George Priory Group. He stated that the doctors there told him he should not have been sectioned.
59. He then saw Dr. Fielding who said he could not return to work with no reason being given. He confirmed that Dr Fielding had written to his GP and the GP backed the consultant. Due to him causing trouble he was discharged and sent to PDS medical services who allowed him to go straight back into work. He confirmed he had planned this. He returned to work after 3 months.

60. He had telephoned staff members of the NHS and kept self harming as they refused to admit to clinical errors. When he was answering bail on the 22nd May 2019 for the offence of harassment he refused to sign the safeguarding form and refused to give up his bracelet leading to him placing it in his mouth and said it was a religious object.
61. He had complained to CQC, Health care professional council and education. He was required by NW England to attend a PLDP. He said it was cancelled after he made indirect threats.
62. He was asked to see occupational health but refused until he was given the notes from team Prevents and Dr. Andrews.
63. He does not accept the PLDP decision was explained. Under cross examination he stated that he had only ever been sent home from work on one occasion due to a hypo and that was confirmed by the email sent from Nigel Cowell with whom he was working.
64. He was taken through the conditions and said that he found condition 2 onerous, he accepted that he did not change employment very often and that as he needed to notify the GDC of any change of employment they should tell NHS England. He said reducing the amount of contact he had with NHS England was better for his mental health. He believed that he had PTSD. He accepted that there was a hearing with the GDC and that any removal of these conditions would be used as evidence in that hearing. In his view GDC could tell NHS England if he changed his employment.
65. He said at one point that he was happy for conditions 3,4,5 and 7 to remain then said immediately afterwards that his preference was for all of them to be removed and that they had to be appropriate.
66. He did not accept condition 3 as NHS England had always exchanged information without his consent but he would not trust them with information under GDPR.
67. He objected to condition 5 as it was unnecessary and inappropriate but then said it was appropriate.
68. In relation to condition 6 he said he had a right to privacy but that if he was sectioned then they did need to know. He accepted that any serious illness they would need to know about.
69. Condition 9 he accepted was necessary, condition 4 the information was already shared by the GDC and 6c was discriminatory.

70. Condition 7 was fine but it was more restrictive than the GDC.
71. He accepted it was helpful to have a registered nurse and supervisor.
72. Condition 1 and 8 he objected to on the basis that he did not want NHS England to have any control over him.
73. He accepted the conditions had been in place since 2014 and that during this period he had been in employment for most of the time.
74. He was asked about the incidents of self-harm and said that the reason for threatening overdoses to his GP was because he was not getting his medication. He was being dictated to by doctors who did not know what was happening. He said he was frustrated when people do not listen to him.
75. He accepted that he had threatened to self-harm on several occasions to Mr. Bove but he did not accept that it had any impact on him because Mr. Bove did not care or understand. He accepted that he had taken an overdose in October 2019 and that he had told him to back off and stop what he was doing.
76. He stated that it would never happen in front of patients because he did not get frustrated with them and when they did not accept his treatment plan he would refer them. He said that most of his patients accepted he had autism.
77. He was asked about the police incidents. In October 2018 he said that he was being bullied and he stood up to their controlling behaviour.
78. In May 2019 he said that he had put the bracelet into his mouth but had not bitten a police officer as recorded. He said the entry was totally false and in his view, it was for the police to justify their barbaric behaviour. He accepted that his standing naked in the cells for several hours was a protest. He denied stating to the police that he would self-harm and suggested the custody record was incorrect.
79. He was referred to the occupational health assessment which he had not attended. He said that he would attend if the original doctor was there so that he could talk to them and challenge their report based on misunderstandings on their part. He believed that a speech and language therapist should be present. He accepted that

he had threatened legal action against Blackpool NHS trust if they contacted him again about an appointment.

80. He believed that he needed a course of EDMR and help with chronic PTSD

Submissions

81. The Respondent submitted that the Court should make findings in relation to self-harm; threats of self-harm; extraordinary behaviour when dealing with the police; threats to managers; displays of bizarre behaviour which continued until July 2020 and erratic behaviour from Sep 18 onwards.

82. When considering the findings, the tribunal should consider the impact and the risks to patients and/or colleagues. If the court made those findings then the conditions as amended by NHS England should be in place.

83. The Appellant had already provided written submissions in which he suggested that the case be adjourned for him to undergo a formal diagnosis of bi polar during which time he should be paid by NHS England. The conditions which mirrored GDC conditions did not need to remain in place and that all others should be removed. He accepted in oral submissions that the findings sought were not specifically opposed but needed to be put in context. He did not accept that the conditions needed to be in place and suggested that if they were removed then it would force NHS England to sit down and negotiate. He stated that he needed support and that had not been provided, instead NHS England had adopted an adversarial attitude and caused him to lose £70k in income due to misdiagnosis and again re-iterated that the case should be adjourned so that he could get a proper diagnosis and get to the bottom of what was happening. He maintained on more than one occasion that he just wanted to sit down with NHS England and discuss his conditions. He also suggested he would like to see the reasons for the conditions written out so that he could take it further.

84. We have considered all the available evidence together with the submissions made by both parties and the case of Chopra to which we were referred. We have not specifically addressed every point in this decision but have considered the points raised in the context of the evidence, and the history.

Findings

85. All parties gave their evidence truthfully although at times the Appellant struggled to keep to the point and would return to events in 2013 which predated the initial set of conditions and was preoccupied with a sense of injustice inflicted upon him and misdiagnosis by medical practitioners.
86. We find that the Appellant has had several incidents of self-harm and threats of self-harm from September 2018 to July 2020. The Appellant accepted the findings however we set out the documents which support that finding. The two incidents in September and June 2018 where he took an overdose are documented in medical records and reports. On the 5th October 2018 there is a documented record that the Appellant threatened to cut off his finger and this led to him being detained under the Mental Health Act on the 6th October. In June 2019 there are medical records to confirm an overdose was taken. On the 17th July there is a record of an admission to Furness general with low glucose and a question of too much insulin. In October 2019 the Appellant wrote to Richard Bove and said he had taken an overdose.
87. We accept that during this time the Appellant was in work other than a period from October 2018 until January 2019.
88. We find that the Appellant did use threats of self-harm to waste NHS resources. The Appellant writes in an email that because of his frustration due to doctors not prescribing medication he has taken 32 tablets of paracetamol which will require hospital treatment. We do not accept as suggested that this was just to get the help he needed. Professor Tantum 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. His own written evidence that “I stopped taking insulin, I refused to eat, I threw water on the floor to make staff clean up and increase their workload. Clearly the concept of non-violent protest was alien to them” indicates that he does use threats and self-harms to waste NHS resources.
89. There are two incidents concerning the police, one in October 2018 and one in May 2019. We find that the behaviour in 2018 was concerning as the Appellant accepted that he had crawled past the police officers to get his mobile telephone. In 2019 we find that he stood naked in a cell for several hours. His evidence was that he refused to put on clothing as it was not cotton and preferred to stand there naked instead; it is also recorded that he said to the police officer “the last time I spent 8 hours naked to make a point and they did not understand the lengths he would go to”. We find that the standing naked in his cell for several hours was to make a

point and not due to the clothing provided. We find that he placed his bracelet which he was wearing around his wrist in his mouth to prevent removal. That fact is accepted. We do not accept it is a religious object as the bracelet says, "never give up". We also find that he said I can eat my own faeces as this is documented in the custody records and he accepted that he may have said something like that.

90. We find that the behaviour in May 2019 was bizarre. We accept in October 2018 he was the subject of a section however it is concerning that during the hearing he did not see anything wrong in his behaviour with the benefit of hindsight. It is a concern that he sees that behaviour as entirely justified as he said in submissions "well it was an illegal warrant and I am entitled to get my belongings back". We do not accept as he submitted that he had complained to the police about the incident in May and it has not been investigated as the investigative report is in his evidence.

91. We find that he did say to the police officer when dealing with the complaint that he had a track record of covering himself in petrol and approaching buildings. The Appellant accepted this has happened.

92. We are asked to make a finding that there was a restraining order imposed upon the Appellant and that it was reported in the local press. We do not need to make such a finding regarding the restraining order as that is a matter of record, we accept it was reported in the local press.

93. We find that he did make threats to NHS managers. We accept the evidence of Ms. Kirwan which was unchallenged that the Appellant admitted to her he had made threats to Mr. Bove and the panel on the 21st May 2019 as he wanted the NHS to know what it was like to be bullied. His evidence was that it was to avoid the trauma to attending the PLDP. We find that behaviour unacceptable and the specific threats as set out in the evidence of Mr. Bove deeply concerning.

94. We find that in March 2020 the Appellant made further comments against professionals, suggesting he would use the Tribunal as a means of imprisoning Jane Conway; would kick the police in the balls and tell Dr. Gelani as a Muslim to have a bacon sandwich. There is a contemporaneous note from Mr. Bove setting out the conversation. Whilst the Appellant says the threats were taken out of context and as a way of hitting back at professionals and the NHS as he has been treated unfairly that is not a valid reason for his behaviour. Jane Conway is believed to be involved in the

proceedings in Somerset many years ago. We find that these threats are further evidence of bizarre behaviour.

95. We find that the Appellant made threats of self-harm to Mr. Bove in July 2020. He accepted that he had made those threats and stated that Mr. Bove did not care or understand.

Conclusion and Reasons

96. Having made the above findings, we find there is a risk to patient safety. Whilst the Appellant says there is no evidence of a risk having happened, we could not rule out such a risk in the future. We find that if the Appellant had an argument with authority during his working day his inability to control his behaviour would be lessened. If he behaved in the way he has behaved, namely self-harming, making threats indirectly or directly the consequences of such a risk and the ability to manage the situation could be severe.

97. The consequences which these findings have is the impact on public confidence in the service. Public confidence includes an objective appearance and should instil confidence in the service which is being provided. We accept that the Appellant cannot recognise the impact of his behaviour on other people which may be related to his diagnosis of autism spectrum disorder of the Asperger's type and speech cluttering. However, his inability to address his behaviour has caused NHS staff significant distress. The threats made or directed to Mr. Bove which predated the PLDP in May 2019 caused Ms Kirwan to step in and provide support and supervision which she stated was a highly unusual step. Looking objectively, we find that although the patients of the Appellant may understand him the objective public generally would be concerned and that will impact on their confidence in the service provided.

98. We find that when the extent of the behaviour is considered, whether that is in relation to self-harm, the police incidents or the threats made, members of the public would be significantly concerned. We accept there is no concern about his clinical abilities and that he has produced in his evidence positive references from patients nevertheless overall there is significant concern.

99. The evidence of professor Tantom has not been challenged. In his report he opines 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. He recommended that he remain registered but the current conditions on his practice were maintained.

100. In October 2018 Professor Tantam provided a report as he had been the medical supervisor of the Appellant when he confirmed that the Appellant was pursuing several cases against Somerset County Council, GDC, NHS England and individual doctors and the Trust in Cumbria. He wrote that a further condition should be required that was to see a psychiatrist regularly in Cumbria. In January 2019 he confirmed that although his ruminations about past events causes him anger and sometimes frustration and stress he did not consider that his symptoms were consistent with PTSD.
101. It is clear to us that throughout the hearing and in the papers submitted in evidence by the Appellant that he has not accepted previous decisions made by authorities and as confirmed in the psychiatric report is unlikely to accept them.
102. Regrettably the Appellant has refused to undergo an occupational health assessment, for which we find there was no valid reason, nor is there a more recent psychiatric report upon which we could rely.
103. We do not accept that NHS England have not supported the Appellant, been discriminatory, re traumatised him or managed his difficulties. The evidence of both employees of NHS England sets out of the lengths to which they went to support him, the 3 separate appointments for the occupational health assessment, buying a ticket for one is just one example. The extensive email correspondence and telephone contact which is responded to is another.
104. It is a concern that the current conditions are not fully complied with by the Appellant which means that the risk is unquantified. The Appellant's suggestion that the NHS conditions be removed as the GDC conditions mirror the NHS conditions cannot be relied upon as the Appellant has confirmed in evidence that he has a further hearing before the GDC and is intending on asking for all conditions to be removed.
105. Dealing with the specific conditions and as requested by the Appellant setting out each separately
1. The agreement to co-operate is appropriate as NHS England need to satisfy themselves that the Appellant is fully able to work safely to manage the risks. We would include on that after all requests "to include any medical assessments or NCAS assessment"
 2. The requirement to notify NHS England of any professional appointment and contact details is also appropriate to

enable any prospective employer to be made aware of the conditions to manage risks to patient safety. The evidence of non-compliance in the application work in Cornwall supports this condition remaining in place. We would amend that to read employed or engaged in providing services

3. The exchange of information with GDC, employers, workplace supervisor and any other person requesting information is appropriate to enable all parties to make informed decisions to manage risk.
4. To work under supervision by a registered dentist. This is appropriate and we rely on the evidence of Professor Tantum.
5. To provide information if any formal disciplinary proceedings or criminal proceedings is partly covered by the NHS (Performers Lists) Regulations 2013 subsection 9. However, we accept the submissions of the Respondent that a “summons” would not be covered and the recent restraining order falls into that category. In those circumstances that condition is appropriate as NHS England need to know about any criminal charges or summons to manage risk.
6. To inform NHS England of any absences with reasons for the absence, expected duration and to remain absent until a satisfactory fit note has been supplied are appropriate. Due to the episodes of mental illness this condition is appropriate to manage any risk to patients and for an assessment to take place if necessary. We accept the submission that it should be amended to remove all absences and should only state “illness”
7. You must not engage in single handed dental practice and be assisted by a RDN. This is appropriate as identified by Professor Tantum.
8. You must co—operate with NHS England seeking provision of assurance within one month of fitness to work. This condition is appropriate for the reasons set out above in condition 6.
9. You must inform the following parties of these conditions. This condition is appropriate to ensure any relevant person is made aware of the conditions.

106. For all the above reasons we find that the conditions as amended are appropriate for the purpose of preventing any prejudice to the efficiency of the services which those included in a performers list perform.

107. Appeal dismissed.

**Judge J Crisp
Primary Health Lists Tribunal
First-tier Tribunal (Health Education and Social Care)**

Date Issued: 12 August 2020