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) (WALES) REGULATIONS 2004

[2019] 3869.PHLVKinly

Hearing held by video link on 27 and 28 July 2020

BEFORE
Ms S Brownlee (Tribunal Judge)
Ms S Brougham (Specialist Member)
Dr J Stevens (Specialist Member)

BETWEEN:

Dr Chinatu Mbagwu Davies Akano

Appellant

-v-

Cardiff and Vale University Local Health Board

Respondent

DECISION

Representation:
Dr Akano was unrepresented.
Mr David Story, counsel, instructed by Ms Laura Johnson, solicitor at NHS Wales Shared Services Partnership ('NWSSP') appeared for the Respondent.

The Tribunal heard oral evidence from Mrs Rachel Armitage, quality and safety manager in Primary, Community and Intermediate Care and Dr Gareth Hayes, clinical director of clinical governance in Primary, Community and Intermediate Care at Cardiff & Vale University Local Health Board ('CVULHB').

There were two observers at the public hearing: Ms Amy Bartlett and Dr Gneeta Joshi – both attending for professional development reasons.

The Appeal

1. This is an appeal by Dr Akano ('the Appellant'), a general practitioner, against a decision made on 29 September 2019 to remove the Appellant from the Medical Performers List pursuant to Regulation 10(6) of the National Health Service (Performers Lists)(Wales) Regulations 2004 ('the Regulations). The Appellant appealed on 24 October 2019.

2. The Appellant was removed on the grounds that he had not demonstrated that he had performed the services, which those included on the medical performers list perform within the Cardiff & Vale University Local Health Board, during the preceding twelve months. This appeal is concerned with the period of 2017 to 2018.

The Hearing

3. This was a remote hearing which was not objected to by the parties. The form of remote hearing was by Kinly Cloud Video Platform ('CVP'). A face to face hearing was not held because it was not practicable and no-one requested the same. The Tribunal noted that the hearing had been listed in April 2020, but did not proceed due to the restrictions in light of Covid-19. We considered that the issues in this appeal could be determined in a remote hearing. The documents that we were referred to are in the electronic hearing bundle provided in advance of the hearing. Page references follow the pagination on the original bundle for ease of reference, as some participants were working from a hard copy bundle and some from a digital bundle.

4. There were some connectivity issues for the Appellant on the first morning of the hearing. He did not call into the hearing until 10.37 am, which caused a delayed start time. At the telephone case management hearing of 6 July 2020, the Appellant's application to postpone the hearing had been refused. The Appellant had confirmed that he would be able to call into the hearing, but would not have access to his smart phone as he would be at work, so he intended to use a land line telephone to call into the hearing.

5. The Appellant initially called into the hearing on a landline telephone, but was having difficulties hearing Mr Story, in particular. He advised the Tribunal that he was not at work. As such, after a further short break, the Appellant was able to call in to the hearing using a mobile phone with a mute function, which meant he could hear Mr Story more clearly.

The Law

6. The NHS (Wales) Act 2006 section 49(1) provides:

   "Persons performing primary medical services
   Regulations may provide that a health care professional of a prescribed description may not perform any primary medical services for which a Local Health Board is responsible unless he is included in a list maintained under the regulations by a Local Health Board".

7. The relevant regulations are the National Health Service (Performers Lists) (Wales) Regulations 2014 (as amended). Regulation 10 sets out the grounds where the Local Health Board must remove the performer from its performers list and where it may do so.

8. Regulation 10(6) provides:

   "Where the performer cannot demonstrate that the performer has performed the services, which those included in the relevant performers list perform, within the area of the Local Health Board during the preceding twelve months, the Local Health Board *may* remove the performer from its performer list".

   Regulation 2 provides that a performers list means a list prepared and published pursuant to Regulation 3(1).

   (our *italics*)

9. Certain removals under Regulation 10 are mandatory, on a clearly defined basis. Removals under Regulation 10(6) are discretionary. There must be circumstances in which a doctor who has not, in fact, performed primary medical services in the preceding 12 months is allowed to remain on the MPL.

10. The appeal is made under Regulation 15(2)(d). Regulation 15(1) provides that the appeal is by way of "redetermination". Regulation 15(3) provides that on appeal the First-tier Tribunal may make any decision which the Local Health Board could have made.

11. Therefore, we are required to make a *de novo* or fresh decision. This may be informed by new information or material that was not available to the Local Health Board. The determination of the appeal includes consideration of the evidence provided by both sides in this appeal and the oral evidence and submissions made.

12. The Respondent bears the burden of proof insofar as any facts are in issue. The standard is the balance of probabilities. The exercise of the discretion under Regulation 10(6) requires a judgment to be made. The Respondent bears the burden of persuasion in this regard.

Interlocutory Matters

13. On 24 July 2020, the Appellant submitted a written application to adjourn the hearing. He was informed that the application would have to be made at the hearing on 27 July 2020.

14. On 27 July 2020, after resolving the connectivity issues and initial delay, the Appellant renewed his application to adjourn the hearing. It was made on

two grounds. Firstly, the Appellant had received a letter from the Respondent on 23 July 2020 informing him that the CVULHB would be proceeding with consideration of his removal from the medical performers list on the basis that he had not provided evidence of having worked in the CVULHB area in the preceding 12 months.

15. The second ground of the application was that he did not feel well. He requested an adjournment of one month. In addition, the Appellant indicated that he did not understand the process and needed to take legal advice. He had proceeded to make an appointment with a solicitor based in London. He intended to attend a meeting with the solicitor – physically attending the meeting in London on Tuesday 28 July 2020 at 12.30 pm. The Appellant was concerned that the Respondent was proceeding with the process even though he had appealed the previous decision.

16. The Appellant confirmed that he did not feel well and would not be able to defend his case as he had a throbbing headache caused by speaking on the phone which had resulted from his speaking on the phone. The Appellant made his application orally and covered the points in some detail. Before hearing the Respondent's response, the Tribunal adjourned to enable the Appellant to take some paracetamol. When he returned to the hearing, after approximately 20 minutes, he confirmed that he was content to proceed with hearing the response.

17. The Respondent opposed the application, referencing the lengthy history of this appeal and the overriding objective of the Tribunal. In effect, as per Rule 2(e) of the First-tier (Health, Education and Social Care Chamber) Rules ('the Rules'), cases should be dealt with fairly and justly, including avoiding delay, as far as compatible with the proper consideration of the issues.

18. The Respondent confirmed that the Appellant had been notified of the Respondent's proposal to remove him from the medical perfomers list in a letter dated 24 June 2020. The letter of 23 July 2020 was to notify him of the decision to remove him following his confirmation that he has not provided any primary medical services within the CVULHB area for over 12 months. Mr Story confirmed that the two processes are separate and concern different time periods.

19. The Appellant confirmed that he has been approved by an agency to take on locum work at HMP Cardiff. He has not yet delivered any primary medical services at the prison.

20. Mr Story advised the Tribunal that in exercising his right of appeal, the Appellant remains on the medical performers list pending the outcome of the appeal. As such, the Respondent was prompted to begin the removal process as the Appellant remained on the medical perfomers list and had not provided any evidence of medical services performed in the CVULHB area in the preceding 12 months (2018 to 2019). Mr Story confirmed that if the Respondent's appealed decision was confirmed by the Tribunal, the

Appellant would be removed from the list.

21. We decided to refuse the Appellant's application to adjourn the hearing for one month. We considered the wider history of this appeal, which is relevant to the balancing exercise required to apply the overriding objective of the Rules.

22. In considering the application, we reviewed the chronology of events in the appeal. On 9 December 2019, the Tribunal directed that the parties liaise together to agree suitable hearing dates between 20 April and 29 May 2020. The Appellant failed to provide his availability to the Respondent. On 8 January 2020, the Tribunal listed the hearing for 21 and 22 April 2020 at a venue in Cardiff.

23. On 4 March 2020, the Appellant made an application to postpone the hearing as he would not be in the UK on the listed dates. This was opposed by the Respondent. On 23 March 2020, the Tribunal refused the application, noting that the Appellant had not complied with previous orders and giving him a final opportunity to submit his evidence by 31 March 2020 with a direction that the appeal would be automatically struck out if there was a failure to comply.

24. On 31 March 2020, the Appellant made an application for a longer period of time to comply with the directions. On 6 April 2020, the Tribunal struck out the appeal and vacated the hearing dates. On 24 April 2020, the Appellant made an application to have his appeal reinstated. On 5 June 2020, the appeal was reinstated and on 11 June 2020, the appeal was relisted for 27 and 28 July 2020.

25. On 6 July 2020, the Appellant made an application to postpone the hearing. This was made on the basis that he would be at work and would not have access to a smart phone. The Appellant confirmed that he could dial into the hearing using a landline telephone. The application for an adjournment was refused.

26. We were struck by the fact that the Appellant had been able to make a coherent and detailed oral application to adjourn the hearing. He also confirmed feeling better and able to participate in the hearing after a break to take some paracetamol. He confirmed that he did not have any medical evidence to support his position that he was unwell. He stated that as a doctor, his opinion was sufficient. The Tribunal was concerned to note that the Appellant had made an appointment to meet with a solicitor in London on the second day of the hearing after agreeing the dates for the hearing and after the refusal of his application to adjourn on 6 July 2020. The Tribunal noted the fact that the Appellant has actually been notified of the most recent removal process by way of a letter dated 24 June 2020 and concluded that he had sufficient time to seek legal advice in advance of the hearing.

27. Ultimately, we considered the overriding objective carefully, paying

particular regard to the effect of further delay. The Respondent had two witnesses ready to give oral evidence, who had booked time away from their roles in the NHS to attend the hearing. We considered the lengthy history of this appeal, including the previous listings. We concluded it would be contrary to the overriding objective to adjourn the appeal hearing to a later date. We concluded that the Appellant's ability to present his appeal was not inhibited by the fact of separate removal proceedings, particularly once this was clarified by Mr Story. We decided that we had insufficient evidence to support the Appellant's assertion that he was not well enough to proceed with the appeal hearing. The Tribunal noted that the time estimate of two full days was a pragmatic one which could accommodate frequent breaks.

28. During the course of the adjournment application, the Appellant warned the Tribunal that if his application was refused, he would 'hang up' and not participate further in his appeal. Once we delivered our decision, he indicated his desire to leave the hearing. Before doing so, the Tribunal explained to the Appellant the next procedural steps: that the Respondent would invite the Tribunal to proceed in his absence and there was a real risk that this would happen. In addition, the Respondent put the Appellant on notice of the possibility of their making a costs application against him. The Tribunal asked the Appellant whether he now wished the appeal to continue or whether he wished to withdraw it, in light of his stated intention. He indicated that he did not wish to withdraw it. The Appellant withdrew from the hearing and did not participate further.

29. Pursuant to Rule 27 of the Rules, we concluded it was in the interests of justice to proceed with the hearing, particularly given the reasons for the previous decision to refuse the application to adjourn the hearing.

Background

30. On 24 April 2019, the Appellant was notified that the Respondent was proposing his removal from the medical performers list. On 25 April 2019, the Appellant responded to request an oral hearing before the Reference Panel. On 9 May 2019, in making arrangements for the oral hearing, the Respondent sought the Appellant's availability for the next three months. On 21 May 2019, he provided availability over three consecutive dates in August 2019. These dates were not workable for the Reference Panel. The Appellant updated the Respondent to confirm his availability during the last week of September 2019. The oral hearing was arranged for 2.30 pm on 25 September 2019 in Cardiff. The Appellant did not attend the hearing. On the day, he telephoned Mrs Armitage at about 1 pm to advise that he was delayed in traffic. The reference panel agreed to delay the start of the hearing to 2.45 pm. Mrs Armitage called the Appellant and left him a voicemail message to update him. He did not attend by 2.45 pm and the Reference Panel decided to proceed, adjourning the hearing after the investigating officer's application and recommendation. The Reference Panel requested Mrs Armitage to contact the Appellant again. This call diverted immediately to the voicemail facility. The Reference Panel

reconvened and proceeded to decide that the Appellant should be removed from the medical performers list. On the evidence available to the Respondent's Reference Panel, it concluded that the Appellant had not worked in the area since 18 August 2016.

31. It is important to set out the wider background to the Appellant's time on the medical performers list. The Appellant was first included on the medical performers list on 26 July 2012. On 12 February 2014, NWSSP requested evidence that he had worked in the Respondent's area during the period of 19 August 2012 to 19 August 2013 and this was duly provided.

32. For the period of 20 August 2013 to 19 August 2014, the Appellant provided information that he had worked in the Respondent's area. On 28 January 2015, the Respondent requested further information from the Appellant on this point. In the absence of any response, the Respondent commenced the Regulation 10(6) process on 16 February 2015. Following discussion, the Respondent agreed to accept evidence that the Appellant had worked one session with Llanishen Court Surgery in March 2015 as sufficient evidence to retain his position on the list. The Respondent took a lenient approach on that occasion even though the relevant session had been performed over six months outside the relevant timeframe.

33. NWSSP sent the Appellant an application pack to assist him with changing Health Board area. The Appellant did not complete the application process as he did not wish to change Health Boards in Wales.

34. For the period of 20 August 2014 to 19 August 2015, the Respondent decided to 'count' the session from March 2015. That one session was 'double counted' for both the 2013 to 2014 and 2014 to 2015 periods.

35. For the period of 1 October 2015 to 30 September 2016, the Respondent retained the Appellant on the medical performers list on the basis of two sessions worked within the area.

36. For the period of 1 October 2016 to 30 September 2017, the Appellant returned a form in which he indicated that he had worked no sessions in the Respondent's area.

37. For the period of 1 October 2017 to 30 September 2018, the Appellant confirmed that he had not worked in the CVULHB area. He had worked at HMP Berwyn in Wrexham which is in the Betsi Cadwaladr University Local Health Board area.

38. On 24 January 2018, the Respondent held a Reference Panel meeting to consider contingent removal of the Appellant relating to allegations raised by an English Ambulance Trust at which the Appellant had been working. The Reference Panel rejected the recommendation to contingently remove the Appellant.

Issues

39. We consider the cores issues to be:

    1. Are the grounds made out under Regulation 10(6) of the National Health Service (Performers Lists) (Wales) Regulations 2004?

    2. If so, should the discretion to remove the Appellant from the medical performers list be exercised?

Evidence

40. The Tribunal had in evidence before it a tribunal bundle consisting of approximately 300 pages of documentary evidence which included the appeal, response and directions made prior to the final hearing, the parties' further evidence, witness statements, extracts from the relevant legislation, the decision of the Reference Panel and the additional documentation submitted by the Appellant relating to the process undertaken by CVULHB in June and July 2020.

41. In oral evidence, Mrs Armitage indicated that in order for a GP to have completed sufficient performance of medical services in the Health Board area, they are required to complete at least one session, i.e. one half a day of services, which equates to approximately three hours, in the preceding or relevant 12-month period. NHSWSSP is the overarching body which conducts a review of the medical performers lists for all seven Health Boards in Wales and which then notifies each Health Board of performers who need to submit evidence as to performance.

42. She confirmed that the evidence must demonstrate that the doctor has actually performed the medical services – being registered to work sessions in the Health Board area was not the same as having worked within them. Mrs Armitage explained that the overriding concern for the CVULHB is clinical competence. She clarified the amount of administration involved in maintaining the list for doctors who do not provide evidence of their performance in the Health Board in the preceding 12 months. If it appears that they haven't worked or no evidence has been submitted, the doctors are sent reminders and a number of procedural steps must then be followed, as per paragraphs (7) to (14) of Regulation 10. She explained that the process, which is commenced by NHSWSSP is quite protracted.

43. Mrs Armitage concluded that the Respondent had taken a lenient approach in the past, in allowing the Appellant to remain on the list. However, during the past three, going on four years, he had failed to complete at least one session of medical services in the area.

44. In his oral evidence, Dr Hayes clarified a point in his witness statement. He confirmed that once an application to transfer to another Health Board is commenced, there is no option for an applicant to withdraw it – it is proceeded with and determined, even if the applicant no longer wishes to pursue it. This was the case with the Appellant – he did not wish to proceed

with the application to transfer to Betsi Cadwaladr University Local Health Board – from the Appellant's perspective, he had withdrawn it, but Betsi Cadwaladr University Local Health Board had to determine the application.

45. Dr Hayes explained that every year there is a handful of doctors who appear not to have worked in the relevant 12-month period. The majority either transfer to another Health Board or withdraw themselves voluntarily in acceptance that they have not worked in the area during the relevant time period.

46. Dr Hayes clarified the position with the Appellant's recent registration with an agency which intends to supply locum doctors to HMP Cardiff. As Dr Hayes understood it, the agency has made a connection with HMP Cardiff which may or may not use its services. Dr Hayes confirmed that as of the date of the appeal hearing, the Respondent had not been notified of any sessions booked by the Appellant to work at HMP Cardiff.

47. Furthermore, he clarified the practical impact of removal of the Appellant from the Respondent's medical performers list. If the Appellant remains on a medical performers list with NHS England, so that, as and when he commences providing medical services to HMP Cardiff, he will have a three month 'grace period' within which to apply for inclusion on the Respondent's list.

48. Dr Hayes commented that the Regulations in England and the Regulations in Wales differ, that CVULHB is bound by the Regulations for Wales and that the Respondent is unable to pick and choose those to apply or those to ignore. He advised that ordinarily, it is the expectation that a doctor will be registered on the medical performers list for the Health Board for which he or she provides the most medical services. In the Appellant's case, the more appropriate Health Board was Betsi Cadwaladr University Local Health Board, given that for the period of 1 October 2017 to 30 September 2018, he worked at HMP Berwyn in Wrexham.

49. Dr Hayes had no confidence that if the Appellant had been retained on the list, given the history, that he would work in the Respondent's area. He considered that the Respondent had 'bent over backwards' to hold the oral hearing before the Reference Panel on a date suitable for the Appellant, who had not been available for some months. Dr Hayes thought the Appellant could have used that time to complete one session of medical services in the Respondent's area – before September 2019. Dr Hayes referred to the administrative burden on the Respondent - that communication with the Appellant was 'uniquely difficult', specifically making reference to numerous emails sent to the Appellant in late 2018 to seek the required evidence, as well as the email communications to arrange the oral hearing.

50. Dr Hayes confirmed that the Appellant's appraisal was not affected by his position on the Respondent's medical performers list. Appraisal is a self-referral process, set up by the doctor, who selects his or her own appraiser,

and undertakes it in one area of any of the four countries in the UK; once completed, the appraisal is stored on the systems of the medical performers lists on which the doctor is registered.

51. The evidence of the Appellant was set out in a witness statement dated 30 March 2020, as well as the submissions in his appeal application form dated 21 October 2019 and his recent confirmation that he is registered with an agency that is working with HMP Cardiff on its staffing needs. We also noted his oral statement to the Tribunal that he is not currently living in Cardiff.

The Appellant's position

52. It is not in dispute that the Appellant did not perform any medical services in the Respondent's area for the period of 1 October 2017 to 30 September 2018. He has acknowledged signing and returning the form dated 15 January 2019, in which he ticked the box to indicate that he had not worked in the CVULHB area during the relevant period.

53. The Appellant disputes the fairness of the decision to remove him from the Respondent's medical performers list. He relies upon the following factors:

    (a) He resides in Cardiff and as a citizen of Cardiff, he should be allowed to remain on his local Health Board's medical performers list;
    (b) Removal from the CVULHB's list would prevent his appraisal taking place. His responsible medical officer is the medical director of CVULHB;
    (c) He intends to continue to complete locum work, the nature of which means that he does not know where his next job will be;
    (d) Historically, he has completed work in the Respondent's area and intends to do so in the future. He has been trying to secure locum work in the Respondent's area to the extent that he has been offered locum work in other Health Board areas of Wales and has turned it down. He will continue to try to secure locum work in the CVULHB area;
    (e) NHS England has a more sensible, robust and practical approach, as it is operated country wide; and
    (f) Removal from the CVULHB's list would deny the Appellant the opportunity to settle back with his family and reduce the risk of constant travelling.

The Respondent's position

54. There was a breach of the requirements of Regulation 10(6) of the Regulations to such an extent that that it was appropriate and reasonable to remove the Appellant's name from the medical performers list.

55. The Respondent does not consider an intention or desire to work in the Respondent's area to be sufficient grounds to remain on the list.

56. The decision to remove the Appellant was justified on the bases that he had not worked in the Respondent's area since 18 August 2016, there was a need to be consistent in its treatment of doctors in similar circumstances, and the administrative burden placed on the Respondent by retaining on its list a performer who was not undertaking any work in its area.

The Tribunal's conclusions with reasons

57. It was highly regrettable that the Appellant made a decision to end his involvement with his appeal hearing upon the refusal of his application to adjourn the hearing. The Tribunal had the benefit of his witness statement, as well as his previous submissions to the Reference Panel, which were appended to his appeal application. However, the weight which we could attach to the witness statement was limited given that the fact that the Appellant was not available to answer questions.

58. We considered Mrs Armitage and Dr Hayes to be credible witnesses. They were clearly trying to assist the Tribunal to understand the process undertaken by the Respondent and the particular engagement with the Appellant, not only over the relevant performance period of 2017 to 2018 (which ran from late 2018 to the conclusion of the reference panel hearing on 25 September 2019). We noted Dr Hayes' correction of his characterisation of the Appellant's application to BCULHB and his acceptance that the Appellant had decided he no longer wished to pursue the application. We concluded that Mrs Armitage and Dr Hayes provided clear and consistent evidence to the Tribunal of a process which was conducted in line with the requirements of Regulation 10 and to ensure that the Appellant was as accommodated as much as was practicable.

59. We concluded that it was of note that the Appellant was first contacted to provide evidence of performance of medical services in November 2018. Up until the point of the Reference Panel hearing, he did not provide relevant evidence. By appealing the decision of 25 September 2019, the Appellant remains on the list for the Respondent and up until the point of the appeal hearing on 27 July 2020, there was no evidence submitted to demonstrate that the Appellant has worked for the Respondent since August 2016. We concluded, on a balance of probabilities, that the Appellant has not performed medical services for the Respondent since 18 August 2016.

60. We consider that the Respondent was entitled to consider removal of the Appellant under Regulation 10(6) of the Regulations for that very failure, as are we as of today, in exercising the decision afresh. We find that Regulation 10(6) is engaged.

61. We considered all of the Appellant's reasons for wishing to maintain his name on the Respondent's list. We have no reason to doubt that the Appellant wants to secure locum work in the Respondent's area, but we cannot ignore the fact that he has not done this for almost four years.

62. We have a discretion. As removal under Regulation 10(6) is not mandatory,

it must be envisaged that there will be circumstances where a doctor who has not, in fact, performed the medical services in the preceding 12 months is allowed to remain on the medical performers list. That must be right, particularly taking into account the lenient approach operated by the Respondent on past years in relation to the Appellant's compliance with the requirements of Regulation 10(6).

63. The circumstances can vary in any given case. In this case, the Appellant's particular circumstances are set out at paragraph 55 above. However, the exercise of the discretion does not end with consideration of the Appellant's personal circumstances only. It must involve wider consideration of the purpose of the Regulations.

64. The Respondent is responsible for the maintenance of the list of medical performers. Maintenance amounts to, amongst other actions, admissions, refusals, removals and contingent removals from the list. Maintenance also involves the list being kept up to date and does not include doctors who have not, in fact, provided medical services in the relevant Health Board area in the preceding 12 months or relevant time period.

65. We consider that the administrative burden and responsibility of maintaining the Appellant on the list is of significance to the exercise of our discretion – it is directly relevant to proportionality. The Respondent is responsible and accountable for the list in question, as well as the delivery of care provided by performers on the list. It is for that reason that the list should be properly maintained and steps taken to ensure its proper maintenance.

66. We have concluded that it is not in the public interest for the Respondent to be required to carry responsibility for the oversight of someone who has not, as a matter of uncontested fact, provided any medical services in the Respondent's area since 2016. There is a risk that public confidence could be undermined in circumstances where someone who is not providing medical services in the Respondent's area is permitted to remain on the list unless there are compelling reasons to do so. We consider the integrity of the process for maintenance of a position on the list is directly relevant to the public interest.

67. That takes us on the issue of proportionality and fairness, which is the crux of this appeal. Continued inclusion on the Respondent's medical performers list brings benefits and obligations to performers. We do not consider that the obligation placed on doctors is particularly onerous – namely, the completion of at least one, half day session providing medical services in the Respondent's area. The Appellant was under an obligation to respond to requests for information from the Respondent. We have carefully considered his engagement with the Respondent, as well as with this Tribunal during the appeal hearing and we have concluded that he has been, at times, recalcitrant in his approach.

68. We carefully considered the impact of this decision on the Appellant. We noted the evidence of Dr Hayes that if the Appellant secures work in the

Respondent's area, the fact of his not being on the Respondent's list would not prevent him from undertaking this work – he will have a three-month grace period to apply to join the list whilst fulfilling the role. We concluded that there would be no material impact on the Appellant upon his removal from the medical performers list.

69. We considered if there were any particular extenuating circumstances in relation to the Appellant. We carefully examined each of the reasons he provided in his documents to the Tribunal and we concluded that none of the reasons could rationally be described as extenuating. We consider that the Appellant bears the persuasive burden in regard to exercising our discretion in his favour to maintain his name on the Respondent's medical performers list and we do not consider that any of the reasons have met that requirement. We conclude that the appeal should be dismissed and the Appellant's name removed from the medical performers list.

Decision

The appeal is dismissed.

The Respondent's decision of 26 September 2019 to remove the Appellant from its performers list under Regulation 10(6) of the National Health Service (Performers Lists) (Wales) Regulations 2004 is confirmed.

Judge S Brownlee
Care Standards & Primary Health Lists Tribunal
First-tier Tribunal (Health, Education and Social Care)

Date issued: 13 August 2020