Primary Health Lists

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

[2016] 2899.PHL

Heard at Royal Courts of Justice
London on 4 & 5 July 2018

BEFORE
TRIBUNAL JUDGE ATKINSON
MS J EVERITT (Lay Member)
MR M GREEN (Specialist Member)

BETWEEN:

MR SUMIT AGGARWAL

Appellant

and

THE NHS COMMISSIONING BOARD
(KNOWN AS NHS ENGLAND)

Respondent

Representation:

For the Appellant: Not represented
For the Respondent: Mr G Thomas of Counsel

DECISION AND REASONS

The Appeal

1. This is an appeal against the decision of the respondent, issued on 19 December 2016, to remove Mr Aggarwal from the dental performers list because he is unsuitable under the National Health Service (Performers Lists) (England) Regulations 2013 ('the 2013 Regulations').

Summary Background and chronology

2. The appellant obtained his dental qualifications from Kings College London in 2002. Over the years the appellant has worked in a large number of dental practices with a geographic spread across the United Kingdom.

3. In or around 2015 the appellant became involved in a commercial dispute with Cottage Dental Care for whom he had performed dental services as a locum.

4. From a date in 2015 to June 2016 and beyond the appellant engaged in extensive e-mail correspondence with Cottage Dental Care circulated to several tens of other individuals or organisations. The appellant expressed his views and comments to the extent that they were widely distributed to many recipients, including for example the Lord Chief Justice, David Cameron, Jeremy Corbyn, and the police who had no connection with the dispute.

5. In November 2015 the respondent became aware of the appellant's behaviour in relation to his use of e-mails.

6. On 18 April 2016 the appellant was put on notice of the respondent's concerns.

7. On 20 April 2016 the appellant was involved in an incident in the course of his duties working as locum dentist at a dental practice run by Genix Healthcare, in Middlesbrough. The incident ended with the appellant being removed from the premises by the police.

8. On 13 May 2016 the respondent suspended the appellant from the performers list on the grounds that he had failed to engage with the respondent in a process to manage the respondent's concerns. The appellant remained suspended from the list until his removal from the list by the decision of 19 December 2016, subject to this appeal.

9. On 9 June 2016 the relevant community mental health team reported that the appellant was not mentally unwell and no intervention under the mental health act was required.

10. On 24 June 2016 the General Dental Council (GDC) suspended the appellant for 18 months on an interim basis because of allegations that the appellant had failed to co-operate with investigations and there was a risk of repetition of the alleged behaviour.

11. In the following period the appellant did not engage with suggestions from the respondent on matters relating to management of his circumstances.

12. On 16 November 2016 the respondent gave notice of an oral hearing to consider his removal from the list on grounds of unsuitability.

13. On 14 December 2016 the respondent, in the absence of the appellant, held a hearing on the issue of suitability and made the decision against which the appeal is brought.

14. Thereafter, there were a number of procedural matters before the tribunal, including a remittal of this appeal from the Upper Tribunal which set aside an earlier decision to strike out the appellant's case.

15. In October 2017 the GDC made a determination to suspend the appellant for a one year period with subsequent review on the basis that the appellant's fitness to practise was impaired by reason of adverse health.

The Law

16. The relevant law is to be found in National Health Service (Performers Lists) (England) Regulations 2013. The relevant provisions are set out in the bundle and it is not necessary to set them out in full here.

17. In brief, regulations 14 and 15 make provision for removal of a person from the performers list on the ground of unsuitability and set out a range of applicable considerations.

18. It is convenient to note here that appeal proceeded by way of redetermination of the issues and that the hearing was held in public.

Preliminary and procedural matters

19. The tribunal dealt with a large number of procedural matters that arose prior to the hearing, at the outset of the hearing and throughout the two days of hearing. It is convenient to draw those matters together and to note them here.

20. In dealing with the procedural issues and in giving directions on the management and conduct of the hearing the tribunal at all times took account of the tribunal's overriding objective to deal with the case fairly and justly. The management directions noted here were all made with a view to ensuring that the appellant, who was unrepresented and in respect of whom the documents suggested that there were issues about his mental well-being, was able to fully participate in the proceedings. The tribunal dealt with all the issues in a flexible manner and by avoiding undue formality.

Procedural Matters prior to the hearing

21. Shortly prior to the hearing the appellant made a series of applications for the judge of the day, Judge Atkinson, to recuse himself, and for an adjournment of

the hearing. The applications were refused, first by Judge Khan by order dated 27 June 2018; and then, on their being renewed applications, by Deputy Chamber President Tudor on 29 June 2018.

22. The appellant sought to further renew the applications on 29 June and 1 July 2018. In the light of those applications Judge Khan by order dated 2 July 2018 further directed that the applications be considered by the tribunal of the day, as listed for 4 July 2018, as preliminary matters.

Procedural Matters at the outset of the hearing

23. At the outset of the present hearing the tribunal considered the appellant's applications as set out in a document from the appellant dated 1 July 2018 and running to 22 pages. That document ranges across a number of issues. They need not all be set out here. In essence the appellant's preliminary applications were to the effect that Judge Atkinson recuse himself and that the appeal hearing be adjourned.

24. The application for recusal appeared to be based on the allegation that Judge Atkinson had not been properly appointed to hear matters in the Health Education and Social Care Chamber and that he lacked the necessary skills, expertise and knowledge to hear the case. The appellant also suggested that the tribunal was not independent or was biased.

25. The application for recusal was refused. That is because Judge Atkinson, and all other members of the tribunal, have been properly appointed to the chamber in order to determine appeals.

26. The suggestions as to bias were rejected. That is because there was no evidence, beyond the appellant's assertions, that the tribunal was biased; and a fair minded and informed observer, having considered the facts would not conclude that there was a real possibility that the tribunal was biased.

27. The second application related to a request for an adjournment, in essence on the grounds that the General Dental Council had arranged for the appellant to undergo a psychiatric assessment on 14 July 2018.

28. The tribunal rejected that application for a number reasons. First, given the substance of the appeal before the present tribunal, a psychiatric assessment was unlikely to be of material assistance in determining the issues before the tribunal. That is because the basis of the respondent's case is founded on issues of whether or not the appellant is unsuitable to be included on the performers list. In considering unsuitability grounds, the regulations make no distinction as to whether such circumstances arise from health issues or from some other aspect of the appellant's circumstances. Accordingly, the psychiatric assessment would be unlikely to be material to the ultimate

determination of suitability.

29. Second, there were a number of subsidiary reasons as to why the application for adjournment was refused. These reasons include uncertainty as to whether such an assessment would in any event take place given the appellant's only very recent agreement to such an assessment; uncertainty as to the terms and remit of the assessment; and uncertainty whether in any event the assessment would be released and made available to the present tribunal.

30. Accordingly, the tribunal was satisfied that it could deal with the hearing fairly and justly without adjourning the matter.

Procedural Matters in the course of the hearing

31. In dealing with the appeal fairly and justly, the tribunal throughout the hearing took account of the fact that the appellant was not represented and the suggestions within the documentation that he might have an underlying mental health condition. The tribunal took a number of steps to ensure that the appellant was able to fully participate as far as reasonably practicable in the proceedings as noted below.

32. The tribunal at all times was satisfied, from its own continuous observations and monitoring, and in the absence of medical evidence showing otherwise, that the appellant was medically fit and mentally competent to participate in the proceedings.

33. The tribunal enabled the appellant to put forward his case by ensuring that he understood the nature of the case as presented by the respondent; by exploring directly with the appellant the grounds of appeal that engaged with the case as put forward by the respondent; by providing the appellant with the opportunity to give oral evidence, through questioning by the tribunal, that addressed the respondent's case; and by clarifying the limits of the matters that were relevant to the issues of unsuitability.

34. In enabling the appellant to put forward his case the tribunal took a flexible approach to the hearing. For example, the tribunal arranged for the respondent's principal witness, Dr Edwards, who gave evidence on the first day, to be recalled on the second day. These arrangements were made in order to give the appellant the opportunity to formulate questions overnight about matters that he wished to put to Dr Edwards. Further, the tribunal assisted the appellant in focusing on his main concerns about Dr Edwards' evidence; and then formulated and put questions on the appellant's behalf to Dr Edwards.

35. The tribunal took frequent breaks to enable the appellant to reflect on the

evidence.

36. At one point on the first day of the hearing, following a series of short breaks in the early part of the proceedings dealing only with the preliminary matters noted above, the appellant left the hearing room at 12.35 without explanation.

37. The tribunal considered rising but, in the light of events in the earlier part of the day dealing only with preliminary matters, decided that the appellant had voluntarily absented himself. He was observed to be waiting just at the door of the tribunal hearing room and was in view of the tribunal.

38. The tribunal considered it was fair and just to continue the hearing by limiting its considerations in the appellant's absence to hearing from counsel about the respondents previously filed skeleton argument and the supporting documentation. The tribunal did not take any oral evidence and considered matters only on which the appellant had prior notice.

39. The tribunal then rose and reconvened at 14.00 whereupon the appellant rejoined the hearing. The tribunal welcomed the appellant back to the tribunal and explained what had taken place in his absence. The tribunal was satisfied that the appellant had not been significantly disadvantaged by his temporary and voluntary absence.

40. The tribunal then moved on to hearing oral evidence on behalf of the respondent. The appellant thereafter remained present during the proceedings.

41. In assisting the appellant in the ways noted above, the tribunal took particular care in ensuring that as far as was practicable extraneous matters were not canvassed before the tribunal. The tribunal accordingly gave directions at various stages on the extent it was appropriate to hear oral evidence on matters that did not go to the core issues. It also allowed the appellant a degree of latitude in exploring his concerns about suspension payments which were matters that fell outside the tribunal's formal decision making powers.

The appellant's response to tribunal directions made in the course of the hearing and further renewal application on Day 2

42. The tribunal notes here for convenience the appellant's response to directions from the tribunal.

43. During the course of giving directions the appellant made a number of remarks including expressing the view that the tribunal was biased, racist, bullying and corrupt. His view of the steps taken by the tribunal were more formally brought together in a document running to 22 pages subtitled witness Statement Day 2 that he had produced overnight and submitted on the

morning of the second day. The appellant there said that Judge Atkinson was not fit to sit, was mentally unstable and a malignant narcissist who had abused his status.

44. He also said that Judge Atkinson was *completely obnoxious, rude abrupt, kept interrupting, full of spam (sic), not giving the appellant the opportunity to put his case, was threatening, intimidating, discriminating, disregarding, showed lack of insight, lack of remorse, lack of reflection, lack of integrity, mishandling and mismanaging the case, ill tempered and his behaviour was gross and serious misconduct in a public office*.

45. The above matters are noted in the context of the tribunal's continuous appreciation of its duty to act fairly and justly in the light of those remarks. The tribunal throughout was satisfied it could continue to deal with all matters fairly and justly.

46. The documents submitted by the appellant on the second day also sought to renew the previous applications as to recusal and adjournment.

47. Those applications were considered and refused in the same terms as noted above.

<u>The documents and evidence</u>

48. The tribunal was provided with a bundle of several hundred pages, indexed to tab E ending at page 88. It comprised all the filed material on which both parties sought to rely together with other background materials. The respondent, at the request of the tribunal, and for the assistance of the appellant also filed a copy of the regulations relating to the making of arrangements known as suspended payments made to those who have been suspended from the list [the Performers List (Suspended Dentists' NHS Earnings) Determination 2015].

49. In addition, as will be seen from what is said above, a number of further documents were submitted by the appellant at and during the course of the hearing. The tribunal admitted in evidence the two self-styled witness statements from the appellant both running to 22 pages without objection from the respondent.

50. Further, the appellant produced his own bundle of additional material running to approximately 315 pages including materials connected with a judicial review application, which had previously been vacated by the civil list office, and proceedings before the General Dental Council.

51. The tribunal directed that the appellant's bundle was not to be admitted in evidence but that extracts may be, if it became apparent that they would assist

the tribunal. On that basis the following numbered documents were admitted: pages 26-33 relating to the appellant's financial arrangements; pages 54-57 and 172-3 relating to assessment of the appellant's mental health under the Mental Health Act; and 195 to 214 relating to the General Dental Council final hearing held in private, dated 26 October 2017.

52. The tribunal heard oral evidence for the respondent, subject to directions noted above, from Dr Edwards, Senior Clinical Adviser to NHS England; and two employees of Genix Healthcare: Ms Nelson-Jones and Ms Sleeman;

53. The tribunal also heard directly from the appellant.

54. For convenience, it is noted here that after the hearing and after the tribunal had concluded its deliberations the appellant attempted to file a further witness statement, dated 5 July 2018 but not received by HMCTS until the morning of 6 July 2018; and thereafter yet numerous other documents. The tribunal having concluded its deliberations did not admit into evidence the post hearing documentation.

Opening Submissions and evidence on behalf of the Respondent

55. Mr Thomas relied on his skeleton argument and made further submissions. The respondent's case may be summarised as follows.

56. In November 2015 the respondent was made aware that the appellant was sending numerous emails of an often inappropriate nature in connection with a private commercial dispute. The emails were copied to a wide range of recipients with no connection to the dispute. The appellant's behaviour in relation to the persistent, inappropriate use of very wide email circulations lists raises serious concerns about his suitability to remain on the list.

57. On 20 April 2016 the appellant, whilst working as a locum dentist allegedly engaged in abusive and aggressive behavior that escalated to the extent that the police were called and the appellant was removed from the premises. The incident raises serious questions about the judgment, insight and suitability of the appellant to remain on the Performers List; and required investigation. The respondent acted properly in seeking to make contact with the appellant in order to understand his position and receive his response.

58. The appellant refused to co-operate with the respondent's inquiries. Such failure is a very serious failure to comply with his professional duties.

59. Faced with genuine concerns about the suitability of the appellant to remain on the Performers List, and his defiant, persistent refusal to cooperate with the respondent, the respondent decided that the appellant is not suitable to remain on its Performers List.

60. In addition, the circumstances of the case suggested that there are concerns about the appellant's mental health. The significance of these concerns in terms of explaining the appellant's behavior is limited in an unsuitability case. That is because the Tribunal is primarily concerned with the appellant's suitability to remain on the Performer's List: it is therefore immaterial to the outcome whether a finding of unsuitability arises from health concerns or some other reason.

The oral evidence of Dr M Edwards

61. Dr Edwards is a GP and senior clinical adviser for NHS England. He adopted his witness statement dated 19 March 2018 as evidence in chief. It is not necessary to rehearse the full extent of his oral evidence which may be summarized as follows.

62. Dr Edwards' role for the respondent includes dealing with issues of behaviour and probity of performers on the list. Dr Edwards advises case and project officers who are managed by an Assistant Director, Alison Sandford.

63. In November 2015 the appellant came to the notice of NHS England in relation to his sending numerous e-mails, originating from a private commercial dispute between himself and Cottage Dental Care. The email correspondence was circulated to a wide range of people. Samples of the emails are set out in part C of the bundle. The appellant also sent additional emails that have not been included in section C. [*The tribunal notes here for convenience that more than two hundred pages of emails are set out behind tab B of the bundle]*

64. The respondent was concerned about the content of the e-mails, their nature and the extent of their distribution. The e-mails showed behaviour that was obsessive and unprofessional.

65. The respondent as regulator needed to understand what was happening and to give the appellant an opportunity to explain what lay behind the correspondence.

66. On 18 April 2016 the case manager for the investigation, Mr E Ofor, wrote to the appellant and advised him that concerns had been raised about his e-mails.

67. The appellant's eventual responses by e-mails, on 3 May 2016, did not address the concerns; stated that the appellant did not understand what comments were required; and suggested that there be a public hearing.

68. Subsequently, in May 2016 the respondent received a serious incident report from Genix Healthcare regarding an incident on 20 April 2016, while the

appellant was working as a locum dentist. It contained allegations of the appellant behaving aggressively and rudely. The police were called and they removed the appellant from the premises. Reports were also made to the Care Quality Commission and GDC.

69. On 12 May 2016 the respondent, having consulted with the National Clinical Assessment Centre, imposed an immediate suspension of the appellant. On the same day the respondent attempted to make arrangements to meet with the appellant. The appellant's response was to describe the respondent's actions as a witch hunt and to make allegations of racism.

70. Thereafter the respondent made attempts either to make arrangements to meet with the appellant or for him to undergo an occupational health assessment on the following occasions

    i. 12 May 2016
    ii. 17 May 2016
    iii. 3 June 2016
    iv. 13 June 2016
    v. 1 August 2016
    vi. 21 October 2016
    vii. 28 October 2016
    viii. 16 November 2016
    ix. 21 November 2016
    x. 8 December 2016

71. Over this period, concerns about the appellant's mental health were such that arrangements were made for the local mental health team to visit the appellant on 30 May 2016, 5 June 2016, and 4 July 2016. The mental health team formed the view that the appellant required no intervention under the mental health Act.

72. Between May and December 2016, the respondent took steps to maintain the appellant's suspension on appropriate notice and ultimately removed him from the list on grounds of unsuitability.

73. Following examination in chief as summarized above the appellant wished to cross-examine Dr Edwards. The tribunal first explored with the appellant the areas of concern that he wished to put to Dr Edwards. The appellant said that he was not in a position to identify those concerns, even if granted a short break to collect his thoughts.

74. The tribunal, with the positive assistance of the respondent, decided to adopt a flexible approach in these circumstances. The tribunal directed that Dr Edwards be recalled on the second day of the hearing and that oral evidence from the other witnesses be interposed in the meantime. By this means the

appellant was afforded time overnight to think about questions he would wish to put to Dr Edwards.

75. In the event the appellant produced the 22 page document noted previously which included reference to questions he wished to put to Dr Edwards.

76. To assist the appellant, the tribunal formulated questions to reflect those concerns and put them to Dr Edwards.

77. The tribunal notes here, for convenience, that certain issues were narrowed as result of hearing the interposed evidence, and as a result the range of questions put by the tribunal was similarly narrowed.

78. Dr Edwards answers to the questions put by the tribunal can be summarized as follows.

79. Dr Edwards accepted that he worked as GP at Fairbrook Medical practice but was of the view that this did not give rise to a conflict of interest with his work as a senior clinical adviser for the NHS. The two areas of work were completely separate and he received separate payment for the work undertaken as a senior clinical adviser. Dr Edwards engages in discussions with other members of the respondent's team on issues of probity and has undertaken particular training on issues relation to managing conflicts of interests and bias.

80. Dr Edwards said that voluntary undertakings from a performer were used where practical and when the respondent wished to investigate matters. The undertakings were set out in written form and would usually restrict a person's practise in particular ways. The undertakings fall outside the regulatory regime and are different from the imposition of conditions under the performers list regulations. Voluntary undertakings enable the respondent to investigate, manage and hold the risks that have been identified.

81. It is noted here that the appellant also wished to ask Dr Edwards about the lack of suspension payments to the appellant. It was not necessary to put those questions to Dr Edwards in the light of the interposed evidence form the appellant which is noted below.

The oral evidence of Sian Nelson-Jones and Bethany Sleeman

82. Ms Nelson-Jones and Ms Sleeman are both employees of Genix Healthcare. They both prepared witness statements dated 7 May 2017 and 6 June 2017 respectively for the purposes of GDC proceedings. Their evidence related to the incident of 20 April 2016 when the appellant was removed from Genix Healthcare premises by the police. Ms Nelson-Jones and Ms Sleeman both adopted their statements as evidence in chief.

83. The tribunal directed that there be limited further oral evidence in relation to those events. That is because the core of the respondent’s case is that the appellant is unsuitable to be on the list because of his failure to engage in the respondent’s investigatory process, rather than the details of the incident itself.

84. The tribunal notes here for convenience that the appellant's response to such directions was to accuse the tribunal of racism.

85. The essential aspects of Ms Nelson-Jones and Ms Sleeman’s evidence can accordingly be summarized as follows.

Evidence of Ms Nelson-Jones

86. Ms Nelson-Jones is a consultant and clinical adviser at Genix. She was working at Genix Middlesbrough on 20 April 2016, as was the appellant. She said that there are some minor differences between her statement to the police taken at or about the time of the incident and her subsequent statement to the GDC.

87. Ms Nelson-Jones saw the appellant and Ms Sleeman in discussions that appeared aggravated. She observed that the appellant was not calm. Over the period of the incident the police were called by the appellant. Two officers initially attended. Ms Nelson-Jones understood that Genix head office had requested the appellant to leave the premises. The officers asked the appellant to leave. The appellant made a further call to the police and told a senior officer that the appellant was being bullied by the police officers in attendance. The senior officer attended and instructed the officer against whom the appellant had made complaint to leave the room. The senior officer told the appellant that Genix head office had asked him to leave. The appellant refused to leave and made a number of allegations. The police officer removed the appellant from the premises.

88. Ms Nelson-Jones did not know whether or not the appellant had been summarily dismissed in the course of the conversations between head office and the appellant at the time of the incident. She subsequently learnt that the appellant had been dismissed about one month later. The appellant at the time of the incident did not say that he had been dismissed over the telephone by head office.

Evidence of Ms S Sleeman

89. Ms Sleeman is the compliance lead at Genix Healthcare and was working as the practice manager at Genix Middlesbrough on 20 April 2016. She was notified by staff that the appellant was irate and then he had phoned the

police. She went to see him and the patient with whom the appellant was in dispute. Ms Sleeman rang Genix Healthcare to obtain guidance about what to do, and in the course of the telephone conversation passed the telephone to the appellant. Ms Sleeman understood that, in the course of the conversation between head office and the appellant, the appellant had been asked to leave the premises. At some point during these events the police arrived, and left after a period of time before attending again. A senior police officer then arrived and asked for an explanation of events. The police officer asked the appellant to leave the premises. He refused to do so. The appellant was then removed by the police.

Submissions and evidence on behalf of the Appellant

90. The case as put forward by the appellant in his notice of appeal did not directly address the concerns of the respondent. In essence the grounds submitted that the respondent's decision was unreasonable. The grounds also alleged that the decision was based on *deep rooted tyranism, fascism, [and] totalitarianism* and that *the persecution, extermination and ethnic cleansing by the NHS should not be allowed to prevail.*

91. Earlier in the proceedings and prior to the hearing, the appellant had been directed by Judge Khan to consider amending his grounds of appeal. The appellant did not do so in response to those directions.

92. The present tribunal at the hearing therefore sought to explore the issue of whether there was an underlying case that might be put forward on behalf of the appellant. The tribunal did so by guiding and inviting the appellant to respond to the particular concerns identified by the respondent. The tribunal afforded the appellant the opportunity to explain: the e-mail correspondence; his position in relation to the requests from the respondent to attend meetings to find out about his circumstances; and his refusal to undertake an occupational health assessment. The tribunal also asked the appellant about his concerns in relating to the lack of suspension payments by the respondent.

93. In order to facilitate this process the tribunal directed that the appellant need not give evidence from the witness box and that he could address the tribunal from where he sat.

94. The appellant's evidence and submissions may be summarized as follows.

95. The appellant relied on his two witness statements dated 1 July 2018 and 4 July 2018 and said that there was no case for him to answer and that the respondent's case focused on historic events.

96. In answer to questions from the tribunal he said that the original dispute between himself and Cottage Dental Care arose because the practice had

asked him to engage in fraud whilst he was working for them. The appellant also sought to recover sums of money from them for work he had undertaken.

97. The appellant said that he had sent e-mails about these matters to a lot of people. That was because whenever he asked for an answer to a question he was directed elsewhere to obtain the information that he sought.

98. As to the events of 20 April 2016 the appellant had called the police to the premises because the patient whom he had been treating had threatened to call the police about the appellant's conduct. The appellant thought that attendance of the police would be helpful.

99. The appellant had spoken by telephone to Genix Healthcare headquarters during the course of the incident. The appellant was told that he was summarily dismissed and that he should leave the premises. The appellant understood that he was therefore required to leave the premises. The appellant said that at the time he had wanted something put in writing to say that he had been dismissed because he was not clear about Genix Healthcare's position regarding his contract with them. The appellant was then removed from premises by the police in handcuffs.

100. In relation to subsequent events the appellant said that he had been invited in an e-mail by Mr Offor to attend a meeting with the respondent, but that the e-mail had been recalled.

101. In relation to subsequent requests to attend a meeting in May 2016, the appellant was unable to attend because he was working in Yeovil. The appellant had suggested that a meeting take place at Capsticks solicitors offices in London.

102. In relation to the respondent's request for the appellant to attend for an occupational health assessment, the appellant said that he did not think that was appropriate because he been found to be suitable to work as a dentist by Kings College where he had obtained his dental qualifications. The request by the respondent for an occupational assessment was an abuse of their regulatory powers. Such an assessment would also lead to duplication given the GDC involvement and the mental health assessments that had been undertaken under the mental health act.

103. The appellant said that he had provided all the relevant information to the respondent to enable suspension payments to be made to him. The appellant said that he had made available information relating to his earnings for the years 2006 to 2010 to the respondent. The appellant said that he accepted that the Suspension Payment regulations required details of 6 months earnings prior to the suspension decision in May 2016; but that in his case his income should be protected by reference to prior earnings in 2006-2010 when

he had earned significantly more income.

104. The appellant's evidence in cross examination may be summarized as follows.

105. The appellant said that he did not wish to answer questions about his understanding of his professional obligations, as set out under the GDC document Standards for the Dental Team, because there were on-going proceedings before the GDC. The appellant said that he was not aware that the respondent was one of the regulators in respect of which he was under a duty to co-operate.

106. The appellant did not regard himself as having a duty to respond to the requests from the case manager Mr Ofor on 18 April 2016 to meet because Mr Ofor had recalled his e-mail making that invitation. The appellant therefore did not take the suggestions seriously and did not read the e-mails but only glanced at them because he had just returned from holiday and was going to be going to work.

107. The appellant was of the view that Mr Ofor's request by email on 3 May 2016 for a response amounted to harassment and was intrusive.

108. The appellant was asked about his response to a request from Lord Howe to cease and desist from being sent e-mails. The appellant said that Lord Howe was racist in making such a request.

109. The appellant was aware that Angela Sandford on the morning of 12 May 2016 had contacted the appellant by e-mail. The appellant responded by e-mail saying that he wanted a fair trial. The appellant also tried to ring her back at 18.23 but she did not pick up the phone. The appellant was of the view that Genix was being fraudulent and conspiring with others to mount a malicious prosecution against him. The appellant was unable to reply to the e-mails sent by the respondent because he was being overwhelmed by them.

110. The appellant received the letter dated 13 May 2016 putting him on notice that he had been suspended. The appellant did not read the letter in full. The appellant was of the view that this letter showed that the respondent was engaged in a deceit based on the report from Genix about the incident on 20 April 2016.

111. The appellant said that he did not put forward an explanation refuting the allegations made in the period from his suspension on 12 May 2016 to the final decision date in December 2016 because he was involved in a county court claim with Genix and did not want to interfere with that process. The appellant also said that his position had been set out in the Genix report and that the respondent had already made up its mind about the case.

112. On further questioning the appellant said that Angela Sandford was a liar, that she had delusional problems and that the documents she had authored were a fabrication.

113. The appellant said that he did not accept that the respondent had made legitimate inquiries because of the extent of those inquiries; and because of the way those inquires had been made.

114. In respect of the respondent's requests for an occupational health assessment to be undertaken, the appellant said that such requests were inadequate legally; and at that time, he had been subject to a mental health assessment on 9 June 2016, and had been *cleared*.

115. The appellant was asked about his suggestions that the meeting with the respondent scheduled for 17 May 2017 be re-arranged to take place at Capsticks solicitors offices in London. In response the appellant said that he was in Yeovil at the time. When asked further whether he would have been able to attend such a meeting at Capsticks, the appellant said that he wanted a neutral venue and that he was unable to attend. The appellant said that the fact that the panel issued its decision shortly after the meeting showed that the respondent had already made its mind up.

116. The appellant did not attend the meeting on 7 June 2016 because he felt overwhelmed by the psychological assessment that had been undertaken and because he was not a solicitor.

117. The appellant did not attend the oral hearing in December 2016 to remove him from the list because the respondent had pre-determined the outcome. The appellant said that he had considered making representations but was concerned that his representations might be misconstrued.

118. The appellant was also asked about some of his e-mail correspondence. The appellant said that he had sent e-mails to a number of recipients, as for example as set out at B58, to Ian Younger; and at B50 to Lord Howe. The appellant had not ceased to send out such e-mails as requested: in response he had increased the numbers on the circulation list.

119. The appellant was of the view that it was virtually impossible that now, 3 years later, the same would happen again. The appellant felt that he had been entrapped. The e-mails had been appropriate at the time.

120. The appellant in an e-mail at C72 dated 16 May 2016 had said that Laura Cotton was demented because that was a fact; and it was a fact that she had been groomed to say what she had said. It was appropriate to say that Laura Cotton was demented in the same way that it was appropriate that the

authorities had arranged for the appellant to be assessed under the mental health act. The appellant's distribution of the emails was comparable to the GDC's distribution of the outcome of its regulatory proceedings by placing such reports on the web.

Closing Submissions on behalf of the Respondent

121. On indication from the tribunal, Mr Thomas confined his closing submissions to reliance on his skeleton argument and submissions on matters arising in the course of the hearing.

122. Mr Thomas' further submissions may be summarized as follows. The documentation now made available to the tribunal by the appellant showed that there were mental health concerns about the appellant and that the appellant's strong sense of right and wrong clouds his judgment.

123. The appellant's conduct in making allegations, in court and against the tribunal, of racism, corruption and taking payments were not only scandalous but also demonstrated the continuing clouding of his judgment. The appellant demonstrates no insight into his own behaviour.

124. The evidence shows that the appellant was unsuitable to remain on the performers list.

Closing Submissions on behalf of the Appellant

125. Before being invited to make closing submissions, the appellant was offered, and took, a short break, in order to formulate a response to Mr Thomas' submissions on behalf the respondent. The appellant was also assisted in making his submissions by Mr Thomas who allowed the appellant access to his own note of his closing submissions held in electronic form on his computer.

126. The appellant's subsequent submissions may be summarized as follows.

127. The appellant was a performer of dental services and as such a clinician. He was not a provider of dental services involved in administration. He should therefore be judged accordingly.

128. The tribunal should make a fresh decision and not simply focus on the events of 2016. The appellant had now agreed to a mental health assessment to be undertaken on the instruction of the General Dental Council. This showed flexibility on the part of the appellant and not rigidity.

129. The appellant is more than suitable to remain on the list because he had qualified at a Kings College London and is a good dentist.

130. The appellant had failed to receive any suspension payments from the respondent. This was a punitive act. If the respondent had acted differently, then the appellant would have moved from his rigid position to a position of flexibility.

131. The appellant is now co-operating with the General Dental Council and cannot see why he could not do this with the respondent. He has now learnt a lot about administration which he had not considered as a clinician.

132. The appellant wished to continue in dentistry. The appellant had demonstrated that he is able to do things differently and there would be no recurrence of events that would mean that he would have to face a panel in the future.

Findings of fact and assessment of evidence

133. The tribunal considered all the evidence and the submissions. In coming to its decision the tribunal has looked at the evidence as a whole**.**

134. The tribunal notes that the respondent's core argument in essence is that it is the failure of the appellant to engage in the investigatory and regulatory process arising from legitimate concerns that show that the appellant is unsuitable to remain on the dental performers list. In the light of the way the respondent has framed its case the tribunal's findings of primary fact are set out, as necessary, below.

135. In making its decision the tribunal considered all the relevant matters noted within the regulations particularly as they relate, under regulation 15, to the nature of the matter; the length of time since the events; the actions of other regulatory bodies; and the risk to patients.

136. For convenience, the tribunal has grouped its findings under the following headings: the e-mail correspondence; the 20 April 2016 incident; the appellant's responses to the respondent's investigatory process; and subsequently, issues of insight and unsuitability.

Findings on the emails correspondence

137. The appellant accepts that he has engaged in the e-mail correspondence set out in the bundle running to several hundred pages. [*The tribunal notes here for convenience that more than two hundred pages of e-mails are set out behind tab B of the bundle]*

138. It is not necessary to make exhaustive findings of fact in relation to the e-mail correspondence.

139. The tribunal finds that the evidence shows that the appellant has engaged in e-mail correspondence, in part, initially stimulated by a commercial dispute with Cottage Dental Care, from or about 2015 to the decision subject to appeal.

140. The tribunal finds that the e-mails were sent to a very wide range of individuals unconnected with the dispute. Typical of the range and number of recipients can be found at B50. That email, dated 13 November 2015 with a subject heading Payment *overdue Unjust deduction of wages*, has a circulation list that runs to more than approximately one hundred and fifty individuals and organizations.

141. The names on the distribution list include various employment tribunals; various MPs; various national health service organizations; the United Nations; Genix Healthcare; Theresa May; various newspapers and the police. Subsequent e-mails were also circulated to an increased number and a wider range including the ECHR, the Lord Chief Justice, David Cameron, Jeremy Corbyn, Jeremy Hunt and Zac Goldsmith.

142. Ian Younger and Lord Howe were amongst those who received such e-mails from the appellant.

143. Ian Younger was the acting director of the professional standards directorate of the City of London Police based in Bishopsgate. He replied to the appellant's e-mail and suggested that the appellant cease and desist [B58] because his actions may be construed as harassment and or breach of the communication legislation.

144. The appellant's response was to report Mr Younger to the Independent Police Complaints Commission. [B56]. The appellant in a subsequent e-mail [B248] accused Mr Younger as being a man who *was following instructions to oppress and suppress Indians*

145. Lord Howe also asked the appellant to cease and desist [C21]. The appellant said that in so doing Lord Howe was a racist and would not have issued that response to a white British citizen.

146. In addition to the wide and inappropriate circulation of e-mail correspondence, the tribunal finds the appellant in the course of e-mail correspondence has made numerous allegations that are unfounded and has widely circulated personally derogatory remarks.

147. For example, at C72, the appellant issued an e-mail describing Laura Cotton, as demented and groomed by Genix Healthcare.

148. By way of further example, at B116, the appellant described Angela Sandford, the officer responsible for managing the respondent's case officers, as carrying out a witch hunt.

149. The tribunal further finds that the appellant has engaged in inappropriate e-mail correspondence involving scores of individuals in matters that do not concern them.

Findings on the 20 April 2016 incident

150. The tribunal makes the following findings of fact in relation to the incident on 20 April 2016. The tribunal need not make detailed findings of fact about this incident. That is because, as noted previously, in broad terms the core of the respondent's case relates to the appellant's response to the respondent's concerns, rather than to the incident itself.

151. Accordingly, the tribunal finds as follows. The appellant was working at Genix Middlesbrough on 20 April 2016. Also in attendance in the same building were Ms Nelson-Jones and Ms Sleeman. At various points on the day these individuals were involved in a dispute.

152. The appellant appeared to be irate and made a number of telephone calls. The appellant was asked to leave the premises by his employer, but did not do so.

153. Police officers attended the scene. The appellant was asked by officers to leave the premises. The appellant refused. A senior police officer arrived on the scene. He asked the appellant to leave the premises. The appellant refused. The police officers removed the appellant from the premises.

Findings on the appellant's responses to the respondent's inquiry and investigation

154. The tribunal finds that the e-mail correspondence and the incident of 20 April 2016 gave rise to legitimate concerns about the appellant that required the respondent to make inquiries and called for an explanation from the appellant**.**

155. The tribunal finds that the respondent made the following attempts to engage the appellant either by making requests for information; inviting the appellant to meetings; and making suggestions that the appellant undertake an occupational health assessment.

i. 18 April 2016 (prior to the 20 April 2016 incident) [C35]– request from case manager Mr Ofor asking for a response to the

respondent's concerns about the e-mails only and suggesting the appellant obtain support from his defence union

ii. 12 May 2016 (after receipt of serious incident report from Genix re 20 April 2016) [C48] – invitation to meet to explore voluntary undertakings in light of concerns and to undertake occupational health assessment

iii. 13 May 2016 [C56] - formal notification of meeting to be held on 17 May 2016 issued by Angela Sandford.

iv. 13 May 2016 [C58] – notice of immediate suspension in light of appellant's indication that he would not attend meeting on 17 May 2016

v. 17 May 2016 [C68] - notice of arrangements to be made for oral hearing of appellant's case and request for consent for appellant to undertake an occupational health assessment

vi. 3 June 2016[C94] – invitation to make representations and attend oral hearing on 7 June 2016; and request for consent to undertake an occupational health assessment

vii. 13 June 2016 [C103] – notice of outcome of hearing held on 7 June 2016

viii. 1 August 2016 [C110] - letter to appellant urging him to reconsider his position and undergo an occupational health assessment

ix. 21 October 2016 [C113] – letter asking appellant to reconsider position about not meeting with the respondent and undergoing occupational health assessment

x. 28 October 2016 [C115] – letter putting appellant on notice of consideration of extension of suspension from list

xi. 16 November 2016 [C123] – formal notification of oral hearing on 14 December 2016 to consider appellant's removal from the list and inviting attendance and representations

xii. 21 November 2016 [C129] – provision of further information to appellant and invitation to make representations in light of appellant's indication that it was highly unlikely that he would attend meeting.

xiii. 8 December 2016 [C132] – telephone call with case manager in which the appellant was asked to reconsider his position about non-attendance and not making written representations

156. The tribunal further finds that the appellant failed to engage or co-operate appropriately with the respondent about the concerns raised by the e-mail correspondence and the 20 April 2106 incident. It is not necessary to particularise the details of what the appellant said and did in relation to each of the inquiries made or steps taken by the respondent. That is because the material aspects of what he said and did are noted in the sections below, where the tribunal sets out its consideration of the appellant's insight and suitability.

157. The tribunal further finds that the appellant, during the currency of the respondent's investigations, did not put forward a meaningful response that engaged and addressed the concerns of the respondent.

Assessment of insight and unsuitability

158. The tribunal now turns to its assessment of suitability based on the facts as found above, and makes further findings as necessary.

159. For the reasons set out in subsequent paragraphs, the tribunal finds that the evidence shows that appellant lacks insight into his actions and the consequences of his actions. In this respect, the tribunal finds that the appellant's behaviour and conduct, between the emergence of the e-mail correspondence, in November 2015, to the date of the decision subject to appeal, are characterised by lack of judgement, irrationality, and distorted thinking.

160. The tribunal further finds that the evidence of the appellant's conduct and behaviour at the hearing demonstrates that these characteristics remain.

161. It is not necessary to particularise every aspect of the evidence showing the appellant's lack of insight. An assessment of a sample of the evidence and of the tribunals findings of fact as above, is sufficient. For convenience, these matters are grouped below under the headings insight and lack of judgement; and insight and irrationality.

Insight and lack of judgement

162. The appellant has demonstrated a lack of judgement. At the start of the relevant period the facts show that the appellant engaged in extensive email correspondence about a private commercial dispute; and that he circulated the emails to a wide range of people who had no connection with the dispute.

Behaviour of this kind manifestly raises concerns about the appellant's judgement and behaviour. The appellant did not show any real appreciation, during the course of the respondents inquires, of the significance of engaging in such correspondence and how it might be perceived by recipients or a third party observer.

163. Indeed, when the appellant was asked to cease and desist the appellant not only continued to engage in this behaviour, but, as he said in oral evidence, he escalated matters.

164. Similarly, the appellant has failed to demonstrate a real understanding and appreciation of the significance of events relating to the incident of 20 April 2016. A true understanding of the bare outline of the events of that day as found above, which culminated in the appellant effectively being removed from his place of work by the police, would include an appreciation that such circumstances manifestly call for inquiries to be made.

165. The appellant's failure to appreciate the import of these matters demonstrates a lack of insight into his circumstances. That same failure is also demonstrated by his behaviour subsequently.

166. Thus, because the appellant did not have insight into his actions or the consequences of his actions, he did not recognise that the respondent had a legitimate concern and was entitled to make inquiries. The depth of the appellant's failure to appreciate the respondent's role is further demonstrated by his oral evidence. For example, when asked in cross examination about his duty to co-operate with the respondent as a regulator, he said that he did not want to answer such questions because of the proceedings before the GDC; and that he was not aware that the respondent was a relevant regulator.

167. The evidence shows that there are numerous other examples of the appellant's lack of insight. Thus, for example, the evidence shows that the appellant failed to have any meaningful engagement in the investigation process. The appellant was invited to meet with the respondent, either formally or informally or attend a hearing, or put forward an explanation for his behaviour, on at least nine occasions.

168. The appellant's response to such requests was variously but not exhaustively: to say that he considered that the initial requests by Mr Ofor had been retracted; to say that he was being harassed when the respondent attempted to follow up their inquiries in the light of the lack of a meaningful response; to say that the respondent in continuing to make inquires and in taking action to suspend in the light of lack of a meaningful response, was conducting a witch hunt; to say that Angela Sandford was a liar whose records were a fabrication and that the respondent was engaged in a conspiracy with Genix Healthcare to mount a malicious prosecution against him; and to say

that he was too busy working in Yeovil when approached to attend a meeting in May.

169. The tribunal finds that the appellant's lack of insight is also demonstrated by his failure to engage with the respondent in undertaking an occupational health assessment. In oral evidence the appellant put forward a number of reasons why he did not co-operate with such an assessment.

170. He said that such an assessment was inappropriate because he had obtained his dental qualification from Kings College London in 2002.

171. The appellant also said that an occupational health assessment was not necessary because he had been *cleared* by the community mental health team who had been called to assess him under the mental health act and had decided no action need be taken.

172. The appellant also said that an occupational health assessment would lead to unnecessary duplication of assessments because the GDC was carrying out its own assessment.

173. The tribunal finds that these responses add significant weight to the view that the appellant lacks insight. The appellant's suggestion that the mere fact that he has obtained a dental qualification shows that it is unnecessary to undertake an occupational heath assessment is patently absurd. The purpose of an occupational health is to assess the appellant's health; to see if it is having an effect on his work; and if so, what steps to take. The mere fact of holding a particular professional qualification is not material.

174. Similarly, the appellant's view that, the decision of the community mental heath team not to intervene under the Mental Health Act following a home assessment, amounts to him being *cleared* shows a lack of understanding of, and insight into, the concerns of the respondent as statutory regulator.

175. Further, the tribunal finds that the appellant's view that the respondent's request for him to engage in an occupational health assessment would amount to duplication is disingenuous. That is because the respondent made those requests on five occasions over the period May 2016 to December 2016. However, during that period the appellant was also not engaging with the GDC in terms of undergoing an assessment. There was therefore no duplication. The appellant has only very recently given consent for his mental health to be directly assessed by the GDC; and the assessment, in event has yet to be undertaken.

Insight and irrationality

176. The appellant's failures and lack of insight noted above are compounded by

the actions and approach that he has taken in response to events as they have unfolded. The tribunal finds that the appellant has a tendency to make unfounded allegations amounting to irrationality.

177. For example, but not exhaustively: the appellant said that Lord Howe was racist because Lord Howe asked the appellant to stop sending him emails about his private dispute; the appellant made a complaint to the IPCC against Ian Younger because Mr Younger had asked the appellant to stop sending him emails and for advising that his actions might amount to a criminal offence; the appellant also accused Mr Younger of being a man who was following instructions in oppressing and suppressing Indians; and the appellant said that Angela Sandford, in making her inquiries on behalf the respondent, was conducting a witch hunt, and as part of a conspiracy with Genix healthcare, was engaged in maliciously prosecuting the appellant .

178. The tribunal notes that there are other examples in the evidence before it. For example, the appellant alleged in emails that Laura Cotton was demented and had been *groomed* by Genix; and in oral evidence on this issue asserted those matters to be matters of fact without equivocation. It is not necessary for the tribunal to set out each occasion when such unfounded allegations have been made.

179. The tribunal however does note that in addition, and perhaps most egregiously in the course of the hearing before the tribunal, the appellant said that the tribunal was corrupt and that he had seen a cheque exchanging hands between those involved in the proceedings. The making of such an allegation merely adds weight to the currency of the concerns.

180. The tribunal is of the view that these matters and further examples do not require further elaboration and exposition in the light of what has been said above.

Assessment and conclusion as to unsuitability

181. On the basis of the findings above, the tribunal finds that the appellant is unsuitable to remain on the dental performers list. That is because the appellant has failed and continues in failing to properly recognise that the respondent has legitimate concerns about his use of emails and the events of 20 April 2016; and has failed to meaningfully engage in the respondent's investigations of matters of legitimate concern.

182. Further, the appellant's behavior and conduct throughout, from the start of the respondent's involvement, up to and including the hearing before the tribunal, shows that the appellant has a continuing lack of insight into his behaviour and the consequences of his behaviour.

183. The approach that the appellant has taken has limited the respondent's ability to obtain information from the appellant in order to inform an assessment of the risk that he may represent to the public.

184. In these circumstances, the tribunal finds that removal of the appellant from the list is a proportionate response to the facts as found. The tribunal notes that, where there is a finding of unsuitability under the performers regulations, there are no other measures short of removal, such as suspension or the imposition of conditions, that are available in law.

185. In coming to this decision, the tribunal finds that the appellant's behavior is of continuing concern and rejects the submission to the effect that the appellant has demonstrated a willingness to engage in the respondent's process. That submission is fundamentally undermined not only by the persistence of the appellant's conduct over a significant period of time, but also by his continued conduct after the decision subject to appeal, and his conduct at the tribunal.

186. In coming to this decision, the tribunal also takes account of the GDC's determination in imposing a one year suspension on the grounds of ill-heath. The tribunal attaches limited weight to the steps taken by the GDC. That is because the steps taken by the GDC are taken with a different objective in mind and for purposes that are significantly different from those that arise in the present proceedings. In addition, for the purposes of the application of the performers regulations, there is no distinction made between those who are unsuitable on health grounds and those unsuitable for other reasons.

187. For the reasons given above, the appeal is dismissed.

Decision

The appeal is dismissed

Mr Aggrawal is unsuitable to be included in the dental performers list

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

Date Issued: 16 July 2018

Notice to parties
The parties' attention is drawn to regulation 46 of the Tribunal Procedure Regulations whereby a party, within 28 days of the issue of this determination, may make a written application to the Tribunal for permission to appeal