

First-tier Tribunal Primary Health Lists

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

CASE NO 2024-01075.PHL

Heard at Royal Courts of Justice London
On 21 and 22 August 2024

BEFORE
Tribunal Judge Atkinson
Ms L Bromley (Lay member)
Dr D Cochran (Specialist member)

BETWEEN

Dr Hafizur Rahman

Appellant

and

NHS England

Respondent

DECISION AND REASONS

Representation:

For the Appellant: Mr S Butler of Counsel
For the Respondent: Mr A dos Santos of Counsel

The Appeal

1. This is an appeal against the decision of the respondent, issued on 6 March 2024, to impose conditions on the appellant's continued inclusion in the Medical Performers List (the list) under Regulation 10 of the National Health Service (Performers Lists) (England) Regulations 2013 (the regulations), on the grounds that continued inclusion in that performers list would be prejudicial to the efficiency of the services which those included in that performers list perform.

Summary Background and chronology

2. The appellant qualified as a GP in August 2011. He joined the Charlton House practice as a partner in 2013 and subsequently became a single-handed partner at the time of the events relating to the appeal.
3. In 2021 the respondent was concerned about allegations of the appellant's
 - i) failure as a GP to provide safe clinical care for patients at Charlton House Medical Centre where he is a single handed principal; and
 - ii) failure as a principal GP to maintain appropriate leadership and oversight of clinical staff and practice systems/policies at the practice.
4. On 9 June 2021 the GMC suspended the appellant.
5. The appellant has not performed services under the list since 9 June 2021.
6. On 14 June 2021, the respondent imposed a mandatory suspension of the appellant's inclusion in the list.
7. On 22 September 2021 the CQC suspended the practice registration.
8. On 29 September 2021 a caretaker provider took over the management of the practice under a temporary contract.
9. On 24 June 2022 a first-tier tribunal allowed an appeal against the CQC suspension.
10. On 14 August 2023, the GMC suspension was replaced with conditions and the mandatory suspension imposed by the respondent on the appellant's inclusion in the list ceased to have effect.
11. On 11 September 2023 the respondent notified the appellant that his suspension from the NHS Medical Performers List had been revoked.
12. On 6 November 2023 the appellant was formally notified of NHS England's proposal to impose conditions on the appellant's continued inclusion in the list. The appellant subsequently requested an oral hearing before a panel.
13. On 5 February 2024 the GMC revoked the conditions on the appellant's registration.
14. On 9 February 2024 the appellant notified the respondent that he intended to start work as a locum. Agreement was reached between the appellant and the

respondent not to return to work until the relevant panel had determined the matter.

15. On 28 February 2024, the respondent in a decision taken following an oral hearing imposed a condition on the appellant's continued inclusion in the list to the following effect

-The appellant must not provide NHS primary care services unless he is working within the remit of the NHS Return to Practice (RtP) programme. Evidence of engagement with the RtP must be supplied to NHS England prior to commencing practice.

16. The appellant was notified of the decision in a letter dated 6 March 2024.

The Law

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

18. In brief, regulation 10 makes provision for imposition of conditions on continued inclusion on the performers list for the purposes of preventing any prejudice to the efficiency of the services which those included in the list perform; and sets out the relevant procedure for giving notice to the performer of the allegations, the action being considered, the opportunity to make representations and the opportunity to put the performers case at an oral hearing.

19. 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

20. The parties did not raise any preliminary matters at the hearing.

21. The tribunal noted that the specialist member of the tribunal, Dr Cochran, had sat as a member of the tribunal in 2022 which had determined the appeal against the Care Quality Commission decision to suspend registration of the Charlton House practice. Both representatives in the present proceedings confirmed that no issue of bias, whether real or apparent, arose in the present case.

The documents and evidence

22. The tribunal was provided with a stitched electronic bundle, indexed to E79. It comprised all the filed material on which both parties sought to rely together with other background materials.

23. In addition, at the hearing, Mr dos Santos provided, and subsequently filed, a collection of authorities indexed and tabulated to tab 5 without objection from Mr Butler.
24. The tribunal heard oral evidence for the respondent from Siobhan Singlehurst, senior performance case manager in the professional standards team at NHS England; and Dr Mehreen Tahir, deputy medical director, professional standards and systems improvement team NHS England.
25. The tribunal also heard oral evidence from the appellant.

Opening Submissions and evidence on behalf of the Respondent

26. Mr dos Santos relied on his skeleton argument and made further submissions. The respondent's case may be summarised as follows.
27. The background to the appeal dates back to 2021 as set out in the chronology. The appellant had not performed NHS primary medical services since the GMC suspension of the appellant.
28. The respondent's decision, issued on 6 March 2024, to impose conditions on the appellant's continued inclusion on the list was fair and proportionate. The respondent in imposing the condition was not bound to impose a proposed return to work plan that had been the subject of previous discussions with the appellant on 26 February 2024.
29. The appellant had failed to meaningfully and, in a timely fashion, engage with the respondent in the period between the GMC revocation of the appellant's suspension on 14 August 2023 and January 2024. That view was supported by the series of email communications from 11 September 2023 onwards, as set out in the documentation. In the course of those communications, despite numerous invitations from the respondent, the appellant had failed to give a positive indication that he was actually going to meet with the respondent, nor had he asked for such a meeting.
30. Further, the appellant, at the oral hearing of 28 February 2024, had backtracked on aspects of the action plan, as previously discussed, relating to whether or not the appellant needed to sit in and observe surgeries.
31. In the light of the Medical Royal College guidance on return to practice following absence, which noted that in all circumstances, an absence of three months, or more, is likely to significantly affect a practitioner's skills and knowledge; and that an absence of two years or more generally requires retraining, subject to review on a case-by-case basis, it was appropriate to impose a condition that the appellant undertake the NHS Return to Practice (RtP) programme.

The oral evidence of Siobhan Singlehurst,

32. Ms Singlehurst adopted her witness statements of 22 May 2024 and 11 June 2024 as evidence in chief. She was cross examined. It is not necessary to rehearse the detail of her oral evidence which may be summarised as follows.
33. Ms Singlehurst is a Senior Performance Case Manager at NHS England working in the professional standards team. She has worked in this role since 2019 and works alongside a clinical adviser. Ms Singlehurst has managed the appellant's case since February 2023.
34. Ms Singlehurst set out the background to the proceedings and her involvement in taking the appellant's case to the oral hearing of respondent's relevant decision-making panel on 28 February 2024. The documentation relating to the 28 February 2024 hearing was exhibited to her witness statement. She confirmed her understanding of the respondent's decision.
35. The NHS Return to Practice (RtP) programme involves the returner completing a self-assessment questionnaire online; the compilation of a report by an adviser about additional continuing professional development and other learning needs; a meeting to talk about the report; confirmation of suitability for the scheme; and a subsequent benchmarking process on a sliding, banded, scale of 1 to 5 with 5 indicating the doctor being up-to-date with a planned return after one month; and bands 1 and 2 indicating lack of suitability for the course.
36. The programme is nationally funded and seen as a supportive process providing assurance of suitability of a doctors return to practice. The course is not regarded as remediation in nature. It is not available to those who are subject to GMC conditions.
37. The respondent's framing of the appellant's case had developed over time. The statement of case dated 15 January 2024 took into account developments relating to the GMC's decision to change the conditions imposed on the appellant and the extent of the appellant's engagement in the respondent's process.
38. The respondent and the appellant had drawn up a proposal in the form of a return to work action plan which was to be put to the relevant panel for consideration. The document is a draft because it was for the relevant panel to make a decision about the arrangements for return to work.
39. The return to practice programme is seen by the respondent as less onerous than the conditions imposed by the GMC because it does not require close supervision, does not require the appellant to bear the costs of a trainer nor of continued professional development, and provides a bursary to those on the course.
40. The case as submitted to the respondent's panel did not refer to the return to practice programme. The panel had asked questions about the programme and Ms

Singlehurst had provided answers in response.

41. The return to practice programme had not been proposed earlier because the course was not suitable and was unavailable to individuals, like the appellant, who were subject to conditions imposed by the GMC. That position changed when the GMC revoked the conditions on the appellant's practice.
42. The return to practice programme was not regarded as mandatory after 2 years of absence from practice. It was a supportive and structured process of return to work that provided assurance.
43. The respondent was aware that the GMC had revoked the conditions imposed on the appellant in February 2024. The respondent had decided not to issue a further regulation 10 notice in response because that would have led to further delay. A panel would have been required to decide to issue such a notice.
44. As to the appellant's engagement, the respondent had asked in September 2023 for information relating to continuing professional development and for the development of an action plan. The appellant's engagement with the processes was belated and partial. The appellant did not provide information until only two days prior to the hearing on 28 February 2024.
45. The information provided showed that the appellant had reflected on one of the cases subject to the GMC investigation and that he had provided certificates relating to continuing professional development.
46. Ms Singlehurst was not in a position to comment on issues of remediation as she was not a clinician.
47. In response to questions from the tribunal, Ms Singlehurst said that it was open to the appellant to make an immediate application online to enter the return to practice programme. An individual had made such an application recently which had resulted in an initial assessment being completed within 2 weeks and the identification of a proposed practice placement. The process thereafter was compilation of a report following the end of the placement and information on feedback. The material was then considered by the postgraduate Dean who would sign off satisfactory completion of the course which would then be submitted to an appropriate panel for review of the conditions that had been imposed.
48. Ms Singlehurst was unaware of any funding issues over the last three years that would restrict the availability of the course.

The oral evidence of Dr Mehreen Tahir

49. Dr Tahir adopted her witness statements of 31 May 2024 and 12 June 2024 as evidence in chief. She was not subject to cross examination. Her evidence may be summarised as follows.

50. Dr Tahir is the deputy medical director for professional standards and systems improvement at NHS England and a GP training programme director for the St George's GP vocational training scheme.
51. Dr Tahir supports the decision of the respondent in light of the Medical Royal Colleges return to practice guidance.
52. Dr Tahir noted the report of the GMC expert showing the appellant's overall standard of care fell seriously below the standard expected; and that the care during medication review to be of significant concern.
53. There would be significant concerns for patient safety in the absence of the appellant completing a robust and structured return to practice programme. It would not be possible to mitigate the risks to patient safety in the absence of conditions which require the appellant to complete the return to practice programme. The programme includes clinical placement and, if necessary, assessment and mentoring.
54. The return to practice programme had been reformed in August 2023 with a view to reducing bureaucracy and improved consideration of the individual needs of the returner. The majority of returners were engaged in a placement for a period of three months.

Opening Submissions and evidence on behalf of the Appellant

55. Mr Butler relied on his skeleton argument and did not consider it necessary to make further submissions in opening.
56. The appellant's case may be summarised as follows. The tribunal is required to have regard to the notice served on 6 November 2023 by the respondent under regulation 10(2), as formulated for the purposes of making the decision now subject to appeal.
57. The present tribunal's consideration is limited to those matters set out in the notice. The notice made reference to 2 allegations concerning: firstly, failure to provide safe clinical care; and secondly failure to maintain appropriate leadership and oversight of clinical staff practice systems/policies.
58. The respondent's subsequent statement of case, dated 15 January 2024, which was prepared for the purposes of the oral hearing of 28 February 2024, set out two additional allegations relating: firstly, to failing to provide evidence of the appellant maintaining his clinical knowledge and skills and lack of evidence of remediation; and secondly, failure to engage with the respondent in regards to return to work planning. The statement of case did not amount to proper statutory notice, under the regulation 10, of those allegations.
59. The appellant had also not been put on notice that he would be required to undertake the return to practice programme.

60. In summary: the appellant had not been fairly notified of the allegations being made against him or what the respondent was considering and on what grounds. The appellant therefore did not have the opportunity to make representations and to put his case at the oral hearing of 28 February 2024.
61. Accordingly, the respondent was wrong to have imposed a condition relating to undergoing the return to practice programme.

The oral evidence of the appellant

62. Dr Rahman adopted his witness statement dated 28 May 2024 as evidence in chief. He was cross examined. It is not necessary to rehearse the detail of his oral evidence which may be summarised as follows.
63. At the time of the hearing before the respondent's panel he had not refused or failed to engage with the respondent in respect of the return to work action plan. He was focused on the GMC investigations. It was rare for a medical practice to employ a GP with such conditions.
64. The GMC had decided that he was fit to return to practice as a general practitioner with no conditions.
65. The respondent had not previously suggested that he needed to undergo the return to practice programme.
66. Dr Rahman had not taken a career break. There were no gaps in his keeping up to date with mandatory training, continuing professional development and has kept up to date with his appraisals.
67. Dr Rahman had also worked voluntarily at a general practice in administrative and managerial roles.
68. Dr Rahman has worked as doctor for over 20 years, 13 of which have been as a GP. He has undergone surgical training and core medical training. He has trained medical students, prescribing nurses, prescribing pharmacists and was about to become a GP trainer.
69. Dr Rahman feels that he does not need to join the return to practice programme. Dr Rahman considers that he has not had a career break because he has been engaged in medical related activities. The only thing he had not been doing is seeing patients. Dr Rahman accepted that he had not engaged in clinical practice for 32 months prior to the respondent's decision.
70. The respondent had been insensitive and a hindrance in its approach. Dr Rahman's position was not comparable to those who have taken a career

break. His knowledge had not diminished. He was able to diagnose conditions. Dr Rahman's view is that he was in fact a better doctor and had improved. He was in better position now than before because he had learned other things.

71. Dr Rahman had completed 12 continuing professional development courses. The certificates of completion were issued over a very short period of time, but he had been engaged in the courses over a longer period. Whilst undertaking the courses he had scanned for topics where things had changed. Dr Rahman had been gathering evidence to support his appraisal.
72. Dr Rahman had not provided further evidence about his skills and knowledge to the present tribunal for the period from March 2024 to counter the criticisms of the respondent, because such a process of providing further evidence would be endless.
73. Dr Rahman accepted that, in the period prior to the respondent's notice of its proposal to impose conditions, he had not stated to the respondent when he would be available to attend a meeting with them. Instead, he had concentrated on the GMC proceedings and hoped to be able to approach the respondent subsequently, with a *clean slate*. Dr Rahman eventually met with the respondent two days before the oral hearing on 28 February 2024.
74. Dr Rahman did not accept that he had backtracked over details of the return to work plan that had been put before the respondent's panel relating to sitting in and observing surgeries. It was the case that he had forgotten that the plan included such provisions. He had agreed to be supervised. Dr Rahman had made supervision arrangements with a friend's surgery at no cost to himself.

Closing Submissions on behalf of the Respondent

75. Mr dos Santos relied on his skeleton argument and made further submissions which may be summarised as follows.
76. The legal position is clear. The respondent at the hearing on 28 February 2024 had the power to impose the condition that it had imposed. The regulations did not require the respondent to give statutory notice of the precise condition that it might ultimately impose. In the present case the respondent had given satisfactory notice.
77. The present appeal before the tribunal proceeded by way of re-determination. As such the tribunal was not exercising powers akin to judicial review or of judicial supervision. The present tribunal was not fettered in its considerations or disposal of the appeal. The tribunal's jurisdiction is exercised within the context of the primary legislation relating to protection of the public interest which included consideration of the effectiveness and safety of the services provided under the performers list.
78. The facts in the present case showed that, at the time of the decision subject to

appeal, the appellant had not carried out relevant services for a period of 32 months. There was a presumption that over time absence from clinical practice gave rise to a risk of de-skilling. The Academy of Royal Medical Colleges guidance indicated in practice, an absence of two years or more seems generally accepted as a rule of thumb for when formal re-training will more often be required, subject to a case by case review.

79. The appellant had failed to provide evidence showing that he should not be subject to the general rule. The evidence relating to his continuing practice development courses showed he had completed 12 such courses in only a few days. They did not support the appellant's claim that his clinical skills were up to date. The appellant in oral evidence had stated that he had been involved in voluntary work located in a GP practice and in reviewing procedures and processes in preparation for inspection by the CQC. That evidence lacked detail and was not supported by evidence from colleagues or other professionals.

80. The evidence showed that the appellant lacked insight and that there was a lack of engagement with the respondent.

81. The respondent's decision to impose conditions relating to the return to practice programme was, in all the circumstances, reasonable and proportionate.

Closing Submissions on behalf of the Appellant

82. Mr Butler relied on his skeleton argument and made a number of further submissions that may be summarised as follows.

83. The performers list regulations set out the powers and procedures to be followed in the present case. The respondent had failed to follow those procedures and had failed to provide appropriate notice under regulation 10. The respondent had put the appellant on statutory notice of two allegations. The respondent in its statement of case added two further allegations but in doing so had not met the requirements of regulation 10.

84. The appellant had also not been put on notice of the condition relating to the return to practice programme. The requirement to undertake that programme would be detrimental to the appellant. He would not receive an income. The appellant would be faced with having to go back to basics.

85. It was accepted by the appellant that it would be appropriate for him to return to practice with the imposition of conditions. The appellant accepted that the terms of those conditions should be framed in the same terms as set out at appendix 1 to the respondent's notice of proposal to impose conditions dated 6 November 2023, save that the words *closely supervised* in condition 5.a be amended by deletion of the word closely.

Findings of fact and assessment of evidence

86. The tribunal considered all the evidence and the submissions. In coming to its decision, the tribunal has looked at the evidence as a whole.
87. The tribunal notes that the primary facts are largely not in dispute as indicated in the Scott schedule compiled for the hearing.
88. The tribunal notes that the appellant's core argument, in essence, is that there has been a breach of natural justice as a result of the respondent failing to put the appellant on notice of all of the allegations and of consideration of the return to practice programme, to the extent that the appellant had not had a proper opportunity to put his case at the oral hearing held on 28 February 2024; and further, that the present tribunal's considerations are limited to consideration of issues contained within the statutory notice of 6 November 2023.
89. In the light of the way the parties have framed the issues, the tribunal considers first the legal and natural justice issues; and subsequently makes findings of primary fact and secondary fact as necessary, as set out below.

The legal issues

90. The tribunal rejects Mr Butler's submissions to the effect that the appellant has not had a proper opportunity to put his case. The tribunal finds such submissions to be flawed because they fail to take into account the fact that the present tribunal proceeds by way of re-determination. That means not only that the tribunal considers all matters afresh, but also that the tribunal is in a position to take steps to cure prior procedural defects.
91. In the proceedings before the present tribunal, it is self-evident from the filed documentation, which need not be rehearsed here, that the appellant is aware of all the allegations made against him, including issues regarding his engagement and insight; and that it is proposed he should be subject to conditions relating to the return to practice programme. The respondent's position on those matters is apparent from the notice of decision issued 6 March 2024; the respondent's response to the appeal dated 5 April 2024 and the series of filed documentation thereafter.
92. Thus, to the extent that it is argued that there was a breach of natural justice based on lack of opportunity to fully know and argue the case against him at the hearing on 28 February 2024, those defects have been effectively remedied in the course of the present proceedings. The appellant knows the case against him and has had the opportunity to put his case before the tribunal.
93. Further, in light of the above, not only do the issues of adequacy of notice fall away, the tribunal now reconfirms that, as a corollary of the nature of the present proceedings being by way of redetermination, it follows that, in

considering matters afresh, the tribunal's considerations are not fettered or restricted by the terms of the notice issued by the respondent on 6 November 2023. The tribunal stands as a primary decision maker, having given the parties proper notice of the matters that fall for determination.

94. The tribunal therefore finds that there is no breach of natural justice in the present proceedings.

The tribunal's findings and assessment

95. It is not disputed that, at the time of the respondent's oral hearing on 28 February 2024, the appellant had not engaged in clinical practice since his suspension by the GMC in June 2021. By the time of the oral hearing the appellant had therefore not been in clinical practice for 32 months. At the time of the present hearing the appellant has therefore not been in clinical practice for a period of three years and two months.

96. The tribunal finds that the Academy of Medical Royal Colleges **Return to Practice Guidance (2017)** sets out a credible procedure for doctors returning to practice and provides practical advice. That guidance notes each doctor will have different needs when returning to practice, reflecting their experiences and circumstances. The tribunal notes that is not simply the length of time out of practice that needs to be taken into account.

97. As noted within the various preceding paragraphs of this determination, the guidance indicates that an absence of three months or more appears more likely to significantly affect skills and knowledge. Further, in practice an absence of two years or more seems generally accepted as a rule of thumb for when formal training will more often be required.

98. The tribunal rejects the appellant's suggestion that the return to practice programme should not be considered in his case because he has not taken a career break. That is because significant periods of time away from clinical practice, for whatever reason, give rise to a risk of de-skilling.

99. The tribunal finds that the real issue is whether or not, in the appellant's particular circumstances, it is appropriate for him to undertake the programme. It is to that question the tribunal now turns.

100. The tribunal's approach in the present case takes into account the guidance noted above and, in particular reviews the appropriateness of the programme in the light of the appellant's particular circumstances.

101. The starting point is that an individual's absence of two years or more, as a general rule of thumb, will more often require formal re-training.

102. The tribunal finds that the available evidence does not show that the appellant's

circumstances are such that the general rule should not be applied in his case for the reasons set out below.

103. The tribunal accepts the appellant's account of his medical background prior to his suspension by the GMC in June 2021. He is an experienced doctor, with surgical training prior to becoming a GP, and he qualified as a GP in 2011.
104. The tribunal finds that the appellant has failed to bring forward credible evidence showing that he has not experienced a level of de-skilling over the course of being out of clinical practice for 3 years. The appellant relies, in part, on evidence of his having completed 12 CPD courses between 23 September 2023 and 30 September 2023 and 4 further courses between February and March 2024.
105. The tribunal attaches limited weight to that documentation. That is because, not only have they all been completed within a very short time of each other, but also, on the appellant's own account, his approach to such courses was to scan the materials to look for changes on which to update himself, rather than more fully engaging with the continuing professional development process. Further, and inherently so, the completion of such courses may add to an individual's knowledge base but such documentation is not evidence showing the appellant's clinical skills and level of clinical practice.
106. The appellant also relies on his own account of engaging in other medical related activities, such as working at a GP practice looking at policies, procedures and preparing for CQC inspections.
107. The tribunal attaches limited weight to that evidence. That is because the evidence is limited in nature and content. The appellant has not provided details of the extent of such activity, where and when it was undertaken, for what period of time and what the outcomes were. Further, the appellant's claim is not supported by evidence from other sources that would attest to the extent of such work, its value and on other matters that might demonstrate the significance of such activities.
108. The appellant also relies on his having engaged in an appraisal meeting on 27 February 2024, the day before the respondent's panel oral hearing. The tribunal attaches limited weight to this evidence. That is because the report itself shows that the appraisal was incomplete in that the domains relating to patients, partnership communication; and maintaining trust and professionalism, could not be assessed due to the appellant not having been in clinical practice.
109. The tribunal finds that the above matters show that the appellant's circumstances are not such that he should be considered to fall outside the general rule of thumb regarding formal re-training, as set out in the guidance.
110. The tribunal finds, in addition to the above, various other factors show that in the appellant's particular circumstances, the general rule should be followed. Those

matters are twofold and relate to: issues of the level of the appellant's insight; and the appellant's engagement with the regulatory and performers list process.

111. Turning first to the issue of insight: the tribunal find that the appellant has limited insight into the issues arising from his period of time out of clinical practice. Whilst the appellant accepted that generally there was a risk of de-skilling after an absence from clinical practice, he maintained that he had not become de-skilled over the last 3 years because of his continued engagement with medical issues and undertaking CPD courses.
112. The tribunal finds such evidence shows that the appellant does not appear to appreciate the difference between engaging in learning as distinct from engaging in hands on clinical practice with patients.
113. Further, the appellant also expressed the view that he was now a better GP than before his suspension because of his learning. The tribunal finds such evidence further demonstrates the appellant's lack of insight into the significance of his absence from practice and the distinction between learning based on courses and actually engaging in clinical practice.
114. The tribunal finds that other aspects of the appellant's evidence demonstrate lack of insight as to the consequences of his absence from clinical practice. For example, the appellant is of the view that he was exonerated by the GMC and the case against him was effectively groundless.
115. The tribunal finds that the documentation from the GMC does not show that to be the case. The GMC had originally commissioned a report from an expert which indicated, in 4 cases, there was evidence showing that overall care in those cases had been seriously below the standard expected of a reasonably competent GP; and 2 cases that were below, but not seriously below that standard. The GMC did not impose conditions after 5 February 2024 because it considered the threshold for an interim order could no longer be maintained and to do so would be disproportionate. The order did not show or say that the appellant had been exonerated.
116. Further, the appellant put forward the view that the GMC had decided that he was fit to practise as a GP with no conditions. That view is wrong. Practise as a GP performing services within the NHS is regulated under the performers list process. The GMC regulates the medical profession as a whole, in a wide range of settings. The GMC in revoking the conditions did not and could not determine matters relating to the performers list. The appellant's evidence to the effect that he had arranged to undertake GP locum work without further consideration of the respondent's position, further shows his lack of insight into the consequences of his absence from clinical practice as GP.
117. It is not necessary for the tribunal to set out all the other matters that tend to suggest lack of insight on the appellant's part.

118. The tribunal finds that the appellant lacks insight into the consequences of his absence from clinical practice for the reasons given above.
119. Turning next to the issue of engagement: the tribunal finds that the appellant failed to adequately engage with the respondent in managing the process for his return to work as a GP, as explained below.
120. In oral evidence the appellant stated that, in the period following the revocation of his suspension by the GMC in August 2023, he had focused on his further dealings with GMC so that he could approach the respondent with a *clean slate*.
121. The tribunal finds that, as a consequence of this approach, the appellant did not have a meaningful meeting with the respondent until shortly before the oral hearing in February 2024, by which time a period of 5 months had elapsed.
122. The appellant's *clean slate* approach is supported by the series of emails set out within the documentation, the details of which need not be rehearsed here. Those emails show that the respondent issued invitations to the appellant to attend meetings and provide evidence about his circumstances on at least 5 occasions. In response, the appellant did not provide significant evidence of his circumstances; did not identify a date on which he would meet with the respondent; nor did he put forward his own alternative proposals.
123. Bringing together the threads of what is said above, the tribunal finds that the appellant's level of insight and engagement are further matters that tend to show the general rule, as noted in the Academy of Royal Medical Colleges guidance, should be applied to the appellant.

Decision, further findings and reasons

124. The tribunal next turns to its decision in light of the above findings on consideration of the totality of the evidence.
125. The tribunal finds that it is appropriate for the purpose of preventing prejudice to the efficiency of the services which those included in a performers list perform to impose conditions on the appellant's continued inclusion on the performers list.
126. The tribunal finds that to do other than impose conditions would prejudice the efficiency of services in the light of the appellant's absence from clinical practice of three years and in the context of his individual circumstances.
127. In determining the appropriate conditions to apply in the appellant's circumstances, the tribunal finds it is appropriate to impose conditions

relating to the appellant undertaking the NHS Return to Practice programme.

128. The tribunal finds that the imposition of such a condition is reasonable and proportionate in light of the appellant's particular circumstances, for the following reasons.
129. The details of the programme will be specifically determined in the light of a professional assessment of the appellant's needs following his lengthy absence from clinical practice. The process of acceptance onto the programme can commence with immediate effect. There are no funding constraints that would limit access to the programme. The period of time in which the appellant will work within the programme will vary according to the extent of his needs, if any, and may involve placement of only one month together with a relatively short further period of time during which sign off of successful completion of the programme is managed. During the period of this process the appellant would be able to access a bursary in the region of £4000 per month.
130. In regard to the above and the issue of proportionality, the tribunal notes Mr Butler's submission to the effect that involvement in the return to practice programme would amount to requiring the appellant to go back to basics.
131. The tribunal rejects that submission. The tribunal finds that to be a mischaracterisation of the programme. The tribunal accepts the evidence showing that the details of what is involved in undertaking the programme will be tailored to the particular circumstances of the individual. An individual who enters the programme without having been significantly de-skilled as a result of absence will be in a position to return to practice as GP within a short period of time, following a placement of one month. The tribunal notes, in passing, that such a process could have been completed within the period following the appellant making his appeal and the present tribunal's determination.
132. The tribunal considered whether or not the imposition of a different set of conditions would be appropriate in the appellant's case. It is noted that in closing submissions Mr Butler indicated that the appellant would accept the imposition of conditions, with slight modification, in terms that were set out in the 6 November 2023 notice of the respondent.
133. The tribunal finds that the imposition of such conditions would not meet the nature of the potential prejudice to the efficiency of services in light of the Academy of Royal Medical Colleges guidance and the appellant's particular circumstances, including his level of insight and engagement in managing his return to work.

Conclusion as to imposition of conditions

134. On the basis of the findings above, the tribunal imposes the following condition on the appellant's continued inclusion in the medical performers list

the appellant must not provide NHS primary care services unless he is working within the remit of the NHS Return to Practice (RtP) programme

135. In framing the condition in the above terms, the tribunal does not consider it necessary to formulate the condition in the precise terms that are set out in the respondent's decision letter. Those terms included reference to evidence of engagement with the programme being supplied.

136. The tribunal finds that those further terms are not necessary because involvement in the programme requires successful completion of the programme to be signed off by the postgraduate Dean of faculty on consideration of the evidence relating to the appellant's performance. Evidence of performance is therefore integral to the programme and, inevitably, any variation of the imposed condition could only be undertaken on the basis of evidence made available.

137 Accordingly, the tribunal regards the phrase relating to evidence of engagement to be otiose.

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

Decision

The appeal is dismissed.

Dr Rahman must not provide NHS primary care services unless he is working within the remit of the NHS Return to Practice (RtP) programme

Tribunal Judge J Atkinson

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

Dated 29 August 2024

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.