

Primary Health Lists

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

[2017] 3209.PHL

Heard on the papers on 6 August 2018

BEFORE
Ms Siobhan Goodrich (Judge)
Dr Parvinder Garcha (Specialist member)
Ms Jane Everitt (Specialist member)

BETWEEN:

DR JOHN CLAYSON BEVAN

APPLICANT

and

NHS WALES

RESPONDENT

DECISION ON NATIONAL DISQUALIFICATION

1. By a decision issued on 13 July 2018 the Tribunal in its redetermination decided to remove Dr Bevan's name from the medical performers list ("MPL") maintained by Abertawe Bro Morgannwg University Health Board (the Local Health Board/LHB) and dismissed Dr Bevan's appeal.
2. The Tribunal also gave directions for the sequential provision of written representations on the issue of national disqualification and, specifically directed the parties to state whether the parties sought an oral hearing.
3. The respondent lodged written representations dated 17 July 2018. The appellant's representations made are contained in a letter from his solicitor dated 25 July 2018. In short, Dr Bevan does not oppose the making of a direction for national disqualification. Both parties consent for the matter to be considered on the papers.

4. The parties' consent is just one factor and we have made our own decision regarding mode of hearing. We consider that we can properly make a decision on the papers without a hearing pursuant to rule 23 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008.

Our Consideration

5. The discretionary power to direct national disqualification is set out in the National Health Service Act Wales 2006 (as amended by the [Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#)):

“115 National disqualification

(1) If the First-tier Tribunal removes the practitioner from a list, it may also decide to disqualify him from inclusion in—

(a)....

(b) the supplementary lists prepared by each Local Health Board,

(c) the lists under section 49 or 63 prepared by each Local Health Board,

(d) the lists corresponding to the lists under section 49 prepared by each Local Health Board by virtue of regulations made under section 103,

(e).....

(f) the lists corresponding to the lists mentioned in paragraphs (a) to (d) prepared by the National Health Service Commissioning Board under or by virtue of the National Health Service Act 2006, or only from inclusion in one or more descriptions of such lists prepared by each Local Health Board and the National Health Service Commissioning Board the description being specified by the First-tier Tribunal in its decision.

(2) A decision by the First-tier Tribunal to do what is mentioned in subsection (1) is referred to in this section as the imposition of a national disqualification.

.....

(7) The First-tier Tribunal may at the request of the person upon whom it has been imposed review a national disqualification, and on a review may confirm it or revoke it.

(8) Subject to subsection (9), the person may not request such a review before the end of the period of—

(a) two years beginning with the date on which the national disqualification was imposed, or

(b) one year beginning with the date of the First-tier Tribunal's decision on the last such review.

(9) The Welsh Ministers may provide in regulations for subsection (8) to have effect in prescribed circumstances as if the reference there to “two years” or “one year” were a reference to a different period specified in the regulations.

6. The decision to impose a national disqualification is discretionary. We refer to the reasons for the decision made. In summary the Tribunal in its redetermination made findings which included that:
 - a. The historic inadequacies in Dr Bevan’s practice were wide ranging and went to the very core of the basic skills and attributes required of a general practitioner – see [para 20]. There was long history of concerns over his ability to observe basic standards of care -see [para 47].
 - b. Dr Bevan has an entrenched resistance to true self-reflection or change - see [para 36]. He had not engaged in remediation.
 - c. His practice posed a clear risk to the public interest in the efficiency of primary care services. The risks engaged included risks to patient safety and well-being – see [para 45].
 - d. Regardless of the level of training or supervision that might be put in place, it is very unlikely that Dr Bevan’s practice would be remediated. His capacity for improvement is seriously limited by his lack of insight - see [para 53].
 - e. We considered our findings would also have supported a conclusion that Dr Bevan was “unsuitable” for inclusion on the medical performers list. We found that he lacked the essential attributes to be a safe and competent practitioner and that the deficiencies in his practice were “irremediable.”- see [para 55].
7. A direction for national disqualification may be made on removal irrespective of whether the decision was based on efficiency or suitability grounds. The application is not opposed but this is nonetheless a discretionary decision and must be exercised with care.
8. The rationale of our removal decision was that Dr Bevan’s practice was irremediable because his lack of insight and his entrenched attitude posed a clear risk to the efficiency of services which included risk to the safety of patients. There is, in our view no reason to consider that the reasons for Dr Bevan’s inefficiency were local. In our view the deficiencies in his practice are likely to recur wherever he practices because the source of his difficulties is his attitude to his practice.

9. If an order for national disqualification is not made Dr Bevan would be free to apply for inclusion in the lists maintained for medical performers by different LHBs in Wales or to the national medical performers list in England. Whilst there would clearly be grounds for refusal by reason of our decision, the fact is that applications for inclusion inevitably absorb time and resources. In our view it is contrary to the public interest in the efficiency of the NHS that resources should be spent in the procedural requirements to consider and respond to an application which, in our view, would be bound to fail on its merits. Further a refusal to include generates an automatic right of appeal which, if made, would then have to be redetermined on its merits. However unrealistic, appeals generate time and expense. A remedy in costs is not automatic.
10. We weighed the effects of an order for national disqualification upon Dr Bevan against the public interest, including the protection of patients and the efficient use of NHS resources. We are satisfied that in all the circumstances it is fair, reasonable and proportionate to make a decision for national disqualification.
11. We direct that the appellant is nationally disqualified from:
- the supplementary lists prepared by each Local Health Board,
 - the lists under section 49 prepared by each Local Health Board,
 - the lists corresponding to the lists under section 49 prepared by each Local Health Board by virtue of regulations made under section 103,
 - the lists corresponding to the lists mentioned above prepared by the National Health Service Commissioning Board under or by virtue of the National Health Service Act 2006.

Period for Review

12. Under regulation 19(1) of the Performers Lists Regulations 2004, (as amended by the National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2006), the review period for national disqualification is extended from two years to five years if the First-Tier Tribunal states that it is of the opinion that the professional conduct of the performer is such that there is no realistic prospect of a further review being successful if held after two years.
13. We have considered **Swain v Hillman [2001] 1 All ER 91** where in the context of the court's power to summarily dispose of claims in civil proceedings and the overriding objective Lord Woolf MR stated:
"The words 'no real prospect of succeeding' do not need any amplification, they speak for themselves. The word 'real' distinguishes fanciful prospects of success or, as [Counsel] submits, they direct the

court to the need to see whether there is a “realistic” as opposed to a “fanciful” prospect of success.”

14. We refer again to the reasons underpinning the removal decision. These relate to professional conduct in the broad sense, given the facts as found including those regarding Dr Bevan’s attitude and his entrenched position regarding remediation. We also noted that Dr Bevan last practiced in October 2017. By the time that such a review could first be requested he will have been out of NHS practice for nearly three years. In all the circumstances of this case we consider that the prospects of success on review can properly be characterised as fanciful.

15. We consider that it fair, reasonable and proportionate to express the view that Dr Bevan’s professional conduct is such that there is no realistic prospect of a further review being successful, if held within two years. It follows that the period for review under the regulations is therefore five years.

Decision

16. (1) A Direction for National Disqualification is made.

(2) The professional conduct of the performer is such that there is no realistic prospect of a further review being successful if held after two years.

Rights of Review and/or Appeal

17. The appellant is hereby notified of the right to appeal this decision under section 11 of the Tribunals Courts and Enforcement Act 2007. He also has the right to seek a review of this decision under section 9 of that Act. Pursuant to paragraph 46 of the Tribunal Procedure (First-tier Tribunal) Health, Education and Social Care Chamber) Rules 2008 (SI 2008/2699) a person seeking permission to appeal must make a written application to the Tribunal no later than 28 days after the date that this decision was sent to the person making the application for review and/or permission to appeal.

**Judge S Goodrich
Primary Health Lists
First-tier Tribunal Health Education and Social Care Chamber**

Date Issued: 15 August 2018