Primary Health Lists

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

Dr Parvaze Khalique
V

Nottinghamshire County PCT

[2011]PHL 15448

DECISION

Before:	**Judge Nancy Hillier** **Ms Lorna Jacobs – independent member** **Dr Rajendra Rathi – specialist member**
Hearing	**12 March 2012**
Venue	**Nottingham**
Representation	**Dr Khalique – Mr Hyam** **PCT- Ms Butler**

Appeal

1. Dr Parvaze Khalique appeals pursuant to Regulation 15 of the NHS (Performers Lists) Regulations 2004 (the Regs) against the decision of Nottinghamshire County PCT (the PCT) dated 14 November 2011 to remove him from their Medical Performers List.
2. The matter was dealt with on the submissions of both parties' representatives based on the written evidence.

Preliminary matters

3. The parties had agreed that the GMC decision in respect of Dr Khalique should be admitted as late evidence and the panel agreed to it's inclusion in the bundle.

4. At the commencement of the hearing Ms Butler applied for the panel to admit a statement from Ms Jackie Swann as late evidence. The application was opposed by Mr Hyam.
5. Ms Swann is Head of Performance, Quality and Safety at the PCT and she presented the case against Dr Khalique at the Performer's List hearing on 10 November 2011. The purpose of the PCT seeking to adduce the evidence was to ensure that the panel were aware of the PCT case as put before the PCT Performance Decision Making Group (PDMGP), not of all of which was referred to in the PDMGP decision.
6. Ms Butler explained that following a conference with her client on 2 March she had obtained the statement from Ms Swann (dated 7 March). She submitted that it was not new evidence because Dr Khalique had heard Ms Swann present the case in November. Further, although the minutes of the hearing are contained in the tribunal bundle, they did not contain the full details of the PCT view.
7. Mr Hyam submitted that the evidence was very late and it would be unfair to admit it on the first day of the hearing. He explained that Dr Khalique had "met the case" on the basis of the written evidence, and that the timing of the hearing had been arranged to take place before Dr Khalique's GMC suspension ended. If the evidence of Jackie Swann were to be admitted he may be instructed to apply for an adjournment to file evidence in response.
8. The panel refused the application to admit the late evidence. We applied the overriding objective and bore in mind the need to achieve a fair and just result.
9. We took into account the fact that the PCT had been legally represented since December 2011 and had been represented by Counsel at a case management hearing on 13 January 2012. In our view the PCT had therefore had plenty of time to consider which evidence it wanted us to consider before the date for filing evidence on 3 February 2012. No application to admit the evidence had been made following the conference on 3 March and Dr Khalique's legal team had had less than 2 working days to consider the evidence prior to the application on the first day of this hearing.
10. We believed that Dr Khalique would be put in a very difficult position if the evidence were to be admitted. He may want to seek further evidence to address the matters raised but would be very anxious for the hearing to be concluded. We decided this would be unfair on him. Further, we concluded that an adjournment to address the issues in Ms Swann's statement would cause unnecessary delay and would be disproportionate.
11. We finally considered any prejudice to the PCT in excluding the evidence. We decided that the prejudice would be very limited since the Integrated Domestic Abuse Programme and Dr Khalique's police interviews were in the bundle and Ms Butler could address them in her submissions directed to the statutory matters which we would take into account.
12. For these reasons we concluded that admission of this evidence on the morning of the final hearing would be unfair.
13. Ms Butler also made an application for the admission of an unredacted version of Judge Milmo QC's sentencing remarks. We had a copy of the redacted version in the bundle and she explained that this version had

been redacted prior to the GMC hearing to avoid potentially prejudicial material being before the panel who were considering a narrow issue, namely fitness to practice in the light of conviction.

14. Mr Hyam opposed the admission of the unredacted version on the grounds of unfairness because the application was very late and no good reason had been given for the lateness.
15. We considered the submissions and applied the overriding objective of seeking to ensure that fairness and justice is achieved between the parties. We decided to admit the unredacted document because we are considering a much wider issue than the GMC, the remarks were in the public domain and may have been heard by Dr Khalique's patients and because we concluded that it was unfair to allow Dr Khalique to rely on the positive aspects of the sentencing remarks but to refuse to allow the PCT to make submissions on the more negative aspects of the remarks. We made it clear that we had not decided how much weight, if any, should be given to the remarks.

Background

16. Dr Khalique qualified as a doctor in 1980. He holds the qualification MB ChB and gained full registration with the GMC in August 1981. He was a general practitioner with a special interest in diabetes and paediatrics, obstetrics and gynaecology. He was also a teacher at Nottingham University and used to undertake assessments of qualifying doctors for the PCT.
17. Dr Khalique was suspended by the PCT in April 2010 when he was charged with assault occasioning actual bodily harm upon his wife, who was also the Practice Manager at his surgery. He had been working as a GP at the Giltbrook surgery in Nottingham for some 25 years. Dr Khalique was remanded in custody following charge, and he was suspended from the Performers list on 21 April.
18. On 18th June 2010 Dr Khalique pleaded guilty and was convicted of the offence and was subsequently sentenced by HHJ Milmo QC on 19th July 2010 to an 18 month Community Sentence with a restraining order. The community sentence required him to complete an Integrated Domestic Abuse (IDAP) programme and attend probation meetings. His suspension was continued.
19. On 25-26 August 2011 the GMC considered Dr Khalique's fitness to practice and concluded that his fitness to practice was impaired by reason of his conviction for actual bodily harm. They concluded that the appropriate sanction was a suspension, without review, for six months under s35D(2) of the Medical act 1983.
20. On 10 November the PCT held a further decision making panel. That panel concluded that Dr Khalique should be removed from the performers list under regulation 10 on the ground of unsuitability. The PCT also decided to apply for National Disqualification of Dr Khalique. Dr Khalique was notified by letter on 14 November 2011 and appealed to this tribunal on 7 December 2011.

Law

21. The appeal is brought to the Tribunal under Regulation 15(2)(a). Regulation 15 (3) provides that the Tribunal can make any decision the PCT could make under the Regulations.

22. Regulation 10(3) provides the conditions for removal on discretionary grounds :

> The Primary Care Trust may remove a performer from its performers list where any of the conditions set out in paragraph (4) is satisfied.
> (4) The conditions mentioned in paragraph (3) are that—
> (a) his continued inclusion in its performers list would be prejudicial to the efficiency of the services which those included in the relevant performers list perform ("an efficiency case");
> (b) he is involved in a fraud case in relation to any health scheme; or
> (c) he is unsuitable to be included in that performers list ("an unsuitability case").

23. Regulation 11 outlines the mandatory criteria to be considered when taking the decision

> Unsuitability:
>
> 11.—(1) Where a Primary Care Trust is considering whether to remove a performer from its performers list under regulation 10(3) and (4)(c) ("an unsuitability case"), it shall—
> (a) consider any information relating to him which it has received in accordance with any provision of regulation 9;
> (b) consider any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or related to that performer, which information he shall supply if the Trust so requests; and
> (c) in reaching its decision, take into consideration the matters set out in paragraph (2).
> (2) The matters referred to in paragraph (1) are—
> (a) the nature of any offence, investigation or incident;
> (b) the length of time since any such offence, incident, conviction or investigation;
> (c) whether there are other offences, incidents or investigations to be considered;
> (d) any action taken or penalty imposed by any licensing or regulatory body, the police or the courts as a result of any such offence, incident or investigation;
> (e) the relevance of any offence, incident or investigation to his performing relevant primary services and any likely risk to any patients or to public finances;
> (f) whether any offence was a sexual offence to which Part I of the Sexual Offences Act 1997(a) applies, or if it had been committed in England and Wales, would have applied;
> (g) whether the performer has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from any list or equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or equivalent body for such action; and
> (h) whether he was at the time, has in the preceding six months been, or was at the time of the originating events a director of a body corporate, which was refused admission to, conditionally included in, removed or contingently removed from any list or equivalent list or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Primary Care Trust or equivalent body in each case for such action.

24. In all cases it is important to consider the effect of Regulation 11(7) which provides

(7) In making any decision under regulation 10, the Primary Care Trust shall take into account the overall effect of any relevant incidents and offences relating to the performer of which it is aware, whichever condition it relies on.

25. Regulation 18A makes provision for National Disqualification, which the PCT asked the panel to consider if appropriate.

26. The Tribunal hearing is governed by the Tribunal (First Tier Tribunal) (Health and Social Care Chamber) Rules 2008 (The Rules). Rule 15(2) provides that the Tribunal may:

> (a)admit evidence whether or not—
> (i)the evidence would be admissible in a civil trial in England and Wales; or
> (ii)the evidence was available to a previous decision maker; or
> (b)exclude evidence that would otherwise be admissible where—
> (i)the evidence was not provided within the time allowed by a direction or a practice direction;
> (ii)the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction; or
> (iii)it would otherwise be unfair to admit the evidence.

27. The standard of proof is the civil standard, namely the balance of probabilities. The burden is on the PCT to prove its case. The Tribunal takes an inquisitorial, or investigatory, approach, rather than a strictly adversarial one. In essence, the hearing in relation to the allegation is a fact gathering exercise consistent with the overriding objective set out in Rule 2.
28. There is no sliding scale of standard of proof depending on how serious the allegation is.
    In ***In re B (Children) [2009] 1 AC 11.*** Baroness Hale concluded at [70-72]:
    "[the standard of proof] is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies. As to the seriousness of the allegation, there is no logical or necessary connection between seriousness and probability."
29. It is also appropriate for the Tribunal to consider relevant guidance, for example that contained in the "Primary Medical Performers Lists Delivering Quality in Primary Care Department of Health 2004" (DOH Guidance).
30. When making the decision the Tribunal should bear in mind the principle of proportionality at all stages. In summary, the appeal is by way of re-hearing, the panel can take any decision the PCT could have made (including a decision to contingently remove, if satisfied that this was an efficiency and not a suitability case), and can take into account evidence not before the PCT at the removal hearing unless it would otherwise be unfair to admit the evidence.

Evidence

31. We took into account all the evidence contained in the bundle provided to us and to NHS (Performers Lists) 2004 (the Regs) and Primary Medical performers lists: delivering quality in primary care: Advice for Primary Care Trusts on List Management.. We also took account of the written and oral submissions made by Ms Butler and Mr Hyam.

Submissions made on relevant Regulation 11 criteria and proportionality.

Nature of offence

32. Ms Butler explained that the offence occurred when Dr Khalique's wife of 30 years told him that she was going to leave him. The assault was sustained and involved Dr Khalique grabbing his wife's hair, pulling her to the ground, blows to her face and kicks to the jaw, back of her head and lower back. Dr Khalique then told Mrs Khalique to go and clean herself up but what followed was a further assault when she again went to the floor. Her nose bled substantially, both within the house and when she went to the police. When she left the home Dr Khalique followed her.

33. Mrs Khalique went to the police. When she arrived there she was cut, her face was swollen and she was very upset. Dr Khalique initially denied the offence when he was arrested and interviewed, making up matters to explain the injuries to his wife. When he went to Nottingham Crown Court he pleaded guilty.

34. Ms Butler submitted that the offence was extremely serious and warranted the 18 month community sentence and restraining order. She submitted that the judge could have imposed a sentence of imprisonment, but Dr Khalique had spent time in custody almost equivalent to the "lead in" sentence for assault occasioning actual bodily harm under s47 of the Offences Against the Person Act 1861.

35. Mr Hyam reminded the panel that Dr Khalique does not fall within the circumstances prescribed for mandatory removal, and that we should bear in mind the fact that rehabilitation of Dr Khalique was a real consideration. He conceded that the offence was serious and did not seek to detract from the facts of the offence. He stressed that Dr Khalique had shown sincere remorse for his actions.

Length of time since the incident or conviction

36. Ms Butler submitted that the length of time since the incident does not mitigate the seriousness of the assault.

37. Mr Hyam submitted that the time since the incident was very relevant because during that time Dr Khalique had served 3 months on remand in custody, had been the subject of a public conviction, had undergone an IDAP and probation programme and had sought to address the obvious

problems in anger control.

Whether there are any other offences, incidents or investigations to be considered

38. Ms Butler submitted that the IDAP programme was very relevant to this consideration. In that report under the heading "Taking responsibility for his use of a violent and abusive behaviour in his relationships" the report records: "During this module Parvaze also recognised that he had been passive/aggressive in the relationship, would be quiet then respond with anger and verbal abuse." Further, the report refers to Dr Khalique admitting that he struck up a relationship with a woman in Manchester in the early 90's. Mrs Khalique became pregnant, and he said that he had been aggressive at times and had hit her in 1995.
39. Ms Butler submitted that this self description tied in with what Judge Milmo QC had described as an "abusive" relationship. Dr Khalique's daughter made a statement that she had witnessed abuse and the PCT panel had concluded that the incident which led to the criminal charges was not a "one off".
40. Again, Mr Hyam did not seek to deny the fact that Dr Khalique had admitted hitting his wife in 1995, the assault in 2010 and that he had been verbally abusive to his wife over many years.

Any action taken or penalty imposed by any licensing or regulatory body, the police or the courts as a result of any such offence, incident or investigation.

41. Ms Butler referred us to both the Crown Court sentence and the GMC decision. She submitted that Dr Khalique's behaviour brought the profession into disrepute. The GMC were looking at fitness to practice whereas the PCT were concerned with a wider aspect, namely the performance as a general practitioner.
42. Mr Hyam stated that the community sentence required Dr Khalique to attend probation meetings and an IDAP programme, which he fully has completed. The IDAP conclusion read as follows:

> *'Parvaze had reached an 'all time low' in his life and career due to his use of aggression and control in his previous relationship. However, he has taken every opportunity to learn from this situation. He has applied himself really well to the idap programme and tutors are sure that he will succeed in the future if he uses the strategies and material in his lifestyle'*

43. He stressed that Dr Khalique was also subject to a restraining order which has not been breached. Further, the outcome of the GMC investigation was that Dr Khalique was suspended for a period of six months, which is half the maximum period and that no review was imposed.

The relevance of any offence, incident or investigation to his performing relevant primary services and any likely risk to any patients or to public finances.

44. Ms Butler submitted that whilst there is no evidence of physical risk to patients, some of Dr Khalique's future patients would be victims of abuse or perpetrators of abuse, and the risk was to them. She drew our attention to the IDAP report which stated that potential risk triggers could be if Dr Khalique did not sort his divorce out at arms length or he were to contact his ex wife. The report said that he needed to ensure that he should be assertive rather than aggressive when communicating his thoughts and feelings. She submitted that this indicated that Dr Khalique might "revert to type".
45. Ms Butler submitted that the PCT were "being asked to take a high risk". She stated Dr Khalique had shown little victim empathy and that there is therefore potentially a high risk of aggression towards patients.
46. Ms Butler also submitted that there was a real risk of reputational damage to the PCT if the appeal were to succeed because this was a vicious assault and in the context of the Domestic Abuse agenda it would be wrong for the PCT to allow an abusive GP to practice in their area because it could undermine the public's trust in the PCT.
47. Mr Hyam denied that there was little evidence of remorse or empathy demonstrated by Dr Khalique and pointed out that the fact that there had been no complaints of aggression or inappropriate behaviour by Dr Khalique working as a GP for many years, the letter of remorse he wrote to Judge Milmo QC, the IDAP report and his steps to address the abusive behaviour towards his wife all support an assessment of very low risk.
48. Mr Hyam submitted that reputational damage to the PCT does not appear in the criteria for removal, the regulations generally or the guidance on unsuitability. There had been some limited publicity two years ago, and although some patients may be dissuaded from consulting Dr Khalique, his actual approach to them would be very safe based on what he had learnt about domestic abuse and its effects. He therefore urged us to give no weight to Ms Butler's submissions on this point.

Proportionality.

49. Ms Butler submitted that removal is a proportionate response because patient and public confidence would be undermined if Dr Khalique were to remain on the list.
50. Mr Hyam submitted that removal would be disproportionate on the facts of this case, which although serious, had many mitigating features.

Tribunal's conclusions with reasons.

51. Having considered all the evidence in the bundle, the oral and written submissions, the relevant regulations and guidance, we concluded, on balance, that removal was not appropriate or proportionate and that the

appeal should be allowed.

52. We took into account the nature of the offence, which in our view was very serious, and which in the absence of other factors may have led to a different conclusion. This was a sustained assault on Mrs Khalique which caused her injury and distress, and it approached a severity which could have resulted in a sentence of imprisonment sufficient to invoke mandatory disqualification.
53. We concluded that the length of time since the incident and the conviction, and what had occurred during that time was very relevant. Whilst the fact that 2 years has elapsed that length of time is not significant per se it is appropriate to record that during that time Dr Khalique has lost his marriage and family, his reputation and his liberty and that he was publicly disgraced on sentence. What is more relevant is that the time which has elapsed has demonstrated that he has complied with the restraining order, the community sentence, probation and the IDAP programme, whilst seeking to explore his anger control with a personal development programme.
54. A particularly difficult feature of this case is that although Dr Khalique was prosecuted for the single incident of assault, we are aware that there were allegations of previous abuse made in the police statements, and Dr Khalique himself accepts that he had been violent towards Mrs Khalique in 1995, and had been frequently verbally abusive towards her.
55. Under “Acknowledging the effects of his use of abusive and violent behaviour on his partner, children and others” the IDAP report records that Dr Khalique admitted that his children had seen him commit verbal abuse against his ex-wife over the last 30 years and he said that he had no right to say that he deserved to get back into his children's lives.
56. In his sentencing remarks, His Honour Judge Milmo QC stated “It seems, and it is by no means unusual, tragically, that the caring professional involved with patients or clients can change radically once the front door is closed and he is alone with his family, out of sight and earshot of non-family members… For the assistance of the General Medical Council and the Primary Care Trust, merely record that I have attempted to summarise the position which may be of relevance to them. I repeat, whatever criticisms that can be and have been made of Dr Khalique in his family relationship, his experience with his patients seems to be entirely different. It is a matter for them on consideration of all the evidence to consider what course of action they should take”
57. The PCT have not sought to prove any abuse over and above the criminal offence and what has been admitted by Dr Khalique, and it is therefore the proved and admitted incidents which we have taken into account. There are no ongoing investigations into Dr Khalique’s conduct. The admitted history of conduct is not surprising given the incident which occurred when Mrs Khalique ended the marriage.
58. We have taken into account that this was a prosecution for actual bodily harm rather than wounding or wounding with intent under s20 of the Act and that the penalty was a community penalty. The GMC concluded that suspension was appropriate because it has a deterrent effect and can be used to send out a signal to the doctor, the profession and the public about what is regarded as behaviour befitting a registered medical practitioner.

Suspension from the register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the period of suspension period.

59. The GMC decision records "The panel has taken a very serious view of the violent assaults which you carried out on your wife. It struggles to reconcile such behaviour with that of a practising member of the medical profession and considers that the public would view those actions is grossly inappropriate behaviour in a doctor. Nevertheless it has taken account of the mitigating features of your case. As a consequence of your actions on the day of the assault, you lost your wife, your relationship with your children and your good reputation. You have acknowledged that you were at fault and have expressed deep remorse for your behaviour. You embarked with some dedication on the IDAP course in which your assessors acknowledged your commitments and the progress you had made. You have also undertaken a number of remedial courses including anger and stress management upon your own initiative and the panel has no doubts that your insight into the gravity of what you have done is genuine."
60. We have concluded that what the Criminal Court and the GMC decided demonstrates that they placed weight on the mitigating circumstances in this case to conclude that Dr Khalique is capable of being rehabilitated. Equally valid however are the concerns of the PCT and we respect the fact that the FTTPP concluded on balance that Dr Khalique should be removed from the list, apparently giving less weight to those same mitigating factors. Ultimately, the decision we take is on the basis of the evidence before us and we are not bound by the views of Judge Milmo QC, the GMC or the PCT.
61. The question of risk to patients was obviously very important. We decided that there was little risk to patients in the future of aggression or inappropriate behaviour by Dr Khalique. We based this decision on the fact that Dr Khalique had an unblemished reputation as a GP even as an undetected and untreated domestic abuser. Since his conduct has been exposed Dr Khalique has sourced and attended a number of relevant courses including anger management, stress management and assertiveness training, in order to lessen the risk of recurrence in his behaviour. We acknowledged that patients involved in an abusive relationship may be apprehensive about Dr Khalique's attitude but we decided that the majority of the evidence weighed in favour of him being more aware of the need for understanding and empathy in those circumstances.
62. In the pre-sentence report dated 7 July 2010 it was recorded that Dr Khalique took full responsibility for the injuries caused to his wife, stating there was no excuse for his behaviour. He said that accepted his marriage was over and sought support in respect of his problems from colleagues, friends and family. The IDAP report concluded that Dr Khalique …"has reached an all-time low in his life and career. However, he has taken every opportunity to learn from this situation. He has applied himself really well to the IDAP programme and tutors are sure that he will succeed in the future if he uses the strategies and material in his lifestyle." Further, Dr Khalique's written statement before this tribunal gives acknowledgement of

his wrong doing and his steps to put things right. Given that information we concluded that he is now more likely to show understanding and appropriate empathy to patients now than in the past.

63. We have concluded that removal from the PCT register would, on balance, be disproportionate in this case. We do not accept that a history of domestic abuse automatically renders a GP unsuitable in a PCT which is actively taking steps to address this scourge of all levels of our society, although we can envisage circumstances where removal would be appropriate. In this case we do not feel that the PCT have given sufficient weight to the conduct of Dr Khalique towards his patients for over 30 years and his conduct since pleading guilty at the Crown Court, nor to a reasoned risk analysis, which are factors which have led us to a different conclusion
64. Taking the above matters into account we are not satisfied that the PCT has proved on the balance of probabilities that Dr Khalique is unsuitable to be a GP in Nottingham and accordingly we allow the appeal.

ORDER

Appeal allowed.

Judge Nancy Hillier

Lead Judge Primary Health Lists

21 March 2012