**IN THE FIRST-TIER TRIBUNAL**

**(HEALTH, EDUCATION AND SOCIAL CARE CHAMBER)**

**PRIMARY HEALTH LISTS**

**THE PRIMARY HEALTH LISTS TRIBUNAL CASE NUMBER 15222**

**DR S YOGADEVA Appellant**

**and**

**TOWER HAMLETS PRIMARY CARE TRUST Respondent**

## REASONS

1. Dr Yogadeva is a General Practitioner (GP). He was born on 25.8.42. From 1976 onwards he has generally been in single-handed practice at the Island Medical Centre in East London apart from short periods when he had salaried partners. Dr Neriman started work at the practice in 2005 as a locum GP. He became a full-time partner in the practice in 2008. (The partnership agreement was signed in 2009 but back-dated to 1.4.08.)

2. On 9 March 2009 Dr Yogadeva was suspended by NHS Tower Hamlets (the PCT). A hearing before the PCT took place on 30.10.09. He was notified on 5.11.09 that the PCT had decided that he should be removed from their performers list. He appealed against the PCT's decision on 26.11.09.

### The allegations

3. The grounds for the PCT's opposition to Dr Yogadeva's appeal are set down in a document entitled 'Statement of Grounds Opposing the

Appeal' dated 8.1.10. In this document the PCT summarised the allegations 'underpinning the case for removal' as follows:

a. the quality of the care that Dr Yogadeva administered to his patients;

b. his abuse of the Extended H0urs Local Enhanced Service (EHLES);

c. manipulation of the General Practice Assessment Questionnaire (GPAQ);

d. inappropriately arranging for the Revaxis vaccine to be administered to adult patients; and

e. Dr Yogadeva's inappropriate and unprofessional conduct towards staff and patients.

4. The details of the PCT's case against Dr Yogadeva spanned a whole range of issues which varied in gravity from the trivial (not providing sufficient disposable gloves for his practice staff) to the serious (he indecently assaulted a patient).

5. The 8.1.10 document details the allegations and the panel relied on that document in identifying where findings should be made. The document does not however detail all the allegations against Dr Yogadeva. An allegation that Dr Yogadeva abused the Prescribing Incentive Scheme was introduced by the PCT prior to the hearing.

**The PCT's evidence**

6. The PCT assembled a large volume of written evidence and relied on the evidence of nineteen witnesses.

7. To deal with issues around Dr Yogadeva's clinical practice the PCT instructed Dr Robinson, a GP with expertise in assessing how GPs should reasonably be expected to act. Dr Robinson gave evidence.

8. In relation to a number of separate but linked issues arising from Dr Yogadeva's practice the PCT relied on evidence from former and

present employees at the Island Medical Practice and also Dr Yogadeva's former partner, Dr Neriman. A number of PCT employees also gave evidence addressing specific matters such as the Prescribing Incentive Scheme and the Extended Hours Local Enhanced Service. Dr Russell (Medical Director NHS Tower Hamlets until his recent retirement) gave evidence about the approach of the PCT to the case. He had presented the PCT's case against Dr Yogadeva in October 2009 and remained involved in the case throughout the current proceedings. Allegations were made about Dr Yogadeva's behaviour towards patients and the PCT arranged for four patients to give evidence.

9. A component of the written evidence relied on by the PCT consisted of a report prepared by Nina Murphy Associates. This organisation was commissioned to carry out a review of a number of allegations against Dr Yogadeva made by the PCT which in part mirror the allegations made against Dr Yogadeva in the current proceedings. The report was commissioned after Dr Yogadeva was suspended by the PCT, was completed in July 2009, and was relied on by the PCT at the October 2009 hearing. The PCT in presenting its case to the panel chose not to call any of the assessors from Nina Murphy Associates. The PCT chose instead to call the majority of the members of staff who were interviewed by the Nina Murphy Associates assessors, and some of the patients. Dr Yogadeva was not interviewed by the assessors and the interviewees were not tested by cross-examination during the PCT's investigation; it is therefore unsurprising that the panel and the assessors reached different conclusions. The panel has referred to the Nina Murphy Associates report where relevant.

**Dr Yogadeva's case**

10. Dr Yogadeva's case was summarised at the outset of the proceedings as follows: 'It is Dr Yogadeva's contention that there has been collusion between his partner Dr Neriman and the practice staff

and it is Dr Yogadeva's belief that patients have been coerced to complain'.[1]

11. Dr Yogadeva gave evidence and to deal with allegations about his clinical practice his solicitors instructed Dr Silk, a GP with considerable medico-legal experience. Dr Silk gave evidence.

**Evidence**

12. Despite an initial argument advanced by Dr Yogadeva's representative that certain evidence was inadmissible it was conceded, and agreed by both parties, that the tribunal rules precluded such an approach. Rule 15(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 provides that the tribunal may admit evidence whether or not the evidence would be admissible in a civil trial in England and Wales.

13. The panel proceeded on the basis that although this was Dr Yogadeva's appeal, the PCT had the burden of proof; also that the PCT had to prove the allegations to the civil standard, that is on the balance of probabilities.

14. The panel indicated early in the proceedings that where serious allegations were made against Dr Yogadeva, in particular by his former patients, then unless those patients were available to give evidence the panel could not attach great weight, in isolation, to their written evidence whether it was in the form of statement, letter or note. The panel required all witnesses to give evidence on oath and special measures were adopted to protect some witnesses; sometimes evidence was given from behind a screen and one witness gave part of her evidence via video-link.

15. It was a central part of Dr Yogadeva's case that four of the PCT's witnesses had an unreasonable and hostile animus towards him and this therefore affected their evidence; it was also alleged that they

[1] Letter from Dr Yogadeva's solicitors to FHSAA 26.11.09

were deliberately engaged in a smear campaign against him. Three of the witnesses in question, Karen Banerjee, Colleen Boosey and Sheila Dod, had worked with Dr Yogadeva for some time: Karen Banerjee since 2001, Colleen Boosey since 2000 and Sheila Dodd since 1994. The fourth witness was Dr Neriman.

16. In 2009 a number of the staff at the Island Medical Centre had two meetings with Dr Russell and other PCT employees. Minutes of the meetings were shown to the panel. On 10.2.09 the following staff attended the meeting: Dr Neriman, Karen Banerjee, Colleen Boosey and Sheila Dod. On 19.2.09 Sheila Dodd, Fatima Khatun, Colleen Boosey, Karen Banerjee and Myoung-Soon Kim attended. The panel considered that the PCT should not have facilitated these group discussions about the practice. The meetings gave an unfortunate impression of conspiratorial activity. The individual staff members should have been interviewed separately.

17. Karen Banerjee, Colleen Boosey and Sheila Dod were close work colleagues. In addition Colleen Boosey was employed by Dr Neriman on a part time basis and worked with him in a private circumcision clinic. The panel was satisfied that they were all likely to have engaged in discussion about the matters in dispute before the panel, both informally before the proceedings started, in the 2009 meetings with Dr Russell and following the interviews that they had with Nina Murphy Associates.

18. The panel was not provided with any evidence that the witnesses who attended the two 2009 meetings deliberately colluded to fabricate evidence and did not proceed upon that basis. The panel however considered that a common and subjective view on certain contentious matters is likely to have coalesced which, in part, reflected the developing antipathy that Dr Yogadeva's employees had towards him.

19. In addition to this matters arose during the hearing which gave the panel cause for concern. Karen Banerjee's evidence was not completed on 26.7.10 and she finished giving evidence on 4.8.10.

During this break, and despite being given an explicit warning not to have any discussion about her evidence, and being reminded that she was on oath, she discussed the case on her mobile telephone with Sheila Dod and Colleen Boosey. The panel considered that the actions of Karen Banerjee, Sheila Dod and Colleen Boosey during the hearing reflected their inexperience and naivety as witnesses rather than evidencing any intent to manipulate the evidence; however their actions diminished their credibility as objective witnesses.

20. Because of these factors the panel concluded that where the evidence of Karen Banerjee, Sheila Dod and Colleen Boosey was relevant then the weight that could be attached to their evidence was reduced and the panel therefore, wherever possible, looked for supporting evidence in relation to issues in dispute.

21. This impacted on a number of the allegations made by the PCT against Dr Yogadeva. In particular the PCT made an allegation that Dr Yogadeva exhibited inappropriate sexualised behaviour to Karen Banerjee around the time when she started work at Island Medical Practice in 2001. The panel concluded that because of her diminished credibility as a witness, and the fact that there was no evidence corroborating her account apart from conversations that she had about the incidents with Sheila Dod, that they were not able to make a finding about this allegation.

22. Dr Neriman's evidence also presented the panel with particular difficulties. He was not a convincing witness. He and Dr Yogadeva had fallen out over contractual matters involving his entry into partnership and this, the panel considered, is likely to have coloured his judgement and affected his approach to Dr Yogadeva. He had also been suspended from the Island Medical Practice by the PCT in July 2009 and his case was referred to the GMC who attached conditions to his practice. Although this happened in 2009 there was no mention of his suspension in his statement dated 14.5.10 and it was only disclosed when he gave his evidence. This in the panel's view seriously reduced the value of any of his evidence particularly in

relation to his critique of Dr Yogadeva's clinical competence as the failings in his clinical practice in part mirrored the failings alleged against Dr Yogadeva.

**Extended Hours Local Enhanced Service Scheme**

23. The PCT's allegations about this matter fell under two headings: Dr Yogadeva abused the scheme by failing to deliver it in accordance with the Service Level Agreement (SLA) and he also made inappropriate claims from the PCT for provision of the service between April and September 2008.

24. The requirement was to provide a service for two evenings a week between 1830 and 2000 and to offer nine GP appointments of at least 10 minutes each between those times; appointments had to be be pre-booked.

25. Andrew Weight was the General Practitioner Access Manager employed by the PCT. His written evidence[2] showed that at least the minimum number of appointment slots was available during the allotted times. It also showed that not all appointments lasted for 10 minutes, neither were they necessarily all filled. It was also clear from his statement that sometimes the service commenced before 1830, the earliest time being 1814. It should be noted that the patient seen at that time had arrived at 1744 for an appointment booked for 1900.

26. Fatema Kahtun gave evidence that she was told to tell patients to arrive before their appointed time, for example for an 1830 appointment they should arrive at 1820. She also said she and her colleagues had been told that they should keep the later appointments free. Sheila Dod said that reception staff told her that they had been told to tell patients to come in early. The evidence provided by the PCT demonstrates that appointment slots were usually booked up to

---

[2] Andrew Weight statement 27.4.2009

and including 2000. It is also clear from the same evidence that patients were often seen before their allotted time and that the appointments were cleared before 2000.

27. Dr Yogadeva denied ever telling his staff to block out the later appointments or to tell patients to arrive earlier than their allotted time. He explained that the surgery was on the way home for many of the patients who availed themselves of the scheme and that some preferred to come and wait in the surgery rather than go home first. Colleen Boosey said that she did say to patients who enquired that they could arrive early if they wished, however that did not mean they would be seen before their appointment. Dr Yogadeva also explained that many of the patients who came had less serious issues e.g. repeat prescriptions, colds etc and did not require the full 10 minute appointment. When he finished with one patient he saw the next one without waiting until the designated appointment time had been reached. For that reason it was possible that the surgery would finish before 2000. He said that he did not necessarily leave at 1930 and could be there as late as 2100. Fatema Kahtun would leave at the end of the surgery.

28. Both Dr Yogadeva and Dr Neriman provided the service at the Island Medical Centre. Only the data in relation to Dr Yogadeva's sessions was audited by Andrew Weight. Some of Dr Yogadeva's patients did arrive well before their appointment time, for example 1744 for an appointment at 1900. The fact that this was happening did not demonstrate that Dr Yogadeva told his staff to tell patients to arrive 10 minutes before their appointments.

29. Dr Yogadeva did commence surgery early on occasions but it is clear from the evidence provided by the PCT that he did so usually when a patient had arrived before 1830 and usually well before their scheduled appointment, often up to an hour early or even more than an hour before their appointment. That he did not commence surgery early on every occasion demonstrates that patients were not routinely told to arrive early so that he could start and finish early.

There is no corroborated evidence as to what time Dr Yogadeva actually left the premises. When he gave evidence he said he often stayed late to complete other practice tasks.

30. As a consequence of the early starts and the nature of the health problems of the patients making use of the service it was not surprising that the sessions might end before 2000. No evidence was provided to disprove Dr Yogadeva's assertion that patients often presented with minor issues. Bearing in mind that appointments had to be pre-booked and it was not a 'drop-in' service there was no facility for Dr Yogadeva to see additional patients to fill the time.

31. Dr Yogadeva was responsible for sessions on Mondays and Dr Neriman covered the Wednesday commitment. It was accepted that when either of the doctors was away the other covered for him. The drawing up of the claims was delegated to Colleen Boosey. It is not entirely clear whether this was by Sheila Dod or directly by Dr Yogadeva but since Sheila Dod was on maternity leave during 2008 the task fell to Colleen Boosey. In her witness statement[3] she said she obtained the details from the computer by looking for late night appointments. In her live evidence she could not remember anything about the appointments booked on 21 and 28 July 2008. There is some discrepancy here as to how she could draw up claim forms using the computer system if no appointments had been made. Additionally she was responsible for the holiday rotas and the surgery sessions and would have known that Dr Neriman had not covered the sessions while Dr Yogadeva was away. She had a responsibility to advise Dr Yogadeva that the sessions had not taken place and it might be argued that Dr Neriman should have told Dr Yogadeva that he had not provided cover.

32. The submission of inappropriate claims to the PCT in respect of 21 and 28.7.08 is admitted by Dr Yogadeva who accepts full responsibility. It would appear, however, that he was let down by

[3] Colleen Boosey 30.4.10 statement page 22 paragraph 155

both his staff and Dr Neriman. There is clear evidence in the paperwork provided by the PCT that there were occasions when no service was provided but that no claim was submitted in respect of those occasions. In July 2008 it was more likely than not that the claims were signed off by Dr Yogadeva and submitted to the PCT in error.

33. Dr Yogadeva accepted that he saw patients before 6.30pm and accepts that there were times when he finished before 8pm; this means that the service was not delivered according to the terms of the SLA. He also accepts that he incorrectly claimed for two sessions in July 2008 when he was on holiday. Dr Neriman was also seeing patients under this scheme. He gave evidence that he would see patients before 6.30pm and if he had seen all the patients booked in under the scheme he would go home early.

*The panel considered that the allegation that Dr Yogadeva did not deliver the Extended Hours Local Enhanced Service Scheme according to the SLA and that he made inappropriate claims was proved to the requisite standard.*

**The General Practice Assessment Questionnaire (GPAQ)**

34. The PCT's allegation about this matter is that Dr Yogadeva caused the results of the GPAQ exercise carried out in the practice in 2008 to be manipulated thereby providing misleading information to the PCT. The GPAQ questionnaire allows patients to provide feedback on their individual experience of the practice (e.g. how long do you usually have to wait for consultations?) and their experience of dealing with the individual doctor (e.g. how well did the doctor listen to what you had to say?). The survey is scored, the scores are provided to the PCT and practices received points according to set targets: for example points on completing the survey and further points for reflecting on the findings, summarising them and reporting on the activities undertaken to address the patient experience. The higher the number of points the more money the practice received from the PCT.

35. No evidence was provided from Scope Medical who administered the survey. In particular no information was provided as to how the survey should be run: for example to deal with important issues such as the design and colour of the original form, whether photocopies of the form would be analysed and whether a resealed envelope would be accepted. Dr Yogadeva said he thought the questionnaire was blue and in booklet form but the panel only had sight of a photocopied version on four separate A4 sheets and in black and white.

36. Two staff members, Karen Banerjee and Coleen Boosey, provided direct evidence that Dr Yogadeva tried to manipulate the survey. They both agreed that Dr Yogadeva asked that the survey should not be given to certain patients.

37. Colleen Boosey gave evidence that she copied forms for use, Karen Banerjee said that she had not seen any copies and when there was a shortfall she contacted Scope Medical and requested extra forms.

38. Karen Banerjee told the panel that because she had originally underestimated the number of completed questionnaires (there had to be a hundred) she had then arranged for some more to be completed and then because she had more than were required she gave Dr Yogadeva 15 spare completed questionnaires and a sealed envelope. She said that he was angry because she had sealed the envelope. She did not know what happened to it after she handed it to Dr Yogadeva.

39. Coleen Boosey's account was different. She said that she was handed an envelope, there was no mention of it being sealed, and Dr Yogadeva told her to take out any forms with poor ratings against him and replace them with the spare ones.

40. There were significant inconsistencies in the evidence of Colleen Boosey and Karen Banerjee. Sheila Dod was told about the allegations by Coleen Boosey and Karen Banerjee; however she made

no reference to being asked by Karen Banerjee about her views as to Dr Yogadeva's request that the survey should not be given to certain patients. 'I [in 2007] reported this to Sheila Dod who told me that Dr Yogadeva could not actively select which patients were to be surveyed.'[4]

41. The evidence about Dr Yogadeva's alleged manipulation of GPAQ was inconsistent and muddled and could not support findings being made even without taking into account the panel's concerns about relying on the uncorroborated evidence of Coleen Boosey, Karen Banerjee and Sheila Dod.

*The panel did not consider that the allegation that Dr Yogadeva manipulated the results of the General Practice Assessment Questionnaire (GPAQ) was proved to the requisite standard*

**Revaxis**

42. The PCT's allegation against Dr Yogadeva was that he inappropriately arranged for the Revaxis vaccine, that should have been administered to children, to be administered to adult patients.

43. Revaxis is a vaccine against diphtheria, tetanus and polio. It is supplied free to practices for administration to children over age 10 as part of a primary course of immunisation. A pre-school leaving booster is given at age 15. Below the age of 10 a different vaccine is used. After the full course of immunisation at age 15 the free vaccine would only be indicated for use in rare occasions, an example being an older person who never had a full primary course of tetanus immunisation and has a relevant injury which could lead to tetanus infection. There is no longer a single tetanus only vaccine available.

44. Revaxis is indicated in travellers to certain countries where tetanus is common and the appropriate anti-serum is not available. It is mainly given to backpackers to boost the immunity they already have through a primary course of immunisation undertaken prior to

[4] Karen Banerjee statement 26.4.10 paragraph 184

age 15. In such circumstances there are two options available for obtaining the vaccine.

45. The first option is for the practice to buy the vaccine from a drugs wholesaler, administer the vaccine and claim from the Business Services Agency (BSA) formerly the Prescription Pricing Authority (PPA) by submitting an appropriate form. The practice is then paid at what is termed the Drug Tariff Price, usually more than they would have purchased the vaccine for and a notional container on-cost thus making a profit on the vaccine. (Dr Yogadeva was in error when he asserted that 'one cannot claim from the PPA for travel vaccines.'[5])

46. The alternative approach, sometimes used by smaller practices who do not use vaccines for travelers' frequently, is to give the patient a signed prescription for the vaccine, the patient takes the prescription to the chemist and the chemist dispenses the vaccine to the patient. The patient then takes the vaccine to the practice who administers the vaccine. This is compatible with NHS Regulations so long as the practice makes no financial claim to the BSA. What is not permitted is for a practice to use Revaxis vaccine supplied for a primary course, that is for age 10 and above up to age 15, for immunising travelers'.

47. The PCT's original allegation about the Revaxis issue is contained in Dr Russell's statement[6] where he suggested that a GP practice can increase its profit margin on Revaxis by fraudulently administering the Revaxis obtained at zero cost through the paediatric scheme to adults. Dr Russell's original analysis was either incorrect, or out of date, as there is now no apparent advantage to the smaller practice to use Revaxis for children as adults are entitled to the vaccine by way of prescription and this was the system in place at the Island Medical Centre. Myoung-Soon Kim stated that if an adult

---

[5] Dr Yogadeva supplementary statement 30 September 2010 paragraph 21

[6] Dr Russell statement 12 May 2009 paragraphs 44-50 and supplementary statement 3.8.10

needed Revaxis they were given a prescription and then they attended the pharmacy and obtained the drug.

48. The evidence of Colleen Boosey and Sheila Dod was confusing (it appeared to be based on out of date information) and did not assist the panel.

*The panel did not consider that the allegation that Dr Yogadeva inappropriately arranged for the Revaxis vaccine that should have been administered to children to be administered to adult patients was proved to the requisite standard.*

**Prescribing Incentive Scheme**

49. The prescribing incentive scheme is a scheme open to all GP practices within the PCT and is a reward system for practices carrying out certain categories of work on prescribing issues, for example for prescribing within budget. Following data audit practices are awarded points, and these points are then converted into cash values to purchase items for the practice that would benefit patients and staff. The PCT identified purposes for which award payments may or may not be used; computer hardware, for example, would have only fallen outside the scheme if it had not been for practice use.

50. In previous years Dr Yogadeva had used the scheme to purchase items such as CCTV. In November 2008 Ann Chan (prescribing adviser for the PCT) was asked by Dr Yogadeva if a laptop, a printer and a digital camera fell within the scheme. She authorised the purchases by email and confirmed that the items must be 'exclusively for surgery use.'[7] In March 2009 Dr Yogadeva claimed payment for the items.

51. Dr Yogadeva was suspended 0n 9.3.09. Around this time Dr Neriman emailed the PCT stating that the items were not at the practice and alleged that Dr Yogadeva had taken them home for his personal use. Following this Dr Yogadeva informed Ann Chan in writing that he

[7] Ann Chan statement 9.4.09 page 2

had the items at home as 'unfortunately things go missing from time to time.'[8]

52. The PCT allege that Dr Yogadeva was acting dishonestly in that he did not return the equipment to the practice following his suspension. Dr Yogadeva accepted that the items were for patient use but never accepted that his retention of the items was dishonest. He also mentioned that no one had asked for the return of the items. He conceded that he retained the items and he accepted that they should have been returned. During the latter part of the proceedings he brought the equipment to the hearing, as far as the panel are aware the equipment was not checked to see whether it had been used. Dr Yogadeva said it had not been used.

53. The panel did not consider that Dr Yogadeva acted dishonestly. He made no attempt to hide the purchase of the equipment. He took the items home in the context of his rancorous dispute with Dr Neriman and he maintained (and there was no evidence to the contrary) that he had not used the equipment. He said that he obtained the equipment through his 'own efforts'. When cross-examined he changed his evidence to 'Dr Neriman and me'. He maintained that the practice was now 'not the same practice.'

54. The panel considered that Dr Yogadeva acted inappropriately in not offering to return the items following his suspension. The rationale he offered for his actions demonstrated a blinkered approach to his responsibilities as a partner in a NHS General Practice; the purpose of the scheme was to benefit patients and staff and even if the practice was no longer 'his', or his and Dr Neriman's, he should have returned the items immediately or at the very least consulted the PCT about their safe return if he was concerned about security.

[8] Dr Yogadeva letter to Ann Chan 24.3.09

*The panel did not consider that the allegation that Dr Yogadeva acted dishonestly in relation to the Prescribing Incentive Scheme was proved to the requisite standard.*

**Conduct towards staff and other professionals**

55. It was alleged by the PCT that Dr Yogadeva acted inappropriately and unprofessionally towards staff and other professionals. In relation to the staff at the Island Medical Centre the panel took into account that three key witnesses (Karen Banerjee, Sheila Dod and Colleen Boosey) had been employed by Dr Yogadeva for a number of years. They chose to continue to work for him and developed relationships with him, and each other, which did not in the panel's view fit with the description by Nina Murphy Associates of a 'traumatised group of individuals'.[9]

56. This may reflect the fact that Nina Murphy Associates were focussing on events in 2009 whereas the panel had greater opportunity to consider events over a period of time. For example when Colleen Boosey gave evidence she described that most of the time when she worked with Dr Yogadeva she had a good working relationship with him and did not have problems. She considered that this changed in January 2009. Sheila Dod said that she thought a lot of him when she started working with him in 1994, he had treated her like one of his family. She changed her view of him in 2001 and thereafter, in her words, was 'respectful' of him.

57. Myoung-Soon Kim said that she had a good relationship with Dr Yogadeva on a personal level, it was only in relation to his clinical practices that she had difficulties. She was aware that some of the other staff had difficulties and when she asked what the matter was when the atmosphere seemed subdued they would say 'the usual' meaning that Dr Yogadeva had been shouting at one of them. She said that she had never seen or heard that happen. It was her view that everyone was alert to his moods and it caused stress and poor

[9] Nina Murphy Associates report June 2009 page 18

performance in the practice. He did shout at her once in connection with a repeated blood test that suggested the patient should be in ITU. He said she should not have done the test. She wanted to resign after that but Dr Neriman persuaded her not to do so. She said that she had seen Sheila Dod crying often in the practice and always because Dr Yogadeva had been shouting at her, but no dates were given. Since she joined the practice in April 2008 and Sheila Dod did not return from maternity leave until November 2008 it was presumably between that time and March 2009. She had not heard Dr Yogadeva shout at Sheila Dod.

58. Fatema Khatun gave evidence that Dr Yogadeva shouted at her in February 2009. She described the context of this incident as being when she had been asked to type a patient's last name into the computer she had typed the first name.

59. Sheila Dod in her statement said that Dr Yogadeva could be a difficult man and that he got angry about small things, for example a broken toilet seat. He shouted at her but would apologise later but some staff could not take it and left. Sheila Dod said that she began to feel threatened by him in the last few months that he worked at the Island Medical Centre. She noticed a change after Dr Yogadeva agreed to take on Dr Neriman as a partner. He seemed disinterested and his mood swings became more pronounced. His reaction to her third pregnancy was angry and his anger continued on her return to the practice after Christmas. There was little communication. He appeared to want her to resign. He was demanding regarding her work and required her to turn off her mobile phone; he threatened to reduce her hours. He slammed her office door so that it damaged the doorframe and broke the keys – this was witnessed by staff. He did eventually in May 2009 deliver a letter of apology to her; her solicitors responded on her behalf.

60. When Sheila Dod told Dr Yogadeva on Christmas Eve that she was pregnant he lost his temper. Dr Yogadeva said he raised his voice. Although there may have been reasons for his loss of control at

that time (her news took him by surprise) he then continued with his behaviour after her return from the Christmas holidays. Dr Neriman gave evidence that Dr Yogadeva was upset by Sheila Dod coming back and then leaving. He was present when Dr Yogadeva said to her 'get rid of the child' and repeated it.

61. The panel considered that it was more likely than not, that Dr Yogadeva's behaviour towards his staff was not that of a responsible employer. He could be irascible, and the panel accept both the evidence of Myoung-Soon Kim and Fatema Khatun in that respect. He was clearly very annoyed and as he said he 'felt betrayed' by Sheila Dod and this affected his working relationship with her to the extent that she could/would no longer stay in work and went on sick leave. He bullied her and behaved poorly towards her as a friend and employer.

62. Apart from the practice staff the PCT relied on the evidence of two professionals who did not work at the Island Medical Centre to support the allegations of inappropriate and unprofessional conduct. The professionals were Mairead O'Connor and Lynne Ruddick. Mairead O'Connor is a clinical nurse specialist in palliative care working at a hospice. (Her evidence is dealt with at paragraph 76 below.)

63. Lynne Ruddick is a qualified nurse and the lead for the Community Heart Failure Service. The service works with GPs and other health professionals offering specialist advice on the management of patients who have experienced heart failure.

64. She gave evidence that she had a number of patients in common with Dr Yogadeva and had worked with him since 2005. On average she said she had contact with him about every three months and up until January 2009 her contact with him had not raised any concerns. In January an issue arose in relation to a patient. Dr Yogadeva's concern was that she had led the patient to believe that he would have an X-ray which then could lead to contention between him and the

patient[10] Lynne Ruddick disagreed and she said that she had not allowed the patient to assume that he would have an X-ray. There was a telephone call between Lynne Ruddick and Dr Yogadeva where she communicated her views. Dr Yogadeva asked her whether she had been to medical school and he was, according to Lynne Ruddick, 'quite aggressive' in his tone. She said that the end result of the discussion was that she felt inadequate.

65. The panel regarded it as relevant that there were only two incidents complained about of Dr Yogadeva's behaviour to a professional outside the practice when over the years Dr Yogadeva had been in practice he must have had countless interactions with other professionals. The incident also occurred in January 2009 when Dr Yogadeva was increasingly under stress. Nevertheless he acted (and the panel accepted Lynne Ruddick's account of the incident) in an inappropriate and unprofessional way to another professional colleague.

*The panel considered that the allegation Dr Yogadeva acted inappropriately and unprofessionally towards his staff and other professionals was proved to the requisite standard.*

**Inappropriate sexualised behaviour towards staff**

66. The panel decided that it was unable to make any findings in relation to the allegations made by Karen Banerjee. The other complainant was Fatima Khatun who the panel regarded as a credible witness. She was employed at the practice from July 2008 to April 2009 as a receptionist. Although she went to one of the meetings with Dr Russell there was no suggestion that she was involved in any 'smear campaign' against Dr Yogadeva. The panel did not consider her evidence to be embellished. She told the panel that Dr Yogadeva once touched her on the breast. She said he was gesticulating and she conceded that his action could have been accidental. She also said, however, that Dr Yogadeva stroked her hair, positioned himself to

[10] Dr Yogadeva second statement 30.9.10 paragraph 81

look at her computer in such a way that when he leant in he was able to touch her neck and hair, made personal comments on her appearance, e.g. said how pretty she was, asked if 'she was stripping naked in front of (him) 'when she removed her cardigan and generally she felt uncomfortable in his presence. The panel considered that it was more likely than not that these events occurred.

*The panel considered that the allegation that Dr Yogadeva demonstrated inappropriate sexualised behaviour towards a member of his staff was proved to the requisite standard.*

**Inappropriate sexualised behaviour towards patients**

67. To deal with the allegation of inappropriate sexualised behaviour towards patients the PCT relied on the evidence of five complainants. Two complainants gave evidence. The other three complainants had made allegations to members of staff at the Island Medical Practice but did not themselves give evidence. Given the seriousness of the allegations the panel decided that it could only make findings if the evidence of the complainant was heard and tested.

68. The panel heard from two patients who alleged that Dr Yogadeva had acted in a sexually inappropriate way towards them.

69. Victoria Flynn told the panel that in 2007 she went to see Dr Yogadeva suffering from a bad chest. He told her to take off her top and he listened to her chest with a stethoscope. There was no chaperone present and this made her feel uncomfortable. The incident occurred in 2007; she made a written complaint in 2009. She said she did not make a complaint at that time as she 'was in such a bad state'. (She briefly told the panel about her abuse of drink and drugs and that she was suffering from depression in 2007.) She was prompted to make the complaint by her father who also made a complaint about his treatment by Dr Yogadeva. She gave inconsistent accounts when she gave her evidence referring first to 'lifting up her top' and then 'taking her top off'. Because of the lapse of time between Victoria Flynn meeting with Dr Yogadeva and making her

complaint, and because of her uncertainty about what happened when she did see him, the panel was not able to make any findings in relation to this complaint.

70. Maria Cossington had been a patient of Dr Yogadeva's since 1984. English is not her first language and she gave evidence via an interpreter. She alleged in a written complaint (drafted by Colleen Boosey) that: firstly she was not referred for treatment for her knee because she did not 'provide him with girls' and secondly, about 8 years prior to her making her complaint, he had acted sexually inappropriately towards her during a consultation.

71. Maria Cossington was not able to explain or provide an understandable context for the first complaint. When asked why she chose to make the complaint about the sexual assault after 8 years, she said 'she had had enough and could not keep it in'. The panel did not find this explanation credible and no alternative or additional explanation was offered to the panel.

*The panel considered that the allegation that Dr Yogadeva demonstrated inappropriate sexualised behaviour towards patients was not proved to the requisite standard.*

### Home visits

72. The allegation that Dr Yogadeva failed to carry out home visits when it would have been appropriate to do so was clearly an emotive issue; his failure to visit Rosemary Senior which is dealt with below was one of the cases discussed at the meeting that Dr Russell and his colleagues had with the Island Medical Centre staff on 19.2.09.

73. Allegations were made by the PCT in relation to four patients. In the case of Kate Cane, an employee of the London Borough of Tower Hamlets made a complaint on behalf of one of his team members that Dr Yogadeva had refused to visit Kate Cane and had shouted at his colleague. The panel read the complaint letters. On the face of the papers this was a serious complaint which was not dealt with sensitively. Evidential uncertainties however prevented

the panel from making findings: Dr Yogadeva had no recollection of the complaint which was made in January 2006, nobody from the local authority gave evidence, the patient had died and there was no record of the request for a visit in the patient's notes.

74. Rosemary Senior was a patient of Dr Yogadeva's who lived in sheltered accommodation some 25 metres from the Island Medical Centre. She was in her late eighties. In June 2008 she had fallen at home. The police requested assistance. Myoung-Soon Kim did not think the police had asked directly for Dr Yogadeva. She was asked by Colleen Boosey and Karen Banerjee to go and assist the police. She asked whether Dr Yogadeva would go and she was told by Karen Banerjee and Colleen Boosey that Dr Yogadeva had refused to visit. She attended on the patient and waited until the ambulance arrived. Dr Yogadeva accepted that with hindsight he should have personally attended on his patient; the panel agreed. Even though Dr Yogadeva's attendance would not have altered the clinical outcome and he was on his own in the middle of his clinic, given the proximity of the patient's residence to the surgery and the alarm that the incident is likely to have caused it would have been better if he had attended.

75. On 6.12.08 Dr Yogadeva did visit his patient Louisa Croft at her home.[11] The allegation against Dr Yogadeva was therefore not that he failed to visit rather that he visited reluctantly and then shouted at the patient's carer. His appropriate management of the patient's condition was not in dispute. Colleen Boosey gave evidence that Dr Yogadeva had to be persuaded to make the visit and spoke inappropriately to the carer. She gave evidence that she did not feel comfortable about confronting Dr Yogadeva about his behaviour. She said that she did complain to someone about it but did not know who it was. The panel did not regard Colleen Boosey's evidence on this issue as credible.

[11] Medical records file 1 tab 2 page 244

76. Thomas Hall had been diagnosed with terminal cancer. It was clear from the evidence of Mairead O'Connor (see paragraph 62 above) that she wanted Dr Yogadeva to visit Thomas Hall for certification purposes and not for clinical reasons. (If a patient who has been diagnosed with a terminal illness is seen by their GP within 14 days prior to their death, the GP is able to sign their death certificate and state that the death was expected. If the patient is not seen by the GP within this timescale the death must be reported to the coroner which can cause delay and further distress to family and friends.)

77. The panel heard evidence from Mairead O'Connor who was a credible witness. She said she had had conversations with Dr Yogadeva in the past which were unproblematic. In the present case she said her objective was to get Dr Yogadeva to visit Thomas Hall as soon as possible and therefore she persisted in attempting to contact Dr Yogadeva. She tried on three occasions to speak to him on the telephone and then visited the practice. She spoke to Dr Yogadeva and was left feeling that he was not treating her as seriously as he should have done; she described asking Dr Yogadeva to visit within 24 hours and him responding by saying he would try and visit, suggesting a later date and then shrugging his shoulders saying 'if it is too late it is too late.' The panel accepted the evidence of Mairead O'Connor. Although the purpose of the visit was not clinical the visit would have been part of Dr Yogadeva's wider responsibilities as a family GP. In his statement he referred to Thomas Hall and his wife a 'very nice couple'. Dr Yogadeva did not do all he could have done to assist his patient and treated a professional colleague with disrespect.

*The panel considered that the allegation that Dr Yogadeva failed to carry out home visits when it was appropriate to do so was proved to the requisite standard.*

**Clinical emergencies at the practice**

78. The allegation that Dr Yogadeva failed to respond to clinical emergencies at the practice was another issue discussed at the

meetings in 2009. At the meeting on 10.2.09 the case of Doris Gallacher was identified.

79. Doris Gallacher was a patient in her eighties who attended the Island Medical Centre on 19.11.08 without an appointment. She was complaining of chest pains and breathlessness. Dr Yogadeva was at the surgery but was not on duty. He said he directed the receptionist to ask Dr Neriman if he could see her. Dr Neriman did examine her and arranged for an ambulance to take her to hospital when she subsequently received treatment.

80. Dr Neriman alleged that Dr Yogadeva ignored Doris Gallagher, Dr Yogadeva denies this. Given the animosity that existed between them the panel was not able to make findings on this point. Whilst it is correct that Doris Gallacher received the clinical care that she required the panel considered that given this was an emergency situation Dr Yogadeva should have offered assistance. Dr Yogadeva accepts this: 'I know [sic] feel that I should have seen her myself'[12].

81. Apart from the case of Doris Gallacher the PCT relied upon one other case to support the allegation of Dr Yogadeva's failure to respond to emergencies at the practice. The patient (Barbara Cutts) fainted at the surgery. Dr Yogadeva's evidence was that he was not aware that this had happened and the panel accepted his explanation. In two other cases Dr Yogadeva attended, observed and took no action. (One patient had a fit, the other had fainted). The only criticism of Dr Yogadeva made by Dr Robinson in relation to these two cases was that he did not communicate with his staff what had happened and why he took the actions he did.

*The panel considered that the allegation that Dr Yogadeva failed to respond to clinical emergencies at the practice was proved to the requisite standard.*

## Discrimination against certain groups of patients

[12] Dr Yogadeva second statement 30.9.10 page 13 paragraph 122

82. In her written evidence Karen Banerjee mentioned a Bengali patient who wanted to see Dr Yogadeva however Dr Yogadeva apparently did not want to see him. She also referred to Gulam Kibria's evidence.

83. Gulam Kibria was a patient at the Island Medical centre. In his written statement [13] he complained of Dr Yogadeva displaying 'an uncaring attitude towards me and my family'. (He also made a complaint about Dr Yogadeva failing to promptly inform him of two test results; this is dealt with below at paragraph 100 and 115-117 below.)

84. He said everything was going OK before 2009 when he raised his complaint. He made a general comment relating to a phone call when he told Dr Yogadeva that he was not kind and polite with him and his family. He alleged that Dr Yogadeva deliberately obstructed Asian female patients whose English was not fluent; no names or specific evidence were provided to substantiate this assertion. When he gave evidence he said that he had told Dr Yogadeva that he had noticed that he was generally less polite and caring towards Asian patients than white English patients.

85. In his statement Dr Neriman referred to the fact that he 'got a sense from (his) discussions with patients over the years that there was a particular group of women patients, vulnerable and mostly Asian, with whom Dr Yogadeva was inappropriate'[14]. He also stated that Dr Yogadeva treated non-English patients badly. He said that African and Chinese patients confided in him that Dr Yogadeva had intimidated them and they did not want to see him again. Dr Yogadeva is alleged to have said 'Do you think that if you were in Bangladesh you could come to the doctors like this? – no details of these patients were available. He alleged that Dr Yogadeva said that such patients were demanding and they expected everything to be

---

[13] Gulam Kibria 5.7.10 paragraph 5

[14] Dr Neriman statement 14.5.10 paragraphs 146-163

provided. An African patient is said to have expressed a view that Dr Yogadeva was dismissive towards her because of her race and other African families that she knew had told her that they had left the practice because of Dr Yogadeva.

86. The panel treated Dr Neriman's evidence with caution, and the rest of the evidence before the panel was insubstantial. The panel considered it relevant that Dr Yogadeva employed staff from a range of different ethnic origins including Bengalis. No letters of complaint concerning racial discrimination were submitted as evidence, some 30% of the patients of the practice were Bengali. Gulam Kibria's letter of complaint made no mention of discrimination issues; these were only raised in the statement he subsequently gave to Nina Murphy Associates and the PCT.

*The panel considered that the allegation that Dr Yogadeva discriminated against certain groups of patients, in particular Bangladeshi patients, on the grounds of race was not proved to the requisite standard.*

**Patients with substance misuse problems**

87. In the main the evidence that Dr Yogadeva discriminated against drug users and alcoholics was based on Dr Neriman's and Coleen Boosey's evidence, neither of which the panel found satisfactory.

88. Apart from the evidence of Dr Neriman and Colleen Boosey the only other evidence in relation to the allegation that Dr Yogadeva discriminated against patients with substance abuse problem came from Paul Flynn who attended the hearing. He was not a credible witness. That notwithstanding there was substance to his complaint which was that Dr Yogadeva had cancelled his prescription without letting him know. Dr Yogadeva accepts that he should have let Paul Flynn know that he had changed his prescription from repeat to current, and also there was no entry in the records to communicate this. This however was a clinical failing and did not evidence a discriminatory attitude toward the patient

89. The evidence in relation to three other patients listed in the expert's reports was unclear and the panel do not make any findings. In one case the experts were not critical, in the other two cases Dr Yogadeva did not believe that the patients were drug dependent. (It was accepted that the number of substance misuse patients formed a very small percentage of the total patient list size.)

90. It was clear that Dr Yogadeva's approach to patients with substance abuse problems differed from Dr Neriman's approach. Dr Neriman chose to try and support the patient whilst continuing to prescribe over time. Dr Yogadeva chose to continue to support whilst decreasing medication. Whilst Dr Yogadeva's approach might have been more challenging to the individual patient than the approach adopted by Dr Neriman, the panel do not consider that Dr Yogadeva's approach was unethical or unprofessional and did not breach GMC, or Department of Health, guidance.

*The panel considered that the allegation that Dr Yogadeva discriminated against, and failed to provide appropriate treatment to, patients with substance misuse was not proved to the requisite standard.*

**Practice equipment**

91. The PCT alleged that Dr Yogadeva 'failed to equip the surgery adequately to enable safe patient care because of his concerns about the cost of equipment' and he 'failed to ensure that medical equipment was checked or calibrated because of his concerns about the cost of that exercise.'

92. There were inconsistencies in the evidence in this area. For example when Myoung- Soon Kim was questioned about disposable gloves she said she did not have a box in her room; later she said had a box but it was not always full.

93. Generally with regard to the purchase of supplies, it was clear that Dr Yogadeva kept a close eye on ordering and was reluctant to waste money. (Sheila Dod in her statement commented upon him

being ‘very controlling with regard to all expenditure’[15] since she started working with him.) The evidence from staff initially seemed to indicate that he would not allow orders to be placed but in fact after questioning and demonstration that items were needed he would agree the order. It might have been better if he had instituted a system of budgeting, which would have given give staff more freedom and responsibility.

94. The issue for the panel however was to evaluate whether there was any evidence that patient safety was compromised by Dr Yogadeva’s approach to expenditure on practice equipment; there was no coherent evidence to establish this fact. The panel was provided with a letter from Dr Russell dated 11.6.07 complimenting the practice on the ‘very significant improvements in the standard of accommodation and the additional medical capacity and recognises the hard work and cost that has gone into making these improvements.’[16] This appeared to demonstrate that Dr Yogadeva was prepared to spend money on the practice when necessary.

95. The evidence in relation to calibration of equipment was too uncertain to allow the panel to draw any conclusions one way or the other. Invoices were shown to the panel that did not clarify matters, and the variation in price between 2008 and 2009 was not explained. Only one invoice, dated 19.2.08, detailed testing of one BP monitor, one fridge and one set of scales. The most coherent evidence was from Dr Yogadeva who stated that there were seven items of equipment which required calibration and this was last done in early 2009.[17]

*The panel considered that the allegation that Dr Yogadeva 'failed to equip the surgery adequately to enable safe patient care because of his concerns about the cost of equipment' and he 'failed to ensure that medical equipment was checked*

[15] Sheila Dod statement 11.5.10 paragraph 8

[16] Letter Dr Russell to Dr Yogadeva 11.6.07

[17] Dr Yogadeva’s second statement 30.9.10 paragraph 229

*or calibrated because of his concerns about the cost of that exercise' was not proved to the requisite standard.*

**Chaperoning policies**

96. The panel was able to form a general view about Dr Yogadeva's approach to the use of chaperones. He gave evidence about the use of chaperones. He distinguished between intimate examinations (eg rectal and vaginal) where he would always have a chaperone present, and breast examinations of female patients. In relation to the latter he said he would offer a choice: either for the patient to attend with a partner or friend or a staff member to act as chaperone. He accepted that he never entered in the patient notes when a chaperone was present.[18] Dr Yogadeva's approach to the use of chaperones was, in the panel's view, deficient in two respects. One was his distinction between 'intimate examinations' and breast examinations. GMC guidance[19] refers to intimate examinations as likely to 'include examinations of breasts, genitalia and rectum' and recommends that the doctor should offer 'the patient the security of having an impartial observer (a 'chaperone') present during an intimate examination.' In that respect Dr Yogadeva's approach fell below 'best practice'. The panel accept Dr Silk's analysis in this respect: 'I doubt if Dr Y's approach to the matter has been very different to a significant number of his peers but his system should be tightened up to recording the offer and/or presence of a chaperone.'[20]

97. The allegation made against Dr Yogadeva by the PCT was that he failed to comply with chaperoning policies. The practice had a chaperone policy available (last reviewed in September 2007)[21] This policy did not form part of the documentation available to the panel and therefore the panel made no finding on this point. (It is relevant that the general criticisms made by Nina Murphy Associates and Dr

[18] Dr Yogadeva's second statement 30.9.10 page 9 paragraph 83
[19] Maintaining Boundaries GMC 2006 (appendix 1 referred to in the reports of Drs Robinson and Silk)
[20] Dr Silk first report page 3
[21] Nina Murphy Associates report June 2009 page 48

Robinson and Dr Silk about the absence of practice policies were accepted by Dr Yogadeva.)

*The panel considered that the allegation that Dr Yogadeva failed to comply with chaperoning policies was not proved to the requisite standard.*

**Complaints handling**

98. The panel was not provided with any data about the number of complaints received by the practice or the number that was referred to the PCT. Karen Banerjee was, and still is, the practice complaints manager at the Island Medical Centre. She gave evidence that the practice ran the normal NHS complaints procedure in that she would draft a response and show it to Dr Yogadeva. She would tell staff about a complaint, get their version and show them what she was planning to write in her response to the complainant. Her intention in showing her proposed response to staff was to allow them to check for accuracy, not to re-write. She claimed that Dr Yogadeva re-wrote her responses. She agreed that some of her replies might not have reflected his version of events. When it was pointed out to her that he just wanted to make sure the letters reflected his position she said: 'but I am supposed to be independent- he cannot just re-word them… I thought he was manipulating the answers'. Her response did not demonstrate that Dr Yogadeva did not engage with the complaints process, rather that Karen Banerjee did not consider that her letters should be changed.

99. Karen Banerjee wanted to assert the independence of the complaints process, Dr Yogadeva wanted any written response to a complaint about him to accurately reflect the facts of the situation. In a better functioning workplace this difference in approach should have been recognized, discussed and dealt with; whilst Dr Yogadeva was in single-handed practice this was his responsibility, when Dr Neriman became a partner it was their joint responsibility to ensure that the practice had an effective complaints process.

100. A specific issue was raised by the evidence of Dr Yogadeva's patient Gulam Kibria. This was that Dr Yogadeva manipulated, or

attempted to manipulate, his complaint. Gulam Kibria made a written complaint about Dr Yogadeva on 29.1.10, the complaint was addressed to Dr Russell. Dr Yogadeva accepts he did telephone Gulam Kibria. He said he had not been shown the complaint letter but obviously knew about the complaint. When he telephoned Gulam Kibria he spoke on several matters. He was asked why he telephoned and he explained that this was because Gulam Kibria was a 'prominent Bengali patient'. (Dr Yogadeva said he was 'prominent' because Gulam Kibria had a good command of English, they discussed wider issues and their relationship was friendly.) The panel did not consider the fact that Dr Yogadeva telephoned Gulam Kibria evidenced an attempt to manipulate the complaints process; that was certainly not the impression the panel obtained after hearing from Gulam Kibria who did not come across as a witness who was susceptible to manipulation.

*The panel considered that the allegation that Dr Yogadeva failed to engage appropriately and professionally in dealing with patient complaints was not proved to the requisite standard.*

**Patient confidentiality**

101. Nina Murphy Associates reported that it was easy to overhear consultations in the health visitor's room from a doctor's room (and vice versa) and that consultation room in the health visitor's room could be overheard from the toilet lobby. Dr Russell's first statement dealt mainly with issues around the practice premises including an allegation that Dr Yogadeva failed to provide premises which were suitable to meet the reasonable needs of patients. At the outset of the present proceedings the PCT made it clear that this was not an issue that the PCT were going to rely upon.

*The panel considered that the allegation that Dr Yogadeva failed to ensure patient confidentiality was not proved to the requisite standard.*

**Patient records**

102. Following Dr Yogadeva's suspension the PCT commissioned a report by Nina Murphy Associates. This report contained a 'practice review' which included a clinical review and an analysis of processes and systems at the Island Medical Practice. The clinical review was based on 31 clinical records: six targeted records of patients who made complaints and 25 randomly selected patient records from a full day surgery on 11.11.08. Following Dr Yogadeva's appeal Dr Robinson and Dr Silk analysed these records, and some of the written material before the panel, in preparing their analyses of clinical concerns about Dr Yogadeva's practice. (The patients under discussion are referred to by their individual EMIS number, for example patient 13536. EMIS is the clinical software used by the practice.)

103. At the direction of the panel the Dr Robinson and Dr Silk prepared a schedule of agreement and disagreement based on the material before them.

104. The Island Medical Centre had been using a predominantly paperless patient record system for a few years with a scanning facility within the clinical software. All the assessors, that is the two assessors from Nina Murphy Associates and Dr Robinson and Dr Silk commented on the inadequacy of Dr Yogadeva's record keeping. The inadequacy of the records made a meaningful analysis of the medical records difficult for all the assessors, and the panel.

105. All the assessors noted a number of consultations recorded with no clinical entries which is likely to be attributable to poor use of the practice software. Also Dr Yogadeva recorded what appear to be consultations as DNA which again is likely to be because of incorrect use of an activity function in the software.

106. Dr Silk noted that the quality of the old paper records were good. Dr Silk considered that Dr Yogadeva needed intensive help to

improve his record keeping although he considered that the paucity of the records was not only a function of computer literacy.

107. Drs Robinson and Silk analysed in some detail a number of patient records to evidence their conclusion as to the inadequacy of Dr Yogadeva's record keeping.

108. Poor record keeping severely impacted on the analysis of Dr Yogadeva's clinical management of individual patients. Patient 12178 was a child apparently diagnosed with psoriasis. The analysis by Dr Robinson was that the drug that was prescribed was incorrect for this particular condition.[22] Dr Yogadeva accepts that his entry of psoriasis in the computerised medical records was wrong; he stated he in fact diagnosed extensive eczema where the use of the prescribed drug for the eczema in 'short sharp courses' advocating a cautious approach to the parent was justified.[23] Patient 4939 evidenced a similar problem. Dr Robinson was critical of Dr Yogadeva for not arranging for a chest X-ray to be taken of a patient recorded as having pneumonia. In fact, according to Dr Yogadeva, there was no such diagnosis and the reference to pneumonia was because of his incorrect use of the computer system.

109. The experts agreed, and Dr Yogadeva accepted this, that the evidence was clear that Dr Yogadeva's failed to keep adequate medical records.

*The panel considered that the allegation that Dr Yogadeva failed to keep adequate patient records was proved to the requisite standard.*

### Clinical care

110. This analysis of the standard of Dr Yogadeva's clinical care highlights some of the issues and concerns covered in the detailed analyses of Dr Robinson, Dr Silk and the Nina Murphy Associates. It is not intended to represent a comprehensive analysis and although

[22] Dr Robinson report 13.7.10 n

[23] Dr Yogadeva second statement 30.9.10 page 20 paragraph 180

findings have been made the panel decided that it was not necessary, or feasible, to make findings on every matter considered by the assessors. The panel was greatly assisted by the quality of the assessment reports and the evidence of Dr Robinson and Dr Silk, who were largely in agreement with each other.

111. General allegations of Dr Yogadeva's poor care in the areas of diabetic (and blood pressure treatment) were made by Dr Neriman and Myoung-Soon Kim; this evidence was scanty. Dr Robinson, with reference to patients 7534/808/12162, observed that Dr Yogadeva failed to act on abnormal blood glucose levels and this was reflected in the records. In relation to patient 7534 Dr Yogadeva said that he did not know why he put 'no comment' in records, and in relation to patients 808 and 12162 he said that that reception staff should have telephoned the patients. The panel considered that it was Dr Yogadeva's responsibility (and that of Dr Neriman when he became a partner) to ensure that there were safe systems in place.

112. In relation to the specific management of patients with diabetes (patient 808) the fasting blood glucose result for this patient was 12.0. Dr Yogadeva's response to that result was the test should be repeated. Dr Robinson's view was that the result of the first result was diagnostic and required proactive and urgent action. The panel agreed with Dr Robinson's analysis and conclusion which was that Dr Yogadeva's failure to take action in this case, thus delaying the diagnosis, fell well below the standard expected of a competent GP.

113. Patient 10385 was a patient with a history of asthma although he had received no treatment for this condition since joining the practice in 2003. (The computerised record reads '1970 occasional asthma'.) On 11.11.08 he saw Dr Yogadeva who diagnosed the patient as suffering from acute bronchitis and prescribed Amoxicillin. Both Dr Silk and Dr Robinson commented that a peak flow measurement should have been undertaken given his history. Similar comments were made in relation to patients 10859 and 4939 where peak flow measurements were not taken. In relation to patient 10385 and

patient 10859 Dr Yogadeva accepts that a peak flow examination should have been undertaken.

114. In two cases of pregnant women (patient 110179 and patient 12367) Dr Yogadeva prescribed medication that is recommended by the BNF and manufacturer to be avoided in pregnancy. He accepted that he would not now prescribe the medication Tramadol to patients who are pregnant. The panel agreed with the conclusions of Dr Silk and Dr Robinson that this was inappropriate prescribing behaviour and fell well below the standard expected of a competent GP.

115. Gulam Kibria made a complaint about the clinical care he received from Dr Yogadeva.[24] (He also made complaints about Dr Yogadeva's discriminatory attitude towards him – see paragraphs 83-84 above.) Because he was one of the few complainants to give evidence his case justified particular attention. He complained that he had not been told about a MRI scan result and also the result of a blood test. Both results were abnormal and Dr Robinson considered that if there had been failures to act on these abnormal results then this fell well below the standard expected of a GP.

116. In relation to the MRI on analysis of the medical records it appeared that he had been referred for the MRI by his spinal surgeon and not Dr Yogadeva and the result would have been sent to the Island Medical Centre for information purposes; in any event it confirmed an earlier result and did not indicate further action. (Dr Yogadeva's evidence was incorrect when he stated that he ordered the MRI.[25])

117. In relation to the blood test the records indicate that Dr Yogadeva saw him on 21.1.08 and requested the test, the test was undertaken on 23.1.08, the result came back around 25.1.08 and he was seen Dr Neriman on 7.2.08. Dr Yogadeva was not able to provide

[24] Statement of Karen Banerjee 26.4.10 exhibit KJB 28

[25] Statement of Dr Yogadeva 30.9.10 paragraph 159

an adequate explanation as to why Gulam Kibria had not been informed of the abnormal blood test. The fact that Dr Nerinam saw him within two weeks was coincidental and although Dr Yogadeva described Gulam Kibria as a frequent attender at the practice this evidenced the absence of a safe system at the Island Medical Centre for acting on abnormal results. (When Dr Yogadeva was asked about arrangements when he went on holiday he said that very few test results came in when he was on holiday and he would not check those that did come in until he returned.)

*The panel considered that the allegation that Dr Yogadeva failed to provide adequate clinical care to his patients was proved to the requisite standard.*

## Conclusions

118. Dr Yogadeva worked for many years serving a population in East London. It is likely that until 2008/2009 the staff who had worked for him for some years had got used to working with him and developed ways to deal with the negative aspects of his behaviour and employment arrangements. Like many small businessmen he had developed a paternalistic manner of dealing with his staff and the panel consider it likely that the positive aspects of his behaviour outweighed the negatives so far as Karen Banerjee, Sheila Dod and Colleen Boosey were concerned as evidenced by the fact that they chose to remain in employment in the Island Medical Centre.

119. From 2008 onwards Dr Yogadeva became increasingly under stress. He was apparently reluctantly taking on a new partner and losing control of his business, he was involved with the PCT in a protracted dispute about his practice premises and his practice manager was shortly to take maternity leave following the birth of her third child, having only recently returned from maternity leave in respect of her second child. It is likely that he was also concerned about aspects of Dr Neriman's clinical performance.

120. The panel determined that a number of the allegations made by the PCT against Dr Yogadeva were proved to the requisite standard.

121. On appeal the Primary Health Lists Tribunal may make any decision which the Primary Care trust could have made. (The National Health Service (Performers Lists) Regulations 2004 regulation 15(3))

122. In deciding what decision to make the panel took into account the general context in which Dr Yogadeva was working and the context specific to each allegation made.

*a. The panel considered that the allegation that Dr Yogadeva did not deliver the Extended Hours Local Enhanced Service Scheme according to the SLA and that he made inappropriate claims was proved to the requisite standard.*

Dr Yogadeva did not deliver the Extended Hours Service according to the terms of the SLA. The panel however considered it relevant that no evidence was presented by the PCT to demonstrate that patients were dissatisfied with the service provided. Also no comparable audit of Dr Neriman's delivery of the service, or of any other local practice, was conducted which would have allowed, for example, for an analysis of differences in the arrival patterns of patients or identification of their presenting conditions. Dr Yogadeva's staff submitted incorrect claims. He does not deny that inappropriate claims were made. He accepted full responsibility for having signed the forms without checking them.[26] He does deny that they were made with intent to defraud the NHS and this was not an allegation that the PCT relied upon. An alternative view would be that Dr Yogadeva was providing the service in a way that met the needs of his patients and a different approach by the PCT could have been to work with him to ensure that the SLA was modified to reflect that fact.

*b. The panel considered that the allegation Dr Yogadeva acted inappropriately and unprofessionally towards his staff and other professionals was proved to the requisite standard.*

[26] Dr Yogadeva statement 19.5.10 paragraph 4.1b

Dr Yogadeva found it difficult to establish boundaries and could act in a childish and petulant way. This was evidenced by his behaviour towards Sheila Dod which over the years moved from him regarding her as a member of the family to him sustaining churlish and offensive behaviour for some weeks. In understanding aspects of his behaviour the panel considered it relevant that his bad temper directed toward Myoung-Soon Kim, Fatema Khatun and Lynne Ruddick, and his discourtesy toward Mairead O'Connor, all occurred in 2008 /2009 when he was becoming increasingly subject to external pressures.

*c. The panel considered that the allegation that Dr Yogadeva demonstrated inappropriate sexualised behaviour towards a member of his staff was proved to the requisite standard.*

The panel considered that Dr Yogadeva lacked, and continues to lack, awareness of how his behaviour can be seen by others in particular the female staff that he employed. His behaviour towards Fatema Khatun reflects that. Although his behaviour was unacceptable the panel considered it likely that he will be so chastened by this finding that he will exercise great care in the future. This transgression was at the lower end of a spectrum of seriousness. This particular finding, and the finding in relation to his dealings with staff and other professionals, must suggest that in the event that he returns to the performer's list he should not place himself again in the position of being a single handed GP in any NHS General Practice.

*d. The panel considered that the allegation that Dr Yogadeva failed to carry out home visits when it was appropriate to do so was proved to the requisite standard.*

The cases of Rosemary Senior and Thomas Hall do not involve allegations of poor clinical care. Rather they evidenced lapses in Dr Yogadeva's judgement and professionalism.

*e. The panel considered that the allegation that Dr Yogadeva failed to respond to clinical emergencies at the practice was proved to the requisite standard.*

There was only one case on which the panel made a finding, that is the case of Doris Gallacher. This case appears to illustrate a similar point to the cases identified in the preceding paragraph. The allegation was not of poor clinical care, rather of a lapse in Dr Yogadeva's judgement and professionalism.

*f. The panel considered that the allegation that Dr Yogadeva failed to keep adequate patient records was proved to the requisite standard.*

Dr Robinson concluded in his report that Dr Yogadeva's record keeping was appalling. When Dr Silk gave evidence, he observed that the standard of the record keeping was very poor: 'this can present a potentially significant risk to patients.' He gave evidence that Dr Yogadeva struggled with the EMIS software.

*g. The panel considered that the allegation that Dr Yogadeva failed to provide adequate clinical care to his patients was proved to the requisite standard.*

Although the panel was satisfied that in relation to some cases Dr Yogadeva's clinical care fell well below the standard of a competent GP the overall picture, compared to his failings in relation to his maintenance of patient records, was not so clear. When he gave evidence Dr Yogadeva displayed a detailed knowledge of many of his patient's histories and circumstances. Whilst this facility may have allowed him to delay getting to grips with the demands of computerized record keeping, now that he has accepted the need to train it may prove to his advantage. The PCT focussed their allegation on Dr Yogadeva's clinical care. The evidence also demonstrated that Dr Yogadeva's clinical management was at fault e.g. the absence of safe systems for acting on abnormal results.

123. Taking into account the context of the various findings made, and weighing up their seriousness, the panel has concluded that in their totality they do not make Dr Yogadeva unsuitable to continue to work as GP. The panel has therefore decided to allow Dr Yogadeva's appeal. Because of the concerns about aspects of his behaviour, and

the clinical shortcomings demonstrated by Nina Murphy Associates and Dr Robinson and Dr Silk, the following conditions are imposed:

a. With the assistance of the London Deanery Dr Yogadeva must formulate a Personal Development Plan specifically designed to address the deficiencies in his conduct towards NHS staff and other professionals and those aspects of his clinical care and his medical practice found to be below the standard expected of a competent GP. (To assist in the formulation of his Personal Development Plan the reasons of the Primary Health Lists Tribunal dated 23.8.11 and the reports of Dr Robinson and Dr Silk should be made available to the London Deanery.)

b. Dr Yogadeva must obtain a placement in an advanced training practice approved by the London Deanery where he will work under the supervision of a named GP trainer for a minimum of six months.

c. At the conclusion of his placement at the advanced training practice Dr Yogadeva must obtain a report from his supervising GP trainer for consideration by the medical director of the Tower Hamlets PCT (or the equivalent person of any successor organisation) to allow a decision to be made about his inclusion in the performer's list.

d. The medical director of the Tower Hamlets PCT (or the equivalent person of any successor organisation) should, if practicable make, a decision about Dr Yogadeva's inclusion in the performers list within 28 days of receipt of the report named in paragraph c. above.

e. Dr Yogadeva must not undertake any out-of-hours work, or work as a locum in any NHS General Practice, until the medical director of the Tower Hamlets PCT (or the equivalent person of any successor organisation) has made a decision about his inclusion in the performer's list.

| | |
|---|---|
| A Harbour | Tribunal Judge |
| H Freeman | Professional Member |
| L Bromley | Member |

Dated 23 August 2011