THE PRIMARY HEALTH LISTS TRIBUNAL

CASE NUMBER 15384

DR G DURU **Appellant**

and

BARNET PRIMARY CARE TRUST **Respondent**

DECISION and REASONS

The references in the text to page numbers e.g. Dr Duru statement 30.6.11 paragraph 14 P64 refer to the numbers contained in the hearing bundle.

1. The appellant (Dr Duru) is a General Practitioner (GP).

2. On 21.4.11 Dr Duru appealed against a decision of the Barnet Primary Care Trust (the PCT) to contingently remove him from their performer's list.

3. A panel of members of the Primary Health Lists Tribunal (the panel) considered his appeal on 15.8.11 and 16.8.11. The panel dismissed his appeal however varied the conditions attaching to his contingent removal. On 16.8.11 the panel orally communicated a summary of their decision to Dr Duru. This is the full decision and the reasons for the decision.

Background

4. The chronological background to Dr Duru's appeal is as follows:

    a. In 2.10.09 the GMC (Fitness to Practice Panel) attached conditions to Dr Duru's registration.

    b. On 10.2.10 Dr Duru was suspended from the performers list of the PCT.

    c. On 9.6.10 the PCT extended his suspension.

d. On 2.7.10 the GMC (interim orders panel) suspended Dr Duru's registration for 18 months.

e. On 5.8.10 the PCT extended his suspension.

f. On 16.12.10 the GMC (interim orders panel) reviewed and maintained the suspension imposed on 2.7.10.

g. On 25.3.11 the PCT continently removed him from their performers list

h. On 19.4.11 the GMC (Fitness to Practice Panel) reviewed the conditions made in 2009, varied them and extended them for a period of 18 months.

i. On 8.6.11 the GMC (Interim Orders Panel) imposed conditions that replaced the fitness to practice conditions. These conditions included a requirement that that Dr Duru should confine his medical practice to a recognised training practice.

5. The GMC's 2009 decision was based on findings that it made in relation to Dr Duru's conduct when he was on duty as a GP at Barnet Hospital in 2005. His function at that time was as a primary care clinician seeing, and treating, patients with uncomplicated primary care conditions. The GMC panel found that Dr Duru failed to conduct a full examination of a 9 month old child (JD), or to make a referral of that child, who died the following day from meningitis and septicaemia. The GMC panel regarded Dr Duru's failings as being 'particularly serious'.[1] The GMC panel also concluded that it was not satisfied that Dr Duru had learnt from his mistakes nor demonstrated adequate insight into his failings.

6. The PCT's decision to suspend Dr Duru on 10.2.10 was based primarily on their concerns arising out of the findings made by the GMC in the JD case coupled with evidence that Dr Duru failed to

[1] Determination of the GMC Fitness to Practice Hearing commencing 28.9.09 page 4 P154

notify Herts Urgent Care (HUC), the out-of-hours service for whom he was working at the time, about the GMC conditions, as he was required to do. In addition concerns had been raised by HUC in relation to Dr Duru's clinical competency in three cases and a record review conducted by Dr Corcoran on behalf of the PCT in June 2009 had identified deficiencies in Dr Duru's record keeping.

7. Dr Duru therefore remained suspended until 25.3.11 when the PCT decided to remove Dr Duru contingently from their list and imposed conditions pursuant to the National Health Service (Performers Lists) Regulations 2004 (as amended).

8. The PCT's decision on 25.3.11, which is the subject of this appeal was both pragmatic (to end Dr Duru's entitlement to receive suspension payments to cover the costs of a locum) and based on a wish to come to a decision that was coterminous with the predicted decision of the GMC Interim Orders Panel. At this hearing the PCT's decision was based primarily on an assessment report undertaken by a team of GMC assessors dated 26.1.11.

9. This report was part of the written evidence made available to the panel by the PCT. Dr Duru disputed the results of this assessment. 'The GMC assessment was flawed from the outset, it lacked objectivity and it's recommendations were prejudiced and therefore should be discounted.'[2] Because of Dr Duru's stated position the panel decided that it could not rely on the findings of the GMC assessors without Dr Duru having an opportunity to test their evidence by way of cross-examination. This meant that the panel either had to adjourn the hearing or make a decision on the basis of the evidence before it.

The PCT's case

10. The PCT called Dr Corcoran, Dr Barnett and Dr Davies to give evidence to the panel in supporting their case that the conditions imposed on 12.4.11 were the correct conditions to deal with their

[2] Dr Duru statement 30.6.11 paragraph 14 P64

concerns about patient protection and efficiency issues. Dr Duru gave evidence. The hearing lasted two days and by the end of the hearing the panel was satisfied that it had read, and heard, sufficient evidence to make a determination in relation to Dr Duru's appeal.

11. Dr Corcoran is a GP with experience of assessing for the Quality and Outcomes Framework (QOF). At the request of the PCT he conducted two reviews of Dr Duru's clinical3 records. The first review was undertaken on 9.6.09. In this review he concluded that Dr Duru's medical records 'did not reach the standard required for evidence based medicine.'[4]

12. The second review conducted after Dr Duru was suspended by the PCT was described by Dr Burnett as a 'failsafe' review. The purpose of the review was not designed to be a comprehensive review of a cohort of patients rather it was designed to pick up cases from the whole patient population where there might be causes for concern.

13. Dr Burnett (a GP) was, until April 2011, medical director for the PCT. It was his role to make decisions about gathering and analysing information about Dr Duru and presenting that information to his employers, the PCT. When giving evidence he summarised his concerns about Dr Duru's practice as encompassing both poor record keeping and poor clinical management. Prior to the report from the GMC assessors being available he relied on Dr Corcoran's assessments as identifying flaws in Dr Duru's record keeping and case management together with additional information provided by HUC and the original 2009 findings by the GMC in the case of JD.

14. Dr Davies, another GP, is the clinical director for HUC. HUC is a social enterprise with around 230 GPs on their books; each working on a sessional basis under a service level agreement. Until the termination of his service level agreement Dr Duru worked for HUC.

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[3] Dr Duru statement 30.6.11 paragraph 4.0 P57

[4] Dr Corcoran report June 2009 paragraph 4.1 P139

Dr Davies summarised the concerns that he and his colleagues had about Dr Duru as follows: his poor reliability (appearing late for shifts or cancelling shifts at short notice); his poor record keeping; his breach of the GMC conditions and his clinical competence. Concerns about his clinical competence emerged via patient complaints.

15. The main reason for HUC terminating the service legal agreement with Dr Duru was that he failed, and Dr Duru accepted this, to notify them about the conditions that the GMC (Fitness to Practice Panel) attached to his registration in 2.10.09. In particular the GMC required Dr Duru to inform any out-of-hours service that he was registered with that his GMC registration was subject to conditions. When cross-examined at the panel hearing he accepted that the condition was clear. When asked why he did not inform the HUC senior staff at a meeting that he had with them on 8.12.09 he said it was not an appropriate place to tell them. When asked why it was not appropriate he said that the meeting was for a different purpose. (The purpose of meeting was described by Dr Davies as being to 'highlight the concerns we had about Dr Duru's practice and give him an opportunity to respond.'[5])

16. Dr Davies gave evidence about three complaints two of which were considered in some detail at the panel hearing. The first involved a patient (patient X) who on 9.11.09 Dr Duru diagnosed as suffering from a TIA (transient ischaemic attack). The criticism of Dr Duru was twofold: first that it was premature to have made the diagnosis of TIA and the patient should have been immediately referred to hospital for further investigation and secondly Dr Duru's records fell well below the standard of a competent GP. Dr Duru's response was uncompromising: his diagnosis was correct and the patient did not suffer any harm as a result of being sent home.

17. Patient Y was seen by Dr Duru on 29.11.09. She was complaining of swelling and pain in her calf on walking. She had undergone an

[5] Dr Davies statement 19.7.11 paragraph 20 P47

arthroscopy in her left knee five days previously. In this case Dr Duru definitively, in his opinion, excluded deep vein thrombosis (DVT) and did not recommend further investigation at the time. The criticism of Dr Duru was that he should have referred the patient to hospital for further investigation. The outcome in this case was known; the patient did have DVT.

Dr Duru's case

18. Dr Duru was unrepresented. The original basis of his appeal was 'to prevail on Barnet PCT to continue my suspension and pay for locum cover until the GMC concludes it's investigations otherwise patient care will be put at a serious risk'.[6] When the panel made him aware that it was not able to make such a decision he requested that the terms of his contingent removal made by the PCT on 25.3.11 be varied.[7]

19. At the outset of the hearing Dr Duru accepted that he was fully aware that he required remediation. He however regarded the PCT's conditions as onerous and they prevented him from returning to his practice. In particular he argued that the condition that required him not to practice medicine other than in a supervised capacity within a recognised training practice for a minimum of 12 months was essentially unworkable.

20. Before the PCT presented its case to the panel it considered whether Dr Duru's suggestion as to a variation in his conditions was acceptable. The PCT however concluded that in the interests of public safety they were not.

21. In a written statement dated 30.6.11 Dr Duru outlined the basis of his appeal. He disputed the decision of the GMC in relation to the case of baby JD. ('It is my view that if the GMC had included the second

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[6] PHL appeal application form 21.4.11 P5

[7] Letter D Riddle to Dr Duru 30.3.11 Appendix 2 PP 1054-1055

doctor in their investigation which everybody thinks was the right thing to do, the outcome would probably have been different'.[8]) He alleged that Dr Burnett, who he says was responsible for the decision of the PCT to suspend him in 2010, was 'determined to go to extra-ordinary and unethical length to procure evidence and get me suspended'.[9] He suggested that Dr Burnett and Dr Davies colluded together to get him suspended and Dr Burnett put pressure on the GMC which resulted in the his suspension in July 2010.

Findings

22. The panel did not read or hear any evidence that indicated that Dr Burnett had acted improperly in dealing with Dr Duru's case. There may have been some delays in the PCT's decision making process. Some opportunities to work with Dr Duru were missed e.g. a lack of focus on acting upon the recommendations contained in Dr Corcoran's first report. However the PCT acted decisively in early 2010 when a number of concerns crystallised which mirrored some of the GMC's findings in the case of child JD e.g. no platform for the next doctor to work on, inadequate examination or adequate recording of the findings and failure to involve senior colleagues in the case.

23. Dr Corcoran accepted the limitations imposed on his assessment exercises and also that his findings could be taken forward by further training and audit with the practitioner assessed. The panel did not accept, as Dr Duru alleged, that the second assessment was a fault finding exercise. The panel is satisfied that Dr Corcoran's assessments offered a snapshot view of Dr Duru's competence in keeping and maintaining computerised records and identified deficiencies which were susceptible to remediation.

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[8] Dr Duru 30.6.11 paragraph 4.o P57

[9] Dr Duru 30.6.11 paragraph 4.4 P58

24. Dr Davies presented in a measured fashion the concerns that he and his colleagues had about Dr Duru's clinical capabilities. The panel accepted that the two cases analysed at the hearing demonstrated significant deficits in Dr Duru's clinical management and competence.

25. In relation to patient X the HUC computerised records that the panel were shown were the notes that Dr Duru entered into the computer at the time of his consultation; these were clearly inadequate and he accepted this when he wrote to Dr Davies.[10] Dr Duru wrote in his statement that the notes of his consultation went missing.[11] The panel considered that this explanation was unsatisfactory; although Dr Duru may have made hand written notes, which are the 'missing' notes that he referred to in his statement, these notes were not transposed onto the HUC computer system. Reliance on hand written records was not a safe system, particularly for a GP working for an out-of-hours service.

26. In relation to patient Y Dr Duru's response appears to have been that whilst he did get the diagnosis wrong it was an unusual complication and in any event was in fact picked up by the patient's GP.

27. Dr Duru saw patients X and Y within weeks of each other. Both patients had potentially life threatening conditions where he made definite diagnoses where referral to exclude a serious medical condition was not made. In the case of X the paucity of his record keeping was particularly alarming given that as an out-of-hours practitioner he was unlikely to be providing further follow-up to the patient.

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[10] Dr Duru to Dr Davies 29.12.09 P72

[11] Dr Duru 30.6.11 paragraph 7.1 P60

28. The panel was satisfied that there was no evidence that Dr Davies and Dr Burnett had colluded together to intentionally build up a case against Dr Duru and their decision to share confidential information about Dr Duru's patients was entirely justified on the grounds of patient safety.

29. The evidence before the panel (and the panel did not take into the report by the GMC assessors) was that Dr Duru's record keeping fell well below the standard of a competent GP. The panel did not accept Dr Duru's evidence where he said that he did not have any clinical deficiencies apart from note-keeping

30. When Dr Duru gave evidence he came across as lacking in insight (he was not able to reflect on his weaknesses) and obdurate (he stubbornly refused to acknowledge any of his manifest failings apart from the inadequate record keeping). He also demonstrated a refusal to accept any responsibility for his own actions blaming variously Dr Burnett, Dr Davies and the GMC for many of his difficulties.

31. The panel considered that the reason that Dr Duru gave for not notifying HUC about the GMC conditions when he had an opportunity to do so was not believable.

32. Taking all these factors into account the panel had no hesitation in concluding that the PCT's decision on 25.4.11 to place conditions on Dr Duru's inclusion in its list was the correct one. The panel also concluded that the variations to the conditions that Dr Duru sought would not address his deep-seated difficulties.

33. The panel decided to vary the conditions made by the PCT on 25.3.11 to align them more closely with the GMC Interim Orders Panel decision of 8.6.11. The panel was satisfied that the only safe way to offer remediation to Dr Duru was via supervised training at a recognised training practice.

The conditions

34. The conditions attached to Dr Duru's contingent removal are as follows:

a. Dr Duru must confine his medical practice to NHS general practice posts in a recognised training practice, as agreed with the local Deanery, where his work will be supervised by a named GP trainer.

b. Dr Duru must seek a report from his supervisor for consideration by the medical director of Barnet PCT (or the equivalent person of any successor organisation) to allow a decision to be made about his inclusion in the performer's list.

c. Dr Duru must not undertake any out-of-hours work or work as a locum in any NHS General Practice until the medical director of Barnet PCT (or the equivalent person of any successor organisation) has made a recommendation to the PCT about Dr Duru's inclusion in the performer's list.

A Harbour Tribunal Judge

P Garcha Professional Member

L Bromley Member

Dated 6 September 2011