In the First-Tier Tribunal (Health, Education and Social Care)
Heard at: Teesside Magistrates Court
On: 20th November 2013

Before:

Deputy Chamber President Judge John Aitken
Dr I Lone
Mr C Barnes

Dr Partington

Appellant

v.

NHS Commissioning Board
(Cumbria, Northumbria, Durham)

Respondent

PHL 15551

Appellant: In Person
Respondent : Ms P Doyle (Hempsons)

Decision

1. Dr Partington appeals a decision of NHS England, dated 20th December 2012 (When the duties were performed by the Sunderland Primary Care Trust) to remove him from the performers list pursuant to regulation 14(3)(b) of the ***NHS (Performers List) Regulations 2013*** on the basis that Dr Partington's continued inclusion in the list would be "*prejudicial to the efficiency of the services that those included within the list perform*".

Background

2. To properly consider the matter it is necessary to have regard to the history of Dr Partington, which has involved a previous decision by the Primary Care Trust to remove him from the performers list in 2008, and 2010. Dr Partington appealed that latter decision to the Primary Health Lists jurisdiction of HESC. There is no dispute as to the facts of this case; this case essentially involves an alleged continuation of the behaviours identified in that case and an evaluation of the effects of those behaviours. Neither party has suggested that the facts identified in the 2010 appeal were in any way inaccurate, in that appeal his background was summarised as follows:

"1. The Appellant is a General Practitioner who has provided medical services since the 1st April 1993 serving an inner city population in Sunderland of approximately 7000 patients. For the three years preceding 2010 he had essentially been a sole Practitioner. However, he has recently taken on a GP Partner and three GPs are now engaged at the Practice.

2. On the 5th January 2005 the Respondent wrote to the Appellant requesting Appraisal Forms to be submitted for the year 03-04 and 04-05.

3. On the 15th January 2007 the Respondent wrote again to the Appellant requesting copies of the appraisal documentation as soon as possible, a reminder letter was written on the 12th June 2007 and formal notification was issued to the Appellant on the 17th June 2008 that the Respondent was to consider his removal from the Performers List.

4. At a Hearing on the 18th September 2008 the Appellant was contingently removed from the Medical Performers List on the following basis:-

a). That the Review should be completed of his Personal Development Plan no later than the 31st December 2008.

b). That the Appellant should submit completed appraisal documentation in June of each year.

5. In February 2009 the PDP Review was completed, although the same should have been completed on or before the 31st December 2008. On the 18th May 2009 the Respondent reminded the Appellant that his next Appraisal was due in 2009. On the 28th July and 10th August correspondence was written by the Respondent to the Appellant to request copies of the appraisal documentation.

6. On the 14th August 2009 a letter was written to all GPs in the Sunderland area advising as follows:-

i). The majority of GP colleagues have continued to undertake their regular annual Appraisals, however there are still a number of GPs who have not had an Appraisal for 2008/09 and a few for 2007/08.

ii). We will not now be pursuing admitted Appraisals from previous years, but if you have not had an Appraisal carried out during 2008/09 it is imperative that you have your Appraisal undertaken as soon as possible.

7. On the 1st September 2009 a formal reminder letter was written to the Appellant by the Respondent concerning the outstanding Appraisal which should have been completed by the end of June 2009.

8. On the 14th October 2009 the Respondent wrote to the Appellant advising that they intended to review the decision made on the 18th September 2008 to contingently remove the Appellant from the Performers List on the basis that the Appellant had failed to comply with the condition requiring submission of appraisal paperwork by June of each year.

9. At a further Hearing on the 12th January 2010 the Respondent decided to impose a further contingent removal. The Panel accepted that an element of confusion arose following the correspondence of the 14.08.2009 and therefore contingently removed the Appellant with the following conditions:-

i) That you inform Dr Stephenson by the 12th February 2010 of the date of your Appraisal and the name of the Appraiser.

ii) That you submit your Appraisal by the 31st March 2010.

iii) The Respondent pursuant to section 12 (2) of the said regulations imposed such conditions having decided that his inclusion in the Performers list required such conditions to remove any prejudice to the efficiency of the services in question.

10. On the 19th April 2010 the Appraisal had not been received. The Respondent notified the PCT that they intended to review the contingent removal due to continued failure by the Appellant to comply with conditions and respond to requests for information.

11. On the 27th May 2010 the Appellant did not attend, nor make written representation at the Hearing. The Respondent removed the

Appellant from the Performers List under Regulation 12(3)"

3. The appeal was allowed to the extent that the Tribunal imposed a contingent removal subject to the following conditions:

> *"i). That the Appellant identifies an Appraiser no later than the 30th November 2010.*
> *ii). That the appraisal documentation be completed and forwarded to the Respondent PCT no later than the 31st January 2011"*

Current position

4. In February 2011 Dr Partington, following difficulties with and then final settlement of a dispute with his previous partners, felt obliged to hand over his General Medical Services contract to Dr Schofield who already worked within the practice as a salaried doctor, as he was no longer able to hold the contract. Since then he has worked as a sessional General Practitioner in the surgery.

5. In October 2011 Dr Partington appeared before a fitness to practice panel of the Medical Practitioners Tribunal Service. That Tribunal at page 15:

   "..found misconduct relating to one clinical consultation, over two years ago, when you were working as a single handed GP in difficult circumstances. Although the panel has found that your failings were a serious departure from the standards to be expected of a reasonably competent GP, it is accepted that there were mitigating circumstances"

   Dr Partington had failed to carry out an adequate examination of a patient on 22nd March 2010 who presented with urinary symptoms and might have fitted the criteria for an urgent 2 week referral to hospital. We note at this

point that Dr Partington considered he had been exonerated by this panel and he repeated that belief to us. He was not exonerated. His poor clinical management of the patient was mitigated and he was given no penalty because of the overall circumstances. It does not assist his case overall that he shows such poor insight into that case.

6. Despite the confidence shown by previous Primary Health List and Medical Practitioners Tribunals the course of Dr Partington's subsequent appraisals did not run smoothly. He completed the appraisal that was required to prevent his removal as directed by the Primary Health Lists Tribunal in January 2011 and was due another appraisal in 2011. The process started in March 2012, but a date on 22nd March was cancelled because Dr Partington had provided no documentation, and there was another cancellation for the same reason on 5th April 2012. A Primary Care Trust panel on 27th June imposed a contingent removal with conditions requiring an appraisal be arranged by 11th July 2012 and that a satisfactory appraisal be completed. When Dr Partington finally attended an appraisal meeting with Dr Liston on 29th November 2012 the resultant appraisal was unsatisfactory, as Dr Partington acknowledges,

7. It may be as Dr Cassidy stated, that after Dr Partington completed an appraisal in January 2011, the Primary Care Trust thought the problem was cracked, it wasn't. A new appraisal was required in November 2011. That appraisal was to be conducted by Dr Ashley Liston, a very experienced appraiser. Dr Liston gave evidence before us and he was most impressive in his persuasive reasonableness. He explained that Dr Partington was not active in fixing a date for his appraisal, and failed to attend on one agreed date without any explanation. When he did attend the next date he supplied supporting documentation the night before rather than 2 weeks before as is normal. This inadequate preparation for the appraisal was mitigated only by the information being so scant that rather than the 2 or more hours of preparation the appraiser would

normally take over such documentation his preparation time was reduced to a mere 15 minutes.

8. The appraisal material provided was inadequate for the purposes of revalidation, which has become one of the main aims of such appraisals. There was a lack of preparation and limited supporting information, a lack of documented Continuing Professional Development activity, only 8 hours in the previous year rather then the expected 50 hours or more, no objective information shared, no reflection on practice other than subjective comments and no reflective record of learning. Dr Liston did his not inconsiderable best to explain why appraisal is necessary and Dr Partington agrees that the appraisal was not satisfactory but says for the first time the system was carefully explained by Dr Liston, such that he explained to us that he was now able to see the point of it and why he should engage in the system. Having seen the history of this matter we do not consider that Dr Partington is to be so easily turned into a model of compliance.

9. We note here that although the Primary Health Lists Tribunal in 2010 recommended that Dr Partington be given personal assistance to complete his appraisal, none was given, although many chances to complete his appraisal were. At paragraph 47 of the 2010 Tribunal decision this was recorded:

"*The Tribunal would urge the Respondent PCT to identify someone, possibly Doctor Sharma, to assist the Appellant in completing the documentation as the Tribunal believe that without such assistance the Appellant will be unable to complete the necessary documentation having himself identified a need for support and guidance in so doing.*"

10. It does seem that the Tribunal were accurate in that assessment.

11. It has also become apparent that Dr Partington has not held indemnity insurance since he was obliged to hand over the contract to Dr Schofield. He explained to us that although he would expect a sessional GP to provide their own cover, he thought as a previous partner who had always had his insurance paid from the practice he was in a different position and it had never been drawn to his attention. This is a matter which requires us to drawn a conclusion and we reject that explanation. We consider that the evidence is clear that the pressures upon him at that time, including financial ones, led to an avoidance by him into looking at insurance which he knew would be expensive.

12. On 20th December 2012 a decision was taken to remove Dr Partington from the Primary Care Trust list, which is the decision he appeals.

13. Dr Schofield, who now runs the practice at which Dr Partington has been working referred three index cases to the former Primary Care Trust as raising questions relating to Dr Partington's clinical practice. On14th January 2013 Dr Partington was suspended from the Primary Care Trust's list.

14. Since his suspension Dr Partington has attended some continuing educational sessions, although we were disappointed to see that he has produced no reflection as is anticipated for appraisal purposes.

15. Dr Partington remains subject to conditions imposed by the Medical Practitioners Tribunal Service Interim Orders Panel imposed on 5th March 2013 for an 18 month period and has undergone a formal General Medical Performance Assessment. He is awaiting the report of the

assessment.

16. The Respondents have produced a schedule of the findings they seek (at page 36 of the bundle)

    i. Persistent failure to engage in the appraisal process
    ii. Failure to complete a satisfactory appraisal
    iii. Failure to hold indemnity insurance
    iv. Failure to carry out appropriate examinations
    v. Failure to make appropriate records
    vi. Failure to recognise the importance of making appropriate records
    vii. Inappropriate prescribing
    viii. Failure to make appropriate or timely referrals
    ix. Failure to warn patients of effects of medication
    x. Failure to reflect on adverse incidents, specifically the deaths of Index cases 1 and 3.

17. In respect of i, ii, and iii, Dr Partington admits these matters as we have indicated, subject to the finding we have made with regard to the insurance matters, however he raises the circumstances and the pressure he was under as mitigating circumstances. Whist we have pointed to the failure of the Primary Care Trust to follow the recommendation of the last Primary Health Lists Tribunal decision we have no doubt that the obligation to undertake appraisal is upon Dr Partington. He has failed to engage in the appraisal process as can be seen from his behaviour and has failed to provide a satisfactory appraisal. He has had no indemnity insurance since 31st March 2011 and we consider that he was aware of this during the period he was practicing. In that connection we note that he was provided with a quote from the Medical Defence Union in October

2012 to regularise his position. However, he continued to practice from October 2012 to January 2013 when he was suspended, whilst in possession of the quotation but did not take out the insurance. He did not accept the quotation because he found it too expensive and by the time he was able to raise the money the offer had been withdrawn. He told us that only one specialist insurer would now consider him for indemnity insurance and the cost was very much higher. We consider that expense is the true reason why he had no indemnity insurance cover for the entire period.

18. In respect of iv, v, vi, vii, viii, ix and x, these matters arose from the evidence of Dr Bookless, who conducted an examination of Dr Partington's records, and a lengthy interview to allow Dr Partington to comment on matters which were found. Dr Bookless is plainly a very highly skilled and competent practitioner. He found that the record keeping was unsatisfactory. *"It demonstrates in particular a recurring lack of evidence and /or absence of vital signs recorded. It is not his practice to record safety netting or plans and his management of patients depends on previous knowledge"* Dr Bookless found 24 of 33 records that he examined to be unsatisfactory largely with insufficient information, nor was there any apparent reflection upon the index cases involving the deaths of three patients.

19. Dr Ord, who worked at the practice, was asked about how she coped with Dr Partington's record keeping, and it is recorded at page 363 of the bundle that she considered his record keeping to be easy to follow, that does not however establish the usefulness of the content. Dr Schofield however considered his record keeping quite difficult to follow at page 359 in interview with Dr Bookless. She indicated however that after a significant event had occurred his practice had definitely improved on examining patients and documenting his findings, since Dr Schofield

reported him, we do not consider she is likely to be exaggerating this.

20. Dr Bookless did not identify any wrong prescribing or failures which had contributed to patient deaths, he accepted in cross examination that he was not saying that Dr Partington had made any identifiable mistakes.

21. Dr Partington claims to have improved his practice, and points out that one of the index cases predates his appearance before the GMC from which date he claims to have improved. He has also, since his last appearance before the Primary Health Lists Tribunal, had a satisfactory appraisal and at least undergone another appraisal albeit unsatisfactory. From the evidence we heard and the papers before us we do find that in respect of matters v and vi, inadequate record keeping and a failure to realise the importance of such records was established.

22. We do not find that the evidence substantiated the matters alleged under headings iv (Failure to carry out appropriate examinations), vii (Inappropriate prescribing), viii (Failure to make appropriate or timely referrals) and ix (Failure to warn patients of effects of medication) and x (Failure to reflect on adverse incidents, specifically the deaths of Index cases 1 and 3), in many respects there was a failure to create adequate records but it did not necessarily follow that the examination prescribing or referrals were inadequate.

23. We would once again point to the assistance that we consider might well make appraisal a success for Dr Partington That he has failed to engage in the appraisal process is his responsibility, but we do consider it some mitigation that he could have been helped a little more. His failure to engage is not absolute, he does make appointments to be appraised, he keeps some of them and he provides some (largely inadequate) material, sometimes. We in no way endorse his behaviour or practice; however the

material before us is not sufficient, we feel, to lead to immediate removal looking at the wider circumstances of the case. Looking at his clinical style we see the deficiencies that Dr Bookless outlined, but on the limited material before us, Dr Bookless being unable to identify any particular mistake relating to those files he examined and the limited improvement he occasionally shows, in particular when subject to conditions, we consider that he may be capable of being an efficient Doctor.

24. We impose a contingent removal. However the conditions are such that we recognise that they set a standard which Dr Partington may not reach; it is however a necessary standard, A number of elements can be dealt with irrespective of whether he is actively in practice at present and we consider that as a minimum he should come up to the required standard in those areas which are listed as conditions to the contingent removal. He must also complete a satisfactory appraisal by the end of November 2014.

25. In addition there will be a condition that he must produce valid insurance documentation to his employer and NHS England relating to his proposed clinical practice and provide evidence of retrospective insurance cover from March 31st 2011 to the date of his suspension on 14th January 2013

Decision

Appeal allowed.

Contingent removal imposed subject to the following conditions:

1. **Dr Partington must complete elements of his annual appraisal by 31st January 2014 to a satisfactory standard and supply evidence to the NHS covering the following elements.**
    a. **Continuing professional development**
        i. **Topics reflections and actions from previous appraisal's development plan in November 2012 (p124)**
        ii. **Save Teaching skills which we accept cannot be undertaken during his suspension.**
    b. **Quality improvement activity**
    c. **Significant events**
    d. **Personal development plan**
    e. **Probity and health issues**

2. **Dr Partington must complete his next appraisal by end November 2014 and it must be submitted as satisfactory.**

3. **Before commencing clinical practice he must produce valid insurance documentation to his employer and NHS England relating to his proposed clinical practice and provide evidence of retrospective insurance cover from March 31st 2011 to the date of his suspension on 14th January 2013.**

Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber