



**The First-tier Tribunal
(Health, Education and Social Care Chamber)
Primary Health Lists**

Appeal Number: PHL 15422

In the matter of THE NATIONAL HEALTH SERVICE ACTS
And in the matter of THE NATIONAL HEALTH SERVICE (PERFORMERS LIST)
REGULATIONS 2004

Before :
Siobhan Goodrich
Dr Howard Freeman
Mrs Jenny Purkis

Determination on the papers

Between

Dr NAVIN ZALA
(GMC Registration Number 2266446)

Appellant

and

WEST KENT PRIMARY CARE TRUST

Respondent

Written Representations:
For the Appellant, Eastwoods
For the Respondent, Richard Booth instructed by Capsticks.

DECISION ON NATIONAL DISQUALIFICATION

The background

1. Earlier this year we heard evidence over twelve days in the appeal of Dr Zala against the Respondent's decision on 27th May 2009 to remove his name from the list of general medical practitioner performers maintained by the Respondent. We reserved our decision.
2. By written determination (hereafter "the substantive decision") dated 10th August 2011 (sic) we made findings of fact in relation to Dr Zala's conduct towards six female patients. We decided that Dr Zala was unsuitable to be included in list of the Respondent PCT.
3. The allegation made in 2007 by SC was the most recent in time. We considered that the findings made in respect of SC alone were sufficient to lead to the conclusion that Dr Zala was unsuitable to be included in the list maintained by the Respondent. We also considered that by reason of our findings in respect of the complaints of PP, HK, LF, PH and KEC, whether viewed individually or cumulatively, Dr Zala was unsuitable to remain on the list maintained by the Respondent.
4. We drew conclusions in the light of all the facts we have found when we looked at the each allegation. The findings revealed a pattern of behaviour by Dr Zala towards each of these women that was abusive, exploitative and sexually motivated over a period of many years. With the exception of HK, all of the women from whom we heard evidence were young at the time. The significance of this was that the younger the patient the less experience she may have as to how a GP should conduct examinations and the less confidence she may have to questions the conduct of a professional person. The natural instinct of most of these patients was that they did not want to believe that their doctor had abused their trust. Many of the women were pregnant. Many of the women were vulnerable. Some suffered from low self esteem and confidence issues and were, in our view, less likely to think that anyone would believe their account rather than that of a doctor. We had little doubt that Dr Zala's method was to carefully select the women on whom he performed "examinations" in a superficially quasi medical manner so as to avoid confrontation, complaint and detection. His actions were sexually motivated.
5. The Appellant has not sought permission to appeal the substantive decision.

Directions re the issue of national disqualification.

6. Directions were given with reference to the determination of the issue of national disqualification. The preliminary view expressed was that, in the light of the overriding objective, an oral hearing was not necessary. The parties were directed to submit written representations within 14 days of the receipt of the substantive decision setting out all matters on which each wished to rely:
 - if it was contended that an oral hearing should be held and
 - in any event, in relation to the issue of national disqualification.It was also stated that if either of the parties were to request an oral hearing a case management decision would then be made in this regard by the First-tier judge.

The written representations

7. The Respondent PCT did not request an oral hearing and submitted a skeleton argument on merits which we have taken into account.
8. The Appellant did not request an oral hearing. In a letter from Eastwoods dated 1st September 2011 it was said Dr Zala wished communicate his disappointment in the substantive decision to the Tribunal and to note that he has subsequently decided to retire from general practice. It was said that Dr Zala has no intention of returning to general practice and consequently has no submissions to make in respect of an

order for national disqualification.

9. In the exercise of case management powers the First tier judge decided that that the issue of national disqualification could be justly determined by the panel without an oral hearing.

The power to direct national disqualification.

10. The power to make an order for national disqualification is to be found in Section 159 of the National Health Service Act 2006. It arises whenever the Tribunal dismisses an appeal against removal made by a practitioner. It is freestanding power and is not dependent upon any application by the PCT.

The Guidance.

11. The Department of Health Guidance "Delivering Quality in Primary Care" states at paragraph 40.2 that national disqualification may be imposed if the facts that gave rise to original decision are so serious that they warrant disqualification. Paragraph 40.4 states that:
"PCTs should recognise the benefits of a national disqualification both for protecting the interests of patients and for saving NHS resources. Unless the grounds for removal... are essentially local, it would be normal to give serious consideration to such an application."

Our consideration of the issue of national disqualification

12. We refer to the substantive decision which we have summarised above. The facts in this case were plainly very serious indeed.
13. We noted that the Appellant is disappointed with findings of fact made and our conclusion. The Appellant had disputed all the allegations. Such admissions that he made in his appeal did not go to the heart of the core allegation. He has shown no insight into his behaviour.
14. We have again considered all the circumstances, including the nature and gravity of the incidents, the period of time over which they took place, the vulnerability of the patients concerned and the effect of the Appellant's conduct upon those patients. We also considered the length of time since his conduct and the absence of any further complaint. The core fact is that the sexualised behaviour of the Appellant towards each of these patients was in breach of the trust that each was entitled to expect of him.
15. We are mindful that it is no part of our task to punish the Appellant in relation to his behaviour although any order for national disqualification, if made, may well have that incidental effect. Dr Zala has said that he intends to retire but our task is to protect the NHS resources from the prospect that Dr Zala would at some stage again apply for inclusion to the list of another PCT (or comparable or successor body) and to protect patients against the risk that such an application might be successful.
16. We are mindful that the doctrine of proportionality requires that we should take no step greater than that which is required to meet the legitimate public interest objective.
17. We weighed the effects of an order for national disqualification upon the Appellant against the risk to the public interests engaged if an order is not made. We are fully aware that a direction for national disqualification will have a significant effect upon the Appellant's private life interests and will bring to an end his ability to earn his living as a general practitioner in the NHS for the foreseeable future. In practical terms, and given the Appellant's age, it will very probably prevent him from the ability

to work as an NHS general practitioner in the long term (irrespective of the length of the review period) and may very well impact adversely upon his ability to practice privately or to work in another healthcare setting. We considered that there are no geographical or location issues involved in the facts we found. In the light of the findings made in our redetermination we consider that it is fair, necessary and proportionate to make an order for national disqualification.

Direction on national disqualification.

18. Accordingly we direct pursuant to Section 159 of the National Health Service Act 2006 that the Appellant, Dr Navin Zala (GMC registration number 2266446) is hereby nationally disqualified from inclusion in:
- a. the supplementary lists prepared by each Primary Care Trust;
 - b. the lists of persons performing primary care services prepared by each primary Care Trust under Section 91 of the Act and
 - c. the lists corresponding to the lists mentioned above prepared by each Primary Care Trust and each Local Health Board under or by virtue of the National Health Service (Wales) Act 2006.

The review period

19. The effect of the statute and the regulations is that a disqualified practitioner may not apply for a review of national disqualification until two years has elapsed from the date of its imposition. At such a review the Tribunal may confirm or revoke the disqualification. Regulation 18 A is subject to Regulation 19 which provides as follows:

“The period for review shall be the different period specified below instead of that in regulation 18A (8) (a) where the circumstances are that-

(a) on making a decision to impose a national disqualification the (Tribunal) states that it is of the opinion that the criminal or professional conduct of the performer is such that there is no realistic prospect of a further review being successful, if held within the period specified in regulation 18A (8) (a), in which case the reference to “two years” in that provision shall be a reference to five years...”

20. We considered **Swain v Hillman [2001] 1 All ER 91** where, in the context of the court’s power to summarily dispose of claims in civil proceedings and the overriding objective, Lord Woolf MR said this:

“The words ‘no real prospect of succeeding’ do not need any amplification, they speak for themselves. The word ‘real’ distinguishes fanciful prospects of success or, as [counsel] submits, they direct the court to the need to see whether there is a “realistic” as opposed to a “fanciful” prospect of success.”

21. The issue at stake for the Appellant here is his potential ability to work as a general medical practitioner delivering NHS primary care services after a minimum of two years following national disqualification. The fact that Dr Zala has stated that he intends to retire is not determinative because he may change his mind. We are also mindful of the effect of the order on his wider interests. In proper context the burdens of entertaining an application for review of national disqualification are not substantial. The Respondent need not be represented although it may wish to be heard. When weighing the practitioner’s prospective ability to apply for review at two years (or at some stage before five years) with such factors as the general public interest in the efficient use of tribunal resources and the overall interests of justice, we consider that it would not be fair or proportionate to preclude the ability of a performer to be heard after an interval of two years unless there is no realistic prospect of success.

22. We consider that it fair, necessary and proportionate to express the opinion that Dr Zala's professional conduct is such that there is no realistic prospect of a further review being successful, if held within the primary review period. It follows that five years must elapse before application can be made for review pursuant to section 159 of the 2006 Act.

Consequential direction

23. We direct the PCT to send a copy of this decision to the Secretary of State for the Department of Health, the National Assembly of Wales, the Scottish Executive, the Northern Ireland Executive and the Registrar of the General Medical Council.

Rights of review and/or appeal.

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

Siobhan Goodrich

Judge of the First-tier Tribunal

12TH October 2011

