

## **Primary Health Lists**

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

**[2016] 2853.PHL**

**IN THE MATTER OF THE NATIONAL HEALTH SERVICE (PERFORMERS LISTS)  
(ENGLAND) REGULATIONS 2013**

**Heard at Ipswich County Court on 15 June 2017**

**BEFORE:**

**Miss S Goodrich (Judge)  
Mr Richard Stokes (Specialist member)  
Mrs P McLoughlin (Specialist member)**

**BETWEEN**

**Dr PRZEMYSŁAW PAWEL SLEDZIK**

**Applicant**

**AND**

**NHS COMMISSIONING BOARD (NHS ENGLAND)  
(Midlands and East (East))**

**Respondent**

### **DECISION AND REASONS**

**Representation:**

**The Applicant: in person**

**The Respondent: Mr Christopher Pataky, Counsel, Blake Morgan.**

### **Introduction**

1. This is an appeal by Dr Sledzik pursuant to Regulation 17 of the National Health Service (Performers Lists) (England) Regulations 2013 ("the Regulations") against the decision made by the Performers List Decision Panel ("PLDP") on 10 October 2016 to remove his name from the Performers List by reference to Regulation 14(3) (d) of the Regulations on the grounds of unsuitability.

## **The PLDP decision**

2. In its decision letter dated 10 October 2016 the PLDP found that Dr Sledzik had failed to inform NHS England of the action being considered by the General Medical Council (GMC) and the imposition of conditions upon his GMC Registration on 29 July 2016. The panel considered Dr Sledzik had not complied with the requirements with which a practitioner included in a performers list must comply in accordance with Regulation 9. It also considered whether the imposition of conditions might be appropriate but decided that conditions would not sufficiently address the concerns which have been raised. The panel decided to remove Dr Sledzik from the performers list on the grounds of unsuitability for the reasons as stated above.

## **The Regulations**

3. The key parts of the Regulations are as follows:

### **Requirements with which a Practitioner included in a performers list must comply**

- 9.—(1) Where a Practitioner is included in a performers list, the Practitioner must comply with the requirements applicable to the Practitioner under this regulation.
- (2) The Practitioner must make a declaration to the Board if the Practitioner—  
.....  
(j) becomes the subject of any investigation by any regulatory or other body;  
.....  
(n) is removed or suspended from, refused inclusion in, or included subject to conditions in, any list;...
- (3) A declaration regarding any matter under paragraph (2) is to be in writing, given within 7 days of its occurrence and is to include—  
(a) an explanation of the facts giving rise to that matter, including those concerned, relevant dates and any outcome; and  
(b) copies of any relevant documents....

### **Removal from a performers list**

- 14.—(1) The Board must remove a Practitioner from a performers list where the grounds in regulations 28(1), 35 (1) or 41(1) apply or where it becomes aware that the Practitioner—  
(a) has been convicted in the United Kingdom of murder;  
(b) is subject to a national disqualification which disqualifies the Practitioner from inclusion in the performers list in question;  
(c) has died; or  
(d) is no longer registered with the Practitioner's relevant body.  
.....
- (3) The Board may remove a Practitioner from a performers list where any one of the following is satisfied—  
(a) the Practitioner has been convicted in the United Kingdom of a criminal offence (other than murder), committed on or after the day prescribed in the

- relevant Part, and has been sentenced to a term of imprisonment (whether suspended or not) of over six months;
- (b) the Practitioner's continued inclusion in that performers list would be prejudicial to the efficiency of the services which those included in that performers list perform ("an efficiency case");
- (c) the Practitioner—
- (i) has (whether on the Practitioner's own or together with another person) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for the Practitioner or another person any financial or other benefit, and
  - (ii) knew that the Practitioner or the other person was not entitled to the benefit ("a fraud case"); or
- (d) the Practitioner is unsuitable to be included in that performers list ("an unsuitability case").

### **Criteria for a decision on removal**

15.—(1) Where the Board is considering whether to remove a Practitioner from a performers list under regulation 14(3)(d) (an unsuitability case), it is to consider—

- (a) any information relating to that Practitioner which it has received pursuant to regulation 9;
- (b) any information held by the NHSLA about past or current investigations or proceedings involving or relating to that Practitioner, which information the NHSLA must supply if the Board so requests; and
- (c) the matters set out in paragraph (2).

(2) Those matters are—

- (a) the nature of any event which gives rise to a question as to the suitability of the Practitioner to be included in the performers list;
- (b) the length of time since the event and the facts which gave rise to it occurred;
- (c) any action taken or penalty imposed by any regulatory or other body (including the police or the courts) as a result of the event;
- (d) the relevance of the event to the Practitioner's performance of the services which those included in the relevant performers list perform, and any likely risk to any patients or to public finances;
- (e) whether any offence was a sexual offence for the purposes of Part 2 of the Sexual Offences Act 2003 (notification and orders) (a), or if it had been committed in England and Wales, would have been such an offence;
- (f) whether, in respect of any list, the Practitioner—
  - (i) was refused inclusion in it,
  - (ii) was included in it subject to conditions,
  - (iii) was removed from it, or
  - (iv) is currently suspended from it,

and, if so, the facts relating to the event which led to such action and the reasons given for such action by the holder of the list;...."

### **Appeals**

17.—(1) A Practitioner may appeal (by way of redetermination) to the First-tier Tribunal against a decision of the Board mentioned in paragraph (2).

...  
(2) A decision of the Board referred to in paragraph (1) is a decision to—

...  
(c) remove a Practitioner from a performers list under regulation 11(1)(c), 14(3) or (5), 16 or paragraph (6)(b) of this regulation; ...

(4) On appeal, the First-tier Tribunal may make any decision which the Board could have made....

### **The Appeal under Regulation 17**

4. In the Appeal Application Form lodged on 14<sup>th</sup> November 2016 Dr Sledzik gave the reasons (see section I of the form) why he thought the PLDP decision was wrong. This included that the reason for his removal was “trivial”. He said that he did not inform NHS England of the imposition of GMC conditions. He had provided a full letter of explanation by email to Dinah Ellis but it seems it was not taken into consideration: the decision was unfair and malicious. The GMC had imposed mild conditions. NHS England had provided dishonest information to the GMC regarding his practice visit which information has a significant impact on the outcome of the GMC hearing. He was on his holidays from 30<sup>th</sup> July until 14<sup>th</sup> August 2016 and when he returned on 15<sup>th</sup> August he was told that his clinics at the University Hospital in Kent had been cancelled. This was a shock. He immediately started to find out how and why cancellation of his work contract happened. He did not have the “head to remember” to inform NHS England about the GMC conditions imposed.
5. He has been unable to find work since 15 August 2016 because of the GMC conditions imposed on his registration. The decision to remove under the rules for a trivial reason will have a catastrophic impact on him and his family.

### **The Hearing**

6. We had received and read in advance of the hearing a paginated and indexed bundle. At the hearing we received with the Respondent’s agreement some further documentation from Dr Sledzik which we numbered as D45 to D51. As Dr Sledzik represented himself the Tribunal Judge carefully explained the nature of the process and the issues in the appeal. Dr Sledzik said that he was able to follow the explanations given and he understood the Respondent’s case. He said that he could not present his case in the same way as a lawyer. The judge reassured him that this was not necessary and that she would assist him as much as she could.
7. We heard oral evidence on oath from the Respondent’s witness, Mrs Lovell-Patel, and Dr Sledzik. We do not intend to set out herein all the evidence that was given but will refer to key parts when making our findings below.

### **The Respondent’s case**

8. In summary, the Respondent submits that the decision to remove the Appellant on the ground that he is unsuitable was correct and remains correct in the light of:
  - (a) his failure to inform the Respondent of the conditions that had been imposed

by the MPTS (Medical Practitioner Tribunal Service) and/or that no adequate explanation has been provided for this failure.

(b) his failure to inform the Respondent that he was under an additional investigation by the GMC.

(c) the serious and wide-ranging nature of the concerns which had been raised with the GMC

(d) his attitude to the concerns that have been raised with the GMC and

(e) that these issues have come to light whilst Dr Sledzik was already the subject of conditional inclusion on the list.

9. The Respondent's case is that individually and/or cumulatively such issue(s) strongly support the contention that the Dr Sledzik is unsuitable to remain on the Performers List.

10. The Respondent further submits that the various explanations provided by Dr Sledzik to seek to explain why he did not inform the Respondent are wholly unsatisfactory. It can safely be concluded that Dr Sledzik's failure to inform the Respondent of the fact that conditions had been imposed by the GMC was deliberate and is indicative of his attitude to regulation and his lack of insight.

### **The Appellant's case**

11. The main points in Dr Sledzik's statement dated 26 February 2017 are that:

a) He considers that without "the "unjustified note" made by the Respondent such serious conditions would not have been imposed by the MPTS on 29 July 2016 "and thus removal from the Practitioners List would not have occurred". The accusation that he would not accept visits to his practice was incorrect. He had a busy schedule and allocating time for a visit was difficult. He had proposed 22<sup>nd</sup> September 2016 and Mrs Lovell-Patel did not arrive. His contracts with the NHS have been terminated by lack of interest from his side in that type of business. There was no need for the Respondent to report to the GMC.

b) He did not inform the Respondent about the GMC conditions imposed. He could not comply with this requirement in due time because of significant complications. The MPTS hearing took place on 29 July 2016. On 30 July he travelled to Stansted to meet his family and then immediately went to Scotland on holiday. He refers also to the sudden and shocking termination of contract by East Kent University Hospital ("EKUH") where he had been working as a mid-grade specialty doctor since 4 April 2016. They had offered him a placement for one year in Ophthalmology. On his return from holiday on 15 August 2016 he learnt that he could not work there anymore because of the conditions imposed by the GMC. It was physically impossible for him to inform NHS England about the GMC conditions due to stress that ensued after these important events.

c) He has not worked since 15 August 2016 due to the GMC conditions. He cannot provide for his family which has caused financial, physical and mental strain on other family members. His own health has significantly

worsened to the point that he has potentially been diagnosed with a TIA (transient ischaemic attack).

- d) The decision (i.e. to remove him from the Performers List) was malicious. He refers to "NHS's plan to eradicate me from the business, or even the country by using unjudged accusations, exaggeration and manipulations of facts, gradually unveils." He refers to the NHS creating a conspiracy against him and refers to a consultant practitioner falsely accusing him of abusing the title of DRCOphth. He believes that active discrimination is evident throughout the documentation and the actions taken by NHS medical bodies.

### **The Burden and Standard of Proof**

12. The Respondent bears the burden of proof. The standard is the balance of probabilities.

### **Our Consideration and Findings**

13. The source of the Tribunal's jurisdiction in this appeal is section 158 of the National Health Service Act 2006 as amended. The legislation and the Regulations made there under provide that the appeal shall be made by way of "redetermination". Regulation 17(4) provides that on appeal the First-tier Tribunal may make any decision which the PLDP could have made.

14. In our view we are required to make our own decision concerning the allegation before the PLDP and in the light of all the information before us relevant to the PLDP decision made. This may include new information or material that was not available to the PLDP. The redetermination of the appeal includes consideration of the detailed evidence provided by both sides in this appeal and the oral evidence which has now been subjected to cross examination.

15. We have considered all the material and the oral evidence before us. If we do not refer to any particular part of the evidence or submissions it should not be assumed that we have not taken it into account.

16. We find that the basic background facts are as follows.

- a) Dr Sledzik became registered with the GMC in March 2005. In 2015/2016 he had two contracts with the NHS to provide primary care services as an Ophthalmic Medical Practitioner (OMP) on the list: one for domiciliary visits and one for his premises.
- b) On 22 December 2015 agreed conditions were imposed by a PLDP panel following a complaint of inappropriate behaviour against Dr Sledzik.
- c) In April 2016 Dr Sledzik began to work at ECUH as a specialty doctor.
- d) In June 2016, following a request by Dr Sledzik the PLDP agreed that a review should take place to consider lifting the conditions that had been imposed in December 2015.
- e) On 29 July 2016 an Interim Orders Panel (IOP) of the MPTS/GMC imposed conditions on Dr Sledzik's registration. The determination regarding the Interim Order is at D27- D33. It is apparent from this that:

- 1) Dr Sledzik was subject to two investigations by the GMC. The first, C1-1280964871, concerned allegations regarding his clinical competence, knowledge and performance following an audit carried out on 3 September 2015 in relation to consultations carried out at Boots Opticians where he had been employed as a locum ophthalmic practitioner. Several allegations were made including failure to carry out assessments, poor record keeping, his ability to carry out eye examinations, inappropriate advice, failure to obtain adequate medical history and communication issues with patients. The IOP decided to make no order on that occasion. On 18<sup>th</sup> February 2016 Mr Omar Hassan, Head of professional Services at Vision Express, informed the GMC that Dr Sledzik had provided OMP services at one of the branches on a locum basis. An audit of his record keeping identified that improvement in this area was required. In March 2016 Ms Girollet, of Specsavers, stated that an audit of 40 sight test records of patients showed that, whilst generally complete, some records were lacking in detail, including a lack of advice to patients. A further audit raised concerns in relation to sight tests undertaken regarding four patients with high intraocular pressures. The store then undertook a further audit: 90 patients were identified with high IOPs for whom Dr Sledzik appeared not to have taken the required action in line with NICE guidelines.
- 2) The second case C1-1328621200 related to information provided by the Responsible Officer in September 2015 regarding Dr Sledzik's prescribing of non-ophthalmic drugs and alleged non-engagement with NHS England.
  - f) In light of both sets of allegations an Interim Order was made on 29 July because it was considered necessary for the protection of patients and in the public interest. Amongst other matters the conditions imposed specifically required Dr Sledzik to notify his 'contracting body' of the conditions imposed which included clinical supervision. It was also ordered that the Respondent must not start/restart work until his Responsible Officer (or his Deputy) had approved the clinical supervisor.
  - g) The Applicant was in attendance at the interim order hearing.
  - h) The PDLP review hearing (referred to at d) above) was held on 24<sup>th</sup> August 2016. Dr Sledzik did not attend. The hearing was adjourned for further information to be obtained, the PDLP having received information that conditions had been imposed on Dr Sledzik's practice by the GMC on 29<sup>th</sup> July 2016.
  - i) The Respondent gave notice on 1 September that it was considering removal because of his breach of Regulation 9. A hearing was held on 5<sup>th</sup> October. Dr Sledzik decided that he would not attend.

17. By reason of the conditions imposed by the IOP in the GMC/MPTS proceedings Dr Sledzik is currently unable to practice as a registered medical practitioner at all unless clinically supervised in his work. He has told us that it has proved impossible to find work in these circumstances. We recognise that the conditions imposed by the GMC were on an interim basis only. We understand from Dr

Sledzik that the substantive hearing regarding the allegation before the GMC is listed to be heard by the MPTS in July 2017. The possible outcomes before the MPTS include that the allegations may or may not be proven. If proven Dr Sledzik may or may not be considered fit to practice. If the MPTS were to consider that he is not fit to practice there is a range of possible outcomes, including suspension or the imposition of conditions.

18. In this appeal we are concerned with Dr Sledzik's suitability to be included on the NHS ophthalmic performers list. The reason that the PDLP considered that Dr Sledzik was unsuitable to remain on the list was because of his failure to inform the Respondent of the fact that he was subject to investigation by the GMC and/or that an interim order had been imposed.
19. In her evidence Mrs Lovell-Patel said that the Respondent was unaware of the investigation C1-1280964871 until the GMC wrote to the Responsible Officer regarding C1-1280964871 in October 2016. The Performance Advisory Group (the PAG) had written to the GMC with concerns in September 2015 and at that time was unaware of the C1-1280964871 investigation. We accept that evidence.
20. Dr Sledzik has always accepted that he did not inform the Respondent of the Interim Order imposed by the GMC on 29 July 2016 and we find that proved on his admission. We also find proved that he did not inform the Respondent that he had become subject of the GMC investigation C1-1280964871. We find that Regulation 9 j) and n) are engaged.
21. We recognise that in accordance with Regulation 15 we are entitled to consider a range of matters regarding the background when considering the issue of removal. In our view there are limitations to the weight that we should attach to some of the background factors. Whilst we are entitled to consider the fact that Dr Sledzik is the subject of proceedings regarding his fitness to practice because of allegations that concern his clinical competence we recognise that those allegations have not yet been determined by the MPTS/GMC or proved before us. We consider that the proper focus in this appeal is whether Dr Sledzik's non-compliance with the obligations imposed in Regulation 9 renders him unsuitable.
22. We have considered all the circumstances. In our view it is a potent factor that when Dr Sledzik failed to inform the Respondent of the conditions imposed by the IOP he was already subject to conditions imposed by the PDLP (see 15 (2) (f)). Indeed, at the very time that he was subject to investigation by the GMC he was asking the PDLP to remove conditions that had been imposed by that panel in relation to an earlier (unrelated) matter which concerned sexual boundaries.
23. Compliance with Regulation 9 is a mandatory requirement for all practitioners on a performers list. The purpose of the requirement enables NHS England to properly review the performance and/or suitability of those on the list and the issue of risk to patient safety. We accept that it is not the case that every practitioner who breaches the requirements of Regulation 9 j) and n) must be considered unsuitable. The key factual issue is the reason why Dr Sledzik failed

to meet his obligations under Regulation 9 and what, if anything, this tells us about his suitability.

24. It is no part of Dr Sledzik's case that he did not understand that he was under an obligation to inform the Respondent that he was the subject of an investigation by the GMC or that an interim order had been imposed. He acknowledged that he was aware of his obligation under the Regulations. The overall effect of his evidence was that with all that was happening he forgot/did not remember to tell the Respondent.
25. The GMC imposed a condition which specifically required Dr Sledzik to notify his 'contracting body' of the conditions imposed. Dr Sledzik was present when the GMC decision was read out. He said that he thought the contracting body was the agency through which he obtained primary care work. We do not accept this explanation. In our view the conditions imposed by the GMC on 29 July 2016, which included the requirement for clinical supervision, were such it would have been obvious to Dr Sledzik that he would need to inform NHS England, and not least because arrangements for a clinical supervisor approved by the Responsible Officer, would have to be in place if he were to decide to perform primary care services. It is notable that he did not inform the EKUH of the conditions either. Although Regulation 9 does not apply in this context this fact tends to suggest that Dr Sledzik was waiting to see if the Hospital found out that he now had to be clinically supervised.
26. Dr Sledzik has given a number of explanations as to why he did not inform the Respondent of the GMC interim order. These include that he went on holiday the following day. He also said in his oral evidence that he was preoccupied during the holiday and that also he was upset because he learnt that the collection of Coi carp he kept at his premises had died in his absence. Whilst we accept that he was on holiday from 30 July until his return to EKUH 15 August 2016 we do not accept that this or any other preoccupation prevented him communicating with the Respondent. If the holiday was the real reason then he would have informed the Respondent on his return but he did not do so.
27. Dr Sledzik has also said that he did not inform the Respondent at this time because he was shocked by the discovery on 15 August 2016 that the job offer that had been made to him by EKUH had been cancelled because of the Interim conditions imposed by the GMC. Dr Sledzik's evidence was that he had not informed EKUH of the fact that he was the subject of an ongoing investigation by the GMC when applying for the Hospital post or at the interview on 6 May 2016. He said that he did not do so because he had not been instructed by the GMC to do so. In our view this account suggests a lack of professionalism and a lack of transparency. Dr Sledzik told us that he had been told by EKUH that, had he told them about the GMC investigation, the outcome may have been different although he said at a later stage in his evidence that this had not been said. In our view, the simple fact that EKUH had withdrawn the offer of a hospital post that had been made to him (a role that he had already been performing since April 2016) would, if anything, have highlighted the importance of informing the Respondent of his situation regarding the GMC. Dr Sledzik did not contact NHS England at all until he sent an email on 13 September in response to the letter

dated 1<sup>st</sup> September by which he was advised that the Respondent was considering removing him from the List. His response is at C41. In summary he said that: it was obvious that NHS England would be informed by the GMC automatically: he was on holiday; it was a shock when he was informed that his clinics at ECUH had been cancelled and that he could not remember all that he should or should not do.

28. We do not accept that the stress of losing his hospital post explains Dr Sledzik's failure to inform the Respondent of the fact of interim order adequately or at all. We consider it unlikely that Dr Sledzik did not realise or remember that he should tell the Respondent of the GMC conditions imposed. We do not consider that the medical evidence adduced by Dr Sledzik provides any or any adequate explanation for his breach of Regulation 9. The letter from Dr Dostal, Consultant Neurologist, at D45 does not deal with the age of the major infarcts seen, when these lesions occurred or the issue of cause and effect.
29. In our view the explanations Dr Sledzik has given about why he did not inform the Respondent are many and various and do not square with the facts that are known. In our view it is more likely than not that Dr Sledzik decided that he would not inform the Respondent of the conditions imposed by the GMC. Had he complied with his obligations under Regulation 9 then he would have had to provide the documentation that would have revealed the full extent of the concerns raised by Boots, Vision Express and Spec Savers. We consider it likely that the reason that underpins his failure to inform the Respondent that a GMC investigation was underway, and that conditions had been imposed by the GMC, was that he wanted to seek to avoid any question of restrictions being placed on his ability to work as a performer of primary care services. It is clear from the evidence that he was highly motivated to achieve the removal of the conditions regarding the sexual boundary issues that had been imposed in December 2015. Whilst Dr Sledzik maintains that the Respondent was involved with GMC case C1-1328621200 we have found that the Respondent was unaware of C1-1280964871 until October 2016. In any event the obligation to provide the information required under Regulation 9 is on the performer.
30. In our view what shone through the appeal notice was that Dr Sledzik considers that the MPTS/GMC interim order was imposed because of unjustified allegations made by Mrs Lovell-Patel. However, anyone reading the IOP determination would appreciate that the issues raised by Mrs Lovell Patel were only a very small part of the matters that gave rise to the perceived need for an interim order so as to protect risk to patient safety. In any event, whatever the truth about disagreement with Ms Lovell-Patel regarding the requested inspection may be, this dispute arose within the broad time frame as the first GMC investigation (C1-1280964871) and does not explain his failure to inform the Respondent when he first became the subject of that GMC investigation. We consider that this investigation must have begun before 23<sup>rd</sup> November 2015 because that was the date of the first IOP panel when no order was made. We consider it probable that notice of the allegation in (C1-1280964871) was given to Dr Sledzik by the GMC well before that hearing date.

31. Dr Sledzik has asserted that the allegations that have been made against him are the product of discrimination, dishonesty and a conspiracy against him. In our view there is no substance in these assertions. Dr Sledzik disputes that he was uncooperative regarding the issue of arranging an appointment for inspection. It is unnecessary for us to make findings of fact regarding this matter one way or the other. In our view the facts regarding the arrangements for the practice inspection are tangential to the issue before us, namely, whether in the light of the failure to comply with Regulation 9 Dr Sledzik is suitable to remain on the list. What was evident from Dr Sledzik's evidence is that he was unwilling or unable to countenance that there could be a different explanation - other than a dishonest conspiracy on the part of the Respondent - to account for the fact that there is a difference of view about arrangements regarding the practice visit. In suggesting that the allegations against him are motivated by malice Dr Sledzik demonstrates a lack of insight. The allegations (and they are of course only allegations) which led to the imposition of conditions by the IOP by the MPTS involved serious allegations regarding his clinical competence and risk to patient safety. Whether they are or are not ultimately proved, it is, in our view far-fetched to suggest that such allegations, which come from a number of different sources and are apparently supported by audit and expert evidence, are the product of wide conspiracy.
32. In our view Dr Sledzik's response to these proceedings demonstrates that he has little or no true insight regarding the importance of compliance with the Regulations and the purpose or importance of regulation. We consider the evidence demonstrates that he lacks any real respect for, or understanding of, the regulatory process. Having seen and heard him give evidence we consider that his attitude to regulation is such that he is unlikely to comply with obligations if *he* considers that there is nothing wrong with his practice. In our view he is unsuitable to be included in the List.
33. In the light of our assessment we now draw our conclusions. We accept that the decision to remove Dr Sledzik's name from the performers list represents an interference with his right to private life under Article 8 of the ECHR and that Article 8(2) is engaged.
34. The Respondent has satisfied us that the removal is in accordance with the law and is necessary in pursuit of a legitimate public interest aim, namely the need to ensure that a performer does not remain on the list if he is unsuitable. We consider that it is important to recognise and uphold the general principle that those on the performers list should respect and comply with the mandatory requirements of Regulation 9 in the interests of efficient and effective regulation and thus, patient safety. It is extremely important that those who maintain the performers list should be able to trust that performers included will take seriously their obligations to comply with the mandatory requirements of the Regulation so that the Respondent, who is responsible for the performers list, can consider whether action needs to be taken to protect patients from perceived risk. In our view Dr Sledzik sought to circumvent the process of the regulation of NHS primary care services by the Respondent when he failed to disclose the fact of the GMC investigation to the Respondent.

35. The real issue is proportionality in the light of our assessment above. We considered all of the material before us. It is in Dr Sledzik's private life interests that he is allowed to resume practice as an Ophthalmic medical performer in the NHS with no or few restrictions. We recognise the impact of removal upon him and upon his family which plainly has serious consequences on Dr Sledzik's private life interests, including his ability to support his family.
36. We considered whether, as an alternative to removal, conditions could be imposed that would address the public interest. In our view any conditions which address the public interest would simply be a restatement of the requirements of the Regulations which Dr Sledzik decided to ignore. Given our assessment of Dr Sledzik's lack of real insight and his attitude to regulation, we do not consider that any conditions could be devised that would adequately protect the public interest, or which would be meaningful or practical. We also do not have any or any sufficient confidence that Dr Sledzik would adhere to any conditions imposed.

### **Our Decision**

37. In conclusion, we have decided that Dr Sledzik is unsuitable to be included in the performers list. Having balanced the impact of the decision upon the Appellant against the public interest we have decided that it is necessary, fair and proportionate that Dr Sledzik's name is removed from the list. We confirm the Respondent's decision and dismiss the appeal.

### **Rights of Review and/or Appeal**

38. 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.

**Judge S Goodrich**  
**Primary Health Lists**  
**First-tier Tribunal (Health Education and Social Care)**

**Date Issued: 30 June 2017**