



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

Appeal Number: FHS 15230

Before :

**Siobhan Goodrich
Dr Mike Sheldon
Mrs Valerie Barducci**

Between

**Dr MONAF KHUDURUN
(GMC registration number 4745039)**

Applicant

and

SUFFOLK PRIMARY CARE TRUST

Respondent

DETERMINATION AND REASONS

The Appeal proceedings

1. By letter dated 10th December 2009 Dr Monaf Khudurun appeals against the decision of the Respondent made on 25th November 2009 to remove his name from its Performers List.
2. The decision was made under paragraph 10(6) of the National Health Service (Performers' List) Regulations 2004 (as amended) (hereafter "the NHS regulations"). Paragraph 10 (6) provides that "*where a performer cannot demonstrate that he has performed the services, which those included in the relevant list perform, within the*

area of the Primary Care Trust during the preceding twelve months, it may remove him from his list.”

The Background to the decision as provided by the PCT.

3. Dr Khudurun was born on 9th March 1950 and obtained his MBBS in Pakistan in 1981. He joined the list of Suffolk PCT in September 2003. The last time he worked in Suffolk was on 6th June 2007.
4. By letter dated 6th April 2009 a letter was sent to Dr Khudurun asking him to provide evidence that he had been employed in the area of NHS Suffolk in the previous twelve months. He did not reply formally but on 9th April 2009 he telephoned and explained that he was working in Wellington and intended to join the list of that PCT.
5. By letter dated 12th June 2009 Dr Khudurun said that he was applying to join the Redbridge List and that the process may take as long as two months to enable CRB clearance. He requested that his name be retained on the Suffolk list until the process was finalised. In these circumstances a period of grace was allowed.
6. Having heard nothing further on 29th September 2009 an officer of Suffolk PCT telephoned Redbridge PCT and was informed that no application had been received from Dr Khudurun. The PCT therefore wrote to Dr Khudurun again and requested evidence that he had worked in Suffolk in the previous twelve months. He was asked to provide a letter of resignation if such evidence was not available. He was also advised that:
 - if he had not responded by 6th October 2009 the PCT would have no choice but to commence removal proceedings under the 2004 Regulations.
 - once this process began he would be unable to withdraw from the list and that any resulting removal would be reported to all relevant bodies and will remain on his record.
7. Dr Khudurun replied on 5th October 2009 and requested a further extension of time. He said that he had contacted Redbridge in June 2009 to seek inclusion on the list. He had filled in all the appropriate forms and had collected the documents for submission. Unfortunately he became involved in the health of his wife who suffers from depression and cardiac problems. He also had family problems in Mauritius and had to fly there urgently. He had not therefore found time to make an appointment with the relevant officer at Redbridge PCT to submit the forms but would do this that week. He asked for understanding because was the only breadwinner in the family and some more delay would not compromise patient safety.
8. Suffolk PCT considered that Dr Khudurun had been given sufficient time to be included in another list and commenced the formal process for removal by letter dated 13th October 2009.
9. On 15th October 2009 Redbridge PCT advised the Respondent that Dr Khudurun had applied to join its List. On 16th October 2009 Dr Khudurun made written representations on relation to the proposed removal by Suffolk and provided a letter of support from Dr Jesuthasan, a Suffolk GP. Dr Khudurun did not request an oral hearing before a decision was made by the PCT but asked that his written representations be taken into account.
10. On 17th November 2009 the Decision Making Group of Suffolk PCT decided to recommend removal because it did not consider that the reasons given were sufficient, particularly as it appeared that Dr Khudurun had no intention of working in Suffolk and was in the process of applying to the Redbridge List.

11. On 25th November 2009 the Deputy Chief Executive of Suffolk PCT made the decision to remove Dr Khudurun's name from the List.
12. On 15th December 2009 Suffolk PCT were notified that Dr Khudurun had been accepted onto the Redbridge List as of 11th December 2009.
13. By letter dated 20th December 2009 Dr Khudurun tendered his resignation as his application to Redbridge PCT had been successful.

The Applicant's case

14. In his letter of appeal dated 10th December 2009 Dr Khudurun said that he had been on the Suffolk list since 2006. As he lived and worked in London he thought it would be appropriate to join Redbridge PCT and told Suffolk PCT of his intention. He started to have domestic problems. He and his wife separated in September 2008. He had to leave his home and children and his wife filed for divorce. The situation was upsetting for him and he delayed filing his application with Redbridge and did not tell Suffolk PCT of his problems. Later on he was reconciled with his wife. Thereafter his elder sister was seriously ill and his brother developed kidney failure. He felt compelled to help and flew to Mauritius. In the meantime he had filed his application with all appropriate documents with Redbridge he hoped it would not be too long before he was accepted to their list.
15. The essence of Dr Khudurun's appeal was that his name be not removed until he obtained confirmation that he was had been accepted to the Redbridge list. His removal was not due to any clinical concerns and any delay would not put patients at risk. He offered his apologies to Suffolk PCT and the Tribunal.

The PCT case on appeal.

16. The PCT opposed the appeal and relies on the following:
 - Dr Khudurun has not worked in Suffolk since 6th June 2007.
 - He was given a considerable period of grace to either provide evidence of working in Suffolk or to be accepted onto another list but had not done so.

Our powers on appeal.

17. A decision to remove a performer's name from the list maintained by any PCT on any of the grounds provided under the NHS Regulations is subject to appeal to the FHSAA and since 18th January 2010, the Health and Social Care Chamber of the Tribunal Service.
18. The powers of this panel are to be found in paragraph 15 of the NHS regulations which provides as follows:
 - (1) *A performer may appeal (by way of redetermination) to the FHSAA against a decision of a Primary Care Trust as mentioned on paragraph (2) by giving notice to the FHSAA*
 - (2) *The Primary Care Trust decisions in question are decisions-*
.....
(d) to remove the performer under regulations 8(2), 10(3) or (6),.....
 - (3) *On appeal the FHSAA may make any decision which the Primary Care Trust could have made.*

The Hearing

19. At the hearing on 12th March 2010 Ms Leverage Rose, Head of Contractor

Development and Clinical Engagement, attended on behalf of the PCT. Dr Khudurun did not appear and was not represented. We are satisfied that Dr Khudurun had been served with the Notice of Hearing and the appeal papers. He had not notified the Tribunal that he intended to attend the hearing or made an application for an adjournment.

20. Ms Rose answered questions from the panel. She had not been directly involved but was familiar with the file. Dr Khuduran's work had been with the out of hours service. Suffolk PCT had sought to make arrangements to appraise Dr Khuduran on two occasions to no avail.

Our Consideration

21. We considered all of the material before us. In so far as any facts are in issue the burden of proof is in the Respondent and the standard of proof is the balance of probabilities.
22. We accept that the general background to the decision and appeal is as set out above. We find that Dr Khudurun last provided services in Suffolk on 6th June 2007.
23. We have considered the NHS regulations as a whole and the Guidance provided by the Department of Health in "*Delivery Quality in Primary Care*".
24. The aim of the NHS regulations is to provide a structure by which doctors are admitted to the performers list of one NHS primary care trust. No general practitioner can provide NHS primary care services in any part of England and Wales unless he is on an NHS performers list somewhere. He may work in more than one PCT locality but the ongoing responsibility for the efficiency of his services and/or his suitability to provide services is that of the PCT on whose list his name appears. Of course a GP is free to decide to work in a different locality. If he does so, it is usual that he will make an application to be accepted onto the list of the PCT where he mainly works within an appropriate time frame.
25. The PCT upon whose list a performer in fact appears has obligations in relation to his performance even if the reality is he does not practice in that locality. It is usual that a performer is formally appraised on a regular basis and this has cost and resource implications for the PCT upon whose list the performer appears. An important feature of the national list system is that the efficiency and suitability of performers is a matter that is regulated by the local PCT on whose list the performer's name appears. It is only the PCT on whose name a practitioner appears that can consider removal on the grounds of either suitability or efficiency, or contingent removal on efficiency grounds.
26. In our view it is obviously undesirable that a PCT retains responsibility for a general practitioner who has not practiced in their area for some time. It is wasteful of the resources of that PCT and poses the risk that performance issues that might arise on regular appraisal or otherwise will not be noticed or acted upon. If any issue does arise there are obvious difficulties if action has to be taken in relation to matters alleged to have occurred elsewhere. It is plainly in the public interest and in the interests of patient safety that the PCT where the performer actually works has that responsibility. It is in these circumstances the PCT has been given the discretion to remove a performer from its list when he has not performed services in that area for a period of twelve months.
27. In this case the PCT, in accordance with the Guidance, afforded Dr Khudurun a reasonable period of grace to secure his inclusion to the Redbridge List. We noted

that, although first made aware that his future on the Suffolk performers list was in question in April 2009, he did not take any decisive action to submit his application until the threat of imminent removal by Suffolk PCT was made in October 2009.

28. We considered the reasons given by Dr Khudurun in relation to why he had not submitted an application to Redbridge PCT earlier. His letter of 12th June 2009 suggested that he was actively engaged in the application process to Redbridge but he did not submit the application until October 2009. We consider that once supporting documentation had been obtained it should have taken no more than a few hours to fill in the application form. However difficult his circumstances were, we consider that he could and should have processed his application to Redbridge much sooner than he did. Had he done so it is very likely that the start of the process to remove his name would have been avoided. As it is the process after submission was eventually completed in just under two months. Once the removal process had started, however, it was not open to the PCT to permit him to resign from the list.
29. We noted Dr Khudurun's submission that no direct issue has been raised in relation to performance or patient safety. Whilst this is so, the fact is that he has not undergone recent appraisal by the PCT on whose list his name appears.
30. It is, of course, the case that Dr Khudurun secured his admission to Redbridge PCT within a few weeks after the actual decision to remove his name by Suffolk. We are not, of course, a review body but we nonetheless state that we consider that the decision made by the PCT panel in the exercise of its discretion was reasonable and proportionate in all the circumstances.
31. We have looked at matters entirely afresh in our own redetermination. We are mindful that we have a complete discretion. In all the circumstances described above it is our view that it is fair, just and proportionate is that Dr Khudurun's name is removed from the list of Suffolk PCT.

The Decision

32. The appeal is therefore dismissed. If it has not already done so Suffolk PCT shall notify the various bodies referred to in paragraph 16 of the NHS regulations.
33. It is, of course, the case that under the NHS regulations Dr Khudurun will have to declare the fact of his removal from the list of Suffolk PCT to Redbridge PCT himself and he will also have declare this to any PCT to whom he may apply for inclusion in future in any event.

Rights of Review and/or Appeal.

34. The parties are hereby notified of the rights to appeal this decision under section 11 of the Tribunals Courts and Enforcement Act 2007. They also have the right to seek a review under section 11 of the 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
15th April 2010**