



**TRIBUNALS SERVICE  
PRIMARY HEALTH LISTS - FIRST TIER**

**Case Number: 15232**

**Listed at: Sheffield.**  
**On: 19<sup>th</sup> March, 30<sup>th</sup> April and 30<sup>th</sup> July  
2010.**

**Mr T Jones Judge of the First-tier**  
**Dr P Wray Professional Member**  
**Mrs Alderwick Member**

**BETWEEN**

**Mr M SIDDIQUE  
(GDC Professional Registration Number: 73039)**

**Appellant**

**and**

**NATIONAL HEALTH SERVICE ROTHERHAM ("The PCT")**

**Respondent**

**Appearances:**

**For the Appellant: Mr Spencer of Counsel**  
**For the Respondent: Mr Hockton of Counsel**

**APPEAL AGAINST REMOVAL OF THE APPELLANT FROM THE  
PCT'S PERFORMERS LIST**

## **The Hearing and the Appeal**

1. On the dates and times appointed for the hearing, we convened a hearing with a quorate Panel. The parties were represented at the hearings as noted above.
2. On 16<sup>th</sup> November 2009 the PCT decided to remove the Appellant from its performance list. Pursuant to Regulation 10 of the Performers List Regulations the PCT as the continued presence of the Appellant on the Respondent PCT's Dental Performers List was considered to be prejudicial to the efficiency of the service. The Respondents case is set out at R1 - R98 of the initial bundle of papers before us. The reasons for the Respondents PCT's decision may be read in themselves in full, at Annex 1 appended to their letter of 19<sup>th</sup> November 2009, addressed to the Appellant, when giving him notice of their decision. This has been supplemented to since, in light of the developments in the course of disposal of the appeal which will be outlined below.
3. In synopsis, the PCT outlined a number of facts in relation to evidence adduced before its hearing concerning the Appellants practice at his premises, Dalton Dental Practice, 5 Doncaster Road, Dalton, Rotherham, South Yorkshire ("the premises"). The premises were the subject of an unannounced visit on 13<sup>th</sup> May 2009 during the course of which the general working practices of the Appellant demonstrated serious breaches of infection control, and showed a wilful disregard over an extended period of time for the most basic of standards. The evidence therein as was adduced before the Tribunal was principally that of Mrs Wakefield a Lead Nurse Infection Prevention and Control Officer, Mr John Heyes the Respondent's Dental Practice Advisor. The Tribunal also heard evidence from two former employees of the practice, who gave evidence as to the poor practices employed therein, of their duties and the lack of a cleaner at the practice for a prolonged period. Mr Kenneth Wragg employed by the Respondent PCT as a Consultant in Dental Health also gave evidence as to the reports he had seen from Mrs Wakefield, his opinion as to the lack of infection control and of the PCT's concerns for the well being of patients and concern as to public health. He also gave evidence as to his visit to the premises with Mr Heyes on 30<sup>th</sup> March 2010 to see the improvements said to have been made since the PCT inspection on 13<sup>th</sup> May 2009. They gave evidence to the Tribunal, adopting witness statements, reports and photographic albums as annexed thereto, as their evidence in chief. All were cross examined, and a note of the same is set out in the record of proceedings.
4. The Appellant's case is set out in his grounds of appeal and his witness statement of 17<sup>th</sup> March 2010 and exhibits annexed thereto. Mrs Merrells a former receptionist gave evidence for the Appellant, as did Mr Renshaw a general dental

practitioner with a consultancy specialising in practice management issues who in conjunction with Mr M Fulford, also a member of an independent consultancy and a dual qualified dentistry and microbiologist prepared reports as to the premises, by then refurbished at the expense of the Appellant, prior to their visit on 30<sup>th</sup> September 2010. Mr Renshaw also gave evidence as noted in the record of proceedings as to the Appellants efforts, of his continued willingness to mentor the Appellant and of his presence at the premises on 30<sup>th</sup> March 2010 when officers of the PCT visited them. Mr Renshaw was afforded the opportunity of hearing evidence given throughout the proceedings, the Tribunal with the concurrence of the PCT, taking the view he was an expert witness. In summary, it was the Appellants case that he had undertaken a large volume of work contracted to him following the introduction of the new dental contract in 2006. He had not appreciated how much work was to be involved and found it difficult to recruit and retain Dentists to help him. He gave up trying to do so and resolved to do the work himself, working extensive hours. He liked the work; the patients and staff liked him, he did not realise how fatigued he was becoming, a cleaner left and was not replaced. Only later did he appreciate how the practice spiralled outside his control, outside the good practice he had adhered to in training and working elsewhere; and how it began to and did fall outside the normal basic standards of cleanliness and infection control. He admitted that all this is properly complained of by the PCT, and as was put to him in cross examination, accepted his practice of re using one use items and that his cursory care for infection control was tantamount to “gross professional misconduct”.

5. On behalf of the PCT Mr Hockton made submissions. He reminded the Tribunal of the evidence, particularly that of Mrs Wakefield, and her report which includes a risk assessment, as well as making reference to photographs taken at her visit as to the appalling state of the premises - particularly with reference to cleanliness and cross infection control (page 100 of the respondents bundle). He reminded us of her comment, though she may have seen fewer primary health settings in her service, it was still one of the worst cases she had seen. Practice staff, in interviews conducted by Mr Heyes, and when they were called by the PCT the staff confirmed these conditions had existed for a long time. It was Mr Hockton’s submission that not only was there neglect on the part of the Appellant, but that there is evidence from staff that corners were being cut too. It is his submission that Mr Wragg’s evidence makes out the PCT claim that the Appellant, given an high and lucrative amount of work by the PCT, has tried to do this in a way simply to maximise profit before caring for patients, staff and serving the efficiency of the service whereby the PCT has had to, in good faith, intervene.
6. Mr Hockton also reminded the Tribunal of the evidence of the Appellant at the hearing. He may seem contrite now, suggesting that he has insight, though he was at a loss to give real reasons for why he allowed this to happen, saying he didn’t really know himself. Mr Hockton suggested it was little more than to

maximise profit. Basics, such as the issues as to the Appellants use of, and lack of changing of gloves between patients, re using single use instruments, the water supply for the dental drills rarely being replenished are all too evident as neglect, over and above the issues highlighted by Mrs Wakefield's report. Mr Hockton reminded the Panel of the Appellants initial endeavours to apologise, saying he would discipline staff, whereas the culture that existed in the practice, of neglect and risk to patients and staff was his own responsibility, as he concedes to be the case now. The Tribunal may have heard evidence from the Appellant as to how he has examined his future practice needs, to remediate, keep up to date, visited several other practices and taken the advice and mentorship of others. This may be so, but the Tribunal was reminded that all these good efforts related to, in the main, the current fabric of the premises, and that overall in so far as the Appellant's future intentions are, the PCT in overview submits that the people of Rotherham deserve to be served better than this.

7. It was also said to be the case that notwithstanding the General Dental Council Interim Orders Committee (GDC IOC) recently imposing interim conditions on the Appellants registration, that the function of the GDC is quite different to that of this Tribunal, and further, the GDC IOC panel will not have heard evidence in full as we have; the GDC has yet to determine matters of fact. Little weight should attach to the current order of interim conditions. The Primary submission of the PCT is that the order made by the PCT for removal was the right one and remains to be so. Mr Hockton did confirm on enquiry from the Panel, given the damning submissions made him, that the PCT did remove the Appellant on grounds of inefficiency and not unsuitability or fraud. He remained resolute that the primary position of the PCT is that removal remains justified and that any reference to conditions placed before the Panel, with oversight of them and contribution made by the PCT to them, is purely to assist the Panel if contingent removal is to be considered by the Tribunal.
8. On behalf of the Appellant, Mr Spencer confirmed, in line with his clients evidence that the entirety of the matters before the Tribunal are admitted, with the exceptions being matters of evidence for the Tribunal to consider relating to needles in an ultrasonic bath, the movement in/out of the premises of out of date stock in relations to inspections, and the problems he had with recruitment of dentists to assist him. The Tribunal is urged to the view the Appellant has been made all to aware of his deficiencies and that they are, in line with his efforts he has made already, in terms of continued educational development, shadowing, his engagement with Mr Renshaw and considerable sums being spent on the premises; all indicative of insight and that remediation is practicable in terms of cost to the PCT, and such that patients and staff need not be put at risk.
9. To put these efforts in more detail, he reminded the Tribunal that the Appellant has undertaken approximately 200 hours of CPD training in the year to May

2010, evidence is available at pages 12 – 13 of his bundle as to shadowing, and there are also supportive testimonials from professional colleagues, including Professor Franklin all available to be seen and examined (pages 23 – 36 of his bundle). Significant sums, as per the schedule supplied, ten of thousands of pounds have been spent by Dr Siddiqui to make sure these premises are, bar one piece of equipment a spare washer disinfectant unit - such that Mr Renshaw, mindful of his duty to give evidence as an expert, is for saying the premises are of a good standard and ready to receive patients. Mr Spencer did comment that it was sad that the PCT visit to the premises in between hearing days of this appeal might have been more fruitful if the officers of the PCT had asked to see more; but overall there is clear evidence that improvements have been undertaken, at significant costs, and Mr Renshaw had no doubt about their efficacy. The Appellant is contrite and all of this surely speaks of insight. It may all be down, he said, whether the Tribunal can trust the Appellant to do that which he intends to do to remediate. The Panel was urged to impose conditions which would safeguard patients and staff in line with those circulated as between the parties, and handed to the Panel – and to make an order for contingent removal.

### **The Law Regulations and the Burden and Standard of Proof**

10. The appeal proceeds by way of a re-determination of the PCT's decision noted above. (Section 49M (3) National Health Services Act 1977; and Regulation 15 (1) of the 2004 Performers List Regulations).
11. We may make any decision which the PCT could have made (Section 49M (4) and Regulation 15 (3)).
12. By Regulation 10 (3) a performer may be removed from the list where any of the conditions in Regulation 10 (4) are satisfied including; "(a) his continued inclusion in its performers list would be prejudicial to the efficiency of the service ... (an efficiency case)".
13. Regulations 11 (5), (6) and (7) set out criteria which are to be taken into account in determining an efficiency case.
14. In an efficiency case we may, instead of deciding to remove the performer from the list, decide to remove him contingently (Regulation 12 (2))
15. The burden of proof is with the Respondent. The standard of proof is the ordinary civil standard (Re B [2008] UK HL 35).

## Our Conclusions

16. On the totality of the evidence, applying the appropriate standard, we find that the issues giving rise to the decision made by the PCT to remove the Appellant from the Dental Performers List are made out. They were in any event largely admitted to by the Appellant in his evidence and in the presentation of his appeal. The only issues we could not resolve in the PCT's favour were those as outlined above, as to the needles in the ultrasonic bath, and alleged removal of out of date supplies before inspection by the PCT was such that we could not find sufficient clear evidence to make a finding against the Appellant, on the appropriate standard. The photographs in respect of the former were none to clear, and the evidence as to the latter was not consistent as to date or action to be satisfied this coincided with any endeavour to mislead the PCT. We did not see the issues as to his payment of nurse's courses, or recruitment, to be issues that could be substantiated either; we found they have little impact given the totality of the default herein. We found the evidence of all the PCT witnesses to be of clarity and consistency, and were particularly assisted by, Mrs Wakefield, Mr Heyes and Mr Wragg as to patient safety issues and the extent of any patient harm known of so far, and of the likely risks of cross infection as of known within the profession.
17. We have considered the operation of law and proportionality as to the question of removal and contingent removal. It is certainly the case, and was conceded in no small part by the Appellant that some form of action should follow. It was confirmed by Mr Hockton that the PCT had not resolved to remove the Appellant on grounds of unsuitability, notwithstanding that said by him in closing submissions; having considered the matter ourselves, serious as they are, in re determining matters we agree that this is an efficiency case and not an unsuitability case. Issues as to distress to patients, harm to patients or the involvement of the Health Protection Agency may give concern as to cross infection, though it was agreed that no patients were at this time known to have to harm and it was acknowledged that cross infection rates generally, and especially those relating to blood borne viruses, were likely to be extremely low. We did note the PCT took an opportunity to visit the premises during the disposal of the appeal; this afforded them an opportunity to see that much work had been done to improve them. The Tribunal did not set terms of reference for the visit, leaving it to the parties to make arrangements for a visit if they thought it helpful, and accepts that for their part, the PCT officers may have been unsure of their role when visiting.
18. One issue put before us was essentially that of trust; trust in the Appellant, which raises questions of insight. We found the Appellants contrition genuine, even though he may have been at a loss as to giving any single reason why these series of events, giving rise to such systemic failure in his good practice, came about.

We did not hold it against him that he did seek to blame others in his initial correspondence with the PCT, he has explained why he wrote that letter in those terms, mistakenly, at that time; he fully accepts – and quite properly so – on reflection all was down to him and we give him some credit for that, though the facts largely speak for themselves. We, applying the appropriate standard, are prepared to accept what he said in the round, that he had a large volume of work to do, set about to do it ill advisedly without making sure he had appropriate support, but we do not find that this was done solely for personal enrichment. We accept as credible that which the Appellant has said, that in reality he gave up trying to get help, as he thought was too busy to go through the repeated process of trying to get permanent help. We also noted that there were times, if personal enrichment was his aim, that he actually exceeded his contracted units for no reward. There are no patient complaints brought to this Tribunal as to the work undertaken. In light of this, and matters considered below also, we found no deep seated attitudinal problems on the part of the Appellant to suggest he will not be able to serve patients, colleagues and staff, without risk if supervised and his practice monitored, whether he is working at The Dalton Dental Practice premises or not. The conditions take account of the fact he may well work elsewhere; even so, he may well have an interest or influence still in these premises and any work undertaken there in the NHS; and therefore, we require them to be reported upon by the Appellant and available for inspection as will be seen below. We should make it clear we set no weight by the recent decision of the GDC IOC to impose conditions, for reasons as advanced above by Mr Hockton, to which we subscribe ourselves. The Appellant is yet, we understand to appear before a GDC Fitness to Practice Panel; that Panel will determine the matters before them on the evidence they receive, and of their own judgement.

19. It is clear to us, and we accept it to be the case, the Appellant has made significant and meaningful steps to remediate himself; he has examined his practises, premises and persona as to why he let these conditions pertain in his practice. He is genuinely remorseful and feels he has let down many people as well as himself. We accept he has a genuine resolve not to allow himself to be in this position again, and find he has made significant commitment in personal time and expense to demonstrate this. His commitment thereto will indeed be tested, and he will be required to meet much of the costs of compliance as we felt it unreasonable to allow contingent removal unless the cost to the PCT could be minimised. He has, we accept sought out the help and support of professionals to assist, though it would have been embarrassing for him to explain his deficiencies in doing so. He has the support of other professionals, including Professor Franklin; and particularly Mr Renshaw, a widely respected member of the profession, as a mentor. We have considered the regulations when considering this as an efficiency case fully, and have carefully considered the extent of the neglect and deficiencies here, the seriousness of these matters, and the liklihood of repetition. The assistance and safeguards that will come from

contingent removal (by way of conditions), we find, will deal with these issues; and, that they are a proper and proportionate balance between the interests of patients, staff and the PCT, when set against the Appellant's interest in preserving the opportunity to work in the NHS, which includes pursuing his profession and earning a living.

## **Decision**

Appeal allowed to the extent that we order the Appellant be CONTINGENTLY REMOVED from the Respondents Dental Performers List with the following provisions:

- 1) The Appellant must not engage in single handed dental practice within the NHS.
- 2) The Appellant must only undertake such NHS work within a training practice(s) approved by the Deanery and must only work under the supervision of a registered dental practitioner(s) (to be known as the workplace supervisor(s)). Any such work or placement is to be approved of in advance by the Deanery and NHSR. The provision of the placement(s) and retainer of the workplace supervisor(s) shall be at the expense of the Appellant. The Appellant shall immediately inform NHSR of the cessation of any such employment(s) or placement(s). The Appellant shall openly disclose details of these conditions to any prospective employer(s) at the time of application for employment, or to the Principal of any practice where the Appellant might seek workplace experience - before the same takes place.
- 3) The workplace supervisor(s) shall (at the Appellant's expense) keep the Appellant's practice under review and provide a report every three months in respect of the same to the NHSR\* (\*That is to say by special delivery post addressed to the Dental Public Health Consultant; or such officer of NHSR nominated in writing to the Appellant by the Chief Executive of NHSR).
- 4) The Appellant shall only practice NHS dentistry when assisted by registered dental nurse.
- 5) The Appellant should engage with a Mentor approved by the Deanery.
- 6) The Appellant must immediately devise a Personal Development Plan (PDP) approved by the Deanery (at the Appellants expense if needs be) and provide a copy of the PDP to NHSR\*. The Appellant shall thereafter provide evidence of his development of this PDP, and compliance with the same, every three months to NHSR\*, or at such lesser frequency as may be agreed with NHSR\* at their sole discretion.



- 7) The Appellant will conduct, at his own expense, regular (of not less than every 3 months, or immediately upon cessation of ownership, operation or work) audits into cross infection practices in respect of any premises he may own, operate, work in, or be concerned with, including the Dalton Dental Practice Premises referred to elsewhere in this determination (even if other practitioners are treating patients at any such premises). These audits are to be externally verified and delivered without delay to NHSR\*.
- 8) The Appellant will cooperate, openly and in good faith, with any announced or unannounced visits to any such premises by officers of NHSR, or their nominated representatives. Every effort is to be made by NHSR to minimise the disruption to the care and treatment of patients.
- 9) The Appellant will allow NHSR to share any information they have, or gather, with the General Dental Council and shall permit, and facilitate, the exchange of information between NHSR/The Deanery/any employer(s) or prospective employers(s) of the Appellant/ Principal providing any work experience placement and any other Primary Care Trust.
- 10) The Appellant shall provide evidence of his continuing professional development every six months to the NHSR\*.
- 11) The Appellant shall promptly inform NHSR\* of developments in any current, and of any further proceedings, concerning the Appellant before the General Dental Council.
- 12) The Appellant shall keep his professional commitments under review and revise or restrict them in line with advice given by The Deanery, and/or, any workplace supervisor(s), and shall cease work immediately if advised to do so by any of the same.
- 13) The Appellant shall not undertake any out of hours work. If a patient is seen as a dental emergency to arrest hemorrhage or following trauma, a record shall be kept and submitted to the NHSR\* within two clear working days of such treatment being given.
- 14) There be liberty to apply to the Tribunal, on notice, as to the variation, clarification, or cessation of these terms and conditions.

**Signed:**

**Judge of the First-tier Tribunal  
Mr T Jones**

