

In the Family Health Services Appeal Authority

Appeal No. FHS/13633

Between:

Mohammed-Jaffer Dattu  
(GDC Registration number 68940)

Appellant

And

Portsmouth City Teaching Primary Care Trust

Respondent

### **DECISION WITH REASONS**

#### **Panel**

Miss M Corbett	Chair
Dr D Kooner	Professional Member
Mr W Nelson	Member

#### **Hearing dates**

8.6.07 (evidence)

26.6.07 (panel retired to consider the evidence and the written submissions)

#### **Background**

1. The appellant is a dentist, Dr M J Dattu who is appealing a decision made at an oral hearing of the PCT on 9.2.07.

2. It is common ground that the appeal proceeds by way of a re-determination. The panel is entitled to exercise afresh the discretion under regulation 8(2) of the National Health Service (Performers Lists) Regulations 2004. The appeal is not confined to a review of the decision of the PCT.

3. Breach of conditions attached to inclusion on a Performers List gives rise to a discretion to remove the practitioner from that List under regulation 8(2).

## **Background**

4. It is necessary to set out a summary of the background in order to gain an understanding of the circumstances in which the 6 conditions were imposed upon Dr Dattu's inclusion upon the performers' list.

5. In May 2001 the Dental Practice Board wrote to Dr Dattu requesting the records relating to some 29 patients. Issues relating to 9 of these were referred to the former Isle and Wight, Portsmouth and SE Hants Health Authority. In August 2002 a dental discipline hearing was held, a finding made that Dr Dattu was in breach in respect of 33 separate items, some relatively minor and some very serious concerning what appeared to be fraudulent claims. Amongst other action there was a referral to the General Dental Council.

6. The General Dental Council held a formal inquiry on 14-17 March 2005. Dr Dattu was found guilty of serious professional misconduct and his name was suspended from the register for 4 months from 15.4.05.

7. During the period of suspension from the GDC register it was necessary for him to be removed from the PCT performers list .

8. Dr Dattu had taken deposits of £20 per adult and £5 per child from registered NHS patients in direct contravention of his terms of service. The NHS counter fraud service became involved and the total sum of £6000 was refunded to over 300 families by Dr Dattu.

9. The investigation recommended that it may be necessary to attach a list of conditions to Dr Dattu's reinstatement to the performers list.

10. His name was reinstated onto the GDC dental register on 15.8.05.

11. On 24.8.05 Dr Dattu applied to join the PCT dental list. The decision was deferred. After considering references and advice from the National Clinical Advisory Service, the Reference Committee recommended that Dr Dattu should be granted an NHS contract number provided that he agreed to a number of conditions being imposed.

12. The agreed conditions are set out in a letter dated 24.10.05 at R67-68. A copy of the letter is attached to this decision. The conditions relate to surgery premises, clinical care, audit and review,

personal development, business management and personality management. The terms of the conditions (save the one relating to personality management) indicated that non-compliance would lead to Dr Dattu's NHS contract number being suspended.

13. In October 2005 Dr Dattu's name was conditionally included upon the PCT performers list.

14. There was correspondence and discussion from November 2005 to April 2006 in relation to the meeting of these conditions. Dr Dattu wrote to the PCT, on 26.3.06, an 11 page letter detailing his considerable personal and family issues. By this point the PCT visit to the surgery premises had not taken place. The PCT had offered 6 different appointments. Following his letter of 26.3.06 an appointment was arranged for a surgery visit on 31.3.06; Dr Dattu cancelled this on 29.3.06 as he had decided to withdraw from NHS dentistry as a principal.

15. The dental reference committee met on 13.7.06 and concluded that Dr Dattu was in breach of at least 5 out of 6 conditions imposed.

16. At Dr Dattu's request, the PCT held an oral hearing of the Dental Reference Committee on 9.2.07. The panel was comprised of people who had not previously been involved in formal decision making in respect of Dr Dattu. Their decision was to remove Dr Dattu from the list pursuant to Reg 8(2). The letter dated 14.2.07 setting out the PCT's decision and reasons is at A50a-d. The decision was that Dr Dattu had failed to meet 5 out of 6 conditions and that his name should be removed from the performers list. The condition which the oral hearing panel decided had been met by Dr Dattu was that relating to the production of a personal development plan.

17. Dr Dattu appealed to the FHSAA on 5.3.07.

### **FHSAA hearing**

18. The panel read all of the documents provided to us in advance, including detailed grounds of appeal and detailed response from the PCT. On the morning of the hearing we received a further 20 pages of references from Dr Dattu.

19. One day was set aside for the hearing on 8.6.07. Despite sitting late it was only possible to conclude the oral evidence; submissions were subsequently filed and served. In addition we received more written evidence (see below). The panel met to retire and consider its decision on 26.6.07.

20. The sole witness who gave evidence on behalf of the PCT was Ms Zenna Atkins, chair of the PCT panel on 9.2.07. Dr Dattu gave oral evidence as did his current employer Dr Kalsi.

21. There are 2 issues arising for the panel from regulation 8(2):
- a. Which, if any, of the conditions agreed between Dr Dattu and the PCT and contained in the letter of 24.10.05 has Dr Dattu breached?
  - b. Does the breach of those conditions mean that he should be removed from the performers list? This is solely at the discretion of the panel under reg 8(2). There is no guidance in the regulations as to the factors which should be taken into account.

**The use of the word “suspended” in the 24.10.05 letter.**

22. Dr Dattu was being offered an NHS contract number provided that he agreed to a number of conditions being imposed. He agreed to this. The letter of 24.10.05 was finalised as a result of discussions over the telephone with Dr Dattu and his advisers. The terms of all but one of the conditions indicated that non-compliance would lead to his NHS contract number being **suspended**.

In fact, in relation to a visit to his surgery premises, the letter states that if he is not wholly compliant with any actions identified after the initial visit the NHS contract number will be suspended; the letter assumes that the initial visit would take place.

Reg 8(2) provides that a panel has discretion to **remove** a performer if there is a breach of one or more conditions.

23. For the avoidance of doubt, the panel does not believe that Dr Dattu was in any doubt as to the effect of non compliance with the conditions agreed to. In all of his correspondence, and at the panel on 9.2.07 he never sought to submit that he understood that the powers of the PCT were other than a discretion to remove him from the list (as opposed to suspend). The letter dated 11.8.06 from the PCT refers to the consideration of removal from the list.

**The conditions**

24. **Inspection of Surgery premises**

(a) Dr Dattu agreed to facilitate a visit by the PCT dental advisor and an infection control nurse to undertake a joint health and safety and infection control inspection within 3 months of obtaining the NHS contract number. This visit was to have formed a baseline assessment out of which an action plan and timetable for any required improvements will be formulated. The premises would have been inspected 6 months later. He agreed that if he had not been wholly compliant with any actions in the initial visit his NHS contract number would be suspended.

(b) The PCT submissions:

The PCT offered 7 dates and times for visits:

21.12.05 4pm

4.1.06 12 noon or 1pm

11.1.06 12 noon or 1pm

17.1.06 10am

14.3.06

Breach of this condition is admitted by Dr Dattu in his oral evidence before the PCT panel on 9.2.07 and in his letter of 20.9.06. The breach is serious and Dr Dattu overplays the excuse of his parents' ill health. His refusal to meet the panel at 1pm on 11.1.06 because of religious commitments when he claimed that he could meet the panel at 2pm, suggests an excessive degree of inflexibility and an unwillingness to do his best to permit the inspection to take place. He cancelled the visit scheduled for 14.3.06 by letter of 5.3.06. There must be a significant suspicion that he cancelled not because of his parents' ill-health but because he had no practice nurse in place. It appears Dr Dattu was able to attend a 3 hour marketing course on 10.3.06.

(c) Dr Dattu's submissions:

At the PCT oral hearing and at the panel hearing he accepted he should have been more flexible. He says:

There were 4 dates offered in December and January and he has offered explanations for his unavailability at pp10-11.

On 21.12.05 – he was due to complete on a property, this did not take place and the date changed to 4.1.06. On 11.1.06 he could not meet at 12 noon or 1pm due to Eid and going with his father to the Mosque, he could only meet at 2pm. At the panel hearing he added a reason that on 14.3.06 he had to liaise with his mother's physiotherapist in relation to a stairlift being fitted.

Since he had rejected the NHS contract he was under the mistaken impression that he did not have to offer the facilities for inspection.

By letter of 20.9.06 he said the PCT could inspect whenever they liked.

The PCT did not offer any dates after 31.3.06

There is no evidence of concern about health and safety or infection control. He has a Health and Safety policy subject to regular review.

(d) The panel finds:

There is a clear breach of this condition. Dr Dattu agreed in October 2005 to a surgery inspection/visit within 3 months. This is an entirely reasonable timescale. The letter states that this was to form a baseline assessment out of which an action plan and timetable would be formulated. This visit should have been a priority for Dr Dattu and it was not. PCT offered at least 6 opportunities for an inspection visit even as late as March – almost 6 months from the date of the agreement. None were taken up by Dr Dattu. No reasonable excuse is offered for the cancellation of such a large number of appointments.

The reasons given by Dr Dattu for all 6 dates and times being unsuitable are inadequate.

He has overplayed the effect of his parents' ill health, bearing in mind the several months in which he had to comply. On 11.1.06 for him to have availability at 2pm but not 12 or 1pm due to taking his father to the mosque appears unreasonable.

As to 14.3.06, this appointment was cancelled on 9.3.06 as his parents were said to be ill. The reason given by Dr Dattu at the panel hearing for cancellation was the appointment with a physiotherapist in relation to a stairlift – a reason not previously given. On 10.3.06 he was able to attend a 3 hour marketing course, which appears inconsistent with his having the day before cancelled an appointment on 14.3.06 due to parental illness.

It is not relevant that Dr Dattu's practice has an infection control and health and safety policy which has been subject to regular review, nor that he has been assisted with infection control and health and safety issues by Sarah Daley, an NVQ assessor at Highbury College and the manager of a dental anaesthetic unit at the Queen Alexandra Hospital.

## 25. **Clinical care**

(a) This condition required Dr Dattu to have "a dental nurse(s) to provide clinical support on site for the full duration of any sessions when NHS care [was] being provided". It was stipulated that the nurse should "*ideally* be fully qualified, be in a formal training programme or intend to join such a programme".

At the panel hearing when confronted with evidence of a lengthy period (6.2.06 to 16.3.06) during which it appeared that no dental nurse had been employed Dr Dattu suggested that he was away from his practice in February and March for a significant period of time (and therefore would not have needed a nurse). He had not mentioned this before in the oral hearing on 9.2.07 when telling the panel whom he had employed and when.

In the instant hearing, at 2.10pm we were told there was a developing situation as to whether Dr Dattu was working from February to mid March. Counsel told the panel that his instructions were that Dr Dattu may have provided emergency treatment without a nurse, but routine treatment was always with a nurse.

A fax was received by the PCT who disclosed it to the panel and to Dr Dattu. It appeared to give a list of 85 treatment starts between 6.2.06 and 6.3.06, then none until 16.3.06. The list contained reference numbers with no codes so that it was not possible on that day to work out what type of work was carried out on the dates listed. Dr Dattu sought an adjournment in the light of the factual issue as to whether the practice was closed and for how long. This was refused by the panel on the basis that information as to when the practice was open and when closed and as to what treatment was provided (emergency/routine) was within Dr Dattu's knowledge, that he had never before suggested that he was away from his practice at this time and the circumstances of the adjournment sought were entirely of Dr Dattu's own making.

It was agreed that the PCT would submit in written submissions more detailed analysis of the information in the fax, to which Dr Dattu could reply.

(b) The PCT submissions:

There was a gap between 6.2.06 and 16.3.06 when according to his evidence on 9.2.07 no-one was employed as a nurse (qualified or not).

The likelihood is that he was absent from work only 6.3.06 - 16.3.06.

This fits with the wording of his letter of 5.3.06: "I need to take time off work immediately" and with the processing information which shows 85 patients commencing treatment between 6.2.06 and 5.3.06 but none between 6.3.06 and 16.3.06.

The PCT relies upon the spreadsheet from Dr Paul Edmondson-Jones showing what treatments were commenced in this period. Dr Dattu said in evidence that any treatment provided in this period would have been emergency treatment only.

This fits with Dr Dattu's letters of 26.3.06, 13.6.06 and 20.9.06, none of which refer to extended absence in February 2006. It is clear that in February 2006 Dr Dattu was working normally and visiting his parents in hospital in the evening. On 21.2.06 Dr Dattu was able to attend a 2 hour life support course.

There is no mention in Dr Dattu's letters of Wioletta Kuczkowska helping out in February 2006 nor was this mentioned at the PCT's hearing on 9.2.07.

This panel must be driven to the conclusion that Dr Dattu practised for a substantial part of February 2006, until 6.3.06 without adequate support and in breach of this condition.

It is a matter for the panel whether in the period when Dr Dattu did have an unqualified practice nurse but no reception staff he was within the condition or not.

(c) Dr Dattu's submissions:

The condition states that a nurse should *ideally* be fully qualified, or in training programme or intend to join such a programme.

Dr Dattu may have provided emergency dental treatment with a nurse in February-March 06, but would have been assisted by a Polish dental nurse Wioletta Kuczkowska when carrying out routine dental treatment.

The surgery closed for about 4 weeks in February and March 2006. For the rest of the time, he only carried out emergency work with no nurse – or Wioletta Kuczkowska was used.

His response to the new spreadsheet came by letter received during the deliberations of the panel. It said that Dr Dattu may have provided emergency dental treatment without a nurse in February-March 2006, but would have been assisted by a Polish dental nurse Wioletta Kuczkowska when carrying out routine dental treatment.

(d) The panel finds:

If the PCT felt it essential that a nurse was fully qualified, or in a training programme or intend to join such a programme, PCT could have said so in the letter of 24.10.05. We do not regard as a formal breach those times when a nurse was present (albeit not qualified etc as Dr Dattu had agreed was ideal).



The key issue is whether, at any time, he carried out routine dentistry without the support of a qualified or unqualified nurse.

Dr Dattu did not refer in the oral hearing on 9.2.07 nor in his letter of 26.3.06 to having employed Wioletta Kuczkowska. At the panel hearing, he only mentioned employing her when confronted with the fax containing evidence that there had been treatment during the February to March period. He said Wioletta Kuczkowska was casual help and said he would call her if a patient wanted non-urgent treatment, this fitted around her care home work.

Dr Dattu's evidence about when he was off work in February 2006 was unconvincing and evasive. His evidence about the employment of Wioletta Kuczkowska on a casual basis for routine treatments only was wholly unconvincing.

The panel agrees with the analysis of the PCT that:

Dr Dattu was absent from work only from 6.3.06 to 16.3.06. This is evidenced by the combination of :

- His letter of 5.3.06: "I need to take time off work immediately". None of his letters dated 26.3.06, 13.6.06 and 20.9.06 refer to an extended period of leave in February.
- The processing information which shows 85 patients commencing treatment between 6.2.06 and 5.3.06 but none between 6.3.06 and 16.3.06.
- The spreadsheet from Dr Paul Edmondson-Jones showing what treatments were commenced in this period. The panel noted there were 98 patients treated. Dr Dattu said in evidence that any treatment provided in this period would have been emergency treatment only. This is clearly untrue.
- on 21.2.06 Dr Dattu was able to attend a 2 hour life support course.

Dr Dattu's evidence that he employed Wioletta Kuczkowska to assist him during routine treatments, as casual help whom he would call when she was not working in the care home, was suddenly introduced into the evidence at the hearing. This is inconsistent with the sheer number of routine treatments over the period set out in the spreadsheet. The panel rejects Dr Dattu's evidence that "he was at all times supported by Wioletta Kuczkowska" as contended for in submissions.

The panel finds that he was carrying out routine dentistry from early February 2006 to 6.3.06 without the support of a nurse, qualified or not. Accordingly there was a clear breach of this condition.

## 26. Audit and review

(a) The condition required a plan for robust peer review within 3 months and implementation within 6 months.

(b) The PCT submissions:

Dr Dattu accepted he had not complied with either requirement. He accepted that he had never come up with a plan for robust peer review.

He has completed just 2 audits, both in July/ August 2006. Both are limited and whilst it is accepted that they could have been part of a wider package satisfying this condition by themselves they fall well short of the robust plan for peer review required. Dr Dattu did not seek any help until March 2006, nearly 6 months after the condition was imposed. He failed to seek assistance from the Local Audit Panel. Even now the panel may justifiably feel that a robust plan for audit would simply be beyond him.

(c) Dr Dattu's submissions:

He accepts that an audit did not take place within the initial 6 month timeframe – due to family and personal problems. The Local Audit Panel ceased to exist around April 2006. He did not have enough patients/data as he had rejected the NHS contract. He could not get a colleague to audit with him. He did not receive enough help from the PCT.

He produced audits in radiographs and crown longevity – small sample size due to practice; these were sent to the PCT 20.9.06. He has complied with the spirit and substance of the condition.

(d) The panel finds:

Dr Dattu accepted he had not complied with either requirement. He accepted that he had never come up with a plan for robust peer review.

The panel did not get any sense from Dr Dattu in oral evidence that he felt audit was a useful tool.

The audit could have been retrospective so the loss of NHS patients is irrelevant to ability to audit.

Dr Dattu did not seek any help until March 2006, nearly 6 months after the condition was imposed.

He failed to seek assistance from the Local Audit Panel when it existed. There was a clear breach of this condition.

## 27. Business management

(a) This condition stipulated that the PCT wished to be assured that he had a robust mechanism in place to ensure that there is no possibility of erroneous charges being made against the NHS or against individual patients. The PCT wished to be assured that there is a clear division between NHS and private patients. The PCT said they would be unlikely to be suitably assured unless he could demonstrate that he had appropriate and sufficient qualified practice management and business management support in his practice. Due to PCT concerns about staff retention Dr Dattu agreed to attend a staff employment management course if that could be arranged.

(b) The PCT's submission:

Without adequate support staff this condition cannot be satisfied, Dr Dattu had a practice manager for 2 weeks in October 2005. Most of the time when he was subject to the condition Dr Dattu had at most only one member of staff, for the majority of that time an unqualified inexperienced dental nurse.

Dr Dattu says he writes handwritten estimates on treatment cards. There is no evidence that the patients agreed these. There is no way of knowing whether the sheets which contained estimates were signed before or after estimates were written in manuscript.

He has difficulties in retaining staff, his lack of organisation and failure to address other conditions means he is not likely to cope with this condition without proper help and support

(c) Dr Dattu's submissions:

Dr Dattu ensured that private treatment costs were notified to patients by providing them with a handwritten estimate on headed paper which he initialled.

He had joined the BDA good practice scheme [in April 06].

Since April 2006 the modest size of his practice has affected his ability to employ administrative staff and in particular a practice manager. He has attended courses relating to management.

(d) The panel finds:

Dr Dattu has not satisfied the panel that he has "appropriate and sufficient qualified practice management and business management support in his practice". The lack of adequate support staff was not crucial as he might have been able nonetheless to demonstrate that he had sufficient and

proper systems in place. However, he had not been able to do so and is in clear breach of this condition.

**28. Personality management:**

(a) The PCT was concerned that Dr Dattu's manner and attitude make it difficult to communicate to best effect with his patients, colleagues and the PCT. They wished him to attend a behavioural assessment which they would assist in funding, and agree to undergo any courses or specific training recommended as a result. The PCT would assist in funding the training.

Dr Kalsi gave evidence on Dr Dattu's behalf. Dr Dattu had been a locum at his practice for 4 weeks, working 4 days per week. Dr Dattu had answered an advert in the British Dental Journal, telling Dr Kalsi that the primary reason he was seeking an associate position was that he was selling his practice. He told Dr Kalsi that he had been before the professional conduct committee and suspended for 2 months, due to a clerical error on his part, paperwork not right and forms incorrectly filled out by others. Dr Kalsi did not fully know the circumstances leading up to the current application. He described Dr Dattu as competent and charming.

(b) The PCT's submissions:

This was not just a tick box requirement which could be satisfied by obtaining a report from a psychologist of Dr Dattu's choosing. It required meaningful engagement in a process. The report from Mr Easton (relating to an assessment on 17.1.07), psychologist, offered too little too late. There is no evidence of his addressing or understanding the reasons behind the PCT request.

(c) Dr Dattu's submissions:

Dr Dattu was unclear about how to go about this. His letters of 13.6.06 and 20.9.06 show that he was seeking the PCT's help in arranging this. After he met his legal advisors in November 2006 Dr Dattu was assisted in finding a suitable expert.

The references provided to Dr Easton was a complete bundle for the GDC hearing including from fellow practitioners.

Dr Dattu has provided up to date references for the panel hearing and called evidence from Dr Kalsi.

(d) The panel finds:

Dr Dattu accepted this condition in October 2005 but took 14 months to get a psychologist's report. He chose the psychologist and chose what information to provide to him. There is no evidence of Dr Dattu addressing or understanding the reasons that lay behind the request by the PCT and he did not demonstrate any insight into the need for assessment and training. The panel agrees with the PCT that that this was not a tick-box requirement, but needed meaningful engagement in a process; this was missing. Although the condition was essentially aspirational and had no explicit time limit or consequence of non-compliance, the panel consider that Dr Dattu has clearly failed to comply with it.

The panel was also concerned at the lack of knowledge of Dr Dattu's recent professional history demonstrated by Dr Kalsi his current employer and referee.

## 29. Discretion

There have been clear breaches of all 5 conditions as referred to above.

Dr Dattu argues there was absence of full compliance during the initial 6 month period when his professional and personal circumstances substantially impaired his ability to comply with the conditions, but since then he has made significant efforts to comply. It is suggested that the panel may consider that further conditions should be applied (these are not specified).

It is said that the 6-month period in question was one of particular difficulty for Dr Dattu because:

- (i) the 4-month period of suspension by the General Dental Council had ended only recently, in mid-August 2005: the GDC's decision had attracted a good deal of adverse publicity locally;
- (ii) Dr Dattu's patients had been deregistered during his period of suspension. It was necessary to re-register them individually and manually which was a time-consuming process. Dr Dattu enlisted the support of a practice manager (Phoebe Buckner) to assist with this process, but she was disillusioned with the NHS and worked in the practice only for a matter of weeks;
- (iii) there were difficulties in Dr Dattu's marriage, his wife leaving the matrimonial home in December 2005 and again in March 2006;
- (iv) Dr Dattu's elderly parents, who had lived with him since moving to England in 1994 were suffering severe health problems as set out in detail in Dr Dattu's letter to the PCT of 26<sup>th</sup> March 2006 [8-16]. Independent corroboration of the extent of the health

problems of Dr Dattu's parents has been provided in the form of copy medical correspondence at [51-55A]. It was necessary for Dr Dattu to liaise with his parents' hospital consultants, general practitioner, hospital staff and residential care home staff and his parents' increased care needs required him to move house and to arrange live-in carers, satisfactory arrangements for which were not in place until about August 2006;

- (v) attempts in February and March 2006 to arrange for Dr George Billey to look after his patients as a locum in order to allow Dr Dattu more time to look after his parents were not successful.

The panel considered carefully whether the mitigating circumstances set out above mean that despite the breaches, this panel should exercise its discretion not to remove Dr Dattu's name from the list.

The panel concluded that the correct exercise of discretion was to remove Dr Dattu's name from the performer's list.

Following the GDC 4 months' suspension, the PCT agreed conditions with Dr Dattu (and his legal advisors) in relation to action which was to take place over a reasonable time period.

Despite his difficult family circumstances Dr Dattu attended courses and treated patients. The panel does not see why the personal circumstances would have prevented him complying with the conditions.

He has failed to respond in any timely way to conditions agreed.

He has shown a reluctance to accept responsibility and blames other circumstances for his own failures.

The cumulative effect of the breaches gives the panel no confidence at all that there would be compliance in the future. The panel is very concerned at Dr Dattu's lack of insight into the need for the conditions to be met by him in a timely and meaningful way. Imposition of further conditions would not safeguard the efficient delivery of dental services. The fundamental and wholesale nature of the breaches to date mean that the only proportionate remedy in this case is the removal of Dr Dattu from the PCT's performer's list.

28. Either party to this appeal may exercise a right of appeal against this decision by virtue of section 11 of the Tribunal and Inquiries Act 1992, by lodging an appeal with the Royal Courts of Justice, The Strand, London, WC2A 2LL, within 28 days of receipt of this decision. Under rule 43 of the 2001 Rules a party may also apply for a review or variation of this decision no later than 14 days after the date on which this decision is sent

Michelle Corbett  
Chair