

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Case No: 14912

Panel

Mrs Debra Shaw - Chairman
Dr Howard Freeman - Professional Member
Mr Michael Cann - Member

BETWEEN

DR CORINNA ENGELKE
GMC NO: 6136134

Appellant

and

SOUTHAMPTON CITY PRIMARY CARE TRUST

Respondent

Appeal by Dr Corinna Engelke against removal from Southampton City PCT's Performers List

DECISION WITH REASONS

The Appeal

1. This is an appeal by Dr Corinna Engelke ("the Appellant") against removal from the Performers List of Southampton City PCT ("the PCT") under section 10(6) of the National Health Service (Performers Lists) Regulations 2004 (as amended) and associated regulations ("the Regulations").

History

2. The PCT wrote to the Appellant on 29th February 2008 confirming she had approval to remain on its Medical Performers List until 27th March 2009. The PCT stated in its letter that it was required to begin proceedings to remove a GP from its list if that GP had not worked in its PCT area during the last 12 months and indicated that as the Appellant had not worked in the PCT's area since June 2007, the PCT's approval was conditional upon the Appellant working within the PCT's area prior to the end of June 2008. The PCT went on to say that if it did not receive confirmation the Appellant had done this, she might be advised to transfer to join the list of a PCT in whose area she had recently worked, or the PCT might begin proceedings to remove her name from its list.
3. The PCT sent a further letter to the Appellant dated 26th July 2008 explaining its Out of Hours ("OOH") Service had undergone significant change, as a result of which it had reviewed its immediate recruitment needs and placed a freeze on all recruitment for the OOH Service, which would be reviewed towards the end of the year.
4. The PCT wrote to the Appellant again on 29th September 2008 (further to its letter dated 27th August 2008 notifying the Appellant it was considering her removal on the basis she had not provided services in the Southampton area in the last 12 months) and formally confirmed it had now decided to remove her from its Performers List under section 10(6) of the Regulations.

5. The Appellant wrote to the Family Health Services Appeal Authority (“the FHSAA”) on 15th October 2008 to appeal against the PCT’s decision to remove her from its list on the basis of the following extenuating circumstances:

- (i) If the Appellant had earlier been made aware of the recruitment freeze, she would have had a reasonable amount of time to apply to another PCT whilst remaining on Southampton City PCT’s list
- (ii) The Appellant was only undergoing these procedures to gain admittance to the PCT’s Performers List because she was engaged to a British national living in the Southampton area, with plans to move to the UK in early 2010, when she would hope to join a surgery in the area.

6. Prior to the Panel’s consideration of the appeal the Appellant confirmed she had not worked in the Southampton area since she had lodged her appeal and the PCT confirmed it had not carried out a review of its freeze on recruitment for the OOH service.

7. The parties subsequently agreed to the Panel considering the appeal on the papers alone and the Panel proceeded in the absence of the parties on 28th January 2009.

The Law

8. The relevant law is set out in section 10(6) of the Regulations, which states

“Where the performer cannot demonstrate that he has performed the services, which those included in the relevant performers list perform, within the area of the Primary Care Trust during the preceding twelve months, it may remove him from its performers list”

Consideration

9. There is no doubt the Appellant has not performed services which those included in the relevant performers list perform within the 12 months leading up to the decision to remove (or subsequently). The reasons are set out in the papers and summarised above. The Appellant does appear to have confused the freeze on recruitment for the OOH Service with a general recruitment freeze, but the evidence indicates she did not intend to work in the Southampton area during the time in question in any event.

10. PCT’s periodically review their lists in order to reduce the administrative burden (e.g. the requirement for annual appraisal of all GPs on a Performers List) for those who cease performing services within their area. Provided this exercise is carried out reasonably, rationally and proportionately, the decision to remove under Regulation 10(6) is within the discretion of the PCT to be exercised fairly.

11. We did consider the wording in the PCT’s letter dated 29th February 2008 that ‘it was required to begin proceedings to remove a GP from its list if that GP had not worked in its PCT area during the last 12 months and that its approval was conditional upon the Appellant working within the PCT’s area prior to the end of June 2008’ suggested a failure on the part of the PCT to understand the discretionary nature of the power to remove under Regulation 10(6) and confusion over the power to impose conditions, which can only be exercised on inclusion as opposed to when a GP is already on the list. However, taking all the evidence into account, we are satisfied that despite this wording, the PCT considered the Appellant’s continued inclusion appropriately and exercised its discretion to remove her fairly.

