

Case No: FHS/14769

Registration No: 71810

BEFORE THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

IN THE MATTER OF DR I HUSSAIN

B E T W E E N:

WARWICKSHIRE PRIMARY CARE TRUST

(The “PCT”)

Applicant

And

MR I HUSSAIN

Respondent

DECISIONS AND REASONS

This is an application by Warwickshire Primary Care Trust for national disqualification of IKHLAQ HUSSAIN.

Dated the 21st August 2008

1. The application by the PCT has been made under Regulation 18.a of the National Health Service (Performers Lists) Regulations 2004 (“the Regulations”).
2. The application was heard over four days from the 12th to the 15th January in Birmingham. The Respondent was represented by Miss Fiona Neale of Counsel instructed by Radcliffes LeBrasseur and the PCT by Miss Lynn Griffin of Counsel instructed by Mills & Breeve.

DECISION:

1. Our unanimous decision is to dismiss the Application for a national disqualification.

REASONS:

Background:

1. In March 2006 the General Dental Council were concerned with the Respondent and sent a warning letter in relation to his professional conduct concerning misleading advertising in respect of the experience and qualifications of another dentist. On the 16th May 2006 the Respondent wrote to patients of the Camphill Dental Practice in respect of another dentist namely Mr Reinhardt.

2. On the 12th June 2006 the General Dental Council notified the Respondent in respect of allegations which had been made concerning Mr Reinhardt. Those matters were referred to the General Dental Council in May and June of 2007.
3. The Heads of Charge were as follows:
 1. From before October 2004 until after June 2006, you were the principal dental practitioner at the Atherston Dental Practice, Atherston and the Camphill Dental Practice, Nuneaton (your Practices).
 2. Your Practices provided NHS dental service to Warwickshire PCTs (the PCTs).
 3. In or about October 2004 you employed Mr Lutz Reinhardt to work as an associate at your practices.
 4. Between the 1st December 2004 and 31st March 2006 you caused or permitted:
 - (a) the interception of letters from the PCTs addressed to your associates, including Mr Reinhardt;
 - (b) telephone calls from the PCT asking to speak to those dentists(;) working for you not to be put through to those dentists
 5. Your conduct as set out in paragraph 4 above was:
 - (a) inappropriate;
 - (b) unprofessional.
 6. On or about the 19th March 2006, between about 7.00pm and 10.30pm you:

- (a) telephoned Mr Reinhardt several times;
 - (b) informed Mr Reinhardt that you would come to his home address;
 - (c) were asked by Mr Reinhardt not to come to his home address;
 - (d) attended Mr Reinhardt's home address;
 - (e) were rude and threatening towards Mr Reinhardt.
7. Your conduct as set out in paragraph 6 above was:
- (a) inappropriate;
 - (b) unprofessional.
8. On or before the 21st March 2006 you dismissed Mr Reinhardt from your employment
9. (a) On the 23rd March 2006 you faxed a letter to Mr Reinhardt's previous employer requesting details of problems which had occurred during their employment of Mr Reinhardt;
- (c) In this letter you stated that Mr Reinhardt was currently working for you.
10. The letter identified in paragraph 9 above was:
- (a) misleading;
 - (b) intended to mislead.
11. (a) ADT responded to your request by letter dated the 23rd March 2006.
- (b) This letter was sent to you in confidence.

12. (a) On or about the 16th May 2006 you caused or permitted letters about Mr Reinhardt to be sent to patients of your Camphill Dental Practice.

(b) These letters:

- i. stated that, upon your recruitment of Mr Reinhardt, satisfactory references had been received;
- ii. stated that you had investigated Mr Reinhardt's previous employment history because of the high number of patient complaints against him;
- iii. enclosed a letter from ADP dated the 23rd March 2006;
- iv. stated that the content of the letter from ADP dated the 23rd March 2006 had contributed to your decision to dismiss Mr Reinhardt;
- v. Invited complaints against Mr Reinhardt to be committed to writing and forwarded to your Camphill Dental Practice.

13. Your conduct set out in paragraph 12 above was:

- (a) misleading;
- (b) intended to mislead;
- (c) unfair to Mr Reinhardt;
- (d) intended to damage Mr Reinhardt's reputation;
- (e) likely to damage ADP's reputation.
- (f) likely to bring the dental profession into disrepute.

At the Hearing 4(a) was not proved to the satisfaction of the Committee.

A considerable amount of facts were admitted. Those which were not admitted namely, 4(b), 5 (a) and (b), 6 (b) and (c), 7 (b), 10 (b), 11 (b), 13 (a) (b) (c) (d) (e) and (f) were found proven by the Panel.

The Committee determined that the actions outlined above were a planned and reprehensible attack upon the reputation of another dentist. The Respondent's behaviour was inappropriate and unprofessional and the Committee were in no doubt that the actions had damaged confidence in the profession and damaged the reputation of other professionals. The Committee considered that in the Respondent's desire to maintain his practice income and further his business interests, that he lost all proper balance and sense of perspective in relation to his professional obligations. The Committee was concerned that even during the course of those proceedings, the Respondent did not appear to have developed any true insight as to the nature and gravity of his actions. The Committee considered that any disposal must mark the serious extensive and sustained nature of the Respondent's departure from ethical standards. It concluded that the public interest could only be served by a sanction that would affect his registration. Bearing in mind all the circumstances and taking into account that the Respondent's clinical abilities had not been called into question, the Committee considered that erasure would be a disproportionate sanction. A period of suspension was imposed for twelve months commencing twenty eight days from June 2007. That decision of the 1st June 2007 was appealed.

The appeal was withdrawn and the suspension took effect from the 24th July 2008 to the 24th July 2009.

In or around April 2008 the PCT sought the removal of the Respondent from its Performer's List under the Regulations. The PCT sought the removal of Dr Hussain under Regulations 10(3) and 19(4)(a) and (c). Regulation 10(3) of the Regulations provides that a Primary Care Trust may remove a performer from its Performer's List where any of the conditions set out in Paragraph 19(4) is satisfied. The material conditions upon which the PCT relies are that:

- 10(4)(a) The performer's continued inclusion in the list "would be prejudicial to the efficiency of the services which those included in the relevant Performer's List perform ("an Efficiency Place")
- 10(4)(c) The performer is "unsuitable to be included" in the List ("an Unsuitability Case").

The basis of the Heads of Charge which led to the application were repeated insofar as the charges at the GDC concerning Mr Reinhardt and in addition the following charges:

1. That in breach of the requirements and Regulation (9)(1) of the Regulations the Respondent failed to make a declaration in writing to the PCT that, as a result of the matters referred to in the warning letter from the GDC, the Respondent had:

- i. become subject to an investigation into his professional conduct by a regulatory body, and/or
- ii had been informed by a regulatory body of the outcome and finding against him of an investigation into his professional conduct.

In addition there were two allegations in respect of the Respondent's conduct one towards a Miss Malatsi on the 20th April 2006, being a dentist at the Great Bridge and Wednesfield Dental Surgeries, such conduct stated to be:

- i. intimidating and/or
- ii aggressive and/or
- iii threatening

A further instant on the 22nd September 2006 concerned the Respondent's conduct towards Tracey Harvey which was stated to be:

- i. intimidating and/or
- ii. aggressive and/or
- iii. threatening.

The Oral Hearing found those charges to be proven. In respect of Miss Harvey, the Panel found that Respondent's conduct had been intimidating and as a result Miss Harvey had felt "surrounded and bullied by him".

As to the complaint concerning Miss Malatsi, the Panel found the Respondent's conduct was aggressive and more than intimidating. Of the two matters, the Panel viewed Dr Hussain's conduct towards Miss Malatsi as the most serious. The Panel found that he had been both intimidating and aggressive towards another professional. Albeit that the "backdrop" to his conduct in 2006 concerned the Respondent's

perceived problems with the PCT and negotiations for the new contract, his behaviour to Miss Malatsi and Tracey Harvey was plainly unacceptable and revealed a manipulative streak in his approach to problems of a business nature which one would not expect to see from a professional and performer on the List. The fact that the Respondent denied the allegations made against him and in particular, stated that he was incapable of such conduct, caused the Panel some concern. The Panel found that the conduct regarding Mr Reinhardt was serious professional misconduct.

The Panel found that the Respondent had lost all proper balance and perspective and that the Respondent had shown no real or genuine insight into his conduct. He had sought to maintain his denials of improper conduct and, when forced to address his behaviour he sought to excuse it.

The decision of the General Dental Council and the decision of the Oral Hearing have not been appealed. Those facts therefore stand as evidence in this case.

It is for the PCT to prove its case on the balance of probabilities.

Written directions were issued by this Panel providing written statements to be filed in respect of all witnesses upon whom either party intended to rely, such witnesses having already given oral evidence at the Hearing in October 2007.

The Panel had the opportunity of considering the bundle which had been supplied including the witness evidence of Tracey Harvey, Dr Tryphosa Malatsi and Ian McIntyre filed on behalf of the PCT, together with statements from the Respondent,

Kirn Varma, Rebecca Jane Armson and Sarah Greenhouse on behalf of the Respondent. There was a considerable amount of testimonial evidence which was considered by the Panel, together with two expert reports from Professor Paul Rogers and Dr Michael Drayton, with a joint statement of agreement/disagreement between those experts.

In addition, the Panel had the opportunity of considering the extract from the GDC Professional Conduct Committee hearing and the PCT hearing in October 2007.

The Panel accepted that insofar as this Hearing was concerned, the evidence called on behalf of Miss Malatsi and Miss Harvey was to consider the impact of the Respondent's behaviour upon those witnesses on the basis that the allegations had been found proven against the Respondent.

The Relevant Law:

This is an application of national disqualification under Section 18(a) of the Regulations:

1. In this Regulation and in Regulation 19 "National Disqualification" means the disqualification of the performer from inclusion in:
 - a. a Performer's List;
 - b. a list referred to in Section 49N(1) prepared by a Primary Care Trust;
 - c. A supplementary list prepared by a Primary Care Trust;
 - d. A list of pharmacists performing local pharmaceutical services prepared by a Primary Care Trust, or only from

inclusion in one or more descriptions as such list prepared by a Primary Care Trust or an equivalent list, the description being that specified by the FHSAA in its decision.

Supporting that legislation are guidelines when dealing with an application for national disqualifications which include the following:

- i) That the findings are serious and not by nature local to the area;
- ii) The range of deficiencies or misconduct
- iii) The explanations given and the level of insight
- iv) The likelihood of conduct being remedied in particular where there are failings of character and personality
- v) Patient welfare
- vi) Use of NHS resources

This must be balanced against the following:

- i. The Respondent's ability to work professionally
- ii. That the decision must be proportionate
- iii. That the decision must be reasonable and fair in all of the circumstances.

EVIDENCE – WRITTEN

1a) Evidence of Dr Michael Drayton:

Dr Michael Drayton is a Clinical Psychologist.

Dr Michael Drayton provided a Report. He is a Consultant Clinical Psychologist.

The summary of Dr Drayton's Report was that Dr Hussain was evasive, vague and impressionistic. The score on the Lie Scale of the Psychometric Evaluation of

Personality was significantly elevated such that it rendered the remainder of the test incapable of interpretation. Dr Hussain did not demonstrate any insight into the internal factors contributing to his aggression. The aggressive intimidating and bullying behaviour demonstrated by Dr Hussain was a result of the interaction between dispositional and situational factors. Due to the lack of insight and consequent lack of motivation he did not recommend any form of psychological therapy for Dr Hussain. He was unable to reassure the Hearing that Dr Hussain's behaviour would not reoccur in the future.

In respect of Dr Hussain's level of insight, in Dr Drayton's opinion, he showed little or no insight into the nature of his aggressive behaviour demonstrated during the incidents with Dr Reinhardt, Miss Malatsi and Mrs Harvey. When Dr Hussain was asked about the incidents he told Dr Drayton that he was not able to remember any of them very clearly. Dr Hussain continued to attribute his unacceptable behaviour to external sources, primarily the new dental contracts. Dr Hussain had not accepted responsibility for his actions in a meaningful and sincere manner. Dr Hussain had attributed his behaviour to stress which in turn was caused by the unreasonable dental contracts. This attribution was very different from understanding that when he felt under pressure or threatened he had a tendency to behave in an aggressive and bullying manner. It was this which he needed to address. He did not agree with Professor Rogers that Dr Hussain's behaviour was situational because he had not demonstrated such behaviour in the past.

1b) EVIDENCE – ORAL

Dr Michael Drayton:

Dr Drayton confirmed that the somatoform pain had been diagnosed in addition by Dr Joseph. He said that Dr Hussain had a lack of recall during the course of his interview. He did not wish to incriminate himself.

It was his opinion that Dr Hussain did not consider how his actions impacted upon other people. He showed signs of impulsive behaviour. He drove across the West Midlands to confront Dr Malatsi at 7.00pm. This was not an appropriate way to speak to a colleague.

He confirmed that he believed that Dr Hussain suffered from anger problems. He said (he) Dr Hussain he was evasive or showed little insight into his own anger. He did not recognise the triggers and therefore could not address his anger. He said that Dr Hussain had rigidity of thinking.

Dr Drayton said there was a consistent lack of empathy in respect of the findings from either the GDC or PCT when he had an interview with Dr Hussain. He confirmed that in respect of the situation in January, which had happened at his practice, that this did not change his view. He was supported by his troops. There was no provocation for his anger.

Dr Drayton did not believe that any therapy would assist Dr Hussain.

Under cross examination, Dr Drayton accepted that he may have made a judgment in respect of the behaviour of the PCT. It was his evidence that behaviour like that just did not happen. He confirmed that he had made judgments as to the fact that the PCT had always acted properly.

He admitted that he had dealt with the evidence of professional people differently. It was his evidence that professional people behaved differently from somebody who had a long history of involvement with the police. The manner of Dr Hussain's evidence to him led Dr Drayton to give more credibility to the other witnesses.

He accepted that Dr Hussain had taken a proper course, had taken advice from a professional. He said that he was a very reasonable man and had followed the advice from the psychiatrist.

He conceded under cross examination that there were only three to four encounters with the GP in 2008. He accepted that (he) Dr Hussain had not attended twelve times as he had suggested. He advised that it was Dr Hussain's perception of events that he was being treated differently, which did not equal the truth.

Dr Drayton confirmed that if the Panel found the PCT had behaved unreasonably, he would be prepared to withdraw his suggestions that Dr Hussain behaved in a paranoid manner.

It was Dr Drayton's opinion that it was Dr Hussain's personality which caused him to behave as he did in the past. He could not say that he would not do it again. He had stepped over the mark three times.

EVIDENCE - WRITTEN

2a) Evidence of Professor Paul Rogers:

Professors Rogers is a Professor of Forensic Mental Health.

Professor Rogers had provided a Report dated the 26th July 2009. It was his opinion that Dr Hussain managed the demands and stresses of his practice without any significant problems up until the introduction of the new dental contracts. The additional stress was specific to issues surrounding the introduction of the new dental contracts and this had continued for a very long time. He confirmed that Dr Hussain had shown remorse and insight into what had happened and did recount a wish that he had handled things differently. He was quite certain that Dr Hussain's anger was situational and not personality related. He could find no evidence by way of history of any such problems and he had no offending history. As such it was Dr Rogers' opinion that it was not a pervasive part of his character. There were no records in respect of anger problems in any of his medical records which date back to 1971.

In Professor Rogers' view Dr Hussain had benefitted from anger management which had helped him reflect upon and reconsider his behaviour at the time that he was angry and would have helped him consider how to manage things differently in the future. Dr Rogers suggested that Dr Hussain could benefit from structured clinical supervision which should be at least monthly. The aims of the clinical supervision

would be to concentrate on his practice as a dentist and on managing the problems which arise from the clinical practice.

2b) EVIDENCE – ORAL

Professor Paul Rogers:

Professor Rogers confirmed that his main area of expertise was risk assessment and risk management in respect of violent behaviour and self harm.

He confirmed that he believed that Dr Hussain's behaviour had changed. He highlighted the instant in January and suggested that Dr Hussain did not choose to seek anybody out as he had done in the past, i.e Miss Malatsi and Dr Reinhardt. He said he could not identify any evidence of pervasive pattern problems with anger. He could not guarantee that this situation would not happen again.

Under cross examination he said that he believed that Dr Hussain was quite ashamed of his actions. He was not proud and did not really want to talk about it. He never specifically apologised to him or empathised. He said that he had said at one point "It was a shame for Dr Reinhardt". It was Professor Rogers' opinion that he was genuinely upset for Dr Reinhardt and of the three he thought he genuinely regretted his behaviour.

He confirmed that Dr Hussain acknowledged that he had a problem with anger and said that openly to him. Shame was much more pervasive. It was not Dr Rogers' opinion that he needed any active treatment. In respect of personality problems he believed that he would expect the pattern to be pervasive, i.e anger. There was no

specific evidence of problems with Dr Hussain, either before this incident in respect of the contracts or afterwards. He believed that it would be less likely that he would cross the threshold again.

He accepted that he had not reflected upon his behaviour in 2006. It was Professor Rogers' opinion that he was unwell and suffering from significant anxiety and stress. Under re-examination Professor Rogers confirmed that one of the biggest stresses that anybody can deal with in uncertainty.

JOINT STATEMENT:

On the joint Statement of Agreement between the experts it was accepted that they came from different backgrounds. The experts came from different backgrounds. Both experts agreed that anger management through cognitive behaviour therapy or counselling was not indicated. Professor Rogers' belief was that there was no evidence of current anger problem, Dr Drayton's view was that Dr Hussain had not acknowledged any problems with regard to anger thus lacked the insight and consequent motivation to engage meaningfully in any therapy.

The experts differed in respect of the insight which Dr Hussain had shown for the reasons set out in their Reports.

The experts agreed that there was not sufficient evidence to diagnose a personality disorder.

Professor Rogers was of the view that it was unlikely Dr Hussain would behave in a similar way in the future, as he felt that the three incidents of anger were isolated to a very stressful time. There was no evidence of a pervasive pattern of such behaviour, that Dr Hussain regretted his behaviours and that he suffered negative consequences as a result of those behaviours.

Dr Drayton disagreed as he believed that Dr Hussain's aggressive behaviour was a product of the interaction between his personality and external stress. The facts indicated that Dr Hussain responded to extreme stress by behaving in an aggressive, intimidatory and bullying manner. He had little or no insight into the process. During his statements to the experts he portrayed himself as a victim, rather than aggressor.

EVIDENCE OF DR MALATSI:

Dr Malatsi confirmed that she was surprised at Dr Hussain's behaviour. It was not the first time they had had an argument but due to the fact that they were professionals, she did not expect him to overstep the mark previously they had dealt with differences firmly but fairly.

In respect of the incident concerning her staff, she said that this incident had never happened. She said that she was very strict with her nurses. She believed that the nurse in question was picking a fight with her so she ignored her.

Under questions from the Panel, Dr Malatsi confirmed that on the 30th March she was contacted by the PCT for the first time in respect of the offer of an individual contract. She said that initially she had not had the standing to have a contract in her own right.

She confirmed that her work permit said that she had to be an employee. She had started work for Dr Hussain in February 2005.

EVIDENCE OF TRACY HARVEY:

Tracy Harvey confirmed that she was the Contractors and Performers Manager and had been working in the PCT/ Health Service for 26/27 years. She confirmed the contents of her statement as redacted were correct. She stated that in respect of the incident concerning Miss Malatsi, when she contacted her by telephone she was tearful, incoherent, and fearful for her safety and needing a lot of support. She advised that Miss Malatsi told her she felt intimidated and she arranged to meet with her.

On the 22nd September she attended one of the surgeries for a pre arranged visit to see Mr. J. Hussain. Mr. I. Hussain and Mr. Bachada tried to deny her access and attempted to place her in a treatment room. This occurred in the waiting room in front of patients. She said they were pushy and pestering her. She left the premises with Mr. J. Hussain. After a discussion with him which took place in her car she returned to the surgery and cancelled another appointment with Mr. Singh as she did not believe that she could see him on the premises. She did not want another scene as Mr. I. Hussain and Mr. Bachada were still present.

She left and walked towards her car. She stated that Mr. Hussain was persistently badgering and pestering her into decision making despite telling him that she could not discuss the matter. Both persons were in her way, trying to restrict her. They were both closer than would be socially acceptable which made her quite anxious and upset. She rang her line manager and completed an incident report form because she

felt that she had been intimidated. There was a general strategy implemented thereafter for her not to attend the surgery again.

Under cross-examination Miss Harvey confirmed that there had been no abusive words or gestures used, voices were not raised and there had been no physical contact. Both persons were in front of her and the whole episode took approximately 2 – 3 minutes.

In relation to the awarding of the new contracts she confirmed that they could be given to associates or principals but not to assistants. Individual contracts were offered to Miss Malatsi and Mr. M. They opened a surgery in September 2006. Miss Malatsi, Mr. M, Dr Singh and Mr. J. Hussain took their contracts with them. The PCT were not concerned about any impact upon the practice if dentists left they were concerned only with patient accessibility. 100% contracts were offered to Miss Malatsi, Mr. M and Dr. Singh and the surplus funds were divided between them

Under re- examination, Mrs. Harvey confirmed that the entitlement to an individual contract arose from the legislation. There was a period from October 2004 to September 2005 and one would have to have earnings over that relevant period. The contract was signed by Miss Malatsi in April but not before 1/04/06. Miss Malatsi left (the date was not known but was the 12th May 2006) and spent the remainder of the summer setting up the new premises.

EVIDENCE OF IAN GRAEME McINTYRE:

Mr. McIntyre confirmed that he was currently retired but that he had been involved in awarding contracts both practice based and individual contracts. He advised that associates were notionally principals in their own right. The PCT could award either

type of contract. If the practice were stable it would be practice based, where they had problems with high turnover it would be individual contracts. He confirmed that he had no personal animosity towards Dr. Hussain, he always found him to be amicable.

There were several points raised in the report of Mr. Drayton in respect of comments alleged to have been made by Mr. McIntyre, “ you are a Muslim lad, I would stab you in the front” were two cited examples, he confirmed that he recalled the conversations but stated that they had been taken out of context. By way of example he stated that he would have said “I would come at you from the front” rather than I would stab you in the front.

Under cross examination he confirmed that he had referred Dr. Hussain to the GDC in January 2006. The PCT were aware that he was the subject of a complaint. He was not sure whether you had to report any referral to the PCT. He was head of Dental Public Health when he retired in December 2006. Both he and another professional were working with Dr. Hussain neither advised him that he had to notify the PCT of the referral which had been made because neither of them knew this was a requirement. Dr. Hussain always reacted in a professional and courteous manner. Mr. McIntyre had no documentation about the high level of concerns or the high level of turnover. He advised that there was unfair pressure placed upon the practitioners to sign the new contracts, it was also difficult for the PCT. The contracts were sent out in the last fortnight of March he believed. The contracts were signed in dispute because of the threats of not being able to work unless they were signed.

Mr. McIntyre confirmed that he caused a letter to be written to the patient liaison group suggesting that the PCT was aware of the irregularities in the references relating to Dr. Reinhardt and was taking steps to put it right. He stated the letter was not true; it was in the PCT's best interest not to divulge everything to PALS. It was a decision made for the right reason. It was his opinion that individual contracts would lead to greater stability as the dentists would stay at the practice. He advised that funding would not be available for an assistant.

EVIDENCE OF SARAH GREENHOUSE:

Sarah Greenhouse is a Practice Administrator.

She confirmed an incident between the staff and Dr Malatsi. She advised that she had been contacted by the dental nurses who had been asked to have lunch between 3.00 – 4.00pm. She said that Dr Malatsi had turned round and said to her “They were her nurses. It was nothing to do with her and it was up to Dr Malatsi as to when they had their lunch”.

EVIDENCE OF DR PATEL:

Dr Patel confirmed that she had worked alongside Dr Hussain since he bought the practice for fourteen years.

Under cross examination Dr Patel advised that on the first day after the Christmas break she had attended work. There were articles in the paper advising that the contracts at the practice were to be terminated. They were to stop operating at the end of that day at 5.00pm. She confirmed that all of the staff were very upset and stressed. Dr Hussain advised and supported all of the staff.

EVIDENCE OF KIRN VARMA:

Kirn Varma confirmed that she had known Dr Hussain since 1997. She worked as a Practice Manager but also provided services to other dentists in the area. She confirmed that Dr Hussain was always courteous and had a good manner with patients.

Under cross examination she confirmed that she had noticed a change in his behaviour at the relevant time.

EVIDENCE OF REBECCA ARMSON:

Miss Armson confirmed that she had known Dr Hussain since the practice was bought in 1997. She now teaches dental nurses.

She said that at the time that the contracts were being allocated they had asked for a practice based contract to reallocate the funds. This was denied by the PCT. She confirmed that it became very stressful. Dr Hussain had to oversee the running of the practices and the future of all of the practices.

It was perceived that the treatment from the PCT was difficult. Communication broke down. There was a perception that their practice was being treated differently.

On the 5th January 2009 she advised that she had attended the practice when patients were standing in the car park querying whether the practice was open. There was a

full public sized notice which had been placed in a paper to confirm that the contract had been terminated. She said there was a complete state of panic. Letters had been sent to the patients. She had seen one of the letters but could not recall the date. She said that Dr Hussain did not behave irrationally or unreasonably at that time.

Under cross examination she confirmed that Dr Hussain had not practiced until since 2008. He was still assisting the practice with day to day running. She believed that he was missed by all of his patients.

She confirmed that in 2006 there was a high turn over of staff. However, she believed this was due to the location of the premises in a very socially deprived area and a considerable amount of dentists would not work in that area. She said dentists come and go for all sorts of reasons.

EVIDENCE OF DR HUSSAIN:

Dr. Hussain advised that he had not been notified by the PCT that he had too many foreign dentists or a high level of turnover. He suggested that the reason dentists came over was to look for work in a city. Camphill was in the middle of nowhere, there was no private work and they could not do any cosmetic dentistry or implants as that work would not be available on the NHS.

All the dentists he employed were on either the supplementary list or performers list. When he purchased the practice at Camphill it had 5,000 patients and at the time of the new contracts this had grown to 20,000 patients.

In respect of his health in 2006 he was slightly overweight, had diabetes tolerance tests and a further visit to the GP maybe once annually. He was suffering from stress

in 2006 and began to have serious pains in the left hand side of his chest. His uncles and aunts had heart problems in the past and his parents had both died from heart related problems. He had been referred to a cardiac surgeon who advised him it was stress related. He accepted that advice and went to see Dr. Joseph a Consultant Psychiatrist. He said that he was helpful, unbiased and neutral and put everything into perspective, he had medication prescribed which assisted.

The individual contracts/practice based meant nothing to him initially until he attended a meeting held by Mr. McIntyre. He said that he was told practice based was good for the practice owner, individual – the funding would revert to the PCT, the practice would be blitzed and unable to survive financially. He confirmed that he was responsible for all of the overheads and had a £500,000 loan. When the new contracts came it reduced the claim from £1.4 million to £1 million. In another practice it reduced by £100,000 but subsequently when the 4 dentists who had been offered individual contracts left he lost a further £460,000. The contracts were hand delivered at 2.00 p.m. on the 31st March and were expected to be returned to the PCT by 5.00 p.m. on that same day. It was a 140 page document. He was surprised when 4 assistant dentists were offered individual contracts. He suggested that Mr. Singh had come to him advising that he was under pressure to take his contract and leave, which he did but returned to work for him some while afterwards for a further period of 8 months. His practice had reverted to practice based after all of the dentists gave notice in 2008 when they became aware they could do that.

He admitted his self esteem was at its lowest at this point. He blamed everyone; he could not get to grips. He accepted after Dr. Joseph's input that the way he was dealing with it was totally wrong. He accepted responsibility for his actions, although

it was difficult for him to admit it, and he felt embarrassed and ashamed as to his behaviour.

In January 2009 he was called to the office as the PCT had placed an advert in the local paper advising that they had terminated the contracts for the practice. This was the first he knew about it. He had attended the surgery, contacted the PCT, taken legal action and the contract was re-instated. He had not behaved as he had in 2006 despite high levels of stress.

On recall, Dr Hussain under cross examination confirmed that he wished to return to the Camphill Practice. He did not want to work other than as a Performer, either on a full or part time basis. As soon as he was able to he intended to apply to joint the Performers List and return to work as a dentist.

Dr Hussain confirmed that he had no ill-feelings towards the PCT. He said that had he not wanted to go back for the NHS he would not have had to follow through these procedures. He could easily have returned to work in a surgery on a private basis, but wished to return to work for the PCT.

He said that he accepted that his behaviour was manipulative, but did not accept he had a manipulative personality. It had taken a lot of energy for him to accept what he did in 2006 was wrong. He said that it had taken him a lot of time for him to reflect, either he did not want to but he accepted that he put his business interests first. He confirmed that Mr McIntyre had said that they were the only practice who had had individual contracts offered to them.

OTHER EVIDENCE

The panel have considered both submissions by the Applicant and Respondent together with the guidance in respect of delivering quality in primary care and considerations in respect of the application for a national disqualification.

FINDINGS

- 1) It was apparent during the course of Dr Malatsi giving evidence that the events to which she referred still caused her considerable distress even after a period of more than two years.
- 2) The panel find that Dr Hussain's behaviour at the time impacted upon her emotional wellbeing and to a lesser extent continued to do so.
- 3) In respect of the incidents concerning the Nurses the panel prefer the evidence of Sarah Greenhouse as Dr Malatsi herself indicated in her own evidence that she was very strict with her Nurses and her expectations were high. The phrase "they are my Nurses and it is up to me when they have their lunch" rings true.
- 4) The panel accept that Dr Malatsi is a strong character as evidenced by this incident and her own evidence. Therefore the panel conclude that her level of distress given her characteristics indicates the degree of severity of Dr Hussain's behaviour.

- 5) The panel accept with regard to the incident concerning Tracy Harvey that she would have felt intimidated and upset which is supported by her implementing a general strategy of not attending the Surgery on her own thereafter.
- 6) The panel find that Dr Hussain's behaviour was unprofessional however, it did not have the effect upon Miss Harvey as Dr Hussain's behaviour had had upon Dr Malatsi.
- 7) The panel find that an individual contract was offered to Dr Malatsi in or around April 2006 which caused her to terminate her employment with Dr Hussain in May 2006. The panel accept Miss Harvey's evidence that the entitlement to an individual contract in accordance with the legislation would not have arisen in Dr Malatsi's case by the 1st April 2006.
- 8) The panel find that the incidents referred to by Mr McIntyre and Dr Hussain will have taken place as both parties were able to recall the incidents some three years later. The panel believe that the truth of exactly what was said during the course of these incidents lies somewhere between the two accounts.
- 9) The panel find that Mr McIntyre did write a letter on behalf of the PCT which was both false and intentionally misleading. His reasoning that it was in the PCT's best interest is wholly unacceptable. The panel find that Mr McIntyre was in a responsible position and a public body should not disseminate misleading information to the general public.

- 10) The panel do not accept the reasoning behind the award of individual contracts
I.e. high levels of turnover and complaints as suggested by Mr McIntyre as no evidence was put before the panel to support this statement.

- 11) The panel find that Mr McIntyre did not notify Dr Hussain that he was under a professional obligation to make a declaration to the PCT in respect of the warning letter that he had received from the GDC as Mr McIntyre was unaware of that requirement. The panel accepts that it is a technical breach of the Regulations however, the PCT were aware of the investigation as Mr McIntyre caused the initial complaint to be made to the GDC. Dr Hussain would have been aware of Mr McIntyre's involvement with the PCT at the relevant time. Both he and Mr McIntyre were unaware of the relevant regulations.

- 12) The panel accept the evidence in full of Dr Patel and Miss Rebecca Armson. In particular the panel accept that the PCT attempted to terminate the contracts at Camp Hill Surgery, caused letters to be written to the patients of that Surgery and placed a large notice in the local paper confirming closure of that practice. The panel accepts that nobody from the PCT gave any prior indication that contracts were to be terminated.

- 13) It is an accepted fact that an interim injunction was sought and granted. The PCT have accepted responsibility and there is an outstanding damages claim proceeding in the High Court.

- 14) The panel find that the PCT did treat Dr Hussain differently from other contractors in 2006 which had a significant financial implication for him. The PCT in January 2009 behaved in the very least unprofessionally. The manner in which they sought to terminate the contract was clearly unacceptable. The panel accept the evidence of staff involved in that practice that Dr Hussain was not directly involved or working at that time but provided appropriate support and guidance. The panel find that due to Dr Hussain's financial interests in the practice and the potential loss of income for him which would have followed that his behaviour differs from that evidenced in 2006. There is no evidence that Dr Hussain behaved inappropriately at this time.
- 15) The panel find that in all of the evidence before it Dr Hussain has not fully accepted responsibility for his behaviour or the impact which his behaviour has had upon other people.
- 16) Dr Hussain expressed regret for the incidents concerning Dr Malatsi and Dr Reinhardt but has expressed no regret with regard to his behaviour concerning Miss Harvey.
- 17) The panel find that Dr Hussain's lack of recall with regard to these incidents gives rise to either a lack of insight or a wish to avoid responsibility. His ability to recall other events quite clearly as evidenced by his recall concerning conversations with Mr McIntyre is in stark contrast.

- 18) The panel is not convinced that even at this point Dr Hussain realises the harm his behaviour has caused to other individuals and as a result find that Dr Hussain has limited insight into either his behaviour or the impact of his behaviour upon others.
- 19) The panel accept that in respect of Dr Hussain's health that he first sought assistance for suspected Cardiac problems in October 2007. He was subsequently referred to a Cardiologist and Consultant Psychiatrist and acted properly upon their advice. There is no evidence that Dr Hussain was a frequent attender at his GP in 2008 or sought medical advice inappropriately. The panel accept that Dr Hussain is now in good health. Insofar as the diagnosis of Somatoform Disorder the panel accept the diagnosis but believe that it is largely irrelevant and a natural response to the situation that he was facing.
- 20) The panel accept Dr Drayton's evidence that Dr Hussain shows little insight into the nature of his aggressive behaviour.
- 21) The panel believe that Dr Drayton was influenced by external evidence i.e. that of Mr McIntyre which he accepted as true which the panel believe has impacted both upon his judgement and impartiality. By way of example "professional people behave differently from somebody who has a long history of involvement with the Police, the PCT always act properly, Dr Hussain's perception of events that he was being treated differently did not equal the truth the panel believe that this evidence shows lack of impartiality.

- 22) The panel does not accept that Dr Hussain's behaviour is constitutional, there is no evidence in his medical records or any other reports of Dr Hussain's behaviour presenting as it did in 2006 at any other time prior or subsequently.
- 23) The panel do not accept that Dr Hussain was paranoid and believe that the use of that word and supporting evidence which lead Dr Drayton to suggest that he was behaving in that manner stems from his stated assumptions as to the correctness of the PCT and the credibility of the evidence of Mr McIntyre, neither of which assumptions he was entitled to make. Further the panel find in respect of the PCT that they have not behaved correctly nor did they treat Dr Hussain in the same manner as other contractors.
- 24) The panel prefer the evidence of Professor Rogers. The panel accept that his main area of expertise is risk assessment and risk management in respect of violent behaviour.
- 25) The panel accept Professor Rogers's evidence that there is no pervasive pattern of problems with anger nor does Dr Hussain suffer from a personality disorder.
- 26) The panel accept that Professor Rogers's opinion that Dr Hussain has reflected upon his behaviour and that he had changed. He had accessed support from anger management and that he was quite ashamed of his actions.

As a result of this evidence Professor Rogers confirms that it is less likely that Dr Hussain would cross the threshold again in contrast to Dr Drayton who confirmed that he could not advise the panel this situation would not reoccur. The panel accept the reasoning and opinion of Professor Rogers in this regard.

SUMMARY

- 1) The panel accept that there are no issues of patient safety or any clinical concerns. The panel note that the GDC did not remove Dr Hussain at the time of the initial Hearing in June 2007. The panel accept all of the findings of both regulatory bodies.
- 2) The panel note the GDC and PCT findings which are accepted and led to Dr Hussain's suspension and removal from those lists.
- 3) The panel accept Dr Hussain's behaviour was a reaction to the introductions of the new contracts in 2006. The panel do not condone that behaviour in spite of the exacerbating circumstances the behaviour was unprofessional and unacceptable.
- 4) The panel do not believe that Dr Hussain has full insight nevertheless the panel believe that it is unlikely that this behaviour will reoccur due to the circumstances of the situation.
- 5) The panel believe that Dr Hussain has reflected upon his behaviour and the events in 2009 and his behaviour at that time support that fact.

- 6) The nature of the behaviour is serious but the panel believe that this was localised and directly related to the events in 2006.

- 7) In respect of the efficient use of NHS resources the panel accept that Dr Hussain wishes to provide a service in a deprived area as an NHS Dentist.

- 8) The panel believe that it is neither proportionate, reasonable nor fair to grant the application for national disqualification bearing in mind the impact upon Dr Hussain and his ability to work professionally in his chosen field.