

ST

In the Family Health Services Appeal Authority

case no: 13361

Heard at Harrogate

On 14 December 2006

Before

**Mr J D Atkinson (Chairman)
Dr E Walsh-Heggie
Mr R Rhodes**

Between

Dr Hasan Salem

Appellant

and

Nottingham City Primary Care Trust

Respondent

On consideration of the papers only:

DECISION AND REASONS

1. This is an appeal by Dr Hasan Salem (the appellant) against the decision of Nottingham City Primary Care Trust (the respondent) dated 31 August 2006, that the applicant be removed from its performers list in accordance with the Health Services Act 1977 (as amended) and associated regulations.

The Proceedings

2. On 3 August 2006 the respondent asked the appellant to provide evidence, within 28 days, of his having performed primary medical services in its area in the period 3 August 2005 to 3 August 2006.
3. On 31 August 2006 respondent decided to remove the appellant from its list on the grounds that the appellant did not perform services in the respondent's area in the 12 month period prior to the date when he was asked to provide such evidence
4. The appellant appealed to the Family Health Services Appeal Authority by handwritten note dated 18 September 2006.
5. Appeals to the FHSAA are by way of redetermination.

Preliminary Matters

6. The respondent was not in attendance at the hearing before the present Panel. The Panel considered and applied rule 40 of the Family Health Services Appeal Authority (Procedure)

Regulations. The Panel noted that the respondent had been duly notified of the application and hearing.

7. The Panel also noted that, by letter dated 28 September 2006, the respondent elected to have the appeal determined on consideration of the papers only.
8. Accordingly, the Panel decided to proceed in the absence of the parties.

The Law

9. The relevant law is to be found in the 1977 Health Services Act as amended together with associated regulations. Regulation 10(6) of the National Health Service (Performers Lists) Regulations 2004 provides as follows:

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.

The documents and evidence considered

10. The Panel considered a bundle of documents numbered to 17. It is not necessary to set out its contents here.
11. For the hearing the appellant and the respondent filed no further evidence or submissions.

The Respondents submissions

12. The respondent relied on the documentary evidence and made written submissions that may be summarised as follows.
13. The appellant had been included on the respondent's performers list with effect from 29 July 2005. On 20 March 2006 the appellant was notified of the need to provide evidence of his working within the respondent's area. The appellant failed to respond to the request.
14. The respondent wrote a further letter dated 3 April 2006 and noted concerns about the appellant's practice which had been brought to the respondent's attention by Islington PCT. The letter of 3 April 2006 was returned to the respondent by the post office following a failed attempt to deliver it.
15. The respondent consulted with its legal advisers, the national clinical assessment service and made further inquiries, the outcome which was that no evidence could be found of the appellant having worked in the area between 29 July 2005 and 29 July 2006.
16. On 3 August 2006 the respondent made a further request for information about the appellant's practice. On 30 August 2006 the appellant provided evidence showing that he commenced a locum assignment at a practice within the respondent's area on 29 August 2006 (sic bundle of evidence page 9 penultimate paragraph, final line).
17. The respondent decided to remove the appellant from its list because he had failed to demonstrate that he had performed services within the respondent's area in the period 3 August 2005 to 3 August 2006. In coming to that decision the respondent took into account the August 2006 evidence of the appellant's employment in the area but noted that it was of a temporary nature.

The Appellant's submissions

18. The appellant relied on a letter from St Albans Medical Centre Nottingham dated 31 August 2006 and his written submissions at page 1 of the bundle which may be summarised as follows.
19. The appellant is an Italian doctor who had been providing locum services in the United Kingdom .The appellant has not provided services for a year in the respondent's area but has taken temporary employment in the area as evidenced by the letter from St Albans Medical Centre. That letter indicates the appellant provided locum cover for 2 weeks from 21 August 2006.

Decision and Reasons

20. The Panel on consideration of the totality of the evidence and submissions allows the appeal for the reasons given below.
21. The National Health Service (Performers Lists) Regulations confers a discretion to remove a performer who cannot demonstrate that he has performed a relevant service during a preceding 12 month period. Such discretion must be used reasonably.
22. The Panel finds that the exercise of such a discretion to remove the appellant would be disproportionate in the circumstances of the present case .
23. The relevant preceding 12 month period identified in the respondent's decision letter of 31 August 2006 is 3 August 2005 to 3 August 2006. The respondent's view of when the appellant undertook work within its area is inconsistent. The respondent is of the view, both that the appellant worked in its area both from 26 August 2006, as per the letter of 31 August 2006 at page 3 of the bundle , and from 29 August 2006 as per its submission at page 9 of the bundle.
24. The evidence on behalf of the appellant, in the form of the letter from St Albans Medical Centre dated 31 August 2006 is that the appellant provided 2 week locum cover with effect from 21 August 2006. This evidence is to be preferred to that of the respondent because it is from a third party source with direct knowledge of the events and there is no reason to doubt its authenticity or accuracy.
25. The appellant, in his written submission, does not dispute that he has not worked in the respondent's area in the period 3 August 2005 to 3 August 2006 as identified by the respondent. The Panel therefore find that the appellant has failed to work in the respondent's area within a twelve month period , but that he did so work 18 days (3 August to 21 August 2006) after the elapse of 12 months.
26. In coming to a view as to whether or not it would be appropriate to remove the appellant from the respondent's list the Panel have taken into account all the relevant circumstances including the need for any decision to remove to be proportionate.
27. The consequences of removal are substantial. It would effectively prevent the appellant from earning a living by providing primary care services within the public sector. In order to provide such services he would need to re-apply to be on a list either in the respondent's area or another PCT area. Such an application would take time to be processed and the outcome would be uncertain, particularly given the requirement placed on the appellant to declare a removal from the list in any future application. All this must be placed in the context of the appellant having failed to meet the relevant deadline for the period by 18 days. The Panel is of the view that such a period is not of great significance.

28. The Panel also take into account that a number of concerns have been expressed about the appellant. Thus the appellant failed to expeditiously notify the respondent of a change in his address. On 19 August 2005 (page 10 of the bundle) the respondent wrote to the appellant at a Nottingham address confirming his inclusion on the list nearly 3 weeks prior to notification with effect from 29 July 2005. However the Appellant did not notify the respondent of a change of address from Nottingham to Bradford until 6 September 2005. The respondent also had further concerns about a letter dated 3 April 2006 to the appellant's notified Bradford address which was returned by the post office as undelivered.
29. In addition, in a letter dated 29 March 2006 from Islington PCT to the respondent, Islington PCT expressed concerns (unspecified to the Panel) about the appellant's performance and practice arising from his work at the Gibson practice in Leeds. Islington PCT suggested that the respondent investigate those concerns. Islington PCT also noted concerns about the appellants failure to advise them of changes in address.
30. On the evidence available to the Panel it would appear that the concerns noted above have been subject to discussion between the respondent and its legal advisors who have both come to the view that there was insufficient local evidence to suspend the appellant.
31. The Panel also take into account the fact that appellant was the subject of an annual appraisal on 16 February 2006 and that no evidence has been put before the Panel to the effect that there were grounds at that stage to suspend or remove the appellant from the list.
32. Looking at the evidence as a whole and the overall effect of the incidents noted above, the Panel finds, that in balancing the seriousness of the consequences of removal against the relatively minor failure to provide services within the 12 month period together with the unspecified concerns about the appellant performance and practice and the failure to notify of changes in address, it would be disproportionate to remove the appellant from the list because he had failed to perform services between 23 August 2005 and August 2006.

Summary

33. The appeal is allowed. Dr Hasan Salem is not to be removed from the performers list held by Nottingham City PCT.
34. In accordance with Rule 42 (5) of the Rules the Panel hereby gives notice that a party to these proceedings can appeal this decision under Sec 11 Tribunals & Inquiries Act 1992 by lodging notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days of receipt of this decision.

Signed

Date

MR J D Atkinson, Chairman