

**IN THE FAMILY HEALTH SERVICES APPEAL
AUTHORITY**

CASE 13738

Professor M Mildred - Chairman
Dr J Lorimer - Professional Member
Mr M Cann - Member

BETWEEN

DR GUNTER BALLAS
(Registration Number 6112341)
Appellant

and

HAMPSHIRE PRIMARY CARE TRUST
Respondent

DECISION WITH REASONS

Background

1. Dr Gunther Ballas ("Dr Ballas"), is a German national who is registered with the General Medical Council and was until recently a member of the Performers List of Hampshire Primary Care Trust ("the PCT").

2. It appears to be the case that Dr Ballas has done no medical work in the area of the PCT since 2004. He made a declaration to the PCT in 2006 in which he stated that he had worked in Weymouth and in Scotland in 2005 but had had thereafter no contact with his agent PPSA despite its attempts to contact him.

The PCT's Decision

3. Accordingly the PCT advised Dr Ballas that they intended to convene a Primary Care Trust Panel Review. At the conclusion of the Review (which Dr Ballas neither attended nor was represented) the PCT resolved to remove him from its Performers List under Regulation 10 of the NHS (Performers Lists) Regulations 2004. It relied upon the following provisions of the Regulation:

(6) 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.

(7) subject to any provision in the relevant Part, in calculating the period of twelve months referred to in paragraph (6), the Primary Care Trust shall disregard any period during which –

- (a) the performer was suspended under these Regulations; or
- (b) he was performing whole time service in the armed forces in a national emergency (as a volunteer or otherwise), compulsory whole time service in the armed forces (including service resulting from reserve liability), or any equivalent service, if liable for compulsory whole time service in the armed forces.

The Appeal

4. By letter dated 30 March 2007 Dr Ballas appealed against the removal. His grounds were (a) he registered with the GMC and to join a PCT List was because he wanted to perform out of hours ("OOH") services; (b) he had applied to the PCT because his agent was in the PCT area;

(c) he had had only two episodes of OOH work; (d) he had now decided to leave fixed working obligations in Germany in order to be free to perform locum work in the UK; (e) he could not switch to the List of another PCT until he knew where he would be working and (f) he wanted to be on the PCT's List in order to be available for OOH and locum work in England.

5. In response to a request from the Panel for more information Dr Ballas confirmed by e-mail dated 9 June 2007 that he was found work in summer 2005 in Weymouth by ABC Locums Ltd of Fareham and that he worked in Scotland over Christmas 2005. He said that work had become available at very short notice but that in future it was likely that planning would be more long-term. If he ended up working in a different area of Britain (since he was planning to run down his work in Germany), he could apply to the PCT in the new area but for now needed to be on the PCT's List in order to be qualified to work in England.

The hearing

6. Both parties asked that the appeal be held on the papers alone. The appeal was dealt with on 28 June 2007. All Panel members confirmed that they had no conflict of interest in hearing the appeal.

Discussion

7. The power to remove a practitioner under Regulation 10 of the NHS (Performers Lists) Regulations 2004 is discretionary, rather than mandatory. The appeal is by way of a re-hearing and we must therefore exercise our own discretion in deciding whether Dr Ballas should be removed from the List.

8. Dr Ballas has not worked in the PCT's area for about three years and we well understand its reluctance to have on its List an inactive doctor for whom it has annual appraisal responsibilities with the attendant expense and administrative burden. Dr Ballas acknowledges this in his letter of appeal but states that he does not regard himself as such but gives no reason to support this view.

9. Dr Ballas also says in his letter that he is accepting work in Germany only until mid-June with a view to beginning work as a locum in the UK thereafter. No further evidence of termination of work in Germany or attempts to get work in the UK have been provided to us despite the passage of three months since the date of the appeal. If Dr Ballas were serious about his professed intention, provision of this evidence would have been the obvious step to take. As of 7 June 2007 it appears that Dr Ballas has been out of contact with the PPSA for the whole of 2007.

10. It seems to us that Dr Ballas should make up his mind exactly what he wants to do and then take the appropriate steps to join the appropriate List for the area where he intends to be based. Again, this appears to be implicitly acknowledged in the last paragraph of the appeal letter. No doubt Dr Ballas is able to provide useful services to general practice in the UK but we find that he must make a fresh start and put his affairs into order.

Decision

11. For the reasons set out above we are of the view that the appeal should be dismissed and Dr Ballas should be refused admission to the PCT's Performers List.

12. We direct, pursuant to Rule 47(1) of the Family Health Services Appeal Authority (Procedure) Rules 2001 that a copy of this decision is sent to the Secretary of State, The National Assembly of Wales, the Scottish Executive, The Northern Ireland Executive and the Registrar of the General Medical Council.

13. Any party to these proceedings has the right to appeal this decision under and by virtue of Section 11 of the Tribunals and Inquiries Act 1992 by lodging notice in the Royal Courts of Justice, Strand, London WC2A 2LL within 28 days from the date of this decision. Under Rule 43

of The Family Health Services Appeal Authority (Procedure) Rules 2001 a party may also apply for a review of this decision no later than 14 days after the date on which this decision is sent.

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Mark Mildred
Chair of Appeal Panel
29 June 2007