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In the Family Health Services Appeal Authority case no: 15154

Heard at Westmead, Birmingham	
On 2 July 2009	

Before

Mr J D Atkinson (Chairman)
Dr I Ione
Mrs I Dale

Between

Dr EDWARD EMMANUEL
GMC Number 4031862

Appellant

and

SOUTH GLOUCESTERSHIRE PRIMARY CARE TRUST

Respondent

Representation:

For the Appellant: Ms Khalique of Counsel
For the Respondent: Ms Neal of Counsel

DECISION AND REASONS

The Appeal

1. This is an appeal by Dr Emmanuel against the decision of the respondent dated 11 March 2009 to remove him from the respondent's medical performers list under the Health Services Act 2006 (as amended) and associated regulations.

The Background and Proceedings

2. The appellant joined the West Walk Surgery, Yate as a GP partner on 4 January 1999.

3. On 2 January 2004 the appellant was included on the respondent's medical performers list.

4. In July 2006 a complaint was made against the appellant which was considered by the GMC who by letter dated 5 October 2007 closed the case due to insufficient evidence and issued advice to the appellant.

5. In or about June 2008 the respondent was informed by an anonymous whistle blower of allegations that the appellant had engaged in an improper relationship with a female former patient, now identified as LJ, and by whom he had fathered a child.

6. On 12 November 2008 the appellant, following an oral hearing, was suspended from the respondent's performers and the GMC were notified of the allegations.

7. On 11 March 2009 the respondent conducted a removal hearing attended by the appellant and counsel and made the decision against which appeal is now brought.

8. The respondent decided that the appellant should be removed from its performers list on the grounds of unsuitability. The respondent decided that the appellant should be removed on the basis of finding that the following allegations were made out:

The appellant

i. used his position to establish an improper relationship with patient LJ

ii. pursued an improper relationship with patient LJ

iii. pursued or continued an improper relationship with a former patient LJ

iv. entered into and continued the relationship with patient LJ knowing that LJ, in the circumstances, was a vulnerable individual

v. inappropriately prescribed orlistat to patient LJ

vi. provided misleading information to the respondent at the hearing on 12 November 2008 relating to his experience and qualifications to perform cognitive behavioural therapy (CBT)

9. On 7 April 2009 the appellant appealed to the Family Health Services Appeal Authority.

10. Appeals to the FHSAA are by way of redetermination.

The Law

11. The relevant law is to be found in the 2006 Health Services Act as amended together with associated regulations. Extracts of the relevant law as set out in The National Health Service (Performers Lists) Regulations 2004 as amended and may be summarised as follows:

> Regulation 10(3) and (4)… a primary care trust may remove a performer from its performers list where… his continued inclusion in its performers list would be prejudicial to the efficiency of the services which those included in the relevant performers list perform…or where he is unsuitable to be included in that performers list

Preliminary matters

12. At the outset of the hearing there was an indication from the parties that there were listing difficulties should the hearing go into a second day. The Panel took into account the undesirability of hearing the evidence and submissions spread over a number of weeks and indicated that it would be appropriate to sit late on the first day to avoid such an eventuality. Throughout the hearing the Panel bore these matters in mind and took appropriate breaks such that it was possible to justly conclude the hearing by sitting until 19.45. Ms Neal indicated that she was 'under pressure' with having to present the appellant's case over such an extended day. The Panel were satisfied that it had been able to conduct a fair hearing in these circumstances.

13. In the course of the hearing Ms Neal also indicated that she would wish to see all other material that had been compiled in the course of the investigation but not filed before the FHSAA, including the handwritten notes of interviews before they were put in typed form. The Panel indicated that such a request, amounting to a generalized trawling expedition at such a late stage in the proceedings was not necessary in the interests of justice and refused the application.

The documents and evidence considered

14. The appellant and respondent submitted originating documentation which was compiled into bundles marked A and R. A is paginated to A11 and R is paginated to R10.

15. For the hearing the appellant also produced a skeleton argument and witness statement from the appellant dated 30 June 2009 together with attachments.

16. For the hearing the respondent also produced a skeleton argument with appendices 1 to 7 in addition to the report of Tracey Cubbage (annex1 and having 75 appendices) and further annexes 2-7.

17. In addition, in the course of the hearing the Panel gave leave to both parties to file further material including signed copies of notes of interviews with LJ (the originals of which were inspected by the Panel); email 1 July 2009 from the Yate Health Centre; UCAS correspondence dated 29 April 2009; GMC review of good medical practice October 2006; letter from appellant's solicitors, Eastwoods, dated 10 March 2009; agreed list of abbreviations used by the appellant in the medical records; report of **Privy Council Appeal no 21 of 1999 Nwabueze v GMC**; and various supportive letters sent to the appellant.

18. The Panel heard oral evidence on behalf of the respondent from Ms Tracey Cubbage head of governance and Dr Mansfield, patient LJ's previous and current GP.

19. The Panel heard oral evidence from the appellant on his own behalf.

Opening submissions on behalf of the Respondent

20. Ms Khalique's opening submissions may be summarized as follows. The respondent relies on the report of Tracey Cubbage and Dr Hayes. The appellant conducted or had established an improper emotional relationship with patient LJ, ostensibly providing CBT and offering support, between January and June 2006. LJ left the practice in June 2006 and in July 2006 the appellant and LJ began a sexual relationship. The key issue is the nature of the relationship.

21. In addition, whilst the LJ was a patient, the appellant inappropriately prescribed Orlistat. The appellant had also provided a misleading CV. The latter two matters in themselves are not sufficient grounds for removal however they reflect on the appellant's credibility and insight.

Oral Evidence on behalf of the respondent

Summary of oral evidence of Tracey Cubbage

22. Ms Cubbage in oral evidence adopted her statement of 12 June 2009, incorporating her report of February 2009 [at annex1] as evidence in chief. Her further oral evidence may be summarized as follows.

23. Ms Cubbage was invited to comment on information set out in the appellant's statement signed on 30 June 2009, just prior to the present hearing, and in respect of which she had not been afforded an opportunity to comment. Ms Cubbage indicated that the appellant's evidence as to his being a locum at the Priory and working alternate weekends 17.00hrs Friday to 05.30 hrs Monday, was new information. She had received information from the West Walk practice and their records showed that the appellant worked Fridays with clinics to 15.00hrs and that he had clinics on Mondays at 08.30. In these circumstances it was difficult to see how the appellant could travel from Bristol to Essex and work within these timescales. Inquires with the Priory indicated that they did not know of the appellant during that period.

24. Inquiries were made of the West Walk practice about the appellant setting up a counselling service there. The practice indicated that the service had been set up without discussion and that the appellant had been asked to stop or reduce his commitment as matters had become problematic. The appellant had not discussed the GMC decision arising from the complaint of 2006, other than to say that it had been dismissed. That complaint had not been dismissed, but closed with advice to the appellant.

25. The GMC's position on the present case was that they had sent out an allegation letter this week.

26. The West Walk partnership has now served notice on the appellant to leave the partnership.

27. The notes of interview with LJ had been signed by LJ, the originals of which could be made available.

28. Ms Cubbage's replies in cross examination and re-examination may be summarized as follows. Ms Cubbage has held the post of head of governance for South Gloucestershire PCT since 2003. She holds no professional qualifications. She was the investigating officer and had not witnessed the events complained of. Ms Cubbage had held discussions with LJ about giving oral evidence on a number of occasions.

29. The record of LJ's telephone conversation with Dr Hayes is set out at tab 19.

The italicized remarks are LJ's amendments. Ms Cubbage first met and interviewed LJ on 10 November 2008 [tab 22] and interviewed her again on 22 January 2009 [tab23]. The typed notes had all been signed as accurate by LJ.

30. Ms Cubbage had contacted the West Walk practice in the light of the appellant's statement and obtained an email dated 1 July 2009 in reply.

Summary of oral evidence of Dr Mansfield

31. Dr Mansfield adopted her statement of 3 November 2008 [tab15] as evidence in chief. She was GP to LJ at West Walk over a prolonged period. Dr Mansfield left the West Walk practice in March 2007 and became LJ's GP once again in February 2009 at another practice. Dr Mansfield's further oral evidence may be summarized as follows.

32. Dr Mansfield has known LJ since she was 16. LJ is now 26. LJ has a history of mental health issues relating to depression, low mood and poor self esteem. There was also a question about an eating disorder for which a referral was made. LJ also disclosed that she had been subject to sexual abuse by her grandfather. The medical records indicate that the disclosure was made on 18 February 2002.

33. Dr Mansfield is of the view that the LJ is vulnerable. LJ is dependent on medical services as indicated by the medical records. Dr Mansfield is not an expert on CBT. LJ's mental health condition has seen improvement. At the moment LJ continues to suffer with her mental health and depression, for which she is seeing Dr Mansfield. Dr Mansfield tended to see more patients with mental health issues at the West Walk surgery than other doctors there.

34. Dr Mansfield had written the letter at tab14 in October 2008 because she had heard from staff that the appellant had had a child with LJ and had happened to meet LJ, with the child, in the summer of 2008 in a shopping centre.

35. Dr Mansfield's replies in cross examination and re-examination may be summarized as follows. The medical records showed the occasions on which she had seen LJ. It was accepted that they were accurate. Dr Mansfield had not seen LJ as a patient between 26 August 2005 and February 2009.

36. Dr Mansfield was of the view that LJ was vulnerable because of her reliance on medical services despite being relatively fit; a history of significant mental health issues from being a teenager relating to recurrent depression and anxiety; and a history of child sexual abuse.

<u>Oral evidence on behalf of the appellant</u>

Summary of oral evidence of Dr Emmanuel

37. The appellant gave evidence on his own behalf. He adopted as evidence in chief his statement of 30 June 2009. The appellant's further oral evidence may be summarized as follows.

38. The appellant had worked as a staff grade locum psychiatrist for the Priory. He finished his clinic in Bristol early on a Friday or took the afternoon off and would travel to Essex. He would leave Essex at 05.30 on Monday. This work was disclosed to the practice. Other GPs engaged in other outside work such as homeopathy. The appellant's fees for such work was passed to the practice accountant.

39. The practice was aware that the appellant was engaging patients in CBT. The appellant had an interest in CBT as a student and in training had run his own clinics.

40. The appellant had provider a folder to the partners in the practice about the complaint made to the GMC in 2006.

41. The appellant was of the view that LJ was not in anyway vulnerable whilst having their relationship. Before the relationship there had been an overall improvement in mood and mental health. When LJ came to work for the appellant she was upbeat, embraced advice, was seeing friends, attending classes, was well turned out, made eye contact, did not have low mood and put herself forward as a shoulder to cry on when he was experiencing matrimonial difficulties.

42. The appellant and LJ had had a sexual relationship only during the course of October 2006. The appellant had last seen LJ in the summer of 2008 when he had helped fill out an application to the University of West Anglia. The appellant had thought it prudent to break contact with LJ since August 2008; however since then LJ had hand delivered correspondence and cards on three occasions.

43. The appellant has learnt a number of things from these events. He would keep a greater distance between himself and patients and former patients. He would not employ any such person within his home. He would not have a relationship with any one of that kind who had ever had low mood or depression. The appellant had been stupid and naïve.

44. The appellant's replies in cross examination and re-examination may be summarized as follows. The appellant had told his partners about his work outside the practice but had not given them details. His engagement in outside work was obvious from the size of his tax bill.

45. The appellant had not intended to mislead by omitting to use the term *locum* in his CV when describing his position as a staff grade psychiatrist. The appellant had working at the relevant time as a full time partner GP.

46. The appellant was unable to say how many weekends he had worked at the Priory. Initially he had worked there alternate weekends, then once per month. The appellant was surprised that the Priory had indicated that they were unable to confirm that the appellant had worked there. The appellant did not keep bank statements going back to 2004 which would have shown payment received from the Priory. The appellant's work at the Priory was supervised by whoever was on call. There were several such people who were available at the end of a telephone.

47. The appellant's provision of mental health services with West Walk was not arranged through a formal practice meeting. The practice meetings notes and recommendations [tabs 42 and 43] refer to any practice doctor and not just the appellant. Other doctors offered counselling as well. The 2006 GMC complaint had led to a review of the provision of counseling services. The practice meeting notes record that the service was worthwhile.

48. The appellant absolutely accepted the GMC guidance of 2001 and the GPC provisions for high standards of behaviour.

49. The appellant provided, as an agreed document, a list of abbreviations that he used when recording his medical notes. He was taken through various entries at tab 34. A number of the entries are based on a template format with codings.

50. The entry dated 9 January 2006, uses a template as indicated by the phrase 'mental health admin'. It is a measure of low mood on a crude scoring system of 1 to 10; 1 being unhappy, 10 winning the lottery. The 7/10 entry is therefore a good score.

51. On 17 February 2006 the medical records indicate that CBT treatment was undertaken in a session lasting 1 hour and 10 minutes. The appellant measures the outcome of such interventions based on an overall impression - a lessening in severity. The entries for 20 February 2006 and 7 March 2006 were reviews as planned.

52. On 7 March 2006 LJ brought up the issue of her weight. The appellant accepted that in hindsight more detail should have been provided in his notes.

53. On 15 March 2006 the appellant provided supportive psychotherapeutic treatment.

54. In dealing with mental health issues the appellant used a mixture of

approaches, not just CBT. The appellant uses an ABC worksheet format for CBT. The patient retains the worksheet.

55. The first mention of such a sheet in the medical records is made on 28 April 2006, however the entry 'will complete' indicates that they had been used in the past but that the patient had not completed the sheet. The appellant was unable to say how many worksheets patient LJ had completed. It was not accurate to say that LJ had only completed one sheet.

56. The appellant accepted that his note taking in respect of these sessions was poor. The appellant did not use such sessions for general chats as described by patient LJ. The appellant never mentioned personal matters at such sessions or made comments to LJ such as ' you look lovely'.

57. The appellant did not accept that he had prescribed orlistat inappropriately. It was accepted that he had prescribed outside the NICE guidelines; however at the time it was his belief that, because LJ had polycystic ovarian syndrome, there was evidence that supported its use.

58. The appellant prescribed orlistat because of LJ's difficulty in losing weight and because she had polycystic ovarian syndrome which amounted to a mitigating factor.

59. It is untrue that the appellant had told LJ that she would look better if she lost weight down to 9 stones.

60. The appellant's solicitor's in their letter of 10 March 2009 had not mentioned that LJ's polycystic ovarian syndrome was part of the rationale for prescribing Orlistat because that letter only covered the main points of his case.

61. In June 2006 LJ offered to work as a cleaner for the appellant. The appellant said that she could not work for him if she remained as a patient. LJ had previously mentioned that she worked for a cleaning business and had given him a business card. The appellant did not want LJ to remain a patient if she were to clean for him because that would result in boundaries being blurred. The appellant did not wish to have a patient who could see the inside of his home because it would become a social relationship and he would lose his objectivity.

62. The appellant had employed a builder, Mr Williams, to work on the outside of his house for a fixed period. Mr Williams was not a personal patient, but his parents were.

63. The appellant could not recall the date LJ left the practice nor when she began cleaning for him. It was not true that LJ had left because the appellant had established an emotional relationship with LJ and wanted it to develop

further. They had begun a sexual relationship in October 2006.

64. The appellant had rung the GMC and MDU in September 2006 to obtain advice about whether in general terms a relationship with a former patient was permitted and received a general response. The appellant did not mention LJ's psychiatric or psychological history because he did not regard LJ as vulnerable.

65. There were no indications that LJ was vulnerable. The appellant came to that conclusion because depressed people tend not to care about their appearance, are not up beat and do not offer a shoulder to lean on or an ear to listen to others. LJ at the time was not depressed, was not on medication, had no interventions and the CBT had taught her to deal with matters successfully. LJ was able to make informed decisions, was going to college and was to do a degree as well as looking after her child and working part time.

66. LJ had ceased to be vulnerable prior to her leaving his practice. The appellant would not describe LJ as vulnerable at the time she was undertaking CBT because of the different ways in defining the word vulnerable. The appellant would describe LJ at that time as emotionally labile, but not vulnerable either at that time or throughout their relationship.

67. The appellant accepted that he had no formal training in CBT but had been interested in it as a student, had used it in clinic and discussed it with consultants. He kept up to date by reading and studying GP literature. The mental health sessions he offered were patient driven.

68. The appellant accepted that what he offered was far from an A1 service. With hindsight he would not provide such a service but there had been a patient need. In hindsight he would not have a relationship with any former patient with a mental health history. It had been an error of judgment

The Respondent's closing submissions

69. Ms Khalique, on behalf of the respondent, relied on her skeleton argument and made a number of submissions which may be summarized as follows. The three main issues for determination relate to the improper relationship between the appellant and LJ; the inappropriate prescribing of orlistat and the appellant's overstating, or being misleading as to, his CV and the provision of CBT.

70. As to his CV, the appellant described his position with the Priory Group in 2000-2004 as a Staff Grade Psychiatrist, whereas he should have indicated that this was a locum position [IR tab 1]. The appellant until now had not given any detail about his work at the Priory; he had undertaken unspecified

therapeutic work with little supervision; and he had provided CBT, a therapy that he was not formally qualified to deliver.

71. As to the prescription of orlistat, it was now accepted that the appellant had prescribed this medication outside the terms of the NICE guidelines; however the appellant now said that the basis of the prescribing included considerations relating to polycystic ovarian syndrome which gave rise to exceptional circumstances. This was an explanation that the appellant had not offered at the respondent's previous hearing, nor was it mentioned as part of his explanation for such prescribing in his solicitor's letter of 10 March 2009.

72. As to the appellant's relationship with LJ, it is the respondent's case that the appellant had developed at least an emotional relationship with LJ between January 2006 and her leaving the practice in June 2006.

73. The evidence of LJ, albeit in documentary form, should be preferred to that of the appellant.

74. LJ at the time was vulnerable as indicated by the evidence of Dr Mansfield whose evidence is compelling and independent. LJ has a history of child sexual abuse, issues over weight and eating, low self esteem, mental health issues and a dependency on medical services as indicated by her frequent attendance at her GP. In the 6 months prior to her leaving the practice LJ was engaged in long counseling sessions with the appellant, the last one being only two weeks before she left the practice.

75. It was accepted that LJ's account of when the sexual relationship began were inconsistent, however she had been reluctant to cause trouble for the appellant. The respondent had encouraged LJ to give evidence and reluctantly had done so. LJ's concerns also related to her worries about their child.

76. The appellant's evidence on these matters was not credible. The appellant's claim that LJ had left the appellant's practice in order that she could work as a cleaner for him was implausible. The appellant had engaged other patients to work for him, such as Mr Williams the builder, without ending the GP-patient relationship. There was no guidance prohibiting patients working for their GP.

77. Whilst there was no guidance about patients working for their GP, there was GMC guidance on good practice, issued in November 2006 with a preceding document issued in October 2006 reviewing the earlier guidance of 2001. It is accepted that the November 2006 guidance post dates the start of the sexual relationship and that it does not deal specifically with the position of former patients. However it is for the Panel to use its own judgement as to whether in the circumstances as found that the appellant's conduct falls below the

expected standard.

78. The appellant claimed to have sought advice from the GMC and Medical Defence Union; however he had done so in only the most general of terms. The decision of the Privy Council in the case of Nuabeze, where a GP's relationship with a former patient was considered, turned on its own facts and had a number of distinguishing features from the present appeal.

The Appellant's closing submissions

79. Ms Neal, on behalf of the appellant, relied on her skeleton argument and made a number of further submissions that may be summarized as follows.

80. The appeal turned on the following narrow range of issues: the emotional relationship between the appellant and LJ; the date of the beginning of their sexual relationship and its duration; whether LJ was vulnerable and known to be vulnerable; the prescribing of orlistat; and whether or not the appellant's CV was misleading.

81. The separate allegation made in 2006, which was dismissed by the GMC, is not relevant. The advice issued by the GMC in this matter was not issued until October 2007, after the events in issue.

82. The form of the evidence relied on by the respondent is a cause for concern. The respondent could have looked after LJ's interest as a vulnerable witness but invited the Panel to accept her evidence in documentary form.

83. The respondent had taken a narrow approach in conducting the investigation. The respondent had accepted LJ's account, sought expert evidence from Dr Mansfield, had failed to pursue telephone records that might assist the appellant and had produced such telephone records that did not relate to a material period. The investigating officer was only a conduit for information that had been received.

84. The evidence of LJ was not consistent on a number of matters. There were significant alterations to her first account; she had given differing dates about when she had moved house and of the date of her pregnancy. In addition, as her differing accounts were given, the allegations against the appellant tended to escalate.

85. The appellant had assisted LJ in obtaining a place at university by filling in forms. LJ had telephoned the appellant confident in knowing that he would offer help in a disinterested way. The appellant's account is that he had a short relationship with LJ in October 2006 as a result of which LJ became pregnant.

86. The appellant had given LJ his mobile telephone number to cover the short period when she was having he gallbladder removed. The practice telephone records show that LJ contacted the appellant on a number of occasions through the practice rather than ringing the appellant on his mobile telephone.

87. The appellant's account of events is almost 100% consistent. The appellant is of good character. His account of LJ being a cleaner is supported by the builder Mr Williams who saw LJ cleaning at his home in the summer of 2006. The appellant's account is also supported by the medical records which show a large number of references to physical problems which on the face of it are not conducive to a budding sexual relationship.

88. The appellant's account of LJ leaving his practice in order to be his cleaner is plausible; namely that she left to ensure that the appellant would not risk his objectivity in providing medical care and to avoid the boundaries not being erased by LJ coming into his home. Such a change in GP was not difficult for LJ given that there are three separate GP practices, including the appellant's, next door to each other.

89. It is also plausible that the appellant and LJ developed a relationship between June and October 2006; many relationships develop within such a timescale.

90. The relevant guidance for good general practice is set out in the GMC 2001 guidance. It is not improper for a GP to have a sexual relationship with an ex-patient as indicated in the Privy Council decision of Nuabeze.

91. The appellant contacted the GMC and MDU for advice on having a relationship with a former patient.

92. The 2006 GMC guidance makes reference to it being improper to enter into a relationship with a former patient if they are a vulnerable person. The meaning of vulnerable is not defined. A detailed examination of LJ's medical records show that at the relevant time LJ was not vulnerable: she was upbeat, she cared about her appearance, was supporting herself in work and taking up educational opportunities. LJ had had no psychiatric admissions and had seen a psychologist in 2003 and then been discharged.

93. Dr Mansfield is a GP and not able to give an expert view on vulnerability. The appellant has experience in mental health and was of the view that LJ was not vulnerable.

94. The respondent's case on the minor allegation relating to the appellant being misleading has been put a number of ways. First it was said the appellant had never worked at the Priory; then that the references were overstated. However, the appellant's account has been consistent. Now it is said that the misleading element relates to the omission of the word locum on his CV. It is

submitted no one , when looking at the CV, would be misled by such an omission, given that at the time the appellant was working fulltime as a GP.

95. It is accepted that the appellant's prescribing of orlistat to LJ was outside the NICE guidelines; however LJ had polycystic ovarian syndrome which was a factor to be taken into account when looking at circumstances leading to prescription outside the those guidelines.

96. The appellant was not unsuitable to work as a GP. He had indicated that he had learnt from these events and would be very careful in the future. He had accepted that his provision of CBT was 'not great', but it was better than nothing. The appellant does not seek to defend the quality of his note taking and recognises that things could be done better.

97. The appeal should be allowed.

Assessment of Evidence

98. The Panel considered all the evidence, the submissions of the representatives, and makes the following findings.

99. The Panel prefers the evidence of LJ to that of the appellant for the reasons given below.

100. In assessing the credibility of LJ's evidence the Panel has looked at the evidence as a whole, noting those matters which are in dispute and those which are not in dispute, the evidence of the witnesses and the other materials.

101. The Panel in assessing the evidence note that there are significant matters that are not in dispute. For example, it is not disputed that LJ was the appellant's patient; that LJ visited her GP very often for both physical and mental health issues; and that the appellant and LJ had a sexual relationship which resulted in their having a child together.

102. Turning first to the evidence of LJ. It is regrettable that LJ did not attend to give oral evidence. The Panel was advised that the respondent had had discussions with LJ about giving oral evidence but she had declined to do so. The giving of oral evidence is important because it affords the appellant the opportunity to test the evidence directly.

103. However, the fact that oral evidence from a principal witness has not been adduced does not mean that their approved and signed statements are not reliable. In this case the account of LJ is set out in three documents comprising a record of telephone and face to face interviews dated 22 August 2008, 11 November 2008 and 22 January 2009, the accuracy of which has been attested by LJ and signed accordingly.

104. The dates of the interviews reflect the development of the investigation. As is a common feature in investigations, preliminary matters are identified at an early stage; further matters arise from the initial inquiries which are pursued and are then brought back to the witness for further clarification. It is within this context that the significance of any inconsistencies must be viewed as set out below.

105. The Panel finds that the evidence of LJ is inconsistent as to the date on which she entered into a sexual relationship with the appellant. In her first telephone interview of 22 August 2008 LJ said that the sexual relationship had begun in September 2006; however in her face to face interview on 10 November 2008 she said that it started early July 2006, just after her daughter's birthday on 30 June. In her interview of 22 January 2009 LJ confirmed the date as the end of June beginning of July and again related the beginning of the sexual relationship to her daughter's birthday.

106. The Panel finds that there is a satisfactory explanation for this inconsistency. As noted above it is not an unusual feature of an investigation for inconsistencies to arise which give rise to further inquiries. The Panel also note that the respondent's investigations arose as a result of information provided by an anonymous whistle blower and not at the instigation of the LJ. LJ's account generally is that there was a degree of secrecy involved in respect of the appellant not being identified as the father of her child, and that the appellant was reluctant for such matters to be brought to the attention of the authorities.

107. LJ's explanation for this inconsistency is that she was concerned about how others would regard her given that she was entering into a sexual relationship with the appellant so soon after leaving the appellant's practice in June 2006 and only having recently separated from her boyfriend Darren in May/June.

108. In these circumstances the Panel finds that the inconsistency as to the date of the commencement of the sexual relationship has been satisfactorily explained and is not a matter that undermines LJ's credibility.

109. The Panel notes that there are a number of minor inconsistencies in LJ's account, for example about the dates that she moved house on several occasions, but finds that they are minor issues that do not go to the core of the matter and do not undermine the LJ's credibility.

110. The Panel finds that LJ's account is plausible and detailed. LJ's account of the timing of the relationship is supported by reference to telling detail, for example by identifying the dates of events to significant dates in her every day life such as her daughter's birthday.

111. The Panel also finds that certain aspects of LJ's account are not materially

contradicted by other evidence which one would expect to find if her account were untrue. For example, LJ's account of the psychotherapeutic sessions with the appellant suggest that their tenor was in the nature of 'matey' chats rather than the provision of therapy sessions. LJ's account would be undermined if there were medical records showing what took place at these sessions, the nature of the discussions, the homework given and what happened in follow up sessions; however as considered further below, the medical records in this respect are wholly inadequate, comprising little more than one line entries.

112. The Panel also finds LJs account to be plausible when considered in the context of the medical records showing the frequency and intensity of her consultations with the appellant. The medical records show that the appellant successfully diagnosed a troublesome abdominal pain leading to surgical intervention in November 2005 and post operative reviews through to December 2005.

113. Thereafter, between January 2006 and June 2006, LJ had 12 sessions or consultations with the appellant relating to her mental health, with some sessions lasting well over an hour and others lasting significantly longer than the standard 10 minute GP appointment time. In this context the Panel rejects Ms Neal's submission to the effect that the pattern and nature of such consultations did not provide a plausible background for a *budding sexual relationship.*

114. As noted above, in assessing the credibility of LJs account the Panel considers the whole of the evidence, including that of the appellant to which the Panel now turns.

115. The Panel heard oral evidence from the appellant. The Panel finds that there are a number of matters that tend to undermine the credibility of the appellant's account as set out below.

116. A central aspect of the present appeal relates to the circumstances in which LJ left the appellant's practice and moved to another. LJ's account in effect is that she left at the appellant's suggestion in order to allow their relationship to develop outside the constraints imposed by a doctor patient relationship. The appellant's account is that the LJ left his practice because she was to become his cleaner and he was of the view that an employer -employee relationship of this nature would put at risk his objectivity in treating LJ.

117. The Panel finds this aspect of the appellant's account to be implausible and vague for a number of reasons. First, in terms of the context, there is no guidance centrally from the GMC or other body that prohibits an employer–employee relationship of itself.

118. Second, the West Walk surgery itself had issued no guidance prohibiting such employment practice.

119. Third, the appellant had engaged other patients from the West Walk surgery to undertake work at his home, albeit in building work for a defined period as opposed to on-going domestic work.

120. Fourth, the medical records show that LJ was a very frequent user of GP primary services with a tendency to take matters to her GP in circumstances where it was not necessary to do so and has a history of mental health issues.

121. In this context, for LJ to move away from her GP practice, where she had been a patient for a good number of years, would likely to have been a significant move requiring a real incentive, even if there were other GP practices in close proximity to the appellant's surgery.

122. However, LJ claims that the issue of cleaning only arose after she became pregnant and the appellant mentioned that he would give her £20 if she cleaned for him. Yet, the Panel finds that in oral evidence the appellant was vague about when LJ began cleaning for him, despite this issue, according to the appellant, being the sole reason for his telling LJ that she had to move out of his practice.

123. The Panel finds that these are matters that end to undermine the credibility of the appellant's account

124. The Panel also finds the appellant's account to be inconsistent as noted below.

125. The respondent submits that the appellant prescribed orlistat inappropriately and outside NICE guidelines. The appellant has given two different responses to this issue.

126. In a letter from his solicitors dated 10 March 2009 the appellant's position on the prescribing of orlistat was said to be that it *had been prescribed at [LJ's] request…* and was within the NICE guidelines, given that she had a BMI of 28 or over. The appellant in oral evidence at the respondent's removal hearing of 11 March 2009 was asked why he had chosen to deviate from the NICE guidelines to which he replied *LJ was desperate to lose weight. Weight was such an issue for and much of her life centred around it.*

127. However in the appellant's statement of 30 June 2009 and in oral evidence to this Panel, the appellant accepted that LJ's BMI was outwith the NICE guidelines, but that LJ's polycystic ovarian syndrome was a significant and an operative factor in his prescribing orlistat for her. This is a rationale that had had not been mentioned before and is inconsistent with the appellant's earlier account.

128. This inconsistency was put to the appellant in oral evidence before this

Panel. The appellant's explanation was that the solicitor's letter only gave an overview of the main features of his case.

129. The Panel does not find that to be a satisfactory answer. The medical records make no mention of polycystic ovary syndrome being a relevant factor in prescribing orlistat for LJ; and if it had been an operative factor as suggested by the appellant he had had an opportunity to mention it at the hearing on 11 Mach 2009, but did not do so.

130. The Panel finds the appellant's inconsistency on this matter and his unsatisfactory explanation for the inconsistency in his account of the prescribing of orlistat to be a matter that tends to undermine the credibility of his evidence.

131. The Panel further finds the appellant's account of the nature of the relationship between himself and LJ in the period before LJ left the practice to be unsatisfactory for the reasons set out below.

132. The appellant's evidence is that at the relevant time LJ was not vulnerable because she was upbeat, embraced advice, was seeing friends, attending classes, was well turned out, made eye contact, did not have low mood and put herself forward as a shoulder to cry on.

133. However, such an opinion does not sit well in the context of the medical records. These show that in the six months prior to LJ's leaving the practice in June 2006, LJ had at least 12 consultations relating to her mental health, with 4 consultations lasting in excess of one hour, as well as other contacts with the appellant. LJ's mood as recorded in the medical records, using what the appellant described as a crude score scale, was noted as 4/10 on 31 May 2006, that being last note of her mental health before LJ left the practice in June 2006.

134. In these circumstances the Panel finds the appellant's view of LJ to be either disingenuous or lacking in insight. Disingenuous because the appellant in oral evidence said that in hindsight that he would not enter into a relationship with former patients with mental health issues whereas in the Panel's view, the risk of entering into a relationship with LJ, given her medical history, would have been plain without calling on hindsight, particularly to a doctor with an understanding of mental health issues. Lacking in insight, because on the face of it, it is clear that LJ may be susceptible to a doctor's influence when undergoing psychotherapeutic treatment.

135. The Panel also finds the appellant's account of the nature of the relationship between himself and LJ, in the period before LJ left the practice, to be unsupported by documentary evidence that one would normally expect to find generated in the course of good medical practice. This is a matter the Panel have already adverted to in considering the plausibility of LJ's account. In particular, the appellant's notes of the psychotherapeutic relationship from January to June

2006 are poorly recorded.

136. The Panel notes the unchallenged information, at tab57 of the investigating report, provided by Joel Conrad a registered mental nurse and lecturer in CBT. There it is said that CBT usually comprises structured sessions carried out weekly with intervening homework tasks by the patient. Standard interventions used in CBT include activity scheduling, thought records, diet records, graded exposure, and cognitive restructuring. There is an expectation that the medical notes would reflect the nature of the discussions, the homework given and how issues were followed up at subsequent sessions.

137. The appellant's recording of the psychotherapeutic sessions with LJ bear no resemblance to the indicated expectations of Mr Conrad. The appellant's notes comprise little more than a short phrase of one line with an occasional reference to the use of ABC worksheets in respect of consultations lasting in some cases over an hour.

138. The Panel finds that the credibility of the appellant's account of these psychotherapeutic sessions is undermined by the lack of adequate medical notes.

139. The Panel finds in considering the totality of the evidence, that the evidence of LJ is reliable and is to be preferred to that of the appellant. In summary, LJs evidence, whilst only in documentary form is sufficiently detailed, plausible, and materially consistent when taking into account the explanation for the differing dates as to the start of the sexual relationship, as to make it reliable. The appellant's evidence is in part not plausible, is inconsistent and his account of the psychotherapeutic relationship unsupported by adequate documentary evidence.

140. Accordingly, the Panel prefers the evidence of LJ and makes findings of facts as follows.

Findings of Fact

141. LJ was a patient at the appellant's practice for a number of years. LJ was a frequent user of GP services.

142. The appellant treated LJ for a number of conditions, relating to both physical and mental aspects of her health.

143. In the period up to December 2005 the appellant was particularly involved in diagnosing LJ's physical condition resulting in a successful operative procedure being undertaken in November 2005.

144. In the period January 2006 to June 2006, in addition to seeing LJ about her physical condition, the medical records indicate that on at least 12 occasions, the

appellant had consultations with LJ in respect of her mental health, with a number of consultations lasting in excess of one hour. The medical records refer to a variety of psychotherapeutic treatments, including CBT and supportive counselling.

145. The appellant's medical notes of the psychotherapeutic sessions with LJ are poor and fail to give a significant indication of the treatment, interventions, discussions and outcome of the sessions.

146. Over the course of January 2006 to June 2006 the appellant and LJ developed an emotional attachment. LJ at the suggestion of the appellant removed herself from the appellant's practice list in June 2006 and joined another GP practice. The purpose of the move was to enable the appellant to develop his interest in LJ.

147. The appellant and LJ entered into a sexual relationship in or around early July 2006. As a result of their relationship LJ became pregnant in October 2006 and a child was delivered 21 July 2007.

148. The appellant and LJ are no longer in a sexual relationship.

Decision and Reasons

149. Looking at the evidence as a whole and in the context of the criteria for removal from the performers list and in the light of the above findings, the Panel directs that the appellant be removed from the respondent's performers list because he is unsuitable for the reasons set out below.

150. The Panel finds that the appellant has used his position as a GP to establish and pursue an improper relationship with LJ, both as a patient and a former patient. The Panel finds this to be an abuse of the doctor-patient relationship which is based on trust. The underlying issue is LJ's susceptibility to the appellant's undue influence.

151. These matters go to the core of a GPs relationship with their patients. The breach of such a fundamental tenet of the doctor patient relationship is so serious that the only proportionate response is for the appellant to be removed from the list. The Panel accordingly reject the submissions by Miss Neal to the effect that removal is not appropriate because the appellant has learnt from these events and would not enter into a similar relationship in the future.

152. It is convenient to note at this point that in the present appeal the parties have made a number of submissions as to the meaning of a vulnerable person and whether or not LJ fell within such a definition. Reference to this matter arises in part due to the GMC guidance of 2006 on a doctor's relationship with vulnerable people.

153. The Panel further notes that the 2001 guidance from the GMC, unlike the 2006 guidance, does not make specific mention of a doctor's relationship with former patients and that, in broad terms, the respondent accepts that it is the 2001 guidance that was effective at the time of these events.

154. Be that as it may, the Panel is under a duty to come to its determination on the application of the statutory criteria as set out in the performers list regulations. The core issue is whether on the facts as found, the appellant is unsuitable to be included in the respondent's performers list. It is therefore unnecessary for the Panel to make determinative findings on the question of whether LJ was a vulnerable person as referred to in the GMC guidance of 2006.

155. The Panel notes that the respondent's skeleton argument at paragraph 26 makes a one line reference to national disqualification. The Panel heard no oral submissions on national disqualification and notes that no formal application has been made to the FHSAA for such a disqualification. By Regulation 18A of the performers lists regulations 2004 the Panel has power to impose a national disqualification if it removes a practitioner's name from a performers list. Whilst the Panel, may of its own motion now go on to consider making such an order, in the present circumstances, the Panel invites the respondent to consider making a formal application.

Summary

The Panel directs that Dr Emmanuel is removed from the South Gloucestershire Primary Care Trust performers list on the grounds that he is unsuitable to be included in the list.

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 Mr J D Atkinson, Chairman Dated 16 July 2009