

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Case No: 14883

BETWEEN

Dr CR Robak Appellant

and

Kingston Primary Care Trust Respondent

The numerical references in these reasons (for example 110) are to the bundle of papers containing the documentary evidence assembled in this case.

1. Dr Robak was suspended from the performers list of the Kingston Primary Care Trust (the PCT) on 16.7.07. He remained suspended from that date until 17.9.08. On that date the PCT decided to contingently remove Dr Robak from their performers list. It is that decision that is the subject of this appeal. When contingently removing Dr Robak from their list the PCT proceeded on the 'efficiency ground'.
2. Directions as to the conduct of the appeal were made by the FHSAA panel (the panel) at an oral hearing on 19.1.09. The appeal was heard on 12.3.09 and 13.3.09. The following witnesses gave sworn evidence on those two days: David Smith (Chief Executive of the PCT), Dr Moore (Vice Chair of the Professional Executive Committee of the PCT) and Dr Robak. The written documentation exceeded 250 pages. The trust was represented by counsel, David Bradly, at the hearings. Dr Robak was not represented.
3. The circumstances that led to of Dr Robak's suspension arose out of an incident on 8.7.07. He was working for Local Care Direct. Local Care Direct is an out of hours service provider in Yorkshire. He visited an 86 year old patient (Mrs F). His examination of Mrs F was not adequate and, in talking to her family members, his language was inappropriate. She was suffering from a serious cardiac condition from which she died the following morning.
4. There was no evidence to indicate that Dr Robak was responsible for Mrs F's death and neither the PCT nor the FHSAA proceeded on that basis.

5. Following the Mrs F incident Dr Robak was suspended from the performers list by the PCT whilst investigations were undertaken by the General Medical Council (GMC). With effect from 26.3.08 Dr Robak became subject to a warning (expiring on 25.3.13) from the GMC. The warning is as follows:

In future you must adequately assess the patient's conditions, taking account of the history (including the symptoms, and psychological and social factors), the patient's views and where necessary examining the patient.

And

You must treat patients with dignity; treat every patient as an individual and refrain from the use of unprofessional language.

6. The decision made by the PCT to contingently remove Dr Robak from their performers list was not only based on the Mrs F incident. They relied on other incidents. These incidents comprised five complaints made against Dr Robak in a nine month period; the complaints being received between November 2006 and May 2007. The matters complained of focussed primarily on Dr Robak's use of inappropriate language to patients.
7. By the time the PCT came to consider Dr Robak's case he had been suspended for over a year. The PCT therefore took into account Dr Robak's training needs in arriving at the contingent removal decision.
8. Of particular concern to the PCT was the fact that Dr Robak had not take any steps to deal with the difficulties identified by the GMC and had not sought any advice concerning his training needs and containing professional development.
9. Dr Robak submitted a written appeal to the FHSAA on 12.10.08. In this six page notice of appeal almost five pages focus on the case of Mrs F and the fact that he is 'innocent of this old lady's death.'¹ He accepted the validity of the GMC warning² and accepted that his performance on the evening that he treated Mrs F was 'clearly inadequate.'³ His approach to the retraining requirements suggested by the PCT was that they represented an 'extra punishment'⁴. He ended his appeal statement as follows:

¹ 112

² 111

³ 111

⁴ 115

I am 61 years of age and am not going to change, however much effort London Deanery does employ in order to beat out of me my own set of values.⁵

10. An appeal to the FHSAA is by way of redetermination and therefore on appeal the FHSAA may make any decision that the PCT could have made. The panel therefore first considered the basis for the PCT's decision on the efficiency ground.
11. The panel formed the view that Dr Robak was obsessed with the fact that the PCT decision was based on him making diagnostic mistakes whereas his failures were (as summarised by the GMC) to do with some aspects of his clinical practice, in particular assessment and language.
12. Dr Robak believed his referral to the GMC was unjustified and the complaint against him could have been dealt with in another way. He regarded the complaint about his treatment of Mrs F made by the deputy clinical director of Local Care Direct as being unwarranted.
13. He accepted he had an opportunity to make representations to the GMC but chose not to do on the basis that he did not want to incriminate himself. He said 'I just wanted to avoid a full GMC hearing.'
14. Dr Robak's attitude to the PCT was contradictory. He asserted that they had 'finished with him' following his suspension yet he accepted monthly suspension payments from them from the date of his suspension to the conclusion of the appeal process.
15. In relation to his training needs he was dismissive about the Deanery. At the end of the first days hearing when asked whether he would accept conditions he gave a conditional response saying that he would need to think about it overnight. (The imposition of conditions was discussed with Dr Robak at length at the directions hearing on 19.1.09.) He sought to moderate his disparaging reference to the Deanery (see paragraph 9. above) by explaining that subsequent to writing his appeal letter he had:

read what the Deanery do and I have a view they offer genuine help.

16. The panel at times found Dr Robak an unconvincing witness. By way of example when cross-examined about his examination of Mrs F he asserted 'he may have taken her pulse'. In contrast when he gave evidence at the PCT oral hearing on 17.9.08 he was recorded as stating:

He had not taken the patient's blood pressure or pulse but would in similar circumstances now do so.⁶

⁵ 115

17. On 5.5.07 Dr Robak visited a patient in a residential care home. His behaviour was complained about by the carer in charge. Dr Robak denied acting inappropriately although he accepted he used the word 'dick' on more than one occasion when examining the patient, an older man. In giving an explanation for this he said he was 'disinhibited'. He sought to mitigate his behaviour by making the following reference to the complainant, who he assumed to be a psychiatric nurse:

Nurses are very strange in psychiatric wards

18. On 25.2.07 Dr Robak examined a young child who was accompanied by her parents. His manner during this examination was the subject of complaint and his then employers (Local Care Direct) apologised to the patient's parents in for what they referred to as Dr Robak's 'talkative manner during the consultation' and went on to write that:

he [Dr Robak] had been advised that some patients do not wish for this type of behaviour when they or their relatives are unwell.⁷

19. When cross examined about this he said he could not recall the incident. The panel found his response unconvincing given the significance of the incident in the context of the current proceedings and the importance he attached to what he perceived to be any unwarranted criticism.

20. In coming to a decision on the efficiency ground the panel took into account a number of issues including the following.

- a. Dr Robak's assessment of Mrs F was on his own admission inadequate and therefore, if repeated, would represent a threat to patient safety.
- b. Dr Robak's approach to communicating with his patients as evidenced by the Mrs F incident and the incident on 5.5.07 was poor.
- c. In 2007 Dr Robak saw patients when, in his own words he was 'disinhibited' and his judgement was affected by his physical condition (gout) and the medication that he was receiving for that condition.
- d. Dr Robak's lack of judgement in failing to recognise that the 2007 GMC complaint made by Local Care Direct was warranted and reflected legitimate concerns about his clinical practice.

⁶ 34

⁷ 75

- e. Dr Robak's sometimes superficial and cavalier approach to the regulatory processes with which he has been involved since 2007.
 - f. Dr Robak's lack of candour about important aspects of the evidence before the panel including the Mrs F assessment and the 25.2.07 complaint.
21. The panel are satisfied that these factors justify Dr Robak's removal from the PCT's list on the ground of efficiency. The decision of the panel is that Dr Robak should be removed from the performers list of the Kingston Primary Care Trust (the PCT). This decision was given orally to the parties at the end of the hearing.
22. The panel then went onto consider the desirability of Dr Robak being subject to a contingent removal. Although the PCT had originally made a contingent removal decision the panel did not consider this was any longer justified. In arriving at this decision the panel in particular took into account the following factors:
- a. Dr Robak believed that his failings were merely superficial.
 - b. Dr Robak had no regard for the training programme offered by the Deanery.
 - c. Dr Robak's recent 'conversion' to the necessity for being trained was based on expediency rather a genuine acceptance that he had learning needs; in particular to address weaknesses in aspects of his clinical practice.
23. The panel then proceeded to consider the question of national disqualification. The parties were invited to make written representations on this point. Dr Robak's representations were of no value. The PCT submitted that:
- a. The issues of patient protection that have arisen in this case apply nationally: all patients require the protection afforded to them by removal from the performers List, not just those in this PCT area.
 - b. Dr Robak gave evidence that he may practice in Northern Ireland, or with the prison service.
24. The panel agree with these representations and consider that the only way that patient safety can be assured is for Dr Robak to be nationally disqualified.

25. Either party to these proceedings has the right to appeal this decision under section 11 Tribunals and Inquiries Act 1992. Any appeal shall be made by lodging a notice of appeal in the Royal Courts of Justice, the Strand, London WC2A 2LL within 28 days of receipt of this decision.

Dated this 2nd day of April 2009

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A Harbour - chair

S Sharma - professional

J Everitt - member