IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Case No:13339

BETWEEN

Dr Michael Tibble

Appellant

and

City and Hackney Primary Care Trust

Respondent

(The references in the footnotes refer to the documents submitted to the FHSAA by the parties.)

Introduction

1. This is an appeal by Dr Tibble against the refusal by City and Hackney PCT (the PCT) to include him on the performers list.

2. The PCT made a decision not to include Dr Tibble on their performers list on 19th July 2006. This was communicated to Dr Tibble by letter dated 10th August 2006. Dr Tibble's notice of appeal was sent to the PCT by the FHSAA on 6 September 2006.

3. There was a directions hearing on 8 December 2006 . This dealt with preliminary matters including an application to debar the PCT from contesting the appeal.

4. On 8 and 9 February 2007 the FHSAA Panel (the panel) heard evidence from witnesses. Dr Tibble was represented by Robert Kellar. The PCT were represented by David Bradly. The PCT called evidence from:

    a. Sarah Raymond (Currently Primary Care Modernisation manager for Islington PCT. From 2003 until October 2005 she was Head of Family Health Services Contracts at Islington PCT)

    b. Eleanor Watson (GP Recruitment and Retention Manager for the PCT)

    c. Steven Gilvin (Director of Primary Care and Adult Community Nursing at the PCT)

    d. Dr Caroline Cattell (Principal at the St Peters Street Medical Practice)

5. Dr Tibble gave evidence himself and did not rely on any other witnesses. Prior to the hearing the panel had been supplied with written evidence from both parties.

6. The ground on which the PCT refused Dr Tibble's application was under Regulation 6(1)(e) National Health Service (Performers Lists) 2004, that is 'there are any grounds for considering that admitting him to its performers list would be prejudicial to the efficiency of the services.'

7. The evidence of efficiency that the PCT relied on focussed on two particular issues : Dr Tibble's prescribing patterns of particular controlled drugs (benzodiazepines) and his failure to act on his removal from the performers list of the Islington PCT.

Prescribing of benzodiazepines

8. The only witness that the PCT relied on to deal with this issue was Dr Cattell. Dr Cattell had been a partner of Dr Tibble in the St Peters Street Medical Practice in Islington. Dr Tibble joined the practice in 1983. Dr Cattell joined the practice in 1997. Her involvement in this appeal was because Dr Tibble gave her a name as a referee when he applied to join the PCTs performers list.

9. The reference she supplied formed part of the written evidence in the case.[1] In her reference she referred to Dr Tibble's clinical skills as being generally satisfactory. When she gave evidence she said the disagreements about his prescribing of benzodiazepines was the only issue of clinical concern. She stated in the written reference:

> There was an irreconcilable breakdown of the partnership prior to Dr Tibble leaving due to myself and the remaining partners disagreement with him over the prescribing of drugs of potential abuse and Dr Tibble repeatedly failing to adhere to agreed practice policies. His commitment and contribution was unsatisfactory.

10. Later in the same document she stated that she could not work with Dr Tibble again because of his approach to the prescribing of drugs of potential misuse.
In her statement she said that she became aware that there were concerns about his prescribing of drugs of potential abuse soon after she joined the practice. The assistance of Dr Garada (a GP advisor on substance abuse) was sought by the partners in the practice. Following her involvement no report from Dr Garada was obtained, and her views on the problem are not known. In 2003 Islington PCT were asked to review the prescribing patterns of St Peters Street Medical Practice for a range of addictive drugs including benzodiazepines.

11. The prescribing review (prepared by a locum prescribing adviser Anne McCooey) formed part of the written evidence in the case.[2] It identified that Dr Tibble initiated most repeat prescriptions and had one of the poorest rates of patient reviews. It was, however, a document which had to be approached with care. When Dr Rogers (Associate Medical Director at Islington PCT between 2003 and 2004) wrote to Dr Tibble's solicitors[3] about the review he commented 'no firm conclusions could be drawn from such limited information.' He confirmed that the PCT decision making group had discussed removing Dr Tibble from the list on account of the prescription issues and had decided not to take this step. He also confirmed that Dr Tibble was 'an intensely caring doctor' to whom others would turn for advice.

12. Dr Cattell and partners were not satisfied with the prescribing review and wrote to the PCT accordingly. (This letter was not part of the written evidence before the panel.) As Dr Cattell stated 'it failed to demonstrate our concerns.'

13. The Panel were impressed with the evidence of Dr Cattell. She had not wanted to be drawn into the dispute between Dr Tibble and the PCT. She did not appear to be motivated by personal animosity towards her former business partner. She gave straightforward evidence which focussed on her concerns about Dr Cattell's handling of a small group of patients and his failure to adhere to written protocols which had been developed (with his agreement) to deal with the prescribing problem. She described the discussion about benzodiazepines as continuing 'ad nauseam' and contributing to the partnership dividing and Dr Tibble resigning in 2004.

14. Although objective data about Dr Tibble's prescribing habits were not available to the panel it was clear (and he accepted this) that:

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[1] PCT bundle 111-112
[2] A11-A22
[3] A46-47

> his approach to the management of drug users differed fundamentally from the approach of his partners.[4]

15. The Islington PCT continued to remain concerned about his prescribing habits. Dr Rogers advised him in a letter dated 17 February 2004:

> that your prescribing habits have not kept pace with the very substantial changes that have occurred, across the profession, in the way that benzodiazepines are used in primary care.[5]

16. Knowing that he was going to leave the St Peters Street Medical Practice Dr Rogers suggested that he take advantage of the appraisal system to reflect further on his prescribing habits and in particular (in the same letter referred to above) recorded that Dr Tibble agreed:

    a. to meet with a designated peer on a quarterly basis to discuss specific cases where issues have arisen or might have arisen of relevance to benzodiazepine prescribing.

17. Dr Tibble's evidence demonstrated that he did not consider that there was wrong about his prescription habits in relation to benzodiazepines. When questioned about the fact that he only met Dr Beaumont (his peer reviewer and appraiser) once or possibly twice after his departure from the St Peters Street Medical Practice in 2004 he said it was not practical to continue with the meetings as he was to busy in his locum positions.

18. The panel concluded that there was little conclusive evidence available to suggest that Dr Tibble's prescribing habits compromised patient safety. The panel were concerned however about his approach to the issue. Both his approach to following agreed practice protocols and his attitude towards the arrangements that he agreed to in 2004 to monitor his practice in this area were dismissive of there being any difficulty. The panel were satisfied that by 2004 Dr Tibble's patterns of benzodiazepine prescribing required at the very least review, if not modification, and yet he was not prepared to countenance this. His clinical practice in this area was out of date and this combined with shortcomings in his team working skills (in particular evidenced by his approach to practice protocols) hastened his resignation from the St Peters Street Medical Practice.

Dr Tibble's failure to act on his removal from the list of the Islington PCT

19. Following his departure from the St Peters Street Medical Practice Dr Tibble worked as a locum including working in the Islington PCT area from 31 August to 17 September 2004.[6] It is ironic that had the Islington PCT had this information prior to 13 September 2005 (the date of his removal) they would not have removed him from the list.

20. In relation to Dr Tibble's removal the panel had before them two letters from the Islington PCT. Both letters were written by Sarah Raymond. Her first letter dated 23 June 2005[7] explained that the Islington PCT understood that he was now working for another PCT (the respondent's in this case) and had not worked in the Islington PCT area over the last twelve months. It offered him the opportunity to make representations if he wanted to make a case for remaining on the list. Her second letter[8] stated:

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[4] A8
[5] A34
[6] A 81
[7] PCT 5
[8] PCT 8

> Further to my letter of 23rd June and the subsequent telephone message that you left for me in July, I am writing to inform you that your name will be removed from the Islinton PCT Medical Performers List with immediate effect.
>
> If you wish to discuss this further, I can be contacted on 020 7527-1180.

21. Dr Tibble maintained that this letter was not received by him. It was not, unlike the June letter, sent by recorded delivery. The panel were not supplied with any evidence that the second letter was received by Dr Tibble.

22. Dr Tibble, according to his evidence, responded to the June 2005 letter by leaving a message on Ms Raymond's answerphone. In his message he said that he pointed out the letter was inaccurate and 'expected a letter back' He then maintained that he took no further action until he was notified in March 2006 that he was practising without being on a performers list.

23. Sarah Raymond accepted[9] that Dr Tibble left a message for her in July 2005. She gave evidence that this message did not give the information that he was working in Islington PCT. If he had, she said, then the letter dated 13 September 2005[10] would not have been written.

24. It was not disputed that Dr Tibble left a message for Sarah Raymond in July 2005. In the absence of any contemporaneous record of the 2005 telephone message, the panel were unable to come to a conclusion about the substance of this call. The panel consider that Dr Tibble was most unwise not to have followed up this message with a further telephone call, letter or email. He accepted that it was his responsibility as a GP to ensure that he was on a performers list. The panel also considered Sarah Raymond's responsibilities in 'removing GPs from the Performers List and keeping the list up to date'[11] required the maintenance of accurate records including a record of the contents of any significant telephone conversations/messages.

25. Of more seriousness is the allegation that Dr Tibble knew in September 2005 that he was not on a performers list and then failed to do anything about it. Eleanor Watson in her statement[12] said:

> On 22 March 2006 …he first told me that he had received a letter from Islington PCT telling him that he had been removed from their Performers List but later on in our conversation he said he could not remember if he had been removed or not and that he did not recall receiving a letter. He did mention conversations he had had with Sarah Raymond of Islington PCT in which she said he was not on their list anymore.

26. When Eleanor Watson spoke[13] to Dr Tibble on 22 March 2006 and notified him that he was not on any performers list and should be, she said he first maintained that he had a letter, in other words that he knew that he had been removed from the list, and then 'changed his tune.'

27. It is agreed that Dr Tibble spoke to Sarah Raymond in March 2006 about the fact that he was not on the performers list. Eleanor Watson's notes[14] refer to Sarah Raymond

> having had several conversations with him since September 05 regarding his need to join another MP list

[9] PCT 3
[10] PCT 8
[11] PCT 2
[12] PCT 11
[13] PCT 11
[14] PCT 39

28. The dates of these conversations are not known. Eleanor Watson's notes[15] also refer to a Lisa Browne reporting Dr Tibble seemed rather vague and unfocussed and that he had known that he was not on the Camden and Islington List at the time of his removal. The Panel did not hear from Lisa Browne and therefore did not feel able to attach any weight to this record.

29. Sarah Raymond maintained that she spoke to Dr Tibble in September 2005 and she recalled having a telephone conversation with him 'about the fact that he was not on Islington PCT's Performers List.'[16] Eleanor Watson was not able to assist in this respect and when Dr Tibble gave evidence about these events he appeared genuinely confused.

30. The panel were unable to determine whether Dr Tibble received the September 2005 letter. The Panel took into account his rapid response to the information that he was given in March 2006 that he was not on any performers list. The panel also regarded the routine nature of the steps that Dr Tibble could have taken in order to remain on the Islington PCT as being significant. As his counsel argued he had an unanswerable reason for disputing his removal. The panel agree that an explanation that Dr Tibble was acting wilfully does not make sense; rather his actions in June 2005 were neglectful and unwise.

31. In coming to this conclusion the panel do not impute any bad faith to Ms Raymond. Her recall was however hampered by the absence of any records. She knew about the September 2005 letter. She certainly had conversations with Dr Tibble in March 2006. The panel considered it possible, in the absence of proper records, that she confused these events and the other conversations she referred to in her statement and evidence.

32. The wider significance of this in the context of these proceedings is that although the panel are satisfied Dr Tibble did not act wilfully in breach of his professional obligations, he did not act with either diligence or care in maintaining his position on the performers list. The panel considered this directly relevant to the allegation of efficiency.

Dr Tibble's evidence

33. In coming to a judgement about the allegations of efficiency concerning Dr Tibble, the panel also took into account his personal circumstances since 2004, and in particular since his cessation from practice in 2006.

34. He told the panel that the he found the process of appeal to the FHSAA most stressful. He also told the panel that subsequent to his stopping practice he had been diagnosed as suffering from depression and that he was receiving treatment for this condition. As he said: 'I became depressed, acutely depressed, everything collapsed.'

35. The panel also noted Dr Tibble's dealings with the PCT in relation to his removal from the list were characterised both by him, and others, as being surrounded by confusion[17]. He also appeared confused during the hearing when he sometimes responded to questions with vague and contradictory statements. Whilst the panel accept that his recent circumstances must have been particularly stressful, his admissions of severe depression cannot be ignored in assessing his continuing suitability to practice. Also on his own admission he had found it very difficult to keep up with professional development since his cessation from practice in March 2006.

[15] PCT 41
[16] PCT 3
[17] A90 'At the date of that conversation (22 March 2006) I was in a state of considerable shock and confusion.'

36. Conclusions

37. The panel consider that in Dr Tibble's case the efficiency ground is met in three linked areas:

    a. His clinical performance in one key area, his pattern of prescribing benzodiazepines, was regarded as sufficiently out of date by his peers to cause significant difficulties both in his workplace and for the PCT. Resources had to be committed to assessing his performance. Although the result of the assessments was inconclusive, Dr Tibble committed himself to a continuing process of peer review to address the problem. He then, with reasons that the panel regarded as entirely unsatisfactory, withdrew from the peer review process. The panel considered that Dr Tibble's approach to the issue lacked insight and would, if not regulated, continue to cause problems to others in the NHS.

    b. Dt Tibble did not exercise proper care and diligence in attending to a simple, but essential task, that is ensuring that he was on a PCT's performers list.

    c. The panel considered that Dr Tibble's psychological difficulties could reduce his capability and result in poor clinical performance. Until he is assessed as being fit to practice, then his inclusion on the list could be prejudicial to the efficiency of the service.

Conditions

38. The panel heard evidence from Steve Gilvin. He confirmed that when the PCT's General Practitioners Vacancy Committee (GPVC) refused Dr Tibble's application to join the PCT's performers list they considered the question of a conditional inclusion. They considered whether remediation would work. (That is whether the Dr Tibble had the capacity to successfully embark on a process designed to speedily return him to practice.) They concluded that given the concerns they had about his previous performance and practice and use of mentoring and supervision then it might not work and so decided against this course of action.

39. Whilst the panel's findings on efficiency are in part similar to the concerns that led to the PCT to refuse his application, the panel concluded that this was a case where conditional inclusion was appropriate. The panel read and heard positive endorsements of Dr Tibble's clinical skills. Elsewhere in these reasons the panel record the views of both Dr Cattell and Dr Rogers in this respect. The panel considered that the specific area of concern about Dr Tibble's practice, that is the prescribing of benzodiazepines, could be properly regulated by the imposition of conditions. The panel noted that the other reference that the GPVCV had before them was from Dr McCartney, his former colleague at the St Peters Street Medical Practice. This reference was entirely positive about his capacity apart from 'some concerns re benzodiazepine prescribing in 2003.'[18]

40. The panel were troubled by aspects of Dr Tibble's approach to his clinical practice and whether this would prevent him from being able to effectively engage in an educative process. Dr Tibble did however demonstrate that he was capable of reflecting on shortcomings in his practice in other areas (with reference to patient RHM for example[19]). He also demonstrated an enthusiastic commitment to returning to general practice and agreed to a series of reasonable conditions. (**Annex A**) In these circumstances the panel concluded that his case was a suitable case for conditional conclusion.

41. Finally, in accordance with Rule 42(5) of the rules we hereby notify that a party to these proceedings can appeal this decision under Sec 11 Tribunals & Inquiries Act

[18] PCT 71
[19] A70

1992 by lodging notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from receipt of this decision.

Dated this 9th day of February 2007

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A Harbour – chair
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Dr M Sheldon – professional
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J Purkis – member

Annex A

The following conditions were approved by the FHSAA Panel on 9th February 2007.

1. Before commencing work Dr Tibble will undergo an Occupational Health Assessment into his physical and mental health organised by the City & Hackney Teaching Primary Care Trust. The costs, if any, of such assessment to be borne by the PCT.

2. If the Occupational Health Assessment is satisfactory then Dr Tibble can work, but only within the City & Hackney Teaching PCT area. If he seeks work outside the PCT's area then he can only work with the agreement of the City & Hackney Teaching PCT and the PCT in which area he is seeking to practise.

3. He works in a training practice which has a GP trainer, or a practice which is approved to train undergraduate medical students, which is suitable for remediation and which is approved by the City & Hackney Teaching PCT.

4. Dr Tibble does not undertake locum work without the approval of the City & Hackney Teaching PCT.

5. The City & Hackney Teaching PCT will liaise with NCAS as to the suitability of a referral and if appropriate it will refer Dr Tibble to NCAS. Alternatively, if NCAS do not consider that it would be appropriate for it to undertake an assessment then the PCT may refer Dr Tibble (and he will agree) to another suitable body (as determined by the PCT) to undertake an appropriate assessment (such as the Deanery). The costs, if any, of such assessment to be borne by the PCT.

6. Dr Tibble will organise a supervisor, approved by the City & Hackney Teaching PCT, who is an experienced local GP looking at such issues as clinical care; audit; compliance with guidelines; records and prescribing, on a monthly basis. The costs of the supervisor will be paid by PCT for a period of one year or until Dr Tibble obtains employment.

7. Dr Tibble will organise regular sessions (at least on a quarterly basis) to meet with an educational mentor, approved by the City & Hackney Teaching PCT, to look at postgraduate education; personal development; planning and appraisals. The costs of the mentor will be paid by the PCT for a period of one year or until Dr Tibble obtains employment.

8. The supervisor to report on a monthly basis to the City & Hackney Teaching PCT and the mentor to report to the PCT on a quarterly basis, outlining what actions have been taken and progress.

9. That Dr Tibble does not treat any patients who are drug abusers. So for example, that includes any patient taking methadone or other controlled drugs.

10. That the PCT will review his co-operation and progress after one year to decide if conditions need to be continued. If the conditions are to remain in place they will thereafter be reviewed on an annual basis or sooner if the PCT considers it appropriate.

11. Dr Tibble to provide the PCT with an up to date address for communication purposes.