

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

CASE NO 13423

APPEAL ON 23rd JANUARY 2007

**DR ABDEL-DAYEM, ADEL MOHAMED HASSAN
(GMC Registration No 4237039)**

Appellant

and

WESTMINSTER PRIMARY CARE TRUST

Respondent

Appeal by the Appellant under section 15 of the National Health Service (Performers Lists) Regulations 2004 against the Respondent's decision to remove him from the Performers List

DECISION AND REASONS

PRELIMINARY MATTERS

1. The appeal was heard by Mrs D Shaw (Chairman), Dr M Sheldon (professional member) and Mr W Nelson (member) at the NHS Litigation Authority, Napier House, 24 High Holborn, London.
2. Prior to the hearing all three panel members had signed a declaration confirming they had not had any prior interest or involvement in the appeal which would preclude them from considering the evidence in an independent or impartial manner.
3. The Appellant was accompanied by Miss Tajana Sycikova and the Respondent was represented by Dr Elizabeth Robinson (GP Medical Advisor) and Miss Fiona Erne (Practitioner Performance Manager). The Appellant called Dr V Crowhurst as his witness.

HISTORY OF THE APPEAL

4. This was an appeal by the Appellant against the Respondent's decision to remove him from the Performers List on the ground of efficiency under Regulations 10(3) and 10(4)(a) of the NHS (Performers Lists) Regulations 2004 as amended (the Regulations) on the following grounds:
 - a. Dr Hassan's failure to comply with Westminster PCT's request to undertake an assessment by the National Clinical Assessment Service (NCAS) as set out in paragraph 11(6)(e) of the Regulations
 - b. Dr Hassan's failure to demonstrate that he provided services within the Westminster PCT area during the preceding twelve months as set out in paragraph 10(6) of the Regulations
5. Dr Hassan is included in the Respondent's Performers List. He currently works as a locum in GP practice in Southend on Sea.
6. In April 2005 Westminster PCT (the PCT) received correspondence from Southend on Sea PCT informing it that Southend on Sea PCT had chosen not to continue using Dr Hassan as a locum doctor in one of its practices because a range of allegations had been made against him by a local nursing home

7. In May 2005 the PCT's Practitioner Performance Decision Making Group (PPDMG) reviewed Southend on Sea PCT's concerns. It noted Dr Hassan's performance had previously been considered and a referral had been made to NCAS in February 2003. Whilst it was noted that NCAS decided not to accept referral in 2003, the PPDMG decided the new allegations were of a potentially serious nature and should be investigated. It asked Dr Elizabeth Robinson to undertake the preliminary investigation.
8. Dr Robinson's preliminary investigation identified a number of issues which she considered required further investigation. With the approval of the PPDMG she looked into the possibility of appointing an external investigator and contacted the Strategic Health Authority (SHA) and NCAS. Dr Robinson and NCAS agreed an NCAS assessment would be an appropriate way forward and the 2003 referral was reopened. The PPDMG notified Dr Hassan accordingly in July 2005 and NCAS reissued referral forms to Dr Hassan and the PCT to complete.
9. Dr Hassan has contended that the referral forms were not comprehensive (as had been the case in 2003). This appears to be because the case file was reopened rather than a new assessment being initiated.
10. At a PPDMG meeting in January 2006 it was noted that Dr Hassan had failed to complete the NCAS forms necessary to proceed with the assessment. It agreed a letter should be sent to Dr Hassan advising him of the need to co-operate with the NCAS process.
11. On 31 May 2006 NCAS wrote to Dr Robinson to confirm the information provided indicated an NCAS assessment would offer a suitable way forward.
12. On 4 July 2006 NCAS organised a three-way meeting between NCAS, Dr Hassan and the PCT, at which Dr Hassan became very upset and angry and declined to sign the assessment agreement. He asked for a further week to consider its contents but failed to keep to this timetable.
13. At a PPDMG meeting on 25 July 2006 the PPDMG decided to write to Dr Hassan to advise him it was considering his removal from the Performers List due to his failure to comply with the NCAS assessment pursuant to paragraph 11(6)(e) of the Regulations. The letter advised Dr Hassan of his right to make representations or request an oral hearing by 25 August 2006.
14. On 1 August 2006 NCAS informed the PCT it had not received a copy of the signed agreement from Dr Hassan..
15. Dr Hassan failed to respond to the PCT within the deadline and a meeting was scheduled to consider the case on 5 September 2006. On that date NCAS informed the PCT it had received a copy of the assessment agreement signed by Dr Hassan and dated 24 August 2006. He had made a number of annotations including a note on most pages indicating he was signing under duress. In the circumstances NCAS wrote to Dr Hassan stating it did not regard this as evidence of his willingness to co-operate with the assessment process. On the same day Dr Hassan forwarded a copy of NCAS's letter to the PCT which he had annotated to indicate that he considered the agreement valid. He also made a note that he had been declined an oral hearing by the PCT.
16. At the meeting on 5 September, although the PPDMG noted that Dr Hassan's request for an oral hearing had not formally been received and was out of time, it agreed to defer its decision and to offer Dr Hassan a second opportunity to present his case at an oral hearing. On 7 September the PCT wrote to confirm this to Dr Hassan and clearly stated that as NCAS did not

regard the annotated agreement as evidence of his willingness to co-operate with the assessment process he would need to complete a fresh copy of the agreement and forward it to the PCT by 12 September. The hearing date was rescheduled to 19 September.

17. NCAS also wrote to Dr Hassan on 8 September setting out its expectations of practitioners.
18. At Dr Hassan's request the hearing was again postponed until 3 October. Dr Hassan declined the PCT's offer to attend but submitted documents in support of his case.
19. The PCT received a letter from NCAS dated 3 October confirming Dr Hassan had not completed a fresh copy of the agreement and had instigated a complaint against NCAS.
20. A PPDGM Panel considered the case on 3 October 2006. It agreed that Dr Hassan should be removed from the PCT's Performers List. In reaching this decision the Panel noted that Dr Hassan had been offered a number of opportunities to comply with the assessment process but had failed to do so. He had clearly stated on the NCAS agreement that he did not trust either the PCT or NCAS and that the document was signed under duress. The Panel concurred with NCAS's view that this did not indicate Dr Hassan was willing to comply with the process. The Panel further noted that both NCAS and the PCT had clearly informed Dr Hassan of the steps required to comply with the process, the first of which was to complete and return an unaltered version of the NCAS agreement. The Panel considered Dr Hassan's contention that the referral was not justified but concluded that there were sufficient and persistent grounds for the referral and noted that NCAS's acceptance of the referral supported this view, particularly as NCAS nationally only accepted a small number of referrals for assessment and would only accept a referral if a PCT could show its concerns had been locally investigated and were of a substantial nature. The Panel accepted the PCT's submission that Dr Hassan's view of the appropriateness of the referral did not diminish his obligation to comply with the NCAS assessment and rejected Dr Hassan's view that the referral and investigation were not properly conducted, finding that all proper procedure and guidance had been followed.
21. Following a routine annual check by the PCT to establish whether GPs on its Performers List were still working in the area, the PPDGM noted at its meeting in July 2006 that Dr Hassan had not been providing services within the Westminster PCT area for a period of at least 12 months and agreed that Dr Hassan should be informed it would also be considering his removal from the Performers List on this ground under paragraph 10(6) of the Regulations.
22. The PPDGM Panel also considered this issue at the hearing on 3 October and on the basis of the evidence before it concluded that Dr Hassan should also be removed from the Performers List on this ground.

THE LAW

23. The relevant regulations are contained in the NHS (Performers Lists) Regulations 2004:
 - 10(3) The Primary Care Trust may remove a performer from its performers list where any of the conditions set out in paragraph (4) is satisfied
 - 10(4)(a) 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 ("an

efficiency case”)

- 10(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.

24. The criteria for a decision for removal under regulation 10 are set out in regulation 11:

- 11(5) Where a Primary Care Trust is considering whether to remove a performer from its performers list under regulation 10(3) and (4)(a) ("an efficiency case"), it shall -

(a) consider any information relating to him which it has received in accordance with any provision of regulation 9;

(b) consider any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or related to that performer, which information he shall supply if the Trust so requests; and

(c) in reaching its decision, take into account the matters referred to in paragraph (6).

- 11 (6) The matters referred to in paragraph (5)(c) include -

(e) whether the performer has ever failed to comply with a request to undertake an assessment by the NCAA;

25. The relevant provisions relating to appeal are set out in regulation 15:

- 15(1) A performer may appeal (by way of redetermination) to the FHSAA against a decision of a Primary Care Trust mentioned in paragraph (2) by giving notice to the FHSAA.

- (2) The Primary Care Trust decisions in question are decisions -

(a) to refuse admission to a performers list under regulation 6(1);

(b) to impose a particular condition under regulation 8, or to vary any condition or to impose a different condition under that regulation;

(c) on a review, under regulation 14, of a conditional inclusion under regulation 8;

(d) to remove the performer under regulations 8(2), 10(3) or (6), 12(3)(c) or 15(6)(b);

(e) to impose a particular condition under regulation 12, or to vary any condition or to impose a different condition under that regulation;

(f) on a review, under regulation 14, of a contingent removal under regulation 12; and

(g) which the relevant Part prescribes that the performer may appeal to the FHSAA.

- (3) On appeal the FHSAA may make any decision which the

Primary Care Trust could have made.

DOCUMENTS AND EVIDENCE CONSIDERED

26. The evidence before the Panel comprised:
- the case papers from the Appellant paginated A1-99
 - the bound bundle of documents from the Appellant numbered 1-298
 - the case papers from the Respondent paginated R1-183
 - further evidence submitted on the day, including a letter dated 13 May 2005 from Southend on Sea PCT to the Respondent (now numbered 299), the minutes of the Respondent PPDMG's meeting held on 24 May 2006 (now numbered 300-304), a letter dated 22 June 2005 from the Respondent to Mr Ralph Tolinson (now numbered 305 and a duplicate of pages 292-293), a letter dated 9 November 2006 from South East Essex PCT to the Respondent (now numbered 306-307), a letter dated 19 January 2007 from NCAS to Fiona Erne at the PCT (now numbered R184)
- It is not necessary to set out the contents of those bundles in detail here.
27. In addition, following the hearing both the Respondent and the Appellant submitted written closing submissions numbered R185-188 and A100-131
28. On the day we heard oral evidence under oath from the Appellant, his witness Dr Crowhurst, and Dr Elizabeth Robinson on behalf of the Respondent. Even though he was to appear as a witness, the parties agreed that Dr Crowhurst could remain at the hearing throughout so he might be able to assist Dr Hassan.

SUMMARY OF SUBMISSIONS AND ORAL EVIDENCE

The Appellant

29. Dr Hassan submitted he had complied with NCAS and the PCT. He had also complied with NCAS in the past when the PCT had tried to refer him and NCAS had said there was no case to assess. This time the allegations had not been disclosed to him, depriving him of the right to respond.
30. On 26 July 2005 Dr Robinson had secretly sent a letter to NCAS (*page 139*) making allegations to which Dr Hassan was not given the opportunity to respond. Dr Hassan also accused Dr Robinson of fraudulently dating 30 May her handwritten note on the end of the minutes of the meeting held on 24 May 2005 (*page R194*) as there was reference in that note to a later meeting of the PPDMG held in July 2005. he submitted Dr Robinson failed to mention this either at the PCT hearing on 3 October 2006 or to NCAS.
31. Dr Hassan submitted Dr Robinson had presented misleading facts at the PCT hearing on 3 October and wanted to cause him maximum damage. At the time of his first referral to NCAS in 2003 he had been removed from his regular job when the doctor at that practice was struck off and he was the obvious successor. That practice was allocated to another doctor and the surgery closed. He had to work and so he started to do locum jobs.
32. Dr Margaret Guy at the PCT had telephoned Southend on Sea PCT on 5 September 2003 (*see file notes at A33-34*) to inform them he had previously been referred to NCAS and had not complied, which was not true. She had also called him a liar and started a national alarm. The PCT had been trying to damage him for six years. It had reported him to the GMC hoping he would be suspended but the Interim Orders Panel (IOP) had only imposed conditions relating to his complying with the NCAS assessment.

33. Mr Colman (*solicitor instructed by the GMC*) at the IOP hearing said the main reasons for the NCAS assessment were the matters raised in Dr Robinson's letter of 26 July 2005 (*page 139*) but the IOP may think there was not a huge amount in that complaint (*page 109 para A*). Dr Robinson had made allegations about his note-keeping at a nursing home and local practice but as Dr Colman had pointed out, he had only worked for half a day at the practice and sent on the notes and the nursing home's allegations had never been investigated. Pioneer Recruitment, with whom he had been for six years, had confirmed it had not received any other complaints about Dr Hassan (*page 152*).
34. Dr Robinson's letter also referred to unacceptable certification but Dr Hassan submitted the death certificate in question (*page 146*) was nothing to do with him. He claimed the annotations on the certificate had been made by a staff nurse at Willowdale Nursing Home he had accused of neglect and there had been no complaints from patients or relatives. Although it looked like his signature on the form he did not think it was his handwriting; he thought someone had copied it. The Registrar of Deaths had said this certificate did not exist because the name of the deceased had been left blank.
35. Dr Robinson had made allegations about his prescribing, note keeping, clinical standards and professional and personal behaviour as evidenced by nursing home staff, but Dr Hassan submitted the nursing home had never been investigated.
36. On 3 June 2005 Southend on Sea PCT had written to Dr Robinson (*page 163*) confirming Dr Hassan had worked to improve his prescribing patterns with good effect and yet she still wrote a secret letter to NCAS rather than a proper referral statement. She had also seen the letter dated 11 November 2004 Southend on Sea PCT had written to Dr Hassan (*page 164*) thanking him for his close attention to the detail of the Action Plan and for his commitment to dealing with the various prescribing issues discussed. It had previously written to him on 28 October 2004 (*page 165*) stating "There is no doubt that in many other ways you have provided an excellent service to patients at Cluny Square and this has been borne out by the recent "Quality Outcomes Framework" visit."
37. Dr Robinson had spoken to Dr Aggarwawal on 26 May 2005 and made a file note (*page 167*) of Dr Aggarwawal's allegations that he had made inappropriate advances to a member of the practice staff and a patient. He had taken this note to the police and reported it. He had asked Dr Robinson not to take this case but she had said there was no-one else to deal with it. She was a part-time medical adviser yet she was presenting herself as an investigating officer. Dr Aggarwawal was mentally ill and Dr Crowhurst could confirm this. Dr Aggarwawal had only entered the surgery once when he was working there; he had told Dr Robinson he worked with Dr Crowhurst but she contacted the wrong man and contacted him at home when he had been off work for four years and then, despite him declining to put his allegations in writing, referred to them in her referral letter to NCAS, which she also sent to the IOP of the GMC.
38. Dr Crowhurst gave Dr Hassan a reference (*page 168*) but Dr Robinson refused to contact him. He had inherited prescribing problems in a drug users area but his ability had been proved by the Quality Outcomes Framework.
39. When the PCT would not help him Dr Hassan went to the Commission for Social Care Inspection (CSCI) which upheld his complaint against Willowdale Nursing Home failing to call a doctor (*pages 169-171*). He had never had a complaint about his practice in thirty-six years or damaged any patients or had any problems.
40. He had reported the nursing home to the Coroner to protect his patient (*page 172*) yet he was now being punished. The nursing home had then made

complaints against him yet he was the one seeking the truth. Dr Crowhurst had also written to the CSCI complaining about the nursing home (*page 178*). Since 2003 Dr Hassan had worked in a hospice in Wakefield for a year yet the nursing home had accused him of not knowing about the terminally ill when he had seen nurses there who were not qualified to work with them.

41. Southend on Sea PCT had confirmed the nursing home had not made a complaint to it about him (*pages 186-187*) and sent a letter to the local LMC on 28 April 2005 (*page 188*) confirming that the allegations were unsubstantiated at present. This letter was also sent to Dr Robinson.
42. Professor Alistair Scotland, Director of NCAS, had written to Dr Hassan on 2 August 2006 (*pages 193-194*) setting out the factors NCAS takes into account when considering a case for assessment. One of those factors was that the problem has to have been adequately defined and substantiated but Dr Hassan contended Dr Robinson did not adequately do this and made false allegations.
43. The PCT did not follow NCAS guidelines (*pages 195-196*) although Dr Hassan kept asking it to do so. The Medical Protection Society (MPS) wrote to him on 6 July 2006 (*page 200*) indicating it appeared that the PCT had not disclosed all the papers to him; he had to obtain them under the Freedom of Information Act.
44. Dr Hassan submitted he had complied with NCAS and met with them many times. He had written to NCAS many times asking for a referral statement containing the allegations against him, which should have been made and substantiated by the Chief Executive in proper form, but he only got this on 1 December 2006 at the IOP hearing when Mr Colman set them out.
45. Dr Hassan reiterated that he was complying with the NCAS assessment. He had signed the agreement. Professor Scotland had sent him a clean copy and whether NCAS had received it or not he could sign now.
46. Paragraph 2.6 of the PCT's Statement of Grounds (*page R4*) stated "the PPDGM noted Dr Robinson's decision to include an NCAS assessment as part of the investigation into Dr Hassan's performance" but Dr Hassan contended NCAS do not investigate and the PCT was playing with words. Paragraph 2.7 stated "NCAS confirmed Dr Hassan was a suitable case for assessment and the referral was reopened. NCAS reissued referral forms for the PCT and Dr Hassan to complete" yet it did so without the allegations being disclosed and referral forms were not reissued. Dr Hassan submitted the PCT should have pinpointed the allegations and disclosed them to him.
47. Dr Hassan had signed the NCAS agreement and faxed them to proceed. He had been told by the PCT that he was exempt from the twelve month requirement because he would be assessed in Southend, yet the PCT was now harassing him and removing him. It was a cruel and unmerciful abuse of power.
48. Dr Hassan had applied for inclusion on Southend on Sea PCT's Performers List as a defence but it had refused him and said his inclusion would be subject to his assessment (*see pages 306-307*). Dr Robinson had given him a bad name and he considered the assessment agreement was invalid until he had been told the allegations and given a chance to respond.
49. Dr Hassan had made many complaints about Dr Robinson to the PCT but the Chief Executive had refused to investigate (*page 268*) yet she had chaired the hearing for his removal and heard all the allegations against him. Even at that hearing Dr Robinson said she had investigated the case and was satisfied it had been substantiated. She had made wrong and misleading statements which led to his removal. He submitted this had been an illegal show hearing.
50. At the PPDGM meeting held on 24 May 2005 it was decided that Dr

Robinson should appoint an independent investigator (*page R19*) and Dr Hassan queried why, if she was not qualified to investigate, she introduced herself as an investigator to the panel at the above hearing. He submitted Dr Robinson had failed to comply with the PPDMG's decision; she had submitted a different copy of page R19 to the IOP of the GMC (*see page 304*) which included a handwritten note saying the matter was subsequently discussed with the SHA and it was decided a NCAS referral was more appropriate. The note said this decision was ratified by the PPDMG on 30 May 2005 but there was no meeting then and the next PPDMG meeting did not take place until 26 July 2005. Dr Hassan submitted the contents of this note were not true and it was a forged statement which the PCT had only submitted to the GMC and not for this appeal.

51. When Dr Robinson made her file note of her telephone conversation with Dr Hassan on 4 July 2005 (*page 243*) when she told him NCAS were considering his case for assessment, Dr Hassan submitted she was not carrying out the PPDMG's intentions. He had complied and asked her to follow the regulations. Dr Robinson had never wanted to contact Dr Crowhurst and he had complained because he wanted the injustice to stop. Dr Robinson had been imposed on him.
52. Dr Hassan pointed out the discrepancy between the two copies of Dr Robinson's file note dated 12 July 2005 (*at pages 244 and 245*) where the wording on the last two lines of the note had been removed from the copy submitted in evidence by the PCT and submitted this was another example of forgery by Dr Robinson.
53. He had wanted a further week to think about signing the assessment agreement following the meeting on 4 July 2005 because he wanted a new referral statement rather than for the old form from 2003 to be reissued. The PCT had said the old form was sufficient but a new form would have allowed him the chance to answer the new allegations and respond before signing the assessment agreement. He needed to have this statement so he could comply with the IOP's recommendations as the old form referred to old allegations.
54. The minutes of the PPDMG meeting on 26 July 2005 (*page 246*) did not say that Dr Robinson had spoken to the SHA. If her handwritten note meant to refer to this PPDMG meeting, Dr Hassan asked why hadn't this been minuted.
55. Dr Hassan then turned to his qualifications. He pointed out he had received a mark significantly higher than the pass mark of his summative assessment (*page 12*) (although it was then pointed out to him this only related to the MCQ element of the examination). He had received a good GP annual appraisal in September 2005 (*pages 14-19*) and good references from Dr Crowhurst (*page 21*) and Mrs Doshi, the Practice Manager at the single-handed practice he had been working at throughout 2006 (*page 22* and where he did 20 home visits every day and currently worked with 21 nursing homes. He had also had a good reference in 2003 from Dr Aggarawal's Practice Manager (*page 23*) where he had stayed for two years and that reference had been produced when Dr Robinson was alleging he was rude to patients. He had a further good reference from the St Albans Medical Centre in Nottingham (*page 25*) where he had worked for ten months.
56. Dr Hassan had tried hard to comply with the twelve months requirement but it was difficult for a locum to do. The PCT had asked him to stay at Southend for his assessment.
57. Dr Crowhurst had written to the GMC indicating he believed the procedure had been legally flawed by the PCT (*page 228*).
58. The PCT had a discretion whether or not to remove a practitioner from its Performers List if he had not provided medical services in the last twelve

months. The Regulations did not support locums; the PCT had disturbed his work in Westminster and then asked him to stay on at Southend. He had complied and answered everything but just kept asking for a referral statement. He had been and was still willing to undergo a proper assessment, but it should have been preceded by a referral statement listing allegations to which he could respond. The assessment agreement was full of insults and they had agreed the assessment would take place at his surgery in Southend.

59. In response to questions Dr Hassan confirmed that after the case was reopened his first meeting with NCAS was on 2 May 2006 at Dr Crowhurst's surgery.
60. NCAS did not make it clear why they had come to see him. He asked for a referral statement and did not get an answer.
61. NCAS had written to him to say when and where the meeting would take place but they did not provide much information about the process and the allegations. NCAS did not write to him summarizing that meeting and the next steps; the next letter he received asked him to the meeting in London on 4 July 2006 but he did not have a copy.
62. It had taken so long to set up a meeting because NCAS had written to him at no 188 Eastern Esplanade (where he used to live) rather than no 186 and then telephoned on the day he was leaving for Egypt, where he had stayed for three months. He had left the MPS his e-mail address and mobile telephone number but he was never contacted. He returned to the UK on 3 January 2006 and he was in contact with NCAS all the time. They had not written to him between January and the first meeting in May.
63. When questioned how he would then know about the meeting on 2 May Dr Hassan replied he had received a letter two weeks before in April 2006.
64. He had asked NCAS in writing for a fresh referral statement all the time but he did not have the letters with him. When questioned why the letter from NCAS dated 28 September 2006 stated he first wrote to NCAS on 24 May 2006 (*page 297*), Dr Hassan contended he wrote to NCAS and spoke to them several times
65. He had faxed every communication to the PCT and NCAS simultaneously and sent his letter dated 16 September 2005 to Ben Millington at NCAS (*pages A87-88*) at the time he wrote it. Whilst that letter did not request a fresh statement of referral he had asked for one in many other letters; NCAS had to comply with the law.
66. It was the PCT, not NCAS, which had to supply a referral statement under the NCAS process, which was not within the PCT's jurisdiction.
67. At the meeting between himself and NCAS alone on 4 July 2006, NCAS did not explain anything about the allegations. When Dr Robinson joined that meeting she explained nothing and refused to answer his questions. He did not know the purpose of that meeting.
NB. At this point Dr Crowhurst interjected that Dr Hassan did know, whereupon Dr Hassan claimed he was denied a referral statement so matters were not fully explained.
68. He had not been given a timetable of when he should attend a GMC hearing; the GMC was waiting for him to comply with the assessment process. He was not saying he would not comply without a referral statement and he had told NCAS many times he would comply. Despite NCAS' letter dated 19 January 2007 (*page R184*) indicating it had no record of receiving a clean and unaltered copy of the assessment agreement from him, he was still prepared to go ahead with the

assessment. If he did not get a referral statement he would sign the form and do the assessment but then he would take them to court.

69. He wanted a referral statement so he could filter out what needed to be assessed; it was not legal or logical not to know what was being assessed.
70. The death certificate the subject of the nursing home complaint (*page 146*) was incomplete; the name of the deceased had been tippexed out. No-one should have got hold of it before he completed it. It was not sent to the Registrar of Deaths so it should not have been criticized; it was like stealing something from his drawer. He had partially filled it in and then it got into the hands of the nursing home.
71. The PCT had accused him of lying based on his having contacted the PCT to say he was still in Egypt when he had faxed from Southend but he had actually said he would still be in Egypt and Margaret Guy (Vice Chair at the PCT) had interpreted it in this way. It was a misunderstanding.
72. When reminded he was under oath Dr Hassan admitted he might not have sent a clean copy of the assessment agreement to NCAS and said it could be human error on his part.
73. He also admitted that Ben Millington of NCAS had informed his solicitor one week ago that the previous referral statement (from 2003) was sufficient but he maintained the guidelines (as set out in Professor Scotland's letter (*pages 193- 194*) require all allegations to be substantiated. He wanted the opportunity to filter out untrue allegations or the assessment would not clear his name.
74. The Southend surgery had been allocated for the assessment. He had been lead to understand he should assist by staying there and complying. There was no reason for his removal on the twelve month ground. This was a frank agreement and made clear repeatedly.
NB. At this point Dr Sheldon explained to Dr Hassan that if he was not in practice the GMC assessment process could take place independent of a practice.

Dr Crowhurst

75. Dr Hassan had come to Dr Crowhurst's Cluny Square surgery in 2003. He had a 4,200 list size and a partner had left at very short notice when they had both a main and branch surgery. Southend on Sea PCT gave him Dr Aggarawal who had split acrimoniously from his last practice. Dr Aggarawal made one appearance at Cluny Square and never ever worked there; on the day he was due to begin he went off sick and then retired. Southend on Sea PCT got Dr Hassan to come and cover all the surgeries which he did very successfully.
76. Two problems arose; with Willowdale Nursing Home and prescribing. Dr Crowhurst had reservations about the nursing home; it was newly established and working with the terminally ill from outside the area. Drugs went missing and it was difficult to get patient notes; sometimes they died before they arrived. The home asked the practice to take on patients privately. Dr Crowhurst told Dr Hassan not to touch the home after which it found problems with Dr Hassan.
77. The surgery was in a run down area with many drug addicts coming to the branch surgery. Their Benzodiazepine prescribing was much higher than average. Dr Hassan weeded out the drug suppliers and within a month or two the prescribing issue disappeared and Southend on Sea PCT wrote to Dr Hassan to say it was happy.
78. Dr Hassan was suddenly asked to leave the surgery and Dr Crowhurst was not given the reason.

79. In January 2005 Dr Hassan re-established contact and appeared distressed to Dr Crowhurst. They socialised in February and March 2005 and then Dr Hassan started work at Dr Doshi's surgery. Dr Doshi had been suspended and had a 2,500 list size. Dr Hassan was very busy; his note keeping was exemplary, he had a very high number of nursing homes and did about 17 visits per day. Without Dr Hassan it would be very hard to find a locum to fill the position as it was an isolated surgery.
80. In Dr Crowhurst's opinion Dr Hassan was an honest and hardworking doctor and he had accompanied him today as a friend. He seemed to have a terrible problem because he needed to be on a Performers List somewhere to continue practising as a doctor. There was no provision in the Regulations for locums who moved around the country; they needed to perform for some part of the year with the "mother" PCT but how could he do this when he was coping as a locum elsewhere in a very busy practice?
81. In response to questions Dr Crowhurst said he was very confused from what he had heard today about referral statements. Ben Millington of NCAS had approached him just before the meeting in May 2005. He had not been aware of the NCAS assessment before that. He spent one and a half hours with Mr Millington whereby NCAS explained there would be one other meeting with NCAS and the PCT to sign the assessment agreement and to outline the process, which would take place at Dr Doshi's surgery with biometric testing at Vauxhall. At the July meeting the full process was outlined to Dr Hassan and he was encouraged to sign the agreement. Dr Crowhurst was not sure if the document was outlining why Dr Hassan was being sent for assessment or if it was a contract. He was confused why Dr Hassan was undergoing assessment. Mr Millington could not tell him the reason for referral at their May meeting as he was there as a friend and so not privy to that information but he could understand why Dr Hassan was not sure where he was in the process.
82. On 3 May Dr Crowhurst sent an e-mail on Dr Hassan's behalf to Mr Millington (*page 204*) asking for clarification on the assessment. After 4 July he was not sure how things were left but he understood Dr Hassan would sign the agreement and put "under duress" which Dr Crowhurst understood would make it invalid. It was not clear if Dr Hassan had been made aware of any of the allegations at the meetings but Dr Crowhurst did not think so. When Dr Hassan asked at the meeting on 4 July what NCAS was assessing they did not answer; Dr Robinson did not tell him the allegations and Dr Crowhurst had no knowledge Dr Hassan had committed any of the actions the subject of the allegations. He had told this to NCAS and the PCT on 4 July. The investigation would not have cost the PCT £30,000 as Dr Robinson had indicated in her file note (*page 244*); Dr Crowhurst could have told them in a telephone call and he made this clear at the meeting on 4 July.
83. Dr Hassan had told Dr Crowhurst he was willing to undergo assessment and Dr Crowhurst's opinion was that he currently was. He thought Dr Hassan had complied with the process to the best of his ability. He could not say whether the PCT wanted him to work in Southend for the assessment.
84. Dr Crowhurst had not read all the documents for the appeal but he had read the majority. He was aware the PCT had indicated Dr Hassan had been copied in on all the papers it had sent to NCAS (*see page 198*) but that did not mean Dr Hassan had received them or that Dr Crowhurst had read them.
85. When Dr Crowhurst could distract Dr Hassan from all the paperwork he functioned well and normally but it made him very despondent and angry. This was not his normal state.

Dr Robinson

86. The PCT opposed the appeal on the grounds Dr Hassan refused to comply with the NCAS assessment and acknowledged he had not worked within Westminster PCT's area for twelve months.
87. The PCT was aware Dr Hassan felt the referral to NCAS was unjustified and therefore did not want to comply, but the PCT did not share his view. The only matter pertinent to this appeal was whether Dr Hassan had complied with the referral and the NCAS process and the PCT's view was that he had not.
88. Dr Robinson was aware the performance concerns for Dr Hassan were long-lived and pre-dated her involvement approximately two years ago. The complaints were multi-faceted and of a serious nature from several parties. Accordingly, the PCT was obliged to consider them and start an investigation. It was obliged to look at his performance in the round rather than the nursing home's allegations. As part of the investigation the PCT had the right to take several actions and if it wished, it could undertake its own investigation.
89. Dr Robinson had been a primary care medical adviser for twelve years. She now held that role on a part-time basis as she was a full-time GP. Over the twelve years she had dealt with several GPs with serious performance concerns but Dr Hassan had been the most difficult of all.
90. In discussion with NCAS it was agreed they would re-open Dr Hassan's case, as they were entitled to do, and look at the new evidence the PCT submitted. This was the path NCAS suggested and Dr Hassan was advised that if he failed to comply he would have to undergo a GMC assessment. Dr Robinson's preference was for a NCAS assessment with 360 degree appraisal but NCAS was an independent body and it was solely their decision whether the case warranted assessment; Dr Robinson could not influence that decision.
91. When NCAS decided this was a suitable case for assessment Dr Robinson assisted them as much as required. The meeting on 4 July 2006 was to set out the terms of reference for the assessment and to obtain Dr Hassan's agreement to the assessment and any follow-up action, which the PCT would be obliged to assist with as required.
92. The PCT were very aware of the many documents Dr Hassan had faxed to it, including those from Dr Crowhurst and patients, so it knew he had a lot of support. The NCAS assessment would take these into account and Dr Robinson had always found them to be very balanced assessments.
93. The PCT considered it had substantiated the problems as required by NCAS when considering a case for assessment.
94. Unfortunately, there had been an eighteen month delay until now because of the problems incurred in arranging the first meeting with Dr Hassan and the subsequent problems after that.
95. The only referral statement was the 2003 statement which set out a number of concerns. The issue was not whether there was a case to answer based on the specific allegations mentioned but that there were sufficient concerns to warrant an assessment. NCAS did not say in 2003 that there was no case to answer; it said it considered there were insufficient concerns to warrant an assessment. In 2005, when additional concerns were raised, NCAS found these amounted to sufficient concerns to warrant assessment and the case was reopened.
96. Dr Hassan was informed of these concerns and the correspondence showed that even his own solicitors were aware of the position.

97. Dr Hassan's evidence as to whether or not he had signed a clean copy of the assessment agreement was still confusing. On several occasions the PPDMG had adjourned and given Dr Hassan clear encouragement to sign a clean copy but as far as the PCT was aware he had not done this. The final time he was asked to sign he was given very clear instructions and dates but when nothing was forthcoming the PPDMG proceeded to hear the case and to make its decision.
98. The PCT asked the Panel to note that Dr Hassan's 2005 appraisal (*pages 14-20*) was a soft, formative, educational tool. It was a personal development plan which recorded a doctor's own reflections and it would not form a large part of any performance review.
99. Dr Robinson pointed out that at the GMC hearing Dr Hassan said on two occasions that he had signed a clean copy of the NCAS agreement and sent it back but neither they nor NCAS had received it. The PCT's concern was that Dr Hassan had said today that he would undergo the NCAS assessment and then take legal action but NCAS would not undertake an assessment if a doctor would not co-operate with the recommendations that came out of the assessment.
100. Turning to the twelve month ground, Dr Hassan had last provided services to the PCT in March 2005 for half a day, to a practice which complained he failed to complete any clinical notes. He had undertaken this locum job after he had previously not provided services to the PCT for twelve months, so the PCT had already been through the process of deciding to remove him. Dr Hassan appealed and the appeal was adjourned, during which time Dr Hassan secured this half-day locum post.
101. One of the reasons Dr Hassan found it difficult to work in this PCT was because of the concerns of many of the practices within the PCT about his performance.
102. Dr Robinson accepted Dr Hassan was now working in Southend and it would be more convenient for both him and Southend on Sea PCT if he was on their Performers List, but if there was an investigation pending he could not transfer.
103. When the question arose of where the clinical part of the NCAS assessment should take place, it was felt that it should be done in a practice with which Dr Hassan was familiar and that was why the Southend practice was chosen.
104. Dr Hassan's failure to provide medical services for twelve months from March 2005 preceded the NCAS decision to assess him, and he had been asked and had failed to demonstrate he had provided services since that date.
105. In response to questions – Dr Robinson pointed out that after the PPDMG meeting on 5 September 2006 the PCT had written to Dr Hassan on 7 September 2006 (*pages 81-82*) confirming that if, on reflection, he wanted to cooperate with NCAS he would need to sign a fresh, unannotated, clean original copy of the assessment agreement and send it to the PCT by 12 September or present it in person on 19 September 2006. The letter emphasized that the onus was on Dr Hassan to contact NCAS and arrange to do this within these deadlines. Dr Robinson did not recall if the PCT had mentioned this during the removal hearing on 3 October but the PPDMG did then take into account the fact Dr Hassan had failed to return a fresh copy.
106. Dr Robinson confirmed her letter to NCAS dated 26 July 2005 (*page 139*) set out her concerns. A copy of this letter would have been included in the bundle of documents sent to Dr Hassan when NCAS decided to take on the case. A copy of the letter would also have been sent to his solicitor. Dr Robinson submitted Dr Hassan had been aware of these concerns as evidenced by his letter dated 16 September 2005 which he sent to Ben Millington at NCAS (*pages A87-88*).

107. When Dr Hassan queried why a copy of this letter had not been sent to the GMC Dr Robinson replied that the GMC had asked for relevant correspondence.
108. Dr Robinson still had serious concerns about Dr Hassan, which were now shared by the GMC. The IOP of the GMC had decided that he may pose a risk to the public and flagged up his possible lack of insight (*see pages 75-77*) and Dr Robinson shared that concern. She also had concerns about Dr Hassan's behaviour towards her and the staff at the PCT.
109. Dr Robinson's letter only summarized the concerns; it did not mean she was the only source of information. NCAS was an independent body but she assumed their decision was based on all the information sent to them and which was sent to Dr Hassan as well..
110. It was up to Dr Hassan to send to NCAS any additional documents he wanted them to see; Dr Robinson had given everything she had to NCAS. She was not sure it was her duty to show NCAS a balanced view; the PCT was required to send NCAS all the information it had on Dr Hassan and it was for Dr Hassan to send NCAS his responses.
111. When Dr Robinson took up her post at the PCT it was her responsibility to look through the Performers List and decide who was working in the area and who wasn't; Dr Hassan was treated like many other doctors. The PCT had put his removal on the twelve month ground into abeyance because NCAS had said this would have made it difficult to carry out their assessment.
112. Dr Robinson's letter was written prior to her first meeting with NCAS on 23 August 2005. At that meeting NCAS was given full access to the PCT's dossier of evidence, including letters written by third parties. She could not recall if the nursing home complaint about Dr Hassan's inappropriate behaviour to an elderly patient had been received by the PCT at that point. This was all normal procedure.
113. So far as putting the concerns in a balanced context was concerned (for example the prescribing practices and concerns of Southend PCT had been remedied by then), Dr Robinson felt that was done in part; all that information was there. The PCT had received evidence from Southend on Sea PCT and it was all available to NCAS. It was not a question of whether Southend on Sea PCT still had outstanding prescribing concerns; all the documents were there and it was for NCAS to decide what to do. Whilst Southend on Sea PCT had informed the PCT of the steps Dr Hassan had taken on prescribing issues "with good effect", there was a detailed prescribing analysis from Southend on Sea PCT with the goals Dr Hassan must work towards included in the documents (*pages R47-50*), which showed Dr Hassan was still 50% out from that PCT's average. Dr Robinson admitted he had made progress but considered that Southend on Sea PCT having identified prescribing problems supported there being a wider investigation of Dr Hassan's prescribing.
114. Dr Robinson did not think she should have put all this into context in her letter, the purpose of which was really to set up a meeting in which NCAS could consider all the documents.
115. Dr Robinson considered Dr Hassan's failure to make clinical notes when he had done the half-day locum was a serious concern, even if he had subsequently forwarded them on to the practice in question. It was not simply that he had not entered them in the EMIS system; he had not done them at all

that day. One of the criteria of Good Medical Practice is to keep good, contemporaneous medical records.

116. Dr Hassan had sent the PCT copious faxes of documents which were supportive of him and these were all available to NCAS.
117. NCAS made the decision to assess Dr Hassan after the meeting on 23 August. The doctor at the meeting did not make the decision; he had to write up the case and send it up to the doctors at NCAS, who then made the decision to reopen the case. It was a two-stage process; the advisers at NCAS would have to agree there were sufficient concerns and then make the case to the doctors there, who only took up one in ten cases. NCAS had a lot of paperwork from the files the PCT had prepared for the meeting in August. Dr Robinson considered this evidence placed her letter dated 26 July 2005 in an appropriate context and as more evidence came in after that from Dr Hassan or anyone else she supplied it to NCAS.
118. It was Dr Robinson's responsibility to write to and meet with NCAS. The Chief Executive of the PCT had conferred that responsibility upon her.

FINDINGS, REASONS AND DECISIONS

- 119 The Panel considered all the documentary evidence, the oral evidence and the submissions of the parties.

Failure to co-operate with PCT's request to undertake NCAS assessment

120. The Panel considered the first discretionary ground on which the PCT had removed Dr Hassan, namely the evidence and submissions relating to whether he had ever failed to comply with a request to undertake an assessment by NCAS in breach of Regulation 11(6)(e). As a starting point they were aware that it is a mandatory requirement under Regulation 4(3)(d) for all practitioners to give an undertaking to co-operate with an NCAS assessment when requested to do so by the PCT when they apply to join a PCT's Performers List.
121. They noted Dr Hassan's objections and prevarication in relation to the NCAS assessment. His principal objection was that the PCT failed to disclose the allegations to him, depriving him of the right to respond. He submitted this differed from the situation in 2003 (when he had previously been referred to NCAS but NCAS declined to accept the referral) and comprehensive referral forms were issued. The Panel noted this appeared to be because the case file was reopened rather than a new assessment being initiated.
122. The Panel noted Dr Hassan submitted at the hearing that he had written to NCAS many times asking for a referral statement containing the allegations against him and that he considered the NCAS agreement was invalid until he had been told the allegations and given a chance to respond. He maintained the NCAS guidelines require all allegations to be substantiated and he wanted the opportunity to filter out what needed to be assessed. He also said that if he did not get a referral statement he would sign the form and do the assessment and then he would take the PCT to court.
123. The Panel also noted Dr Hassan's evidence as to whether or not he had signed a clean copy of the NCAS agreement. His evidence at the IOP hearing (which is given under oath) was that he had signed and returned to Professor Scotland at NCAS a clean copy of the NCAS agreement (*paragraph B page 26*) and his evidence before them, also under oath, was that he had signed and returned it. However, when reminded he was under

oath, Dr Hassan told the Panel he might not have sent a clean copy of the agreement to NCAS and said it could be human error on his part.

124. In closing submissions Dr Hassan enclosed a copy of a recorded delivery slip for £7.40 for documents sent to the Chief Executive of the PCT on 26th September 2006 with a note this was for the fresh agreement sent to the PCT before the hearing for removal on 3rd October (*page A106*).
125. The Panel considered the PCT's evidence on this issue. They noted the PCT was aware Dr Hassan felt the referral to NCAS was unjustified and so he did not want to comply, but did not share his view. The PCT submitted the only matter pertinent to this appeal was whether Dr Hassan had complied with the referral and the NCAS process and the PCT's view was that he had not.
126. The Panel also noted the PCT's oral evidence that at the IOP hearing Dr Hassan said on two occasions that he had signed a clean copy of the NCAS agreement and sent it back, but neither they nor NCAS had received it, and its closing submission that Dr Hassan's evidence about returning the NCAS agreement was vague and extremely contradictory (*page R187*).
127. There were further closing submissions from the PCT pointing out that even in 2003, Dr Hassan's poor response to the initial NCAS referral was evidence of his lack of co-operation. It submitted that although it was Dr Hassan's contention at the hearing that he repeatedly asked for a new referral statement, despite copious correspondence to the PCT, he could not produce any documentation of this specific request, which in any event, NCAS had decided was not necessary.
128. The Panel accept that Dr Hassan felt extremely aggrieved about the allegations made against him; he had submitted Mr Colman had indicated at the IOP hearing that the IOP may not think there was a huge amount in that complaint. They also felt that even if it was not a requirement for a fair and balanced view of the allegations to be provided to NCAS at the initial stage, relations with Dr Hassan might have been better if Dr Robinson had been more helpful in explaining the new allegations to him and had given a fuller explanation and a more balanced view of the allegations; for example, they thought it was unhelpful to have included Dr Aggarwal's unsubstantiated allegations in her initial letter to NCAS without any further explanation.
129. However, whilst the Panel consider a clearer explanation of the new allegations and the NCAS assessment process might have helped to defuse the situation, they note that NCAS makes it entirely clear on its website and in its handbook that its aim is to work with all parties to clarify concerns and make recommendations to help the practitioner continue to deliver a high-quality and safe service for patients. They also note Dr Hassan acknowledged in his evidence (paragraph 73 above) that NCAS had informed his solicitor one week ago (*letter dated 22nd January 2007, pages A108-110*) that the previous referral statement (from 2003) was sufficient but he maintained the guidelines require all allegations to be substantiated. The Panel further note that the recent letter from NCAS to his solicitors also clearly and fully explained the position and states (*page A109*):
"The assessment does not focus solely on the specific issues that prompted a referral, nor is it designed to establish whether a practitioner is fit to practise on the basis of specific allegations against him or her. The assessment will identify areas of satisfactory practice as well as areas of the practitioner's performance that require improvement. It is also intended to provide the

referring body and practitioner with a way forward aimed at bringing the case towards a resolution.”

130. In the circumstances the Panel finds Dr Hassan was given appropriate advice on the correct procedure for NCAS assessment on several occasions but he chose not to comply and to interpret the procedure and advice he received as he saw fit. For example, the Panel note he made great play of the fact that when Professor Scotland wrote to him on 2nd August 2006 (*pages 193-194*) he stated in that letter that when considering cases for assessment NCAS would take into account some of a list of factors he set out, including the problem being adequately defined and substantiated, and that Dr Hassan took this as evidence that proper procedure had not been followed, whilst ignoring the rest of the contents of that letter.
131. The Panel are also aware that the Department of Health Guidance on Primary Medical Performers Lists published in August 2004 specifically states that failure to co-operate with a referral to NCAS can be regarded as evidence of unwillingness on the part of the doctor to work with the PCT to deal with performance or competence problems (*paragraph 29.8*). They accept the PCT's view that Dr Hassan's opinion of the appropriateness of the referral did not diminish his obligation to comply with the NCAS assessment and reject Dr Hassan's opinion that the referral and investigation were not properly conducted. Accordingly, the Panel finds that even if it might have been more helpful for the PCT to have better explained the new allegations and object of the NCAS procedure to Dr Hassan, it was not incumbent upon it to do so, and the PCT did follow all proper procedure and guidance.
132. Furthermore, the Panel have grave concerns relating to Dr Hassan's credibility. They note his repeated assertions that despite writing to NCAS many times it failed to provide him with details of the allegations, but they cannot find any evidence in the documentation that he did in fact write to them with such a request.
133. Furthermore, Dr Hassan's conflicting evidence relating to whether or not he signed a clean copy of the NCAS agreement and returned it either to NCAS or the PCT (see paragraphs 123 and 124 above) is of the utmost concern. He gave evidence to the IOP under oath that he had signed and returned a clean copy of the agreement to Professor Scotland and repeated this under oath to the Panel, until when reminded he was under oath, he changed his mind. In the Panel's view, he further exacerbated the situation by claiming in his closing submissions that he had in fact sent the signed agreement back to the PCT, when the PCT has no record of receiving it (although it did receive other documents and written representations from Dr Hassan around this time for the removal hearing on 3rd October (*see page 137*)). The Panel consider the recorded delivery slip for £7.40 Dr Hassan produced as evidence of returning the agreement gives no indication of the contents but the cost indicates it could not simply be for the few pages of the assessment agreement. The Panel also wonder why, given the importance of the agreement in relation to his removal, if he had sent it, Dr Hassan did not bother to check it had been received before the removal hearing. The Panel wondered if the agreement could somehow have been lost by the PCT when it received Dr Hassan's other documents but they felt this was implausible. Given Dr Hassan's contradictory and confusing evidence on this issue, the Panel is not persuaded by his evidence on this point and finds he failed to return a clean, signed copy of the agreement to NCAS or the PCT.
134. The Panel is also concerned by Dr Hassan's evidence relating to the

death certificate the subject of the nursing home complaint. He initially gave evidence that the annotations on the certificate had been made by a staff nurse at Willowdale Nursing Home he had accused of neglect and although it looked like his signature on the form he did not think it was his handwriting; he thought someone had copied it. However, when questioned on this issue, he claimed he had partially filled in the certificate and then it got into the hands of the nursing home and suggested it had been stolen from his drawer. The Panel does not find Dr Hassan's evidence on this issue to be credible.

135. Given all of the above, whilst the Panel acknowledges that Dr Hassan felt aggrieved at the manner of his referral to NCAS, they consider that does not in any way invalidate the requirement for Dr Hassan to undergo the NCAS assessment. Dr Hassan has submitted the best way forward would be to restart local procedures instead of NCAS assessment (*page A125*) but it is not within his power to decide a suitable way forward. Regardless of any shortcomings Dr Hassan claimed in the way the referral was handled by Dr Robinson and the PCT, the Panel finds it was entirely within the PCT's remit to refer him for NCAS assessment, and by repeatedly failing to co-operate with that assessment he is in breach of Regulation 11(6)(e)

Failure to perform services within the area of the PCT during the preceding 12 months

136. The Panel considered the second discretionary ground on which the PCT had removed Dr Hassan, namely the evidence and submissions relating to his failure to provide services within the Westminster PCT area for a period of at least 12 months.
137. The PCT's evidence was that following a routine annual check by the PCT to establish whether GPs on its Performers List were still working in the area, the PPDMG noted at its meeting in July 2006 that Dr Hassan had not been providing services within the Westminster PCT area for a period of at least 12 months and agreed that Dr Hassan should be informed it would also be considering his removal from the Performers List on this ground under paragraph 10(6) of the Regulations. It considered this issue at the hearing on 3rd October and on the basis of the evidence before it concluded that Dr Hassan should also be removed from the Performers List on this ground.
138. In closing submissions the PCT submitted that prior to half a day's work as a locum in Westminster in March 2005, which gave rise to complaints from the practice that no clinical records were made, Dr Hassan had not provided services in the area for over 18 months.
139. Dr Hassan's evidence was that the Southend surgery had been allocated for the NCAS assessment. He had been led to understand he should assist by staying there and complying. There was no reason for his removal on the twelve month ground. This was a frank agreement and made clear repeatedly.
140. Dr Crowhurst's evidence was that Dr Hassan had a terrible problem because he needed to be on a Performers List somewhere to continue practising as a doctor. There was no provision in the Regulations for locums who moved around the country; they needed to perform for some part of the year with the "mother" PCT but how could Dr Hassan do this when he was coping as a locum elsewhere in a very busy practice?
141. The Panel acknowledges this aspect of the Regulations can prove

problematic for locum practitioners. However, yet again, they consider that Dr Hassan has taken one particular fact (that is the necessity for him to be in a clinical environment with which he is familiar for his NCAS assessment) but failed to acknowledge the overall situation. The Panel finds that for whatever reason Dr Hassan failed to provide services within the Westminster PCT area for a period of at least 12 months, it was entirely within the PCT's discretion to remove him from its Performers List for being in breach of Regulation 10(6).

NATIONAL DISQUALIFICATION

142. Although directed to make closing submissions on national disqualification, the PCT failed to do so.
143. Dr Hassan submitted (*pages A130-131*) that the IOP did not decide on suspension, which is the equivalent of national disqualification, so why should the Panel consider it.
144. He also submitted there were plenty of constructive options for a doctor of his 35 years of service and with his good clinical reports and RCGP qualification, national disqualification would be illegal. He contended that national disqualification stood no chance in a judicial review or crown court which he was pursuing against Dr Robinson for slander. He also submitted the Panel had more constructive options, in the knowledge they had from the documents he has submitted, of the suspicious circumstances that surrounded the actions of the PCT, Dr Robinson and NCAS and he again referred to Dr Robinson's failure to disclose the allegations in her referral letter to NCAS (*page 139*) .
145. Dr Hassan contended the documents and facts which were not disclosed at the time of the PCT hearing for his removal meant the Panel could question the credibility of the present case and they should support him. He also repeated that national disqualification would stand no chance in judicial review by the Crown Court.
146. The Panel notes the local antagonism between Dr Robinson and Dr Hassan and his desire to be included in Southend on Sea PCT's Performers List. However, it views with extreme concern Dr Hassan's angry, abusive and repeated attacks on Dr Robinson, both in his dealings with her in relation to his removal, for example at the meeting on 4th July 2006 (*see page R90*), and in his behaviour before them at the hearing, when he accused Dr Robinson of fraud, misleading the PPDMDG, and wanting to cause him maximum damage. The Panel also notes Dr Hassan's closing submissions that he intends to pursue Dr Robinson in court for slander and that he will seek judicial review if he is nationally disqualified.
147. The Panel further notes Dr Hassan's submission that as the IOP did not decide on suspension, which he equated to national disqualification, the Panel should not consider it. The Panel wishes to point out that they are entirely separate to and independent of the IOP and governed by separate Rules and Regulations which entitle them to make any decision which the PCT could have made. Furthermore, the IOP only hears submissions, not evidence. Accordingly, the Panel reject this submission.
148. The Panel have noted Dr Crowhurst's evidence in support of Dr Hassan and the many supportive references in his documents. However, the Panel has already set out their concerns about Dr Hassan's integrity and this, coupled

with his behaviour as outlined in paragraph 146 above, leads them to conclude that the grounds for removal are not essentially local. Accordingly, given that the Panel consider Dr Hassan has repeatedly demonstrated a grave lack of insight and repeatedly shown himself to be unwilling to undergo NCAS assessment and to work with the PCT to deal with performance or competence problems, the Panel consider the grounds for his removal are equally relevant to any other List.

149. The Panel are aware of the effect of an order for national disqualification upon Dr Hassan and the practical effect of it preventing him pursuing his career as a general practitioner within the NHS for a minimum of two years, but consider an order for national disqualification to be reasonable, necessary and proportionate in the interests of patient safety and good medical practice. However, this is not a case in which the Panel consider that they should make an order under Regulation 19 that an application for review cannot be made for five years.

SUMMARY

150. The Appellant's appeal against removal from the Performers List under Regulations 11(6)(e) and 10(6) is dismissed.
151. The Appellant's continued inclusion in the Respondent's Performers List would be prejudicial to the efficiency of services which those in the relevant performers list perform and he should be removed forthwith.
152. The Appellant is to be nationally disqualified from inclusion in all Lists prepared by all Primary Care Trusts and all Health Authorities including but not limited to those referred to in Section 49N(1) of the National Health Service Act 1977 as amended.

APPEAL.

153. Finally, in accordance with Rule 42(5) of the Procedure Rules, the Panel hereby notifies the parties that they have the right to appeal this decision under and by virtue of section 11 of the Tribunals and Inquiries Act 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 day of 2007

.....
Debra R Shaw
Chairman of the Appeal Panel