

**THE PRIMARY HEALTH LISTS TRIBUNAL  
CASE NUMBER 15247**

**DR BA SINGH**

**Appellant**

**and**

**BIRMINGHAM EAST AND NORTH  
PRIMARY CARE TRUST**

**Respondent**

**REASONS**

The references in these reasons are to the paginated bundle prepared for the Primary Health Lists Tribunal, for example R 30

1. The appellant (Dr Singh) applied for inclusion on the Performers List of the Birmingham East and North Primary Care Trust (the PCT) on 15.12.07. According to the minutes of the Family Health Services Committee of the PCT which considered his case on 15.1.2010:

No further action was taken on Dr Singh's application, pending the outcome of the GMC's Fitness to Practice Panel Hearing<sup>1</sup>.

2. The GMC Fitness to Practice Panel further considered Dr Singh's case in October 2009. The minutes of the Panel were then communicated to the PCT who then dealt with Dr Singh's case in January 2010.
3. The tribunal was not provided with any evidence that Dr Singh was notified about the 15.1.2010 meeting. Counsel for the PCT informed the tribunal that there was a PCT policy that practitioners would not be invited to such a meeting.
4. The Family Health Services Committee made a decision under regulation 6(1)(a) of the National Health Service (Performers Lists) Regulations 2004, known as the 'suitability ground'. The sole reason for their decision was recorded in their minutes as being because:

Dr Singh had not met the requirements of the General Medical Council's Fitness to Practice Review Panel Hearing held between 7-9 October 2009<sup>2</sup>.

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<sup>1</sup> R63

5. The decision was communicated to Dr Singh by letter dated 25.1.10. The reasons for the Family Health Services Committee's decision were amplified in this letter. The comments of the GMC Fitness to Practice Panel Hearing were noted, in particular that the recommendation of the Panel that Dr Singh obtain a half day position at a GP training practice had not been met.
6. Dr Singh appealed to the Primary Health List Tribunal (the tribunal) against this decision by letter dated 19.2.10. In support of his appeal he provided correspondence from Professor David Wall (Deputy Regional postgraduate Dean – NHS West Midlands) which identified a number of issues including the need for Dr Singh to be appraised and the need for him to obtain a half day position in training practice.
7. The PCT was represented at the tribunal hearing by counsel. No representative from the PCT attended the hearing and therefore the PCT relied on documentary evidence. Dr Singh was unrepresented; he was accompanied by Dr Dinha to support him. He gave oral evidence that he had been appraised and that he had secured a place in a training practice. A letter from Dr Sihota dated 6.4.10 confirmed the attachment to a training practice. This evidence was not disputed by the PCT.
8. The hearing before the tribunal is by way of rehearing and the tribunal may make any decision that the PCT could have made. The first matter that the tribunal considered was what 'ground', if any, could be relied upon. The relevant grounds in this case were suitability and efficiency.
9. The Department of Health published in 2004 a document entitled 'Primary Medical Performers Lists – Advice for Primary Care Trusts on list management' (the Advice) which provides guidance on the terms suitability and efficiency. In relation to the efficiency ground 'broadly speaking'<sup>3</sup> the relevant issues are of competence and quality of performance. In relation to the suitability ground there:

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<sup>2</sup> R65

<sup>3</sup> Advice paragraph 7.4

is a lack of tangible evidence of a doctor's ability to undertake the performer role (for example, satisfactory qualifications and experience, essential qualities).<sup>4</sup>

10. Although there is overlap between the grounds, if a doctor cannot meet the suitability ground he cannot be included on the performers list subject to conditions.

The effect of the law is that a doctor is either suitable or unsuitable. There are no degrees of unsuitability.<sup>5</sup>

11. Given the deficiencies that the GMC Fitness to Practice Panel Hearing identified in Dr Singh's practice the tribunal was satisfied the PCT was correct to act on Dr Singh's application to join their panel. The concerns about Dr Singh's practice identified by the GMC Fitness to Practice Panel Hearing meant that the public should be protected.

12. The tribunal however decided that 'efficiency' better reflected Dr Singh's circumstances than 'suitability'. In arriving at this conclusion the tribunal took the following into consideration: the GMC Fitness to Practice Panel Hearing by imposing conditions on Dr Singh's registration acknowledged that he had displayed insight into his problems and there was potential for him to respond positively to remediation/training. In summary he had the potential to change.

13. The tribunal was therefore satisfied that Dr Singh could be placed on the PCT's performers list with the public being protected by the imposition of conditions. In arriving at this decision the tribunal took into account the following factors: the resource implications to the PCT did not appear to be of significance (the GMC continues to evaluate Dr Singh's clinical capabilities and he was funding his own position in the training practice) and he would not be able to resume practice unless this was sanctioned by the GMC.

14. The tribunal therefore allowed Dr Singh's appeal against the PCT's refusal to include him on their performer's list. The tribunal also determined that

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<sup>4</sup> Advice paragraph 7.10

<sup>5</sup> Advice paragraph 15.6

to prevent prejudice to the efficiency of the PCT's service the following conditions should be imposed:

- a. Dr Singh must comply with all the conditions listed in paragraphs 1 to 17 of the minutes of the GMC Fitness to Practice Panel Hearing which took place between 7-9 October 2009; and
- b. Dr Singh must comply with any conditions that may be imposed by the GMC Fitness to Practice Panel Hearing when they review his case.

15. The PCT should make available these reasons to the GMC within 21 days of receipt.

A Harbour	Tribunal Judge
Dr S Ariyanayaham	Professional
S Brougham	Member

Dated 21.5.10