

DR N SPICER

Appellant

and

HEREFORDSHIRE PRIMARY CARE TRUST

Respondent

REASONS

References in the body of the text, for example ‘Dr Badcock statement 31 December 2009 page 3 76’ include the page number in the trial bundles, in this example 79.

1. This is an appeal by Dr Spicer against the decision by the Herefordshire Primary Care Trust (the PCT) to remove him from their performers list. The ground of the removal was unsuitability under regulation 10(3) and 10(4)(c) of the National Health Service (Performers Lists) Regulations 2004. The decision and reasons were sent to Dr Spicer by letter dated 5 June 2009. The PCT subsequently reviewed their decision to suspend Dr Spicer and decided, given that the GMC had also suspended Dr Spicer, that their suspension was no longer required. The GMC suspension expired on 13 August 2010 and as the Primary Health Lists Tribunal hearing had had to be postponed the PCT on 18 August 2010 further suspended Dr Spicer until the conclusion of the appeal process.
2. The Primary Health Lists Tribunal (the panel) concluded the hearing of Dr Spicer’s appeal on 17 January 2011. The decision, that his appeal had been dismissed, was communicated to him on 4 February 2011.
3. On 24 June 2010 the panel made a decision that the hearing should be held in private and that a summary of the reasons would be made public. (The Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 rules 30 and 14.) These are the summary reasons. If either party wishes to disclose the full reasons then permission should be sought from the Primary Health Lists Tribunal and the other party must be notified.
4. Dr Spicer is a General Practitioner. In 2005 his wife became aware that he was accessing pornographic literature on the internet. She asked him to stop and he did not do so. She monitored his usage. In 2007 she reported her concerns to the senior partner in his GP practice. The matter was then referred to the PCT and the police. On 9 November 2007 Dr Spicer was suspended from the practitioners list and in June 2009 the PCT made a decision to remove him from the list; it is this decision which is the subject of the present appeal. The police investigation resulted in no criminal charges being brought against Dr Spicer.

5. On 14 December 2007 the Interim Orders Panel of the GMC suspended Dr Spicer's registration for 18 months. The Fitness to Practice Panel of the GMC considered Dr Spicer's case in January 2010 and on 15 January 2010 suspended his registration for 6 months. A GMC review hearing took place on 22 July 2010 and at that hearing it was determined that Dr Spicer could resume practice. The GMC suspension expired on 13 August 2010.
6. The first substantive hearing of this case was listed to commence before the panel on 18 January 2010. The case had to be adjourned to allow the PCT to obtain all reports from the GMC and to arrive at a decision as to whether they wished, in the light of the GMC findings, to continue to oppose Dr Spicer's appeal. The case was then re-listed to be heard on 24 June 2010. Dr Spicer's then counsel became unwell on the day before the hearing and the case had to be again postponed. The substantive hearing of the case commenced on 22 November 2010 and evidence was heard on that day, and six other days, concluding on 17 January 2011.
7. The panel read statements from, and heard oral evidence from a number of witnesses. The PCT called DC Cook, DI Mardell, Dr Holden, Dr Warner and Dr Spicer's wife. Dr Badcock and Dr Willmott gave evidence on behalf of Dr Spicer and Dr Spicer gave evidence.
8. In addition to statements from the witnesses who gave evidence the panel was supplied with a number of other statements and additional written material. This included a statement from Anne Hughes (Head of Primary Care at the PCT), the transcript of the PCT hearing on 7 and 8 August 2009 which resulted in Dr Spicer's removal from the list and statements of expert witnesses prepared in relation to the GMC proceedings.
9. Dr Spicer has not been convicted of any criminal offence and the police were satisfied that at the conclusion of their investigation, in their words, there was no 'criminal offence activity'. He is an experienced GP and no concerns have been expressed about his clinical competence. The GMC decided that Dr Spicer would not pose a risk to patients if he was to resume practice and the panel do not dispute that conclusion.
10. The panel accepts the opinions of Dr Badcock, Dr Willmott and Dr Holden who all consider that Dr Spicer does not now suffer from any mental illness or mental disorder.
11. The fact that Dr Spicer chose to access gay and other pornography involving adults was not the reason that the PCT took action and does not form part of the panel's reasoning. From late 2003 to 2007 however Dr Spicer chose to access material on the internet which graphically described, in text, sexual activity between a. children and adults b. children and children and c. young male adults. His access was not random: he made a series of choices of websites to access where the text that he was going to view was clearly signposted.
12. It was accepted by all who had to read the downloaded text stories, particularly the stories about children, that the material was abhorrent.

The Panel found the material that you viewed to be abhorrent. Though consisting of text rather than images and, as such, fruits of the imagination, the stories embody a perverse distortion in their portrayal of children and children with adults. It is shocking that such material was accessed regularly over a number of years by a medical practitioner. (*GMC Determination page 1 6.1.10*)

13. The panel was unable to accept (as the GMC had concluded) that Dr Spicer was in the grip of an obsession which somehow prevented him from distinguishing right from wrong. The evidence from Dr Holden was that even if he was suffering from a mental disorder it was not of a sufficient degree to prevent him from recognising the inappropriate nature of the material he was accessing. The panel consider that Dr Spicer was responsible for his actions and do not consider that his thinking processes were so 'derailed', as Dr Badcock suggests, that this could not prevent him from knowing that what he was doing was wrong. The fact that Dr Spicer's behaviour might partly have been a response to his marital difficulties cannot justify the inappropriateness of his actions.
14. The panel did not find Dr Spicer's explanation for his actions that resulted in the PCT's decision to suspend him plausible. Dr Spicer's explanation was that he was seeking reassurance that he was 'normal' following a medical procedure that he had undergone. If that had been the case he would not have focussed on internet sites with an emphasis on paedophilia.
15. His internet usage was discovered by his wife. She challenged him to stop, he did not do so and he lied to her saying he had stopped. His usage only stopped when she contacted the senior partner in his practice who in turn contacted the police.
16. One of his early responses to being 'found out' is contained in an email to his ex-partner Dr Ilsley. On 8 January 2008 Dr Spicer sent an email to Dr Ilsley:

I don't think you or anybody outside the family understand the enormity of what has happened to me over the last two months. I am now beginning a life sentence: I have lost my wife, possibly (if she gets her way) my children, my house (which I paid for and paid all the bills for entirely myself) and now I have to fight for my job as well. And what crime have I committed – none. What I did do was to "pick up" a book of stories and read only the first few paragraphs (and the evidence actually supports this) of many of them, including young, old, rich, poor, black, white etc etc. Because I was not interested in who or what these individuals were, or what they were doing, the fact that some of them were children and the potential significance of this completely passed me by. I never in a million years thought that [] would get a third party to examine my computer and in so doing, shaft you the way she did. Having used this as the sole reason for the divorce and my removal from my house she must persue [sic] her beliefs right down to the wire.

17. Later in the same email he writes:

I see all of this as a huge, huge injustice. If you choose to throw me away before a single professional has ever spoken to me, I have nothing further to lose and will try and fight. publicly [sic] if necessary. (*Ann Hughes statement 18 March 2009 AH 11 464*)

18. The panel was not able to accept that when he wrote to Dr Ilsley, Dr Spicer was aware that the material he had been reading was unpleasant. If he had been aware he would have said so. His understanding of what he was doing at that time was muddled and confused; he lacked insight.
19. The fact that at the material time he did not recognise the references to children in the text stories which he accessed as having 'a general potential paraphilic significance' (*Dr Badcock statement 31 December 2009 page 3 76*) demonstrated a profound lack of judgement.
20. He was a family practitioner with responsibility for medical input into two schools. Regardless of any objective analysis of risk his failure to recognise how his conduct would be viewed by his peers, and his patients, amounted to such poor judgment that his removal on that ground alone was justified.
21. The panel are satisfied that the PCT was justified in suspending him when his actions came to light and fell to be investigated. Two questions now follow:
 - a. Can a GP who displayed such poor judgement in 2007 with no apparent recognition of the seriousness of his actions be considered suitable for inclusion on the list today?
 - b. Have matters now changed sufficiently to conclude that that he is now suitable to return to the performers list and therefore return to NHS general practice?
22. Since 2007 he has had countless opportunities to reflect on his actions. When he gave evidence to the panel he adopted the adjective 'abhorrent' in describing the material he accessed, although the statement that was submitted on his behalf to the Primary Health Lists Tribunal contains no indication of this.
23. The panel considers that Dr Spicer's understanding for the motivations behind his actions is incomplete and his insight remains partial. His continuing, and categoric, denial that he gained any sexual gratification from reading stories about incest or sex between underage children and adults (*Dr Spicer statement undated page 2 paragraph 6 11*) is not regarded as the complete story, even by those experts he relied upon to support his appeal. He still has in Dr Badcock's words 'blind spots' and as Dr Willmott observed 'he does not understand himself well'. The panel found his account of the reasons that he viewed the material that he chose to access (to reassure himself about the medical procedure that he had undergone) illogical and implausible.
24. The appeal to the Primary Health List tribunal is by way of redetermination. The panel must follow the criteria contained in regulations 11(1) and 11(2), and in addition 11(7) and (8) the National Health Service (Performers Lists) Regulations 2004. In addition the

panel must have regard to any relevant advice. Guidance for PCTs states that the suitability of a general practitioner must involve considerations of the individual practitioners 'essential qualities'. (Advice for Primary Care Trusts on list management paragraph 7.10 Department of Health 2004) These qualities are not further defined in the guidance.

25. The panel consider that a GP must behave in such a way as to not jeopardise the trust of his patients. The panel is satisfied that Dr Spicer's actions which are the subject of these proceedings would have destroyed the trust of the vast majority of his patients.
26. If he were to return to practice his patients would have to be reassured that his attitudes, and insight, had fundamentally changed. The tribunal heard little in his evidence, and saw little in the way he chose to present his case, that indicated this level of change.
27. In the case of BP Mr Justice Munby outlined an approach to cases of this nature:

This does not mean, of course, that the Tribunal is simply to pander to the unreasoned baying of the mob; but it does mean that it is entitled to have regard to matters which are likely to be of concern to ordinary sensible people. (*Secretary of State for Children, Schools and Families v BP [2009] EWHAC 866 Admin.*)

28. In this case a senior and experienced GP focussed on reading pornographic and paedophilic material for a four year period, on a regular basis, and when he was suspended he displayed no recognition that the material that he had been accessing was, or would be, regarded as 'abhorrent'.
29. If these facts were known to the public, the panel is satisfied that they would have great concerns about Dr Spicer returning to general practice regardless of any determination as to risk. The PCT has to take into account public confidence in the way that their lists are regulated.
30. If the public was to accept that the risk assessments in this case were neutral then they would remain deeply concerned about his judgement; his return to the list would have to be prefaced by Dr Spicer being able to demonstrate significant insight and understanding of his actions. The panel was satisfied, on the basis of his evidence, that he was unable to do this.

A Harbour Tribunal Judge

S Ariyanayagam Professional

D White Member

Dated 14 February 2011