

**IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY**

**Case No: 15197**

**Panel**

**Mrs D Shaw** - **Chairman**  
**Dr M Sheldon** - **Professional Member**  
**Mr T Bennett** - **Member**

**BETWEEN**

**Dr BIMAL PROVA ROY BURMAN**

GMC NO: 1013441

**Appellant**

**and**

**ENFIELD PRIMARY CARE TRUST**

**Respondent**

**Appeal by Dr Bimal Roy Burman against refusal to include on the Performers List**

**DETERMINATION**

**The Appeal**

1. This is an appeal by Dr Bimal Roy Burman ("the Appellant") against the refusal of Enfield Primary Care Trust ("the PCT") to include her on its Performers List under section 6(2)(a) of the National Health Service (Performers Lists) Regulations 2004 (as amended) and associated regulations ("the Regulations").

**History**

2. The Appellant was previously a performer on the PCT's Performers List.
3. On 19<sup>th</sup> to 21<sup>st</sup> December 2007 a GMC Fitness to Practice Panel ("FTP Panel") determined that the Appellant's fitness to practise was impaired by reason of her misconduct and suspended her from the Medical Register for a period of 12 months with immediate effect.
4. Consequently, the PCT removed the Appellant from its Performers List on 15<sup>th</sup> January 2008 with immediate effect, pursuant to the mandatory removal requirement in section 26 of the Regulations.
5. On 5<sup>th</sup> December 2008 the FTP Panel, reviewed the Appellant's suspension and determined her registration should be made subject to conditions from 12<sup>th</sup> January 2009 until 11<sup>th</sup> July 2010.
6. The Appellant applied to rejoin the PCT's Performers List on 7<sup>th</sup> July 2009. The PCT decided that it was unable to accept the application, as the Appellant had not given any evidence of intention to work in the PCT's area pursuant to section 6(2)(a) of the Regulations. It notified the Appellant of its decision in a letter dated 30<sup>th</sup> July 2009

7. The Appellant appealed against the PCT's decision in an undated letter to the FHSAA received on 25<sup>th</sup> August 2009. She failed to particularise her grounds of appeal and the basis of her appeal was not clear.

### **PCT's response to appeal application**

8. In its Response dated 5<sup>th</sup> October 2009 the PCT's primary submission was that there is no right of appeal under section 15 of the Regulations to a mandatory refusal under section 6(2)(a) of the Regulations and the appeal should therefore be dismissed.
9. The PCT also submitted that as the Appellant is not on the GP Register, did not provide evidence of indemnity cover, and failed to provide evidence of compliance with the GMC's conditions, these deficiencies obliged it to refuse her application under section 6(2)(a) of the Regulations.
10. In case the FHSAA were to find against the PCT in this respect, the PCT also submitted the Appellant was unsuitable to be included in its Performers List because, in her application

10.1 She failed to fulfil the requirement to inform the PCT of the conditions to which her registration is subject

10.2 She failed to disclose that she had previously been removed from the PCT's Performers List, falsely stating that she has not been removed from any list

10.3 She falsely declared that she is included in the GP Register

10.4 She failed to respond to the question requiring her to state whether she has been subject to any investigation into her professional conduct

### **Directions issued to the Appellant**

11. On 22<sup>nd</sup> October 2009 the Appeal Panel chair issued preliminary directions to the Appellant to provide particularised grounds of appeal, together with:
  - 11.1 Evidence that she is registered on the GP Register at the GMC, failing which she must provide an explanation of why her name is not currently so listed
  - 11.2 Evidence of professional indemnity cover
  - 11.3 Evidence of appointment to a salaried GP post in the Enfield PCT's area which has been approved by the London Deanery
  - 11.4 Evidence of when and to whom at the PCT she sent details of the GMC conditions to which her GMC registration is subject, as she indicated she had done in her letter dated 21<sup>st</sup> August 2009.

12. Although the Appellant submitted a letter dated 26<sup>th</sup> October 2009 and some further documents in response to these directions, including a letter dated 16<sup>th</sup> October 2009 in which she declared "*nobody will offer me a job until I am on the Performers List*", she failed to provide the required information.
13. On 18<sup>th</sup> November 2009 the Appeal Panel chair issued further directions to the Appellant to, inter alia, comply with outstanding preliminary directions previously issued to her.
14. The Appellant failed to respond.

### **Hearing**

15. The Hearing took place on 18<sup>th</sup> November 2009 at the Care Standards Tribunal, Pocock Street, London SE1. A list of the persons present is attached at Appendix I.

### **Preliminary Issue**

16. In the PCT's Skeleton Argument and at the hearing Mr Reynolds, on behalf of the PCT, submitted that the Appeal Panel did not have jurisdiction under section 15 of the Regulations to hear an appeal against a decision by a PCT to refuse to include a person on its Performers List under section 6(2)(a) of the Regulations.
17. He further submitted that given the Appellant's failure to comply with Directions, the Appeal Panel should consider striking out the appeal on the basis the Appellant was unable to show cause why it should not do so.
18. The Appeal Panel requested submissions from the parties on the jurisdictional point outlined in paragraph 16 above.
19. Mr Reynolds submitted section 15(2) of the Regulations sets out decisions capable of appeal to the FHSAA, none of which cover a decision made under section 6(2)(a). Accordingly, on a clear reading of the Regulations, the Appeal Panel did not have jurisdiction to hear an appeal under this provision.
20. He pointed out this very point was considered by another FHSAA appeal panel in *Dr Mangaria Srivinas Rao and Central Liverpool PCT - Case No: 10780 December 2003*. Although that case referred to the 2001 Regulations in place at the time, there is no practical difference between the relevant provisions in the 2001 Regulations and the 2004 Regulations.
21. In that case the appeal panel sought submissions from both parties on the issue of jurisdiction under Regulations 15 and 6(2)(a). The appeal panel determined "that we should read Regulation 15 as broadly as possible and to give a right of appeal if the regulation is capable of being so read. It [is] with some regret that we conclude that we are not able to interpret Regulation 15 so as to include a right of appeal against the decision by reference to Regulation 6(2) of the 2001 Regulations. The wording is in our view plain that the only decisions which can be appealed against are those under Regulation 15(2) and so far as relevant to this decision do not include a decision to refuse admission to the Supplementary List under Regulation 6(2)."
22. Mr Reynolds submitted that determination supported a very clear reading of the existing Regulations and the Appeal Panel had no jurisdiction to hear this appeal under Regulation 6(2)(a).
23. The Appellant did not make any submissions directly relevant to the issue of jurisdiction and she was unable to confirm that she had received any offers of employment.

24. At this point the Appeal Panel adjourned the hearing to consider the preliminary issue of whether it had jurisdiction to hear the appeal.

### **Determination**

25. Whilst we have sympathy with the Appellant's plight and note that the PCT's decision letter stated she had a right of appeal, we consider that right of appeal only relates to the matters referred to in paragraph 10 above in so far as they comprise discretionary grounds for refusal under Regulation 6(1) and such right of appeal could only be exercised if the Appellant had been able to provide some clear form of evidence that she intends to perform services in Enfield PCT's area.
26. However, we note that despite being asked in preliminary directions for evidence of appointment to a salaried GP post in the Enfield PCT's area which has been approved by the London Deanery, and despite being reminded in further directions to deal with this outstanding issue, the Appellant has failed to provide any evidence that she intends to perform services in Enfield PCT's area.
27. We have considered and concur with the reasoning of the earlier appeal panel set out in paragraph 21 above and accordingly, we do not consider we have jurisdiction under Regulation 15 to proceed further to hear the Appellant's appeal.
28. We therefore dismiss the Appellant's appeal for want of jurisdiction.

### **Supplementary matters**

29. We note that in its decision letter the PCT has invited the Appellant to re-apply for inclusion on its Performers List, subject to her providing it with evidence that she has been offered a salaried GP post in the Enfield area, where all the GMC conditions are met.
30. If the Appellant wishes to re-apply for inclusion on the PCT's Performers List in the future, we would:
- 30.1 urge her to obtain an offer of employment, subject to her inclusion on the PCT's Performers List and to provide a letter from her prospective employer to the PCT confirming this and setting out the terms of its offer of employment
  - 30.2 remind her that under the GMC conditions to which she is subject, any such post must be approved by the Director of Postgraduate General Practice Education at the London Deanery
  - 30.3 remind her that she must also comply with all of the other conditions the GMC has placed on her registration
  - 30.4 urge her to look at the reasons given by the PCT in its decision letter dated 30<sup>th</sup> July 2009 as to why it was unable to accept her application, which she will still need to meet on any future re-application
31. We direct that a copy of this decision be sent to the persons and bodies referred to in section 47 of the FHSAA (Procedure) Rules 2001 (the Rules).
31. In accordance with Rule 42(5) of the Rules, we hereby notify 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 26<sup>th</sup> day of November 2009**

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