

**IN THE PRIMARY HEALTH LISTS**

**CASE NO: PHL/15279**

**BETWEEN**

**DOCTOR J S PARTINGTON**

**APPELLANT**

**AND**

**SUNDERLAND PCT**

**RESPONDENT**

**DECISION AND REASON**

### **REPRESENTATION**

For the Appellant in person  
For the Respondent Mr A Hartrick, Solicitor

This is an Appeal by Dr Partington to remove the Appellant from the Performers list under Regulation 12(3) of the National Health Service (Performers lists) Regulations 2004 (the Regulation) against the decision of the Respondent dated the 27<sup>th</sup> May 2010.

### **Background**

1. The Appellant is a General Practitioner who has provided medical services since the 1<sup>st</sup> April 1993 serving an inner city population in Sunderland of approximately 7000 patients. For the three years preceding 2010 he had essentially been a sole Practitioner. However, he has recently taken on a GP Partner and three GP's are now engaged at the Practice.
2. On the 5<sup>th</sup> January 2005 the Respondent wrote to the Appellant requesting Appraisal Forms to be submitted for the year 03-04 and 04-05.

3. On the 15<sup>th</sup> January 2007 the Respondent wrote again to the Appellant requesting copies of the appraisal documentation as soon as possible, a reminder letter was written on the 12<sup>th</sup> June 2007 and formal notification was issued to the Appellant on the 17<sup>th</sup> June 2008 that the Respondent were to consider his removal from the Performers List.
4. At a Hearing on the 18<sup>th</sup> September 2008 the Appellant was contingently removed from the Medical Performers List on the following basis:-
  - a. That the Review should be completed of his Personal Development Plan no later than the 31<sup>st</sup> December 2008.
  - b. That the Appellant should submit completed appraisal documentation in June of each year.
5. In February 2009 the PDP Review was completed, although the same should have been completed on or before the 31<sup>st</sup> December 2008. On the 18<sup>th</sup> May 2009 the Respondent reminded the Appellant that his next Appraisal was due in 2009. On the 28<sup>th</sup> July and 10<sup>th</sup> August correspondence was written by the Respondent to the Appellant to request copies of the appraisal documentation.
6. On the 14<sup>th</sup> August 2009 a letter was written to all GP's in the Sunderland area advising as follows:-
  - i. The majority of GP colleagues have continued to undertake their regular annual Appraisals, however there are still a number of GP's who have not had an Appraisal for 2008/09 and a few for 2007/08.
  - ii. We will not now be pursuing admitted Appraisals from previous years, but if you have not had an Appraisal carried out during 2008/09 it is imperative that you have your Appraisal undertaken as soon as possible.

7. On the 1<sup>st</sup> September 2009 a formal reminder letter was written to the Appellant by the Respondent concerning the outstanding Appraisal which should have been completed by the end of June 2009.
8. On the 14<sup>th</sup> October 2009 the Respondent wrote to the Appellant advising that they intended to review the decision made on the 18<sup>th</sup> September 2008 to contingently remove the Appellant from the Performers List on the basis that the Appellant had failed to comply with the condition requiring submission of appraisal paperwork by June of each year.
9. At a further Hearing on the 12<sup>th</sup> January 2010 the Respondent decided to impose a further contingent removal. The Panel accepted that an element of confusion arose following the correspondence of the 14.08.2009 and therefore contingently removed the Appellant with the following conditions:-
  - i. That you inform Dr Stephenson by the 12<sup>th</sup> February 2010 of the date of your Appraisal and the name of the Appraiser.
  - ii. That you submit your Appraisal by the 31<sup>st</sup> March 2010.
  - iii. The Respondent pursuant to section 12 (2) of the said regulations imposed such conditions having decided that his inclusion in the Performers list required such conditions to remove any prejudice to the efficiency of the services in question.
10. On the 19<sup>th</sup> April 2010 the Appraisal had not been received. The Respondent notified the PCT that they intended to review the contingent removal due to continued failure by the Appellant to comply with conditions and respond to requests for information.
11. On the 27<sup>th</sup> May 2010 the Appellant did not attend, nor make written representation at the Hearing. The Respondent removed the Appellant from the Performers List under Regulation 12(3) which provides that:-

- i. If the PCT determines that the Performer has failed to comply with the condition, it may decide to a) vary the conditions imposed, b) impose new conditions; or c) remove him from its Performers Lists.

## **Appeal**

12. The Appellant appealed the said decision on the 23<sup>rd</sup> June 2010.
13. This Appeal is brought pursuant to 15 (1) of the said regulations whereby a performer may appeal by way of redetermination to the FHSAA (now PHL) against the decision of a PCT by giving notice to the FHSAA. The Primary Care Trust in question is the decision to remove the Performer under regulation 12(3)c.
14. The burden of satisfying the case is proven lies with the Appellant.
15. Regulation 12 provides a discretion in an efficiency case that instead of deciding to remove a performer from it's Performers lists, the said performer can be removed contingently. Contingent removal requires that we impose such conditions as we may decide with a view to "removing any prejudice to the efficiency of the services in question" Regulation 12(2)(a).
16. The standard of proof which we have applied is the balance of probabilities whether a fact or allegation is more likely than not to have occurred.
17. We considered the Appellant's Bundle paginated A1 to A18.
18. The Respondent's Bundle paginated R1 to R30 and a Master Bundle Index paginated 1 to 154. We have also considered the Respondents bundle and heard oral evidence from three parties.

## **Oral evidence**

19. We heard evidence from the following:-
  - i. Dr Partington.
  - ii. Dr Stephenson.
  - iii. Susanne Margaret Whinfield.

## **Dr Partington**

20. Dr Partington gave evidence. He confirmed at the start of his evidence that he could not take issue with the factual submissions of the Skeleton Argument which had been filed on behalf of the Respondent.
21. He had completed one Appraisal on the 12<sup>th</sup> June 2008. That was a completed Appraisal which was identified in the papers.
22. He had met with an Appraiser in February of this year and had a preliminary meeting as to ascertaining which documents he needed to produce to conduct the Appraisal. He gave evidence that he had maintained his training to a high standard and that he also had been subject to an Independent Patient Survey which returned high results. There were no issues raised by the PCT in respect of his clinical competence.
23. He confirmed that at one stage he was told by the PCT that he should withdraw his Appeal as it had no merits of success and he produced written evidence to that effect.
24. He had attended educational activity provided by the PCT and had attended every event which they had held. He had changed his Practice accordingly. He had had undertaken event audits, audits in the Practice, monthly meetings, chronic disease managements and other such audits.

25. He did not attend the Hearing on the 27<sup>th</sup> May as he believed it was a foregone conclusion. He said that the PCT had no other concerns in respect of his compliance with the contract, premises, staff or clinical competence. He confirmed that he had been confused when he received a letter on the 14<sup>th</sup> August 2009. When asked by the Panel as to when the Appraisal might be completed, he confirmed that if he was given a timescale he would do his utmost to deliver what was required. He said that he found the Appraisal system to be very daunting. It had not been set up to remove Doctors from practice it was supposed to be an informative gathering of information. He was now aware that there was locum cover available and funded by the PCT.
26. He confirmed that he had been in Partnership for 17½ years and had provided good service in this Partnership. He said that he would be a very stupid man if he did not comply with any conditions placed on him from this point onwards. He accepted that he had not accessed the support or appreciated that it was available and confirmed that having spoken to Dr Stephenson today, he was aware that the support was available. He confirmed that if he was to complete the Appraisal he would need more support than other Doctors as he needed somebody to help him and advise him as to what he needed to undertake.

**Dr Stephenson –**

27. Dr Stephenson confirmed that he was a Medical Director (Performance) at NHS South of Tyne & Wear and a Partner in a GP Practice in Washington Tyne & Wear. Dr Stephenson confirmed that it was well understood locum pay was available to cover GP's who needed time to undertake their Appraisals. He said that there had not been one complete Appraisal because you needed to consider the areas which you raised on your first Appraisal, on your second Appraisal subsequently to draw up a Personal Development Plan for the forthcoming year, to consider those areas where you may have needed assistance and ascertain whether the training or

28. He said that there was a lack of engagement with the Respondent throughout the proceedings by the Appellant. He did not believe that the Panel had anywhere else to go in May other than to remove him. Even with the contingent removal the Appellant had not complied with undertaking the Appraisal process. No other decision could reasonably have been made by the Panel.
29. He said that Dr Sharma who is a GP Tutor could offer some support. His name had been put forward in the past.

**Susanne Margaret Whinfield**

30. Ms Whinfield had been the Chair of the Respondent PCT since 2002. Ms Whinfield had been responsible for all three Panel Hearings. She confirmed that the Appellant had attended the Hearing in September 2008. Extenuating circumstances provided for a longer period for the Appellant to undertake his Appraisal.
31. In January 2010 there was disappointment that the Appellant had not complied with the previous decision. It was felt however, for the avoidance of doubt that there could have been confusion arising out of the letter of the 14<sup>th</sup> August and that all paperwork should now be submitted by March 2010. She said that the Panel's view was that the Appellant's priority was to his patients and their clinical care. He viewed completing Appraisals as taking him away from his patients.
32. Further conditions were imposed in January 2010 that he needed to identify by February 2010 the name of his Appraiser and the date of his Appraisal.

33. In May 2010 the Panel had received nothing in writing to confirm whether the Appellant intended to attend the Hearing. They had contacted his Practice and eventually became aware that he would not be attending due to child care responsibilities. The Panel had considered contingent removal. However, having placed those conditions in September and January nothing had been forthcoming. The Panel felt that there was no other option other than removal. The documentation had not been produced by March and it was not present at the Hearing which took place in May. They were at a loss to understand why nothing was forthcoming. She said that they felt puzzled and frustrated but had no confidence in the position changing unless something else was done. They had no desire to remove a Doctor under these circumstances, all that they wished was to obtain the documentation from his Appraisal.
34. Miss Whinfield confirmed that remained her position today. She had not received a satisfactory explanation today to give her any assurance that the Appellant will undertake an Appraisal process.
35. Miss Whinfield had a responsibility to her patients to ensure that the process was undertaken. She was conscious of the efforts of the Appellant who had tried to produce the documentation. She said that there was a failure to engage and she was at a loss to understand the lack of response to the correspondence. Sadly she believed that the decision that the Hearing took in May was correct

### **Review and Findings**

36. The oral evidence and all of the paperwork has been considered, together with the submissions from both the Appellant and the Respondent PCT. All of the witnesses were extremely helpful and truthful. The Appellant himself confirmed that he would not take issue with any of the documentation before the Tribunal. It is an accepted fact that the Appellant accepted the conditions placed upon him in September 2008 and that he did not intend to lodge an Appeal against that decision.



37. It is a contractual requirement under the NHS (GMS Contracts) Regulation of 2004 that:-

- i. A Contractor shall ensure that any Medical Practitioner performing services under the Contract a) participates in the services under the Contract, b) participates in the Appraisal system provided by the Respondent PCT unless he participates in an appropriate Appraisal system provided by another Health Service Body or is an Armed Forces GP.

38. A further requirement to comply with the GP Appraisal process is found in the NHS (Performers List) Regulation of 2004 at Regulation 9(7).

A performer who is included in a Performers List of a PCT, shall:-

- a. Participate in the Appraisal system provided by a PCT; and
- b. if the Appraisal is not conducted by the Trust in whose List he is included, send that Trust a copy of the Statements summarising that Appraisal.

39. The Appellant produced considerable training documentation confirming his ongoing training both in 2008 and 2009. At least 12 hours were identified in 2009 some of which directly related to his personal development as identified on his Appraisal in 2008.

40. The Appraisal in 2008 was completed but no subsequent Appraisal was undertaken. The Tribunal find however that areas which the Appellant identified as necessary to improve upon, he had in part addressed.

41. The Appellant did not attend the Hearing in May 2010. The Tribunal accept his evidence that he thought it was a foregone conclusion. Nevertheless, any reasonable General Practitioner facing that scenario would have attempted to remedy the situation.

42. The Tribunal believe that the Appellant is a very competent Practitioner. There is no evidence which contradicts this. The Appellant produced evidence of Independent Patient Satisfaction Surveys with 33% marked as good and 67% marked as excellent.
43. The Tribunal find it disappointing that the Appellant has still not attempted to address the Appraisal process, but believe that he now accepts that help is available to him, having given evidence that he was made aware of that through Dr Stephenson at this Hearing. The Appellant himself identified that he would need considerable support to undertake that process and the Tribunal believe that if this is offered to the Appellant, it will substantially increase the chances of his compliance in undertaking the Appraisal process.
44. The Tribunal accept that the Appellant has not engaged in the Appraisal process, however the Panel do not believe that the Respondent PCT have offered the support to the Appellant given the difficult circumstances in which he found himself him to enable him to address the completion of his appraisal documentation.
45. The Tribunal accept that time and resources have been incurred in seeking to engage the Appellant, but do not accept that considerable time and resources have been incurred as suggested. The Tribunal accept that previous conditions were proportionate and reasonable, but unfortunately they have failed to achieve the desired result.
46. The Tribunal accept that the Appellant has shown limited insight into the need to comply with the Regulatory requirements. The Tribunal also accept that these requirements are designed to assist and safeguard patient welfare. The Tribunal accept that the Appellant has not viewed the Appraisal process with any degree of urgency. Nevertheless, the Panel believe that he will now use his best endeavours to complete the necessary documentation.

47. The Tribunal would urge the Respondent PCT to identify someone, possibly Doctor Sharma, to assist the Appellant in completing the documentation as the Tribunal believe that without such assistance the Appellant will be unable to complete the necessary documentation having himself identified a need for support and guidance in so doing.
48. We have considered the entirety of the evidence in this case and whilst we accept that the Appellant has neither engaged appropriately with the Appraisal process of the PCT nor has he shown a large degree of insight into the need to comply with the necessary regulations. Nevertheless, there are indications that given the appropriate support, the Appellant would undertake the Appraisal process. This is in part evidenced by the fact that one Appraisal was undertaken in June 2008.
49. In the circumstances, and considering both the Regulations and criteria set out in the regulations in respect of a decision on removal under 11(5) of the Regulations, the Tribunal believe that imposing a contingent removal rather than removal is more proportionate as the Tribunal is not satisfied that removal is justified nor that the Appellants inclusion is prejudicial to the efficiency of the services.
50. In considering whether the Appellant should be removed on the grounds of efficiency the Tribunal consider that the removal of the Appellant would in fact cause the Respondent PCT to lose an extremely valuable resource in removing him from their Performers List.
51. We therefore allow the Appeal and impose a contingent removal with the following conditions:-
- i. That the Appellant identifies an Appraiser no later than the 30<sup>th</sup> November 2010.

- ii. That the appraisal documentation be completed and forwarded to the Respondent PCT no later than the 31<sup>st</sup> January 2011.