

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Case No: 13222

**Mr Paul Kelly
Dr Peter Leigh
Mr Colin Barnes**

**CHAIRMAN
PROFESSIONAL MEMBER
MEMBER**

BETWEEN

**DR DEV DUTT
GMC NO: 1580473**

Applicant

and

HUDDERSFIELD CENTRAL & SOUTH HUDDERSFIELD PCT

Respondent

DECISION WITH REASONS

1. With effect from 1st April 2004 Dr. Dev Dutt (the Practitioner) has the benefit of a General Medical Services Contract (the Contract) with Huddersfield Central Primary Health Care Trust (the PCT). The Practitioners address recited in Schedule 1 is The Health Centre, Spaines Road, Fartown, Huddersfield HD2 2QA.
2. By letter of 21st June 2006 the PCT terminated the contract with effect from midnight on 20th July on grounds found in paragraph 113(1) and 2(h) National Health Service (GMS Contracts) Regulations 2004 (bankruptcy of practitioner).

3. On the 10th July the Practitioner wrote to the National Health Service Litigation Authority purporting to appeal against the decision to terminate the contract. The letter of appeal did not contain grounds for appeal. It indicated he would be represented but no meaningful enlargement or clarification of the basis of appeal has been received leaving those with the responsibility of resolving the matter wholly unclear as to the basis of appeal/dispute resolution. The only communication on behalf of the Practitioner is a request by advisers to adjourn today's hearing because the Practitioner was in Court resisting an application by the Official Receiver in bankruptcy proceedings.
4. Disputes in GMS contracts are resolved by National Health Service Litigation Authority (NHSLA) on behalf of the Secretary of State except those subject to a Direction by the Secretary of State dated 8 March 2004 which requires certain disputes be resolved by the Family Health Services Appeal Authority. Included within that Direction is authority to deal with disputes falling within paragraph 113(1) and 113(2) which includes the bankruptcy provision relied on to terminate the contract in this case.
5. What the Secretary of State gives with one hand she dilutes with the other for the Direction of 8 March restricts the type of dispute to be resolved by The FHSAA to only those which ".....requires a determination as to whether any of the persons specified in paragraph 113(1) falls within 113(2) during the existence of the GMS contract" (para. 5(2)). In simple terms a purely factual exercise which, within the context of this case, amounts to deciding whether the Appellant is bankrupt.
6. Whether by inadvertence or otherwise we cannot say, but the larger (and probably more important) decision on a PCT's exercise of discretion to terminate a contract.....("The Primary Care Trust *may* serve notice....." para 113(1)) does not fall within the Direction. The corollary is that it remains to be decided by the NHSLA as part of the dispute resolution process.
7. In deciding to proceed today the Panel has considered the contents of a request by Messrs. Stachiw Bashir Green, Solicitors faxed to the FHSAA yesterday; a fax from the BMA again faxed yesterday and submissions by Ms. Print for the PCT who has attended today. It has also considered the limited jurisdiction of the FHSAA recited above and that the right to request dispute resolution in respect of the discretionary part of the PCT's decision is preserved.
8. From the contents of correspondence, the name appearing on the Bankruptcy Order dated 12th June 2006 and the address given for the debtor in the bankruptcy proceedings we are satisfied to the required standard that the Dev Dutt referred to in the Bankruptcy Order is Dr. Dev Dutt the same person named in Part 2 of Schedule 1 to the Contract.

9. The papers in this case will be remitted to NHSLA for further consideration of the Appellant's case together with a view that in future similar cases the NHSLA should appoint the FHSAA panel as its dispute resolver. This will ensure disputes of dual jurisdictions can be dealt with justly, economically and expeditiously.

10. Finally, in accordance with Rule 42 (5) of the Rules we hereby notify that a party to these proceedings can appeal this decision under Sec 11 Tribunals & 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 5th October 2006

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Paul Kelly, Chairman.