

**IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY**

**Case Number: 14496**

**Listed at: Harrogate**  
**On: 31<sup>st</sup> July 2008**

**Mr T Jones Chairman**  
**Dr Sharma Professional Member**  
**Mrs I Dale Member**

**BETWEEN**

**DR S BANERJEE (aka Dr S BANDPADHYAY)**  
**(Professional Registration Number: 1528276)**

**Applicant**

**and**

**HULL TEACHING PRIMARY CARE TRUST (“The PCT”)**

**Respondent**

**DECISION WITH REASONS**

**The Appeal**

1. On the 11th April 2008 the Respondent PCT (“The Respondent”) removed the Dr Banerjee’s name (the Appellant) from its Medical Performers List having given him an earlier opportunity to make representations. He was notified of the removal and of his right of appeal therein. In a letter of 11<sup>th</sup> May 2008 the Appellant made an appeal against this decision. The PCT resists this appeal and requests the National Disqualification of the Appellant pursuant to Regulation 10 of the NHS (Performers List) Regulations 2004, as the Appellant inclusion in any Medical Performers List on the ground of unsuitability.

**Background and the Appeal**

2. The PCT had been investigating information relating to the Appellant asking patients for loans. The PCT were first alerted to this in April 2007, a patient Mr A was said to have been asked for £2,000 during the course of a consultation with the Appellant. Patient A provided a statement to the PCT.

3. As a result of this Dr Sue Butler, PCT Medical Director, spoke to the Appellant in the hope of dealing with the matter informally and to see this did not re occur. The Appellant advised Dr Butler that he had asked for the loan; but he had done so only because of severe financial pressure he was under. This was due to the Appellant helping his brother in Nigeria with his business; the Appellant now had debts in seven figure sums and he was desperate. The Appellant assured Dr Butler no other patients had been affected, she advised the Appellant not to seek loans from patients and informed him that this was unacceptable professional behaviour and that the General Medical Council (GMC) document "Good Medical Practice", (GMP) at paragraph 72, specifically forbids this practice. It states: "You must not encourage patients to give, lend or bequeath money or gifts that will directly or indirectly benefit you".
4. Shortly after this, a second concern was raised with the PCT in respect of such behaviour by the Appellant asking an elderly patient for a loan and a note of the same is within the Respondents bundle at pages R32 -34. Patient A provided a statement concerning the first matter reported to the PCT and that is at R37 of the Respondents bundle.
5. Given this second matter occurring after advice had been given to the Appellant, Dr Butler, accompanied by Mr Pougher at that time a Clinical Governance Manager with the PCT, visited the Appellant and advised of him of the PCT's concerns as to the effects these financial pressures appeared to be having on his professional conduct; and whether his performance might also suffer if under such pressure. He was also advised an investigation into these matters would now commence and a reference committee would meet to discuss referral of the matters to date to the GMC. At the hearing before us, Dr Butler informed us it is and was at this time her usual practice to provide a draft of her letter to a practitioner for comment before issuing any letter in these circumstances. She confirms she did this with her letter to the Appellant of 9<sup>th</sup> May 2007 (R35 and 36 of the Respondents bundle).
6. The PCT appointed Dr Butler as investigating officer. In the course of her enquiries she was told of further incidents as to alleged misuse of practice cheques, and that the Practice Manager and Nurses were concerned at the Appellants withdrawal from interaction with them and the brevity of his consultations.
7. In September 2007 a patient became distressed whilst at the surgery; this was due to his concern that his wife should not find out he had advanced the Appellant a loan. Thus, PCT became aware of a further matter. Though this had occurred on 22<sup>nd</sup> May 2007, this was after the Appellant had been advised of such conduct being professionally unacceptable; orally on two occasions by officers of the PCT and once in writing by the PCT in a letter of 9<sup>th</sup> May 2007. The PCT suspended the Appellant from its performers list on 21<sup>st</sup> September 2007 in the interest of patient safety and the wider public interest pending the conclusion of its investigation. This patient wished to remain anonymous, stated that they felt vulnerable within the doctor/patient relationship when the request was made, had been very grateful to the NHS, it had saved his life. He made the loan, but was concerned as to how the loan remaining outstanding affected his health; keeping the loan, unpaid, a secret from his wife weighed heavily on him. The Appellant had asked they keep the matter between themselves. Shortly after speaking to the PCT the loan to this patient was repaid. A note of the meeting between the PCT and this patient is in the Respondents bundle at pages R85 to R87.
8. A further matter concerning another loan was put to the PCT towards the end of October 2007. A former patient of the Appellant a Mr C complained he had lent the Appellant some £10,000. When unpaid, a further sum of £2,500 was advanced at the Appellants request to allow a bank in Nigeria to release monies to the Appellant who was desperate, and wished to repay the loan. At the hearing, we were told by Patient C's Son, who was consulted by his father throughout, that they became concerned as to whether the money would be repaid when they had been informed the Appellant was suspended by the PCT. The loans had been advanced believing he had been their doctor, and as such was in a professional position, with secure, well paid employment. He confirmed the only relationship between the Appellant and his father had been doctor/patient. That

relationship had ceased when the family moved away from the area in which the Appellant practised. The Appellant had contacted Patient C's son at the place where Patient C's son conducted his family's business, on the 6<sup>th</sup> September 2007, in order to get his father's new contact details. A receipt for the initial £10,000 advanced and a statement relating to Patient C's son are within the Respondents bundle at pages R90 – R96.

9. On the 15<sup>th</sup> November 2007 the Appellant was suspended from the medical register by an Interim Orders Panel of the GMC pending the outcome of its own investigation.
10. In December 2007 a further matter was put to the PCT as to loans having been advanced to the Appellant by a patient. The second loan was said to be haven advanced after the Appellant had been made after the Appellant was well aware that this forbidden. This patient who wished to remain anonymous spoke to Dr Butler on 13<sup>th</sup> December 2007, a family member had earlier spoken to the Practice Manager as to the stress of having borrowed to loan the Appellant several thousand pounds was having upon the patient concerned. The patient told Dr Butler how this had destroyed their confidence in the profession. Details of this meeting are in a report presented to the PCT at pages R69 and R70. The PCT met and resolved periodically to continue with the Appellants suspension from the performers list.
11. On the 11<sup>th</sup> April 2008 the PCT met, on notice, and resolved that in light of the above the Appellant should be removed from the PCT's performers list and that subsequently a national disqualification be sought. A note of that meeting when the Appellant appeared with a representative from the Medical Protection Society, is within the Respondent's bundle at pages R114 to R119.
12. The Appellant submitted an appeal to the Family Health Services Appeals Authority (FHSAA). This is set out in letter at page A1 of the bundle placed before us. The Appellant submitted the PCT had taken a very strong position, that he is still in good health and would plead to be allowed to work in the NHS. He said "In retrospect I feel bad and sorry for myself to come to a situation where I had to accept money from anybody, but circumstances took an upper hand...I was very aware of my responsibilities and I have already apologised to them and returned their money". In what we take to be a reference to Patient C, the Appellant said: "The other episode was not of a doctor – patient relationship at all. They left the practise 8 years ago and remained friends. After hearing my crisis they helped me." The Appellant re iterated he had worked in the NHS for "thirty years without any blemish, had not intended to cheat or bluff anybody. By hindsight it was not appropriate to get into any financial arrangements with them".
13. At the hearing the Appellant appeared but was not represented; he stated he was ready to proceed. Miss Richler-Potts from Messrs Hempsons Solicitors appeared for the Respondent. She called three witnesses; Dr Butler, Mr Jackson and the Son of patient C. All were asked questions by the Appellant and some were asked questions by the Panel. The Appellant gave evidence adopting as his evidence in chief his statement at pages A8 – A12 of our bundle; he was cross examined and asked one question by a member of the Panel. Closing submission were then taken in turn, from Miss Richler-Potts, and then finally the Appellant. A note was taken in the form of a record of proceedings by the Panel Chair, and by Panel members for their own benefit when making our decision herein.

#### Our Conclusions

14. Applying even the highest standard of proof, we find the allegations made by the Respondent concerning the requesting, and the taking of loans by the Appellant from patients and a former patient, to be made out. They are, we find, also made out in the terms of what the Appellant in his notice of appeal, statement, evidence and closing submission where the Appellant has admitted these matters in some measure. We find; he has sought to equivocate and dispute matters only as a result of the consequences of his actions becoming apparent.

15. The Appellant has shown little insight as to how his behaviour in bringing his financial situation to the attention of patients, then taking money from them, and as to how that has effected his suitability to be on the list of a PCT. He, we find, was offered help and guidance by the Respondents officers, both in terms of his professional commitments and responsibilities, as well as his health and he was warned as to the professional difficulties that could accrue if he continued. Yet, out of concern for himself rather his professional position, his patients well being and the confidence the public are entitled to have in their doctor - he has as he has admitted, put his own needs first. Though we have some sympathy for the Appellant who in measure sees himself as a victim of fraudsters abroad, we find his actions to be contrary to proper guidance given to him, to have undermined confidence placed in him and the profession by patients, and compromised patients well being as they became distressed as outlined. The Appellant has we find shown a lack of insight therein; with hindsight, we note he has made expressions of regret and apology.
16. At the hearing issues in relation to alleged performance issues were hardly advanced or pressed upon us at all. We do not in looking at all matters in the round find against the Appellant therein; or as regards the issues concerning the practise funds, given the complexity of the issues arising, that might yet be resolved in other proceedings. We also set no weight by a submission made that the Appellant may have found it convenient to be know by two surnames; we accept he has been known as Banerjee for many years and accept his explanation that following initial registration he changed his name because people found his registered name difficult to pronounce. We have concentrated on the issues as to suitability placed before us in relation to patients.
17. Nonetheless, we find the Appellant's reference to Patient C's loan not being between doctor/patient disingenuous. We accepted the evidence of Patients C's son, who we found a credible and honest witness, to be such that we find the claim that the Appellant maintained social contact with Patient C after he moved, directly or through his own or his Son's (Appellants Son's) connections, wholly untrue. We accept the evidence given that the Appellant had to elicit Patient C's contact details from Patient C's son; the Appellant knowing that Patient C was wealthy and might be able financially to advance monies on the basis of the former doctor/patient relationship.
18. The Appellant's actions in their totality clearly defy professional guidance from the GMC (GMP paragraph 72) that he would be aware of; and indeed, was reminded of more than once. The interest of patients and the wider public interest are such that he is unsuitable for inclusion on the list of the Respondent PCT.
19. The power to make a national disqualification is contained in Section 49N of the Health and Social Care Act 2001. In August 2004 the Department of Health provided guidance on national disqualifications and delivering quality primary care: PCT Management of Primary Care Practitioners Lists.
20. The guidance contains two relevant propositions: "where the facts of the case are serious it would wrong to allow the doctor to offer his services to every (PCT) in turn in the hope that he will find one willing to accept him". Further, "unless the grounds for their decision were essentially local it would be normal to give serious consideration ... to an application for national disqualification". Therein, we refer to paragraphs 8.1.2 and 8.1.5 of the guidance notes referred to above.
21. In determining the application made by the Respondent herein, we find that the Grounds of Application are well made out. We find that the Respondent was empowered, and quite right, to remove the Appellant from their Medical Performer's List. The Respondent's actions therein have been entirely proper and proportionate. In light of the Department of Health guidance as noted above the Respondent has quite properly, and we find quite rightly, made an application for national disqualification. The application for national disqualification made within the context of these proceedings is also, we find, proportionate and we make such an order.

## Decision

22. A) The Appellants appeal against removal from the Respondents Performers List is dismissed.
- B) Our order is that pursuant to Section 49N(3) of the National Health Service Act as amended by the Health and Social Care Act 2001, the Appellant be disqualified from inclusion in all Performer's Lists prepared by all Primary Care Trusts, all lists deemed to succeed or replace such lists by virtue of Regulations made there under. In so doing, proportionately, we have weighed the effects of this Order upon the Appellant, against the risk to patients if a national disqualification is not made.
23. We direct that a copy of this decision be sent to the bodies referred to in Regulation 47 of the Family Health Services Appeal Authority (Procedure) Rules 2001. Finally, either party to this appeal may exercise a right of appeal against this decision by virtue of section 11 of the Tribunal and Inquiries Act 1992, by lodging an appeal with the Royal Courts of Justice, The Strand, London, WC2A 2LL, within 28 days of receipt of this decision.

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Mr T Jones, Chairman  
Harrogate, 10<sup>th</sup> September 2008.