

## **First-tier Tribunal Primary Health Lists**

### **The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008**

**[2020] 4133.PHL VKinly**

Hearing held via Kinley Video  
on 9 March 2021

#### **BEFORE**

**Jane McConnell (Tribunal Judge)  
Jane Everitt (Specialist Member)  
Martyn Green (Specialist Member)**

#### **BETWEEN:**

**Mr Peter Francis Reda**

**Appellant**

**-v-**

**The National Health Service Commissioning Board  
("NHS England")**

**Respondent**

#### **DECISION**

##### **The Application**

1. Mr Reda appeals against the decision made by NHS England London Region, Performer List Decision Making Panel (PLDP) dated 23 September 2020 to impose a condition on his inclusion on the NHS Performers list that states that the proposed practice at which he completes his supervision cannot be owned by a close relation.

##### **Attendance**

2. Mr Peter Reda, Appellant
3. Miss G. Goring, Counsel for the Respondent. Mr P. Shah, Lead Dental Adviser for NHS England and NHS Improvement (London Region).
4. The hearing was held fully remotely by Kinley video (v) with the consent of both parties. A face-to-face hearing was not practicable because of restrictions on movement imposed by the Covid-19 pandemic. Parties and their witnesses

confirmed that they had no concerns about their ability to participate in proceedings. The Tribunal panel considered that all outstanding issues between the parties could be decided fairly and justly without a face-to-face hearing being conducted and that parties had been able to give oral evidence and submissions effectively at the hearing.

### **Background**

5. Mr Reda qualified as a dentist in 2017 having completed his professional training in Poland and then undertook a 1-year internship within a hospital there. Since March 2019 he has worked as a dentist treating private patients at a practice in London. The practice is owned by a blood relative, his mother.
6. On 8 May 2019 Mr Shah, Lead Dental Adviser for NHS England and NHS Improvement (London Region), received a completed Performers List Application pack from Mr Reda. The PLDP met on 17 October 2019 to consider Mr Reda's application following which a decision letter was sent which confirmed that he would be included on the Performers List with conditions. These included a requirement that he work with a named supervisor to oversee his clinical practice and that the proposed practice at which the supervision was to take place cannot be owned by a close relation. Mr Reda subsequently confirmed that he accepted these conditions.
7. On the 24 August 2020 Mr Reda made a request in writing to the PLDP that the conditions be amended to allow him to be supervised by a dentist at the practice owned by a close relation, his mother. This was considered by the PLDP and in a letter dated 17 September 2020 they confirmed that this aspect of the Condition should remain unchanged.
8. Condition 1 of the revised September 2020 conditions reads:

*Work with a named supervisor to oversee your clinical practice with overlap at the practice of at least 75% between you and the supervisor. The supervision will be for a minimum period of 6 months OR 75 working days (whichever is the longer period will apply). At the end of your supervision we will require a satisfactory reference from your named supervisor.*

*Your named supervisor will have to confirm to NHS England and NHS Improvement that they have no more than 2 dentists under their supervision and that they will be on site on average at least 75% of your clinical working days in the practice.*

*(a) The proposed practice cannot be owned by a close relation. Any potential relationship should be disclosed.*

9. Mr Reda is appealing against this decision.

### **Legal Framework**

10. These proceedings are governed by the National Health Service (Performers Lists) (England) Regulations 2013 ('the Regulations'). This appeal is under Regulation

17 which states that a practitioner may appeal under regulation 17(1) (by way of redetermination) to the First-tier Tribunal.

11. Regulation 10(1) states:

*Where the Board considers it appropriate for the purpose of preventing any prejudice to the efficiency of the services which those included in a performers list perform or for the purpose of preventing fraud, it may impose conditions...*

**Evidence**

12. It was noted by the Tribunal that there were few, if no, factual issues for the Tribunal to determine in the appeal. Both parties confirmed at the start of the hearing that the single issue to be considered and decided was the request that Condition 1(a) be removed or varied.

13. All witnesses gave oral evidence having made an affirmation and confirmed their written statements.

14. The Respondents clarified that there were no issues being raised with Mr Reda's clinical practice and that they were aware that he had now been treating private patients for nearly 2 years. They accepted that he had completed 12 days of the 75 days of supervision required by the conditions set in September 2020. During the hearing, Mr Shah advised that the PLDP are currently agreeing to amend conditions that supervision has to be for a minimum of 6 months. An application for this condition to be lifted in Mr Reda's case could be considered at a meeting of the PLDP on either the 1 April or 15 April 2021 and a decision could then be issued within 7 working days. Mr Reda acknowledged that this would be welcomed and useful in addressing his concerns about successful completion of supervision. The parties will liaise outside of the Tribunal to progress this issue.

15. In oral evidence, Mr Shah explained that the further 63 days of supervision was required to ensure Mr Reda's competency in NHS processes. As Mr Reda had not trained in the UK and still has very limited practice within the NHS, the condition for supervision imposed was usual. It was there to ensure that over and above his clinical practice, Mr Reda developed specific competencies in NHS Rules and Regulations including record keeping, procedures and the standards expected. Amplifying reasons already set out in his witness statements included in the written evidence, Mr Shah reiterated that the PLDP's rationale for imposing Condition 1(a) relates to the possibility of conflicts arising where a proposed supervisor works for an individual who is a close relative of the person under supervision. First, the conflict of interest could impact/compromise the objective view of the person providing the supervision - there is the potential for lack of objectivity around assessments/feedback. Second, the supervisor could be vulnerable should any subsequent issues arise with regards to the performance of the dentist under supervision. Whilst there was no evidence that these issues would arise if the condition was varied as requested, these issues potentially impact on the objectivity and value of the supervision, such that there could be prejudice to the efficiency of the services if supervision was not appropriate for conflict reasons. Such conflicts of interest could arise in relation to the trainee and the supervisor. This is the rationale for why this causes concern and also why Condition 1(a) is appropriate. It will help ensure Mr Reda's supervisor can provide an objective view

of his work and ensure no compromise in the supervision – both for the supervisor and for Mr Reda.

16. Mr Shah referred the Tribunal to additional written evidence which supported the decision made. The “Framework for Managing Performers Concerns” issued by NHS England sets out the circumstances when conditions would be imposed for inclusion on the Performers List. Also, the “Guidance on Education and Training with Close Family Members” from the Committee of Postgraduate Dental Deans and Directors identifies that there is significant risk of perceived and actual probity issues if dentists in training are trained, assessed or otherwise educationally supervised by close family members. Whilst Mr Shah accepted that the later guidance was most relevant to new qualified dentists without established clinical practice, he remained of the view that the issues raised remained relevant to Mr Reda’s circumstances.
17. Mr Reda confirmed that he was not disputing that he needs to complete the rest of his NHS supervision period. He explained that his knowledge of NHS procedures and systems was very limited as although the practice that he works in has one IT system for both private and NHS patients he has not been involved in NHS work. When he had originally accepted the PLDP conditions back in November 2019 the Covid Pandemic had not struck and he was about to start work at an NHS Practice where he had been assigned a supervisor. His subsequent request to vary Condition 1(a) in August 2020 was made only because of the circumstances that had arisen because of the Covid pandemic. He explained to the Tribunal that since leaving the previous practice he was employed at, following the lifting of Covid restrictions in the summer of 2020, there are now limited opportunities for him to find an NHS practice which will employ him. Dental practices are not routinely open and are not working at the same capacity levels as before the pandemic. He is now facing substantial difficulties in completing his NHS supervision. In a perfect world, one without Covid, he would not be asking for a lifting of the condition as he would have been able to find an alternative practice at which to finish his NHS supervision but that was not the situation that he has found himself in.
18. When questioned, Mr Reda accepted that there was a possible perception of bias that could arise if the condition was lifted and he was allowed to be supervised by a dentist at his mother’s practice. He explained that to counter any possible perception of bias, it was not widely known amongst his private patients that he was related to his mother as then their expectations of him would be associated with her long-standing reputation as an exemplary dentist. It had already been identified that knowledge of this relationship could in itself lead to complaints. However, any concerns about his NHS supervision could be effectively countered by ensuring his supervisor’s objectivity. This could be achieved by making sure that information was not passed back to his mother about his progress by the supervisor. In addition, the carrying out of patient surveys would allow for any concerns raised in feed-back to be specifically addressed. Mr Reda did accept that even though his proposed supervisor was self-employed he did have a business relationship with his mother. Also, that patient surveys would not be able to provide comment on his knowledge of NHS rules, regulations, practice and procedures. He did not accept that the perception of bias was enough to justify the condition remaining in place.

### **The Tribunal's conclusions with reasons**

19. The Tribunal carefully considered Mr Reda's request and all the written and oral evidence provided by the parties. Mr Reda does not challenge the imposition of conditions requiring his direct supervision. The only live issue is that the proposed practice at which the supervisor works and where the supervision will be completed is owned by a blood relative, his mother.
20. We accept that there are no questions at all as to the competency of Mr Reda's clinical practice which would make a condition necessary for his inclusion on the Performer List. There is also no question being raised about their being an actual bias by his proposed supervisor or of the integrity of the Dental Practice run by Mr Reda's mother. We have upmost sympathy for the situation that Mr Reda faces in completing his NHS supervision which is in no way the result of his own actions, but the product of the restrictions imposed on us all in response to the Covid pandemic.
21. We must however consider that actual and perceived objectivity in all areas of dental services practice is paramount to protecting public confidence in the profession. This includes the provision of supervision even for established dentists but who are engaging with the NHS for the first time.
22. We considered Mr Reda's proposed strategies for ensuring the objectivity of the supervisor. Whilst a "wall" could be imposed on the flow of information between the supervisor and Mr Reda's mother we are not persuaded that this would address the issue of the perception of potential bias. By its nature such an issue would only be raised if a complaint against Mr Reda had been made. His mother as owner of the business has a duty of care to all her patients to have ensured that effective measures are in place to mitigate any risks from those dentists operating as part of her business. The limiting of the flow of information could detrimentally affect her carrying out this duty. Whilst the use of patient surveys, especially if targeted at Mr Reda's patients, could only provide feedback on the quality of his clinical work which is not under question. It could not provide a safeguard to ensure that his supervision on NHS procedures and practice was adequate. Neither of the measures proposed by Mr Reda, or any other which the Tribunal could think of using its specialist expertise, could effectively address the issue of conflict of interest or potential bias raised by a supervisor working within a dental practice owned by a blood relative of the supervisee.
23. When considering the proportionality of Condition 1(a) we took into account the specific circumstances that have arisen because of the Covid pandemic. Mr Reda is currently working full-time treating private patients. He is not suffering any financial loss as a result of the condition as it has not stopped him working. Whilst the Tribunal cannot predict when dental practices will open fully, we are aware relying on our specialist knowledge that a level of NHS dental work is continuing. Whilst recruitment opportunities for dentists are more limited now than before the pandemic, they still exist. For these reasons we conclude that the condition remains proportionate. In action, any subsequent lifting of the 6-month restriction for completing supervision also included as part of the PLDP conditions will give

Mr Reda the required additional time to complete the remaining supervision days although perhaps not as quickly as he had originally anticipated.

24. Our conclusion is that the decision made by the PLDP is reasonable, proportionate and rational. The potential conflict of interest was well made out by the evidence and accepted by Mr Reda. The condition imposed is proportionate even given the current change of circumstances brought about by the Covid pandemic and we cannot identify an effective alternative means of off-setting the potential perception of bias in Mr Reda completing his supervision in a practice owned by his mother.

**Order**

25. The appeal is refused.

**Judge Jane McConnell**

**First-tier Tribunal (Health, Education and Social Care)**

**Dated: 16 March 2021**