

NHS TRIBUNAL (SCOTLAND)

STATEMENT of the TRIBUNAL

In the case of

LOTHIAN HEALTH BOARD, a Health Board constituted under Section 2 of the National Health Service (Scotland) Act 1978 (COMPLAINER)

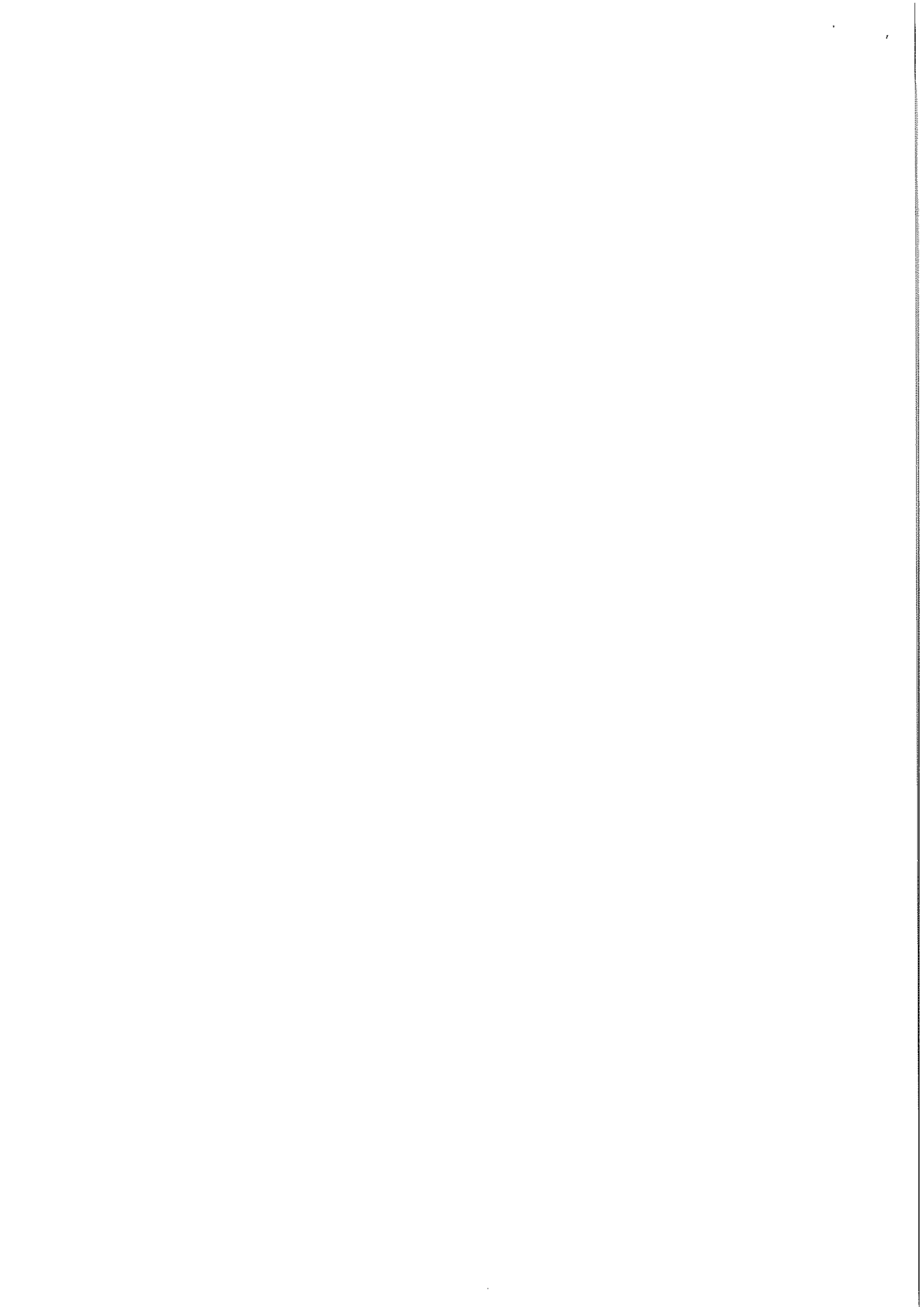
Against

MANUELA CIASCETTI, having a place of business at The Dental Surgery, 25 Inverleith Row, Edinburgh EH3 5QH (RESPONDENT)

The Tribunal, having considered all representations, evidence and submissions, finds as follows:

1. Facts

- (i) Admitted and found proved that the Respondent is a Dental Practitioner.
- (ii) Admitted and found proved that the Respondent has been listed on the Performers' List of Lothian Health Board since 24 January 2010.
- (iii) Admitted and found proved that the Respondent is required to adhere to the Terms of Service set out in Schedule 1 to the National Health Service (General Dental Services) (Scotland) Regulations 2010 ("the Regulations").
- (iv) Admitted and found proved that Paragraph 40 of the said Schedule to the Regulations provides that a dental practitioner shall undertake at least 15 hours of Quality Improvement activities during "the relevant period".
- (v) Admitted and found proved that prior to 26 October 2017 Quality Improvement activities were known as clinical audit activities.
- (vi) Admitted and found proved that Quality Improvement activity is described in the Regulations as a process involving "the systematic, critical and reflective analysis of the quality of dental care provided by the dentist, and of any changes made by the dentist to bring about improvement in quality of care, patient experience, patient safety and clinical effectiveness, (including the processes used by that dentist for diagnosis, intervention and treatment and use of resources)".
- (vii) Admitted and found proved that the relevant period for the purposes of sub-paragraph (iv) above is described as: 1 August 2010 to 31 July 2013 (inclusive) and each successive period of three years thereafter.
- (viii) Admitted and found proved that the Respondent failed to undertake her Quality Improvement



activities in the three cycle which began on 1 August 2013.

- (ix) Admitted and found proved that during the said three year cycle commencing on 1 August 2013, the Respondent completed ten Quality Improvement activity hours.
- (ix) Admitted and found proved that in January 2017, the Respondent wrote to the Complainer purporting to explain why she had not complied with her terms of service.
- (x) Admitted and found proved that the Complainer wrote to the Respondent advising her that in light of the explanation provided it would extend the period within which she could complete her Quality Improvement activities to 31 July 2017.
- (xi) Admitted and found proved that by 31 July 2017, the Respondent had completed no further hours of Quality Improvement activity and was thus still five hours short.

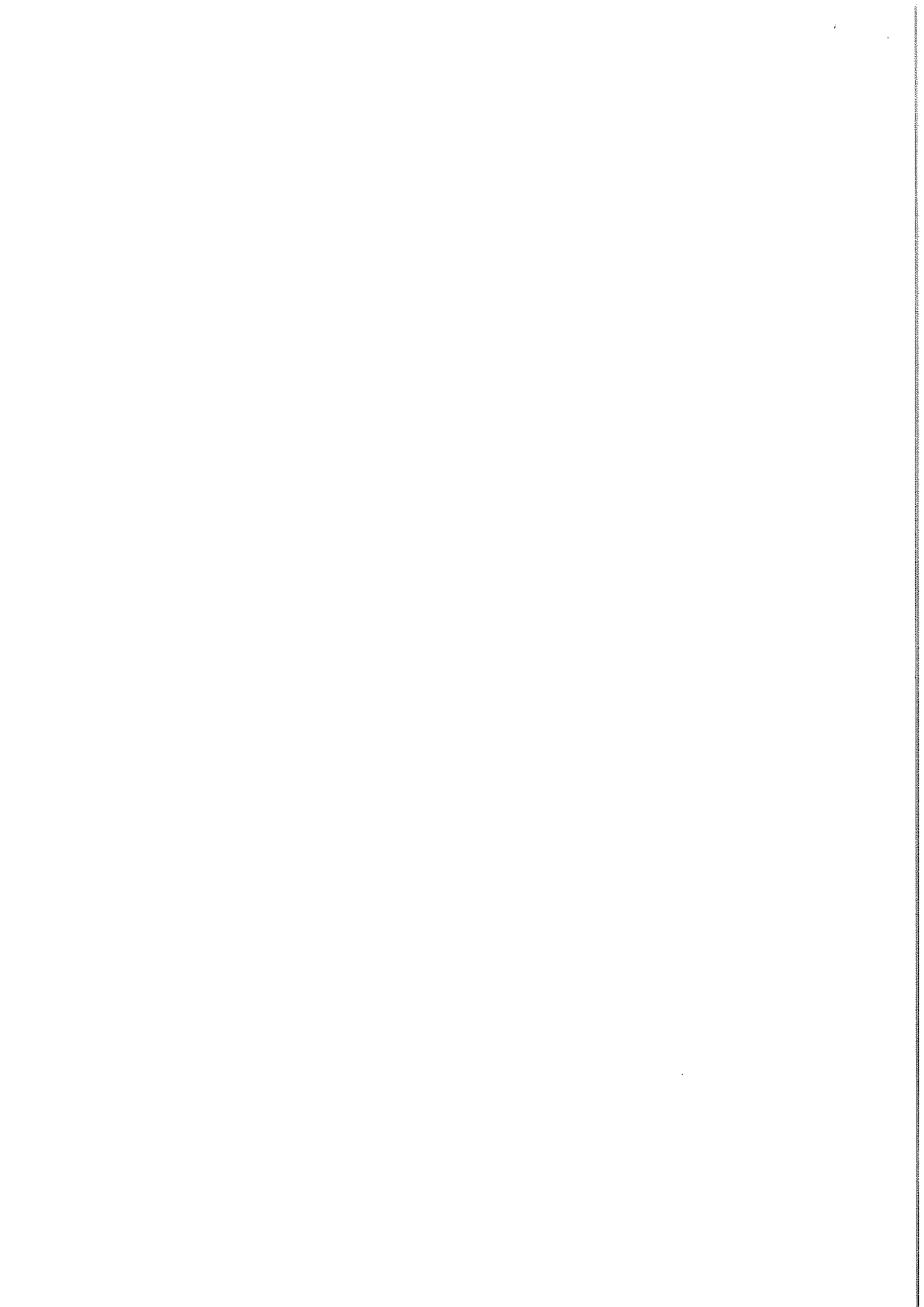
2. Grounds for Disqualification

Section 29 of the 1978 Act sets out the conditions for disqualification. The complainers in their Representations contend that the facts found proved engage the first condition for disqualification, namely that the continued inclusion of the Respondent in the list would be prejudicial to the efficiency of the services which those included in the list perform or undertake to provide or are approved to assist in providing. The Representations also averred that the third condition for disqualification was also met, namely that the Respondent is unsuitable by virtue of personal or professional conduct to continue to be included in the list. In oral submissions however, the Complainers no longer insisted on this line.

As set out above, the Respondent admits all of the facts underlying the Complainers' Representations. Through her solicitor, she offered an explanation as to what she has done to address her failings. Her solicitor referred to Quality Improvement activities being undertaken currently, both for the current cycle and for the earlier cycle. One of the remedial measures being undertaken is a Significant Event Analysis, in respect of which she will claim 5 hours. He also explained that steps had been taken at an earlier stage to undertake an audit in order to make up the shortfall for the 2013-16 cycle, but she failed to secure the necessary approvals for the time engaged in that audit to count. The Tribunal was concerned about the ability of the Respondent to complete both the outstanding audit activities for the previous cycle within a period of six months, as well as her audit activities for the existing cycle by the end of July 2019. However, it was assured that the Respondent can do this, and the Complainers accept the Respondent's position on this.

Parties presented an agreed position that the first condition for disqualification has been met, and that conditional disqualification would be the appropriate disposal. They presented a joint position as to the conditions which the Tribunal was being invited to impose. During the hearing, they accepted that the issue of disqualification is a question for the professional judgement of the Tribunal in the exercise of its discretion, rather than being a matter resting on the parties' agreement or on which there is an evidential burden.

The Tribunal takes account of the purpose of paragraph 40 of the Regulations, which is to ensure quality



improvement in the delivery and organisation of the services which the Respondent is engaged to provide. The process is mandatory and is not unduly burdensome. The importance of continual improvement is clear from the fact that there is a requirement to undertake such activity within the Regulations. Such activity is designed to ensure and improve efficiency in the NHS. A structured and mandatory quality improvement programme, emphasising the need to continually improve; and the keeping of accurate records relating to that, are important facets of ensuring and improving the efficiency of the NHS. Among other reasons for this is the need to ensure best value for the resources spent on the provision of such services by the National Health Service. It is important for all practitioners to comply with their Terms of Service in this regard. The Respondent having failed to do so, the Tribunal is satisfied that the first condition for disqualification is met.

With regard to the third condition for disqualification, the Tribunal noted that the Complainers do not now contend that the third condition for disqualification is met.

3. Disposal

Having found that the first condition for disqualification is met, the Tribunal then considered the appropriate disposal. Parties were agreed that, if the Tribunal found that one of the conditions for disqualification had been met, then an order for conditional disqualification would be the appropriate disposal. A set of conditions was suggested to the Tribunal for its consideration, in which it was proposed that the Respondent be given additional time to fulfil the requirements upon her.

Whilst reminding itself that this is a matter for its own professional judgement, the Tribunal agrees that conditional disqualification is the appropriate disposal. Absolute disqualification would be disproportionate and unjust in the circumstances. It was of the view that the conditions proposed by parties would be sufficient to remove any prejudice to the efficiency of the services. The Tribunal harbours some concerns about the Respondent's ability in practical terms to complete the obligations upon her within the timescales agreed by the parties, but it has nonetheless acceded to the parties' joint application. In light of the Tribunal's finding that the third condition for disqualification has not been engaged, no conditions relating to suitability are appropriate.

Accordingly, the Tribunal hereby DISQUALIFIES the Respondent from inclusion in the list, but does so conditionally, to come into effect only if the Tribunal determines upon review that the Respondent has failed to comply with the following conditions:

1. that the Respondent submits work in respect of her outstanding quality improvement activities obligation (for the cycle 2013-2016, which were referred to as clinical audit activities during that cycle) within a period of 6 months from the date hereof;
2. that the Respondent follows up any reasonable amendments required by NHS Education for Scotland (NES) on the outstanding quality improvement activities for the cycle 2013 - 2016 that are necessary to allow the quality improvement activities to be deemed completed by NES within such period as NES consider to be reasonable in the particular circumstances of the case; and
3. that the Respondent also meets her quality improvement activities obligation during the

current audit cycle (2016 - 2019) by the appropriate date (31 July 2019).

Should a review be required, this shall be triggered by an application made to the Tribunal through the clerk.

In respect that these Representations were justified, and in view of the agreement reached between the parties, the Tribunal hereby finds the Respondent liable to the Complainers for payment of expenses in the sum of Six Hundred Pounds Sterling (£600).

That concludes the case.

J. Michael D. Graham, Chairman

16 April 2019

