

NHS TRIBUNAL (SCOTLAND)

STATEMENT of the TRIBUNAL

In the case of

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

Against

ANDREW DAVIDSON, having a place of business at Envisage Dentistry, 58 Cow Wynd, Falkirk, FK1 1PU (RESPONDENT)

The Tribunal, having considered all representations, evidence and submissions, NOTES that, in terms of a Joint Minute sent to the Clerk on 22 August 2023, the allegations contained within the Representations have been admitted on behalf of the Respondent; and in terms thereof 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 Forth Valley Health Board since June 2018.
- (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 his Quality Improvement activities in the cycle which began on 1 August 2016. In relation to that cycle, the Respondent has submitted two significant event analyses. He did so in response to this referral. The Complainer has submitted these documents to National Education for Scotland on behalf of the Respondent. National Education for Scotland have indicated that dependent on further information being provided, the significant event analyses submitted by the Complainer on behalf of the Respondent would result in a credit of between 4 and 5 hours. This leaves 10 or 11 hours still to be completed in respect of that cycle, which the Respondent is confident of completing within a period of six months.

2. Grounds for Disqualification

Section 29 of the 1978 Act sets out the conditions for disqualification. There being no allegation of fraud in this case, the facts found proved would engage either (or both) 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; or the third condition for disqualification, namely that the Respondent is unsuitable by virtue of personal or professional conduct to continue to be included in the list. In written submissions, both parties agreed that the third condition for disqualification was engaged in this case.

As set out above, the Respondent admits all of the material facts underlying the Complainers' Representations. He offers an explanation as to why he failed to adhere to his Terms of Service. His representatives advise that in respect of the cycle commencing on 1 August 2016, the Respondent was due to complete the audits with the principal dentist at his practice. The principal then left the practice. In addition to the extra work created by the principal dentist's departure, the Respondent was also off work due to Covid-19 and then suffered a hand injury whereby he was off work for six months. When he returned to work, there was a backlog requiring between 600 and 700 hours of treatment on his waiting list. This all culminated in the audits not being completed within the cycle. He tried to submit two Significant Event Analyses, but these were not successfully submitted through the portal. These issues were compounded by him not monitoring the relevant email address as regularly as he should, resulting in missed communications. He accordingly overlooked the required Quality Improvement activities which were never done. He has expressed the intention of catching up with outstanding 10-11 hours of Quality Improvement activities for that cycle within six months.

Parties presented an agreed position that the third condition for disqualification has been engaged, despite the mitigating circumstances; and that conditional disqualification would be the appropriate disposal. Notwithstanding their agreement on this matter, 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 took account of the mitigating factors outlined by the Respondent. The reasons given for not having undertaken these activities were accepted by the Tribunal in mitigation. However, the required activities are not onerous and are mandatory. The Tribunal considers that the Respondent's conduct was unacceptable, in view of the benefits which practitioners such as the Respondent derive from inclusion in the NHS Approved Providers List. All practitioners should be well aware of the requirement to undertake these activities and should prioritise them. Whilst the Tribunal was provided with a degree of comfort that the Respondent now has some insight, in that he has undertaken to catch up with the outstanding hours within a period of six months, in all the circumstances, the Tribunal considers that the third condition for disqualification is nonetheless met.

3. Disposal

Having found that the first and third conditions for disqualification are 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. It was suggested that the Respondent be given an additional period of six months in which to fulfil the requirements upon him for the 2016 – 2019 cycle.

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, particularly in view of the mitigating circumstances. It was of the view that the condition proposed by parties would be sufficient to remove any prejudice to the efficiency of the NHS services. It also considered that the conditions proposed would address the conduct which led to the Tribunal's finding that the third condition for disqualification is also met.

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 any one or more of the following conditions:

1. that the Respondent submits work in respect of his outstanding Quality Improvement activities obligation for the cycle 2016-2019 within a period of six months from the date hereof; and
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 2016 - 2019 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;

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 agreed sum of Two Thousand Five Hundred Pounds Sterling (£2,500), which parties have agreed falls to be paid within fourteen days of today's date.

That concludes the case.

A handwritten signature in black ink, appearing to read 'J. Michael D. Graham', is written over a horizontal line. The signature is cursive and includes a period at the end.

J. Michael D. Graham, Chairman

06 October 2023