

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

SIMON ATKINSON, having a place of business at the Dental Surgery, 1 Liberton Brae, Edinburgh, EH16 6AQ. (RESPONDENT)

Edinburgh, 09 May 2019

The Tribunal (a) allowed the Statement in Answer which had been submitted by the Respondent's solicitor on 7 May 2019 to be received and accepted in substitution for the earlier letter lodged by the Respondent, dated 8 February 2019 and received by the Tribunal on 8 March 2019; (b) allowed the Complainers to amend their Representations by substituting the word "complete" for the word "undertake" in paragraph 2.viii, and by the substitution of the words "an explanation satisfactory to the Complainer" in place of the word "any explanation" in paragraph 2.x; (c) notes that paragraphs 2.viii and 2.x of the Representations as amended are now admitted by the Respondent, subject to explanations proffered; and (d) thereafter, 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 22 July 2008.
- (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 complete his Quality Improvement activities in the three cycle which began on 1 August 2013. The Respondent contended that he had, in fact, undertaken 15 hours of such activities, but he admitted that he had not uploaded the relevant data in the correct manner through the NHS National Education for Scotland ("NES") portal. The Complainers accepted that some activities had been undertaken, as do the Tribunal.
- (ix) Admitted and found proved that the Respondent had recorded no Quality Improvement activity hours in the cycle commencing 1 August 2013. The Tribunal noted the Respondent's explanation for why this had happened, involving both IT issues and personal circumstances.
- (x) Admitted and found proved that the Respondent has failed to provide an explanation satisfactory to the Complainer for his failure to comply with his Terms of Service. The Respondent referred to an email of 24 January 2017 in which he sought to explain his error and offered an explanation for it.

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 most of the facts underlying the Complainers' Representations. Through his solicitor, he offered an explanation as to why his failings occurred, those failings being categorised as administrative or recording failures, rather than a failure to undertake the required Quality Improvement activity. His solicitor also outlined what he is doing to address these failures involving undertaking fresh Quality Improvement activities for the 2013 – 2016 cycle. His solicitor also referred to Quality Improvement activities being undertaken currently, for the current cycle.

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, including meeting the administrative requirements upon them. The Respondent having failed to do to, 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 him and in which he would be required to meet any requirements of NES and accept the support of a Dental Practice Advisor.

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. 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:

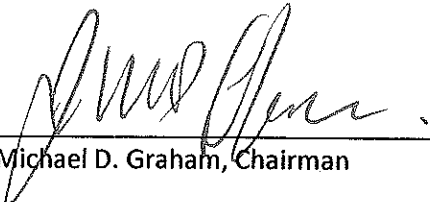
1. that the Respondent submits work in respect of his outstanding quality improvement activities obligation for the cycle 2013-2016, (which were referred to as clinical audit activities during that cycle) by 31 January 2020;
2. that the Respondent follows up any reasonable amendments required by NES 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;

3. that the Respondent meets his quality improvement activities obligation during the current audit cycle (2016 - 2019) by the appropriate date (31 July 2019);
4. that the Respondent accepts the appointment of a Dental Practice Advisor ("DPA") provided by the Complainers to provide support in relation to his quality improvement activities for the cycles 2013 - 2016 and 2016 - 2019;
5. that the Respondent meets or otherwise discusses the progress of his outstanding quality improvement work with the DPA on a regular basis, the frequency of said meetings/discussions to be determined by said DPA; and
6. that the Respondent follows any reasonable recommendations made to him by the DPA about the progress of his quality improvement activities for the 2013-2016 and 2016 -2019 cycles.

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 One Thousand Pounds Sterling (£1,000).

That concludes the case.



J. Michael D. Graham, Chairman

09 May 2019