

Care Standards

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

Before
Judge Stewart Hunter (Tribunal Judge)
Caroline Joffe (Specialist Member)
Susan Last (Specialist Member)

Dr Mujib Ul Haq Khan

Appellant

v

Care Quality Commission

Respondent

[2015] 2364.EA-SUS

DECISION

Hearing held in London on 17th May 2016 and the 19th September 2016
Deliberation Hearing (Panel Only) on 11th October 2016

Mr. Richard O'Dair of Counsel (Instructed by Cubism Law) represented the Appellant.

Mr. Tim Grey of Counsel (Instructed by Mills and Reeve LLP) appeared for the Respondent.

Appeal

1. The Appellant appeals against the decision of the Care Quality Commission (CQC) dated the 8th January 2015, pursuant to Section 31 of the Health and Social Care Act 2008, suspending his regulated activities, namely treatment of disease, disorder or injury.

Background

2. The Appellant had, prior to his suspension, been a GP for around 40 years and for 33 years operated a single doctor surgery at 78 Granville Road, Southfields in London. In June, 2014 he had passed his revalidation with the General Medical Council (GMC) entitling him to practise as a GP for the following five years.

3. The Appellant has been inspected by the CQC on a number of occasions, including in December 2013, June 2014, August 2014 and January 2015.

4. Following the inspections on the 16th December 2013 various concerns were identified by the CQC which led to compliance action being taken in relation to a number of areas, including emergency medicines, systems to identify poor standards and infection control.

5. After the inspection on the 10th June 2014 the CQC considered the Appellant remained in breach of the Regulated Activities Regulations 2010 and a Warning Notice was issued to be complied with by the 4th August, 2014. A further inspection took place on the 14th August, 2014 when it was considered by the CQC that whilst there had been some improvements a number of concerns remained and a further Warning Notice was issued on the 9th September, 2014 requiring compliance by the 20th October 2014. This included concerns relating to medicines management and record keeping. On the 20th October 2014 the Appellant wrote two letters to the CQC stating that the requirements mentioned in the CQC's letter of the 9th September 2014 had been complied with.

6. On the 22nd July 2014 representatives from NHS England visited the Appellant's practice to review compliance with his medical services contract. After the visit the Appellant was served with a Remedial Notice in connection with breaches of his contract, including failure to ensure he had appropriate arrangements for infection control and decontamination, and appropriate storage of vaccines. NHS England infection control staff visited the Appellant's practice on the 31st July 2014 and produced an audit plan. Amongst the concerns were poor cleaning standards and maintenance standards.

7. A records review of the Appellant's practice was commissioned by NHS England in October 2014 which resulted in a referral by NHS England to the Performer's List Decision Panel (PLDP). The PLDP invited the Appellant to an oral hearing to consider action under the Medical Performance List Regulations with the hearing taking place on the 17th November 2014. The outcome of the hearing was that the Appellant was suspended from the Performer's List for a period of six months. This meant that the Appellant was unable to provide any direct medical treatment or consultation to patients.

8. The Appellant was referred to the General Medical Council (GMC) by the CQC on the 5th September 2014 and also by NHS England on the 7th November 2014. On the 19th December 2014 the Medical Practitioners Tribunal Service, (MPTS) confirmed they had varied the conditions on the Appellant's inclusion in the medical register following a referral made by NHS England.

9. On the 2nd December 2014 NHS England issued a Remedial Notice to the Appellant in connection with the keeping of clinical records.

10. The CQC carried out a further inspection on the 6th January 2015 which raised a number of issues regarding the Appellant's practice, including the availability of emergency medicine. The CQC took the decision on the 8th January 2015 to suspend the Appellant's registration as a service provider for a period of four months.

11. Prior to the ending of the four month suspension, the CQC carried out an inspection on the 7th May 2015 following which a letter was sent by the Respondent on the 11th May, 2015 requesting clarification of a number of matters. This was followed by the CQC issuing a Notice of Decision to suspend the Appellant's registration for five days from the 15th to the 20th May 2015.

12. The Appellant subsequently informed the CQC he would not be providing GP services from Granville Road Surgery from the 20th May 2015. On the 26th August 2015 the CQC sent the Appellant a Notice of Decision to cancel his registration to carry out regulated activities at the surgery.

Preliminary Matters

13. During the course of the hearing the Tribunal accepted as additional evidence the following documents produced by the Respondent:-

- (i) The CQC's Inspection Report for the 14th August 2014.
- (ii) The "Visit Plan and Record – Review of Compliance" in relation to the visit to the Appellant's surgery on the 6th January 2015.
- (iii) A "Note Taking Template for Inspections" dated the 6th January, 2014 – Dr. Chaudery.
- (iv) A "Management Review Record – Compliance" – 8th January, 2015.

Respondent's Evidence

14. The Respondent called three witnesses to give oral evidence; the first of whom was Dr. Noreen Chaudery who had signed a witness statement dated the 18th April 2016. Dr. Chaudery stated she had been practising as a GP in South London for 20 years and she also gave details of her other roles and experience. She had been a CQC Specialist Advisor since 2014 and had taken part in inspections in that capacity. She had attended an inspection at the Appellant's premises on the 6th January 2015 together with two CQC Inspectors, Ms. Emma Dove and Ms. Sian Carter.

15. On arrival at the Appellant's premises, Dr. Chaudery stated they had been met by the Practice Manager. There was also a locum doctor, Dr. Fernando present seeing patients, the Appellant being unable to conduct surgeries due to GMC restrictions. Dr. Chaudery said she had spoken during the course of the inspection to the Practice Manager, the Appellant and Dr. Fernando. The visit had caused her to become extremely concerned about a number of issues, in particular the on-call cover home visit provision, the non-availability of emergency drugs, especially for anaphylaxis, blood tests being dealt with by a non clinician, the lack of systematic dissemination of

information and the locum doctor being unaware of local prescribing and referral management policies.

16. In her statement Dr. Chaudery stated that she had been aware on the 6th January 2016 that Dr. Fernando had given a flu vaccine and prostep injections during the morning surgery. When she had interviewed Dr. Fernando, he had told her that he thought the anaphylaxis kit could be in the bag under the couch. Dr. Chaudery said she and Ms. Emma Dove had looked in the bag, but could not find an anaphylaxis kit. On being told by Dr. Fernando that the kit could be in the next room Dr. Chaudery stated that they had made enquiries of the practice staff and been told by the Practice Manager the kit was in the doctor's bag.

17. As far as the Appellant was concerned Dr. Chaudery indicated that he had arrived on the premises late on the morning of the 6th January 2016, saying he had been to a locksmith as the doctor's bag could not be opened. Dr. Chaudery stated she was extremely concerned firstly that the doctor's bag had not been on the premises when the flu and pro-step injections had been given and secondly that the bag could not be opened during the inspection as there were problems with the lock.

18. On being cross examined, Dr. Chaudery clarified that she had not been part of the decision making process which had led to the Appellant's suspension following the inspection in January 2015.

19. Dr. Chaudery confirmed she had been told on the 6th January 2015 by the Practice Manager that emergency medicine was kept in Dr. Khan's bag, which on the day in question the Appellant had taken to the locksmith. When she had met Dr. Khan he had the bag but it could not be opened.

20. When Dr. Fernando had been asked about the anaphylaxis kit he had said it was under the couch, but Dr. Chaudery said further enquiries had not located a kit either under the couch or in the next room. She had found an oxygen cylinder and a long bag but no emergency medicines. At no time was she or the inspectors shown where any emergency medicines were kept. Dr. Chaudery accepted that it was possible Dr. Fernando might have forgotten to mention some important information, but in her view if he was unable to identify emergency medicine on the premises then he should not have been consulting with patients.

21. Dr. Chaudery also reiterated her concerns regarding the lack of any significant events at the practice which she said was not real life. The existence of such events showed an open culture and the ability to learn from those events. Dr. Chaudery also commented on her concerns regarding the lack of an induction pack for the locums who the Appellant was employing and the potential implications regarding such matters as local policies on medication, referral of patients, the keeping of records and procedures for end of life cover. Dr. Chaudery also expressed concerns about the lack of cover at the surgery between 8.00am and 9.00am.

22. The next witness to give evidence was Ms. Emma Dove; she had signed two witness statements dated the 12th February 2015 and the 18th April 2016. In those statements Ms. Dove stated she was an Inspector for the CQC Primary Medical Services Directorate London Region. In the same statements Ms. Dove provided details of her inspection on the 6th January 2015 of Granville Road Surgery.

23. Ms. Dove described the CQC's areas of concern regarding the Appellant's practice which included the procedures for employing locums, the induction of those locums, systems and processes to identify risk, disseminate information and share learning.

24. Ms. Dove also commented on the situation regarding emergency medicines. At paragraph 20 of her witness statement of the 12th February 2015 Ms. Dove stated as follows:-

"20. The locum GP was not aware that the doctor's bag was not available to them when we arrived at the practice at 9.00am and remained unavailable until the provider arrived at 10.15am. The locum GP was not aware that when the doctor's bag was returned to the practice, it was locked and the combination code was not known. The locum GP told us that they had administered two injections during morning surgery. This meant that emergency medicines to be used in the event of a medical emergency were not available which put patients at significant risk of harm if they had an allergic reaction to the injections they were given. To ensure patients protection, we asked the practice manager to check if patients booked into the afternoon surgery were due to have an injection and, if they were, to contact them and reschedule their appointment for a time when emergency medicines were available."

25. Ms. Dove provided more information about the CQC inspection on the 6th January, 2015 in her second witness statement of the 18th April 2016. This included details of the discussion she and Dr. Chaudery had with the locum GP, Dr. Andrew Fernando. He had told them that emergency medicines were in the doctor's bag and the bag was usually kept in an area beside a chair in the consultation room. Ms. Dove stated Dr. Fernando had not said there were other emergency medicines available to him in the consultation room. Ms. Dove then went on to state at paragraph 4 of her second witness statement as follows:-

"... I do not recall if I specifically asked if there were other medicines to deal with the medical emergency available to him. We asked about the availability of emergency medicines because we had seen staff take two injections from the medicine fridge and give them to Dr. Fernando during morning surgery."

26. It was also stated by Ms. Dove that Dr. Khan had not opened the doctor's bag during the course of the inspection on the 6th January 2015, but he had opened it with a screwdriver on the afternoon of the 9th January 2015 to demonstrate the bag could be opened. Ms. Dove had been attending the practice on the 9th January to hand deliver to Dr. Khan the Notice of Decision

from the CQC to suspend him from providing regulated activities at Granville Road Surgery.

27. In her second witness statement, Ms. Dove also described the events of a Management Review Meeting held on the 8th January 2015 and the decision to suspend Dr. Khan's registration for a period of four months. In addition Ms. Dove provided information about her visit to the Granville Road Surgery as part of an announced inspection of the practice on the 7th May 2015 prior to Dr. Khan's suspension coming to an end on the 8th May, 2015.

28. When cross examined Ms. Dove said the decision to suspend Dr. Khan was not a step the CQC had taken lightly. As far as her own involvement was concerned, Ms. Dove said she had been asked when carrying out inspections in June and August 2014 to check on risks to patients' safety. Ms. Dove confirmed that Dr. Khan had written to CQC on the 20th October 2014 detailing the improvements he had made. The inspection in January 2015 was one of CQC's new approach inspections whereby the CQC were looking at new issues and also to give providers a rating.

29. On being asked about the availability of emergency medicine at the inspection on the 6th January 2015, Ms. Dove said it was primarily the contents of the doctor's bag with which they were concerned. When Dr. Fernando had been interviewed he had indicated where he expected the doctor's bag to be, but it was not there. Although she had not asked Dr. Fernando if there was emergency medicine elsewhere in the surgery, Dr. Fernando had been focussing on the bag as the place where the emergency medicine was kept.

30. Ms. Dove told the Tribunal that she had spoken to the Practice Manager on the 6th January 2015, but she could not recall discussing anaphylaxis medicines.

31. In taking the decision to suspend Dr. Khan, Ms. Dove said the CQC had considered all the risks which had been identified following the January 2015 inspection which presented a risk to patient safety. In particular because the locums were not working full time and there were periods of the day when there was no GP in the surgery, for example between 8.00am and 9.00am. There were also issues regarding recruitment checks not being carried out for locums and emergency medicines being kept in a doctor's bag which was not opened on the 6th January. The purpose of a suspension was to give a provider the opportunity to make changes. The CQC wanted patients to receive safe and appropriate care and treatment.

32. The next witness to give evidence was Dr. Stephen Richards, who had signed two witness statements dated the 12th February 2015 and the 16th April 2016. Dr. Richards stated he had worked for CQC since the 7th July 2014 and was a Regional GP Advisor. He had acted as the GP Specialist Advisor on the inspection of the Granville Road Surgery on the 14th August 2014. He confirmed that he could corroborate the findings as set out in the inspection report from CQC of the 14th August 2014. He then proceeded to address his

major clinical concerns following the inspection, these included concerns about the patient records he had been shown.

33. Dr. Richards also referred in his statement of the 12th February 2015 to an examination of Dr. Khan's doctor's bag. Dr. Richards described the exterior of the bag as being old and somewhat battered. The bag had been unlocked. Dr. Richards said he had noted six plastic pill pots in the bag which had Dr. Khan's handwriting on them. The labels on the pots, Dr. Richards said made it impossible to identify which pill was which. There were also no expiry dates and no audit trail to show where the medicine had come from. Dr. Khan had agreed to dispose of all of the contents of the plastic pill pots.

34. In his second witness statement Dr. Richards said he had ceased to be the CQCs' GP Regional Advisor on the 31st March 2016 although he continued to practise as a GP and work for the CQC as a GP Specialist Advisor. Dr. Richards went on to clarify that although he had attended the inspection of the Appellant's practice on the 14th August 2014 he had not been present at the inspection on the 6th January 2015. Dr. Richards then made a number of observations relating to medical emergencies, in particular those requiring either oxygen or adrenaline. He commented on the importance of there being emergency medicines readily available in a GP's surgery and for locums to know where they were kept.

35. On being cross examined, Dr. Richards said he had contributed to the CQC discussion following the inspection in January 2015 regarding whether or not to suspend Dr. Khan. Dr Richards said that alongside many other issues a particular feature of the discussion had been around emergency medicine. He considered four months suspension to be appropriate.

36. Dr. Richards said that having read the CQC inspection report for January 2015 he acknowledged that oxygen had been available if required and he had made a mistake in his witness statement of the 16th April 2016 by stating oxygen was not available.

37. Although he had not mentioned it in his witness statements Dr Richards said there was no defibrillator present in August 2014. It was a necessary requirement for a surgery to have both oxygen and adrenaline as a frontline response to a medical emergency. However Dr Richards said the lack of access to emergency medicine was only one feature of the decision taken to suspend Dr. Khan. In his professional opinion Dr. Richards said he had concerns when Dr. Khan had been practising that the risks to patients had increased with the use of locums because they were not given a full induction and this put patients at risk.

38. When he had inspected Dr. Khan's doctor's bag in August 2014, Dr Richards said that as far as he could recall there were no emergency medicines in the bag. He could not recall if there were any other emergency medicines on the premises. If the locum in January 2015 had known there was adrenaline in a cupboard as an alternative supply, then Dr Richards said it needed to be accessible within two or three minutes as it could be critical to

a patient's survival. Dr. Richards went on to say it was not critical that there should be two supplies of emergency medicines in a doctor's surgery, but it was good practice to have an alternative supply. It was reasonable in Dr. Richards' view to expect a provider to show inspectors where an alternative supply of emergency medicine was kept if there was no main supply. In August 2014 Dr. Richards had not been aware of any alternative supply of emergency medicine.

39. Dr. Richards said he did not know why there was no mention of emergency medicine in the August 2014 inspection report. Many practices kept separate bags for emergency medicine and as part of the inspection emergency medicine would always be looked at.

40. The Respondent also submitted witness statements from Ms. Rebecca Gayle a CQC Inspection Manager and Dr. Jane Fryer, the Medical Director and Responsible Officer for NHS England South London Sub Regional Team. These witnesses were not called to give evidence.

The Appellant's Case

41. The first witness to give evidence for the Appellant was Dr. Fernando, who had signed two witness statements, dated the 17th February 2015 and the 15th April 2016. In his first witness statement Dr. Fernando said he had worked as a doctor for the NHS since 1965, from 2002 he had worked as a locum in various GP surgeries providing urgent support to GPs.

42. He had first been introduced to Dr. Khan through an agency specialising in placing locums in GP practices. He began working at the Granville Road Surgery in about July 2014 for four days a week. It was his duty to assist Dr. Khan in the day to day management of the surgery and to provide treatment to patients.

43. Dr. Fernando stated that in November 2014 he was aware Dr. Khan had been suspended from the performance list. This meant Dr. Khan was forbidden to operate as a single doctor's surgery. The suspension placed a condition on Dr. Khan to have locums in the surgery and/or to have other doctors working there.

44. Dr. Fernando explained that when he had first started at the surgery he had been shown around by Dr. Khan and told where everything was kept. He had not been given an induction pack as it was a small surgery with only three rooms.

45. It was stated by Dr. Fernando that he knew how to provide vulnerable patients with adequate protection and which agencies to refer them to. In providing treatment to patients, he read their records and updated those records after their appointments.

46. Although in the past Dr. Fernando stated he had his own emergency bag, he had stopped doing that and relied instead upon the emergency bag at

the Granville Road Surgery. Whilst he was at the surgery, Dr. Fernando said the emergency bag was in the room where he was saw patients and he knew how to gain access to the medicines in the bag. If he experienced any difficulties he could always speak to the Practice Manager or Dr. Khan.

47. In his second witness statement, Dr. Fernando indicated that when he had started working for Dr. Khan as a locum, he had been shown by Dr. Khan where the emergency medicines were kept. These medicines, specifically adrenaline, were kept in the Practice Manager's room and also in the doctor's consultation room. Dr. Khan had also showed him the doctor's emergency bag which was kept in the consultation room.

48. In describing the events of the 6th January 2015, Dr. Fernando stated that he had been told by the receptionist the CQC inspectors wanted to speak to him. He had been asked by the inspectors about the doctor's bag and vaccinations. He had pointed to where the doctor's bag should have been, but it was not there. Dr Fernando said he was told by the inspectors that the doctor's bag was next door. Dr. Fernando then went on to state at paragraph 10 of his witness statement of the 15th April 2016 as follows:-

"I was then told that patients who have been scheduled to receive an injection that day would no longer be allowed to receive their injections and that their appointments would be rescheduled. I was very confused and worried. I just followed what I was told to do."

49. In his oral evidence Dr. Fernando provided information about the work he had done since becoming a GP and his work as a locum. Dr Fernando said that when he first went to work for Dr. Khan he had already had CRB/DBS checks and he had given copies of those checks to the surgeries where he worked.

50. At Dr. Khan's surgery he had not been given any induction pack, but he had been shown round the surgery before he started work and he was aware of where everything was kept. If he had needed anything then Dr. Fernando said he would ask Dr. Khan if he was there or alternatively the Practice Manager.

51. During the inspection on the 6th January 2015 Dr. Fernando said he recalled Dr. Chaudery coming to see him and asking him some questions.

52. When cross examined Dr. Fernando was asked what he considered to be a "significant event" and how he would deal with it. He said if there was a "significant event" he would make a report and then ask the Practice Manager where to send it. There had been no "significant events" when he had been working at the Granville Road Surgery. As regards safeguarding children and adults, Dr. Fernando said he had completed an on-line course online. He also spoke about the procedure for passing messages within the surgery.

53. Dr. Fernando said he would usually arrive at the surgery at 9.30am and remain until 11.00am and then come back in the afternoon between 3.30pm and 5.00pm.

54. In the case of emergency medicines, Dr. Fernando said he relied on the surgery for the provision of such medicines and he knew where the bag in which the medicines were contained was kept. On the 6th January 2015 he had thought the bag was in the usual place but it was not there. There was another supply in the Practice Manager's room, but he had not mentioned that to Ms. Dove. Dr Fernando said at one point on the 6th January 2015 he had been told by a CQC inspector that the doctor's bag was next door. He had been concerned in case he needed emergency medicine, but he knew there was some in the cupboard in the Practice Manager's room. Dr Fernando said he would be worried if he could not obtain access to emergency medicine. On the morning of the 6th January 2015 Dr. Fernando said he had given two injections because he believed there was adrenaline in a box in the Practice Manager's room.

55. On the 6th January 2015 Dr. Fernando said he had seen some patients before he had spoken to the inspectors and those patients had not required injections. The emergency medicines were kept in the doctor's bag in the consulting room. Dr. Fernando said he had never had cause to go into the bag. There was also a supply in a locked cupboard in the Practice Manager's room which the Practice Manager had shown him once. The Practice Manager was not always on the premises, but if she was not present there would be a receptionist. The cupboard with the emergency medicines was kept locked but the receptionist knew where the key was.

56. The Appellant then gave evidence; he had submitted six witness statements. In the first of those statements, he provided details of his GP practice and his connections with the local community. It was the Appellant's contention that the NHS and CQC were moving to close down single-doctor surgeries and to move GP's into working in multi-doctor practices. The Appellant said he had been invited to move on to a new NHS contract, to give up his practice and merge with a larger clinic, but he had refused.

57. In the same statement the Appellant provided information about the CQC's inspections of his surgery in 2014 and his referral by CQC to the GMC and NHS for a formal assessment. As a result of the inspections the Appellant was issued with a number of warning notices which the Appellant stated he had complied with by the deadline of the 20th October 2014.

58. It was acknowledged by the Appellant that in mid- November 2014 he was suspended from the Performers List for a period of 6 months. As a result he employed a series of locum staff to assist with patient care and treatment at the surgery.

59. In relation to the criticism of his record keeping, the Appellant through the Medical Defence Union challenged the allegation that had been made

against him. He also pointed out that he had attended 5 courses on good record keeping.

60. In his statement of the 17th February 2015 the Appellant set out his response to the matters referred to in the Suspension Notice which had followed the CQC inspection on the 6th January 2015. In respect of locums the Appellant stated that from mid-November 2014, they had been employed through reputable agencies, one was employed through personal contacts. All of the GP'S were experienced, fully qualified and were doctors who had worked in various surgeries in the local area. They had not been given an induction pack when coming to work at the Appellant's surgery, because it was a fairly small practice and the Appellant said there was not much requirement for a formal induction pack. They were given a tour of the surgery and if they required more information the Practice Manager was available and the Appellant himself could be contacted.

61. It was the Appellant's contention that the locums knew how to record any matters concerning patients and again if they had any questions they could always ask the Practice Manager. It was also the case that the Practice Manager knew how respond if there was a fire or other emergency.

62. During the CQC inspection on the 6th January 2015 the Appellant stated there had been a difficulty opening his medicine bag as one of the combination locks had jammed. He had not however been asked on the day by the CQC inspectors to open the bag. The Appellant stated that the bag was not locked so tightly it could not be opened and he always kept a screwdriver and other tools at the surgery.

63. The Appellant exhibited two documents to his second witness statement, namely a Remedial Notice from NHS England dated the 18th February 2016 and the response from the Appellant's solicitors dated the 19th March 2015.

64. In his third and fourth witness statements the Appellant provided information regarding the administering of injections by Dr Fernando on the 6th January 2015. The Appellant exhibited a number of documents to these statements including the medical records of the two patients to whom it was said injections had been administered. Also documents relating to the purchase by the Appellant of adrenaline injections on the 18th March 2014.

65. The Appellant denied that Dr Fernando had administered injections whilst the doctor's bag containing emergency medicines was out of the surgery. The Appellant stated that he recalled on the 6th January 2015 sitting with the CQC inspectors in the nurse's room when a Protsap 3 injection was taken out of the medicine fridge by the receptionist whilst one of the patients was waiting in the waiting room. The doctor's bag containing the emergency medicine was with the Appellant.

66. The 10 adrenalin injections purchased by the surgery in March 2014 were stated by the Appellant still to be in his possession in April 2015 with 3

injections having being kept in the medicine bag and 7 in a cupboard at the surgery.

67. In his fifth witness statement, the Appellant explained the effect the actions of the CQC had upon him, with his suspension causing enormous embarrassment particularly within his local community. During the 4 months suspension the Appellant said business at the surgery had collapsed. CQC had conducted a further inspection on the 7th May 2015, which owing to having to attend hearings at the IPO and the Performers List Panel on the preceding days; he stated he was not fully prepared for the inspection.

68. In his final witness statement the Appellant provided further background to his relationship with NHS England and CQC. The Appellant also gave additional information regarding the CQC inspection on the 6th January 2015, particularly relating to emergency medicine. On the evening before the inspection the Appellant said that he had found one of the locks on the doctor's bag was jammed. He therefore took the bag to a local locksmith the following morning, but the locksmith was unable to fix the lock. The Appellant stated he then drove from the locksmiths' to the surgery arriving just before 10.00 am, to find the CQC inspectors already on the premises.

69. The Appellant stated that he explained to the inspectors where he had been and the situation regarding the doctor's bag. He went on to say that in his conversation with the inspectors he was not asked any questions about the bag, adrenaline or emergency medicine. The Appellant said that had he been asked about adrenaline he would have shown the inspectors where it was kept in the surgery.

70. On the 9th January 2015 the Appellant met with CQC inspectors in the surgery and was told he was being suspended for 4 months. Notices were put up at the surgery by NHS England saying the premises were closed and there was subsequently an article in a local newspaper. The Appellant explained the effect this had on him and also his patients and the circumstances leading to his decision to close the surgery.

71. When cross examined at the hearing, the Appellant said he had been involved with CQC inspections since December 2013 and he had complied with the requirements emanating from those inspections. The inspectors prior to the 6th January 2015 had seen the Practice Manager, the concerns which had been raised did not relate to clinical practice. The Appellant had seen the inspection reports and was aware of the shortfalls which had been identified.

72. The Appellant was asked a number of questions about the events of the 5th January 2016 in particular regarding emergency medicines. He said the last time the doctor's bag had been opened was in the middle of 2014 when the contents had been checked by NHS England. On the day of the CQC inspection the Appellant said he had not been asked by the inspectors to open the bag, but he had opened it after they had left with a screwdriver. The Appellant said he had purchased emergency medicines in March 2014 and later prepared an inventory of the medicines in the doctor's bag and those in a

cupboard. He had put the medicines in the bag himself. The Appellant explained that there were 2 doctor's bags, the bag referred to by Dr Richard's in his witness statement and the bag containing the emergency medicine.

73. The doctor's bag containing the emergency medicine was jammed on the 5th January 2015 and as a result the Appellant had taken it to a locksmith on the morning of the 6th January 2015, he had not told Dr Fernando he was going. The Appellant said whilst injections were being given on the 6th January he was in the surgery with the doctor's bag.

74. The Appellant then answered questions on other issues raised in the CQC's suspension notice of the 9th January 2015. He said that he had initially recruited locums through an agency and had understood the necessary checks had been carried out by the agency, but he was now ensure whether he should be relying on any agency. On a locum starting at the surgery the Appellant said he introduced them to everything, he did not seek to update their knowledge as they had done their own training. In terms of multi-disciplinary work with other health and social care services, the Appellant said he assumed the locums would know who to contact.

75. In terms of issues around records, registers, referrals and leadership, the Appellant stated that in his view the CQC had in mind big surgeries with 8 or 9 doctors. He was a sole practitioner in a very small practice and matters such as leadership structures should not apply to him. The Appellant said he lived a 1 minute's drive away from the surgery and many patients had his mobile phone number. Documents such as those regarding practice meetings were kept by the Practice Manager and the Appellant said he did not always see them. Clinical records were kept on the computer and not in hard copy, Prescription pads were kept under lock and key in the surgery.

76. The Appellant said he had an excellent knowledge of his patients, who were vulnerable and who were not. There was no need to have a register. He also knew the local social services and if a problem arose he would deal with it. There was a doctor on call all the time including between 8am and 9am. If there was an emergency between these hours a doctor would attend, if not an emergency then the patient would wait until the surgery opened.

77. In his oral evidence the Appellant said he considered the CQC to be another tier of regulation to control doctors and they had been wrong to suspend him, based on an emergency bag. A lot of other matters raised by CQC the Appellant said did not apply to his surgery.

78. In answer to questions from the Tribunal panel, the Appellant said his Practice Manager had been with him since 2002, she had not previously worked in a medical practice, but she had good experience of management. She had attended various courses arranged by such organisations as CQC and NHS England.

79. The Appellant said he had replaced the doctor's bag after August 2014, the new bag had a combination lock, he had transferred drugs into the new

bag and at that time the lock was working. The Appellant said he had changed the combination on the lock using common numbers. He had not told anyone the combination lock numbers; he accepted he should have told the locums. Although apart from Dr Fernando all the other locums had their own bags. When he had taken the bag to the locksmiths, the person concerned had taken the bag into a back room, but was unable to open it. The Appellant said he was surprised that later he himself had been able to open the bag with a screwdriver.

80. On the morning of the 6th January 2015, the Appellant said he had arrived at the surgery at 9.15 am, to find the CQC inspectors already there. Dr Fernando was running his morning surgery.

81. It was accepted by the Appellant that it was his responsibility to check the emergency medicine was in date. When they were inspected they were out of date and the Appellant acknowledged that was his fault. The Appellant went on to say that he kept 3 injections in the doctor's bag and 7 in stock in a locked cupboard. He had shown Dr Fernando where the key to the cupboard was kept.

82. The Appellant submitted witness statements from Dr Luqmaan Malik and Dr Noor Ahmed, both were dated the 16th February 2015. Mr Grey said he did not wish to cross-exam either witness and they were not called to give oral evidence.

83. Dr Malik in his statement said he had been a qualified GP since 2013 and had worked as a locum at a number of GOP surgeries mainly in South London. Through an agency he had been placed at the Granville Road surgery, for 3-4 days during which time he saw numerous patients and had no problems with the contents of their medical records. He had been shown round the surgery by the Appellant and having worked as a GP in the area was aware of local protocols. Dr Malik had his own medical bag whilst working at the surgery and carried his own emergency medicines.

84. Dr Noor Ahmad in her statement said she had been practicing as a GP for 14 years and had known the Appellant and his surgery for many years. She had done some locum work for the Appellant at the end of November/beginning of December 2014. Dr Ahmed had no undue concerns in respect of the patients' records. She was aware of where the equipment she needed was to be found in the surgery and if she had any problems she was able to ask the Practice Manager or the Appellant. Dr Ahmad said she was familiar with who to contact so far as vulnerable patients were concerned. As far as the surgery premises were concerned she found them clean and hygienic.

The Law

85. Section 31 of the Health and Social Care Act 2008 reads as follows:

“ (1) If the Commission has reasonable cause to believe that unless it acts under this section any person will or may be exposed to the risk of harm, the Commission may, by giving notice in writing under this section to a person registered as a service provider or manager in respect of a regulated activity, provide for any decision of the Commission that is mentioned in subsection (2) to take effect from the time when the notice is given.

(2) Those decisions are—

(a) a decision under section 12(5) or 15(5) to vary or remove a condition for the time being in force in relation to the registration or to impose an additional condition;

(b) a decision under section 18 to suspend the registration or extend a period of suspension.

(3) The notice must—

(a) state that it is given under this section,

(b) state the Commission's reasons for believing that the circumstances fall within subsection (1),

(c) specify the condition as varied, removed or imposed or the period (or extended period) of suspension, and

(d) explain the right of appeal conferred by section 32.”

Tribunal's conclusions

86. The Appellant has been a GP for about 40 years and has spent 33 years as a sole practitioner in his surgery in Southfields, South London. We have no doubt that during that time he has provided invaluable support to the community and has achieved a great deal of respect. This is reflected in the section in the CQC's January 2015 inspection report relating to "What people who use the service say", the first paragraph of which reads as follows:

“We spoke with three patients during our visit. Patients we spoke with made positive comments about the care and treatment they received. Most had been registered with the GP for many years and felt this was important because it meant the GP knew them and their family history. Patients valued that the GP and staff understood their cultural needs. They said the GP was very caring, supportive, and helpful and that they would recommend the practice to others. Patients made positive comments about their experience of making an appointment, they said they were referred to other services appropriately, that the repeat prescription process worked for them and they appreciated that the GP and staff were able to speak with them in their own language.”

87. It is also relevant to note that in June 2014 the Appellant passed his revalidation with the GMC which meant he was entitled to practice as a GP for the next 5 years. However when considering the risk of harm to patients it is necessary to look at all aspects of a clinical practice not just medical competency.

88. The background to this case is that a number of inspections were carried out by CQC before the inspection in January 2015 and the subsequent

decision to suspend the Appellant's registrations. These included inspections in December 2013, June and August 2014. The outcome of all of these inspections resulted in some sort of compliance action being taken by CQC. Whilst it is true that some attempt was made by the Appellant to comply with what was required, this was often not done in a timely fashion or not fully. So that for example on the 17th February 2014 the Appellant produced an action plan to address compliance issues arising from the CQC December 2013 inspection, however the subsequent inspection in June 2014 found that the Appellant had failed to make the necessary changes to ensure the service he was providing was safe. This resulted in a Warning Notice being issued.

89. The Warning Notice was not fully complied with by the time of the August 2014 inspection. In that inspection the CQC identified a number of essential standards of quality and safety which were not being complied with and which breached the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009, including some new concerns. They included such matters as medicines management and record keeping. We take into account that the Appellant wrote to the CQC on the 20th October 2014 saying the required improvements had been made, but nevertheless further problems were found during the inspection which took place on the 6th January 2015.

90. In looking at the background of the Appellant's practice, it is also important in our view to refer to the action being taken against the Appellant by other relevant authorities such as NHS England, the GMC, PDLP and MPTS. In so far as the Appellant seeks to suggest there was some sort of conspiracy between any of these bodies to close him down, we reject this. Whilst understandably there was a sharing of information between these organisations, they each have their own rules, regulations and procedures and we have found no evidence to suggest these were not properly followed.

91. The Appellant in his oral evidence, indicated that in his view the CQC were trying to close single practices and that a different approach should be used by them when inspecting small practices. There were also certain aspects which did not apply to him such as leadership structures. This apparent reluctance to fully accept the role of the CQC we consider in many ways reflects the Appellant's engagement with the organisation and their inspectors. The Appellant also said in his evidence that he had not gone through the inspection reports line by line and that his Practice Manager was, "looking after these matters". We find this surprising given the importance of inspection reports and the shortfalls identified by the CQC over a number of inspections.

92. We then turn to the inspection of the 6th January 2015. The report of the inspection under the section, "Are services safe", concludes they are inadequate. Amongst the specific concerns raised were the arrangements for the recruitment and induction of locums, fire safety, out of hours cover and the availability of emergency medicines.

93. The Appendix to the notice to suspend dated the 9th January 2015, includes a summary of the findings from the 6th January inspection and itemises the issues which the CQC considered placed patients at avoidable risk. We have considered those in some detail.

94. Firstly the situation in relation to locums, it is not disputed that there was no evidence available in the surgery to show appropriate checks had been carried out. There was no locum induction pack and the locum interviewed by the inspectors had not been supplied nor had the locum been given the child protection or safeguarding adult policies.

95. It was explained to us by the Appellant that since mid-November 2014 he had employed locums through reputable agencies and he relied on them to check all the necessary requirements were met. However under the regulations it is the registered person who must operate effective recruitment procedures and we do not consider it sufficient to rely completely on an agency without taking steps to ensure all the necessary checks have been properly carried out.

96. We have some sympathy with the Appellant in relation to the failure to provide the locums with an induction pack, in circumstances where the Appellant was operating a very small practice, based effectively in 3 rooms. That is not to say there should not be a basic simple information pack containing information on local procedures and practices in relation for example to child protection and adult safeguarding, as well as the key information about the practice, local contacts, phone numbers and what to do in the event of a fire.

97. There is clearly a risk that a locum who does not have access to this type of information, may be put in a situation where incorrect procedures are followed or the wrong information is given to a patient, it is not sufficient in our view simply to see a locum would be able to speak to the Practice Manager or the Appellant.

98. There were a number of issues arising from the January 2015 inspection which gave Dr Chaudery particular concern; they included provision for out of hours cover and the availability of emergency medicine. It was Dr Chaudery's view that out of hours cover finished at 8am and there was then a gap until 9am until the surgery opened. Dr Chaudery said she was told that during this time patients were advised either to go to A&E or wait until the surgery opened. Having heard from the Appellant, we consider this may have been a misunderstanding on the part of Dr Chaudery. The Appellant told us that there is a doctor on call at all times and if there was for example an emergency before the surgery opened the doctor would come in and if not an emergency the matter would wait until the surgery opened.

99. The situation regarding the availability of emergency medicines is more complicated and it is probably necessary to go over the history. It has always been the Appellant's contention that one supply of emergency medicine was kept in his doctor's bag in the surgery. We have seen a note on the

Appellant's headed notepaper listing various emergency injections with the prices, (the total cost being £43.14). The note is headed, "Medicines for Doctor's Emergency bag" and there is endorsed on the note a pharmacy stamp with the date of the 18th March 2014. We were also provided with a credit card statement for the Appellant showing a payment to "Well Being Pharmacy" on the 18th March 2014 for £43.14. On the balance of probabilities therefore we accept that the Appellant did purchase emergency medicine on the 18th March 2014. We are reinforced in this view by a comment in the August 2014 inspection report which reads, "*A further inspection on 10 June 2014 found the emergency medicines had been replaced.....*"

100. In his evidence Dr Richards describes his examination of a doctor's bag during the August 2014 inspection, describing the bag in question as being, "old and somewhat battered". Dr Richards lists the contents of the bag and expresses concern about the labelling of medicine pots and their expiry dates. The Appellant agrees to dispose of the pots. Dr Richards also confirmed there was no emergency medicine in the bag he examined. He suggested that many practices keep a separate bag for emergency medicine and the Appellant confirmed the bag Dr Richard's examined was different to the bag in which the emergency medicine was kept. In any event it would appear from the August 2014 inspection report that the Appellant did have emergency medicines at the surgery, even if it is not entirely clear where they were being kept.

101. We were also told by the Appellant that NHS England had visited the surgery during the middle of 2014 and checked his doctor's bag and were satisfied that the required emergency medicines were present. Whilst Dr Fryer does not specifically mention an examination of the doctor's bag in her witness statement, she does refer to visits by NHS England on the 10th June and the 22nd July 2014. There is nothing in Dr Fryer's statement relating to emergency medicines.

102. As far as the doctor's bag is concerned the Appellant told us that after the August 2014 CGC inspection he replaced his doctor's bag with a new bag which had a combination lock. He transferred the emergency drugs into that bag and changed the code on the combination lock. The Appellant did not tell anyone about the new code which he accepted he should have done.

103. If we then turn to the events of the 6th January 2015, the Appellant in his first witness statement states that on the day there was difficulty with the medicine bag with one of the locks having jammed. At an earlier Tribunal hearing and in his sixth witness statement the Appellant states that on the evening of the 5th January 2015 he had tried to open the bag and found one of the locks had jammed and as a result he decided to go to a locksmith the following morning. It was also the Appellant's evidence that he had not had cause to use the emergency medicine since placing it in the new doctor's bag. The locksmith we were told was unable to open the bag and the Appellant agreed that was somewhat surprising given his evidence that he was able to open it himself later in the day with a screwdriver. Whilst we accept as plausible the lock on the bag had become jammed, we consider it equally

plausible that given the length of time which had elapsed since the Appellant changed the combination on the lock that he was simply unable to recall the new number. Indeed Ms Dove in her evidence refers to the bag being locked, *“..and the combination code was not known..”*

104. There is some confusion as to precisely what time the Appellant arrived at the surgery on the morning of the 6th January 2015. In his oral evidence the Appellant said he reached the surgery at about 9.15 am in his sixth witness statement he said he arrived just before 10.00 am. Ms Dove in her statement states that the Appellant arrived at 10.15 am. On the balance of probabilities we consider that the Appellant entered the surgery around 10.00 am, either just before or shortly thereafter.

105. There is then the important issue of what if any injections were administered by Dr Fernando on the 6th January? Ms Dove in her initial statement states she was told by Dr Fernando that he administered two injections during morning surgery. In her second statement Ms Dove says the inspection started at 9am and during the first hour and a half of the inspection Dr Fernando was seeing patients and that it was after those appointments that he was interviewed by Ms Dove and Dr Chaudery. In her own statement Dr Chaudery states the interview with Dr Fernando took place around midday.

106. Dr Fernando's evidence on this point we found somewhat confusing, in his second witness statement he says he was told by inspectors that patients who had been scheduled to receive injections would no longer be able to receive them. In his oral evidence he said he did give injections because he believed there was adrenalin on the premises.

107. The Appellant referred us to the medical records of two patients who were said to have received injections from Dr Fernando on the 6th January. They show their consultations with Dr Fernando beginning at 10.38 am and 11.09 am respectively. Whilst there was some discussion about when and who made computer entries in patients records, on the balance of probabilities we accept these timings to be correct. When questioned about the availability of emergency medicine, both Ms Dove and Dr Chaudery stated that Dr Fernando referred to it being kept in the doctor's bag beside a chair in the consultation room. Dr Fernando in his evidence accepts that on the morning of the 6th January the doctor's bag was not where he expected it be.

108. This was undoubtedly because the Appellant had taken the bag to the locksmith's that morning. However we accept that the Appellant having arrived at the surgery around 10.00 am and the two injections being given between 10.30 am and 11.30 am, the doctor's bag with the emergency medicines was on the premises. It was not where Dr Fernando expected it to be because it was still in the possession of the Appellant, however even if Dr Fernando had been aware of this it would have been of little assistance to him because the bag was locked and he did not know the combination. We do not accept that the Appellant would simply have been able to open it at will with a screwdriver, despite his claim to have done so later in the day, given that it could not be opened by a professional locksmith. Moreover Dr Fernando

being unaware of the combination to the lock would not have been able to open it had he needed to do so on any day prior to the 6th January 2015.

109. It is said by the Appellant that issues with the bag were not crucial because there was another supply of emergency medicine at the surgery. We were referred to a document entitled, "Injections List" which contains two lists of injections, one set in the "Medical Bag" and the other set in "Cupboard". These are said to equate to the injections purchased by the Appellant in March 2014. It is said by the Appellant that this list was handed to CQC or NHS England during one of their visits in 2014, we were however not taken to any evidence to substantiate this. We consider the document to be very much self serving and we have looked for other evidence to show emergency medicines were kept in the surgery other than in the doctor's bag.

110. The evidence from both Ms Dove and Dr Chaudery is that during the inspection on the 6th January 2015, neither the Appellant or Dr Fernando mentioned there being another supply of emergency medicine in the surgery. Although we note in Ms Dove's second witness statement her comment that she could not specifically recall if she had asked Dr Fernando if there were other medicines available to deal with a medical emergency.

111. The first witness statement made by the Appellant after the decision to suspend is dated the 17th February 2015. In that statement the Appellant refers to the difficulties with the medicines bag, but makes no mention of another supply of emergency medicines elsewhere in the surgery. Dr Fernando's first witness statement is also dated the 17th February 2015, at paragraph 10 of that statement he says as follows:

"10. I used to have my own emergency bag as a locum. Recently, I have stopped stocking my bag with emergency drugs. As such, I rely upon the emergency bag which is at the Surgery. During my time at the Surgery, the emergency bag was always in the room where I was seeing the patients. At all material times, I knew where the bag was and I knew how to gain access to the medicines in it. If I experienced any difficulties then I could always speak to the Practice Manager, and other staff who were onsite. Dr Khan was also easily available, if I needed to speak to him about an administrative emergency. I had Dr Khan's mobile number and I was aware that he lived only a minute's drive away from the Surgery."

112. The first time that the Appellant indicates that there was also adrenalin available in a cupboard was at a tribunal hearing in March 2015, although he does go on to mention it in subsequent statements. Dr Fernando refers in his second witness statement to having been given a tour of the premises by Dr Khan prior to starting work at the surgery and having been shown where the emergency medicines were kept, which included a supply in the Practice Manager's room. In their oral evidence before us the Appellant maintained he had told Dr Fernando about the emergency medicine in a locked cupboard. Dr Fernando said he knew there was a supply in the Practice Manager's room, although on the 6th January 2015 he had not mentioned this to Ms Dove. We did not have any evidence from the Practice Manager.

113. It is clear from the evidence of Ms Dove and Dr Chaudery that emergency medicine was a key issue which was discussed on the day of the 6th January 2015 inspection. It may well be the case as the Appellant and Dr Fernando claim that they were not specifically asked about the availability of emergency medicine other than in the doctor's bag. However we do not find it credible that given the concerns expressed by Ms Dove and Dr Chaudery they would not mention the existence of an alternative supply in a cupboard. The Appellant was sufficiently concerned to be able to demonstrate to the inspectors emergency medicine was available that he took his bag to a locksmith's on the day of inspection. Dr Fernando was extremely worried that he stood accused of administering injections without having access to emergency medicine. We therefore conclude on the balance of probabilities there was no emergency medicine elsewhere in the surgery other than in the doctor's bag and that on the 6th January that could not be opened during the inspection.

114. Mr O'Dair in his submissions made reference to human rights and contended that the Appellant's medical practice is a right of property protected against interference by Article 1 to the 1st Protocol of the European Convention on Human Rights (ECHR). That accordingly any interference with property may be justified if it is a proportionate means of achieving a legitimate aim. Even if it is right that a medical practice is protected by the first protocol to the ECHR, we do not agree this places any higher standard on the procedures the CQC follows or the decision it makes. Section 31 of the Health and Social Care Act 2008 requires the CQC to have, "...reasonable cause to believe...", which in our view requires the CQC to carry out reasonable enquiries and we are not persuaded that the ECHR requires any higher standard.

115. It is said on behalf of the Appellant that his practice was singled out and there was an attempt by CQC to destroy the practice. We reject that contention, there were enquiries made of the Appellant's practice by various regulators and whilst there was appropriate sharing of information between them, we do not agree there was a conspiracy as the Appellant would have us believe. The regulators followed their own separate procedures in respect of which the Appellant was given an opportunity to present his case. In our view the different regulators reached their own conclusions on various aspects of the Appellant's practice.

116. The aspect of the CQC's enquiries which came in for particular criticism was in relation to the availability of emergency medicine. It was submitted that there was a burden on the CQC in carrying out a reasonable enquiry to have asked Dr Fernando a specific question about the availability of emergency medicine. Having heard from Ms Dove and Dr Chaudery we accept the issue of emergency medicine was raised with Dr Fernando and his response had been that it was in the doctor's bag. As we have already indicated we do not find it plausible, particularly as he was concerned about the possibility of having given injections when the doctor's bag was not available, that Dr

Fernando would not have mentioned another supply of emergency medicine if there was one.

117. Clearly if CQC were proposing to use the lack of available emergency medicine as part of the reason for suspending the Appellant, the issue needed to have been raised as part of their inspection and we find that it was. As far as Dr Fernando is concerned, we are prepared to accept that when he administered injections on the 6th January 2015 he genuinely believed that emergency medicine was accessible in the doctor's bag , even though in reality it was not.

118. The decision to suspend was based on the Appellant's failure to comply with Regulations over a period of time, but primarily as a result of the findings from the inspection on the 6th January 2015. The breaches particular seen in the context of the Appellant's regulatory history are significant, however the key issue in our view was the lack of access to emergency medicine on the 6th January 2015. As a result the Appellant's practice was not in a position to deal appropriately with any emergency which arose, that we consider exposed patients to the risk of harm.

119. We are not persuaded having heard from the Appellant that he had an understanding of the importance of complying with the Regulations and co-operating with the CQC. On several occasions when giving evidence he indicated that he did not consider all the Regulations should apply to him. The Appellant's history of non-compliance and the seriousness of the emergency medicine situation on the 6th January 2015 causes us to conclude that in order to protect patients, the CQC were justified in suspending the Appellant. We therefore unanimously uphold the decision to suspend for four months and dismiss the appeal.

Decision

The appeal is dismissed.

**Tribunal Judge Stewart Hunter
Care Standards
First-tier Tribunal (Health Education and Social Care)**

Dated: 10 November 2016