

Primary Care Appeals

Background

Dr Shashikanth's dispute related to two General Medical Services Contracts held for the provision of primary medical services. On 1 October 2019, the NHS (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2019 inserted a new paragraph 15A into Schedule 3 of the National Health Service (General Medical Services Contracts) Regulations 2015 (as amended) requiring either sign-up to the Network Contract Directed Enhanced Service Scheme or at least ensuring that the Scheme is available to patients.

The Commissioner issued a Remedial Notice to Dr Shashikanth for breach of Contract (for not complying with clause 499 of the Contract and his failure to comply with relevant legislation - paragraph 15A). Dr Shashikanth was then issued with a Termination Notice due to not remedying the breach within the specified time.

Dr Shashikanth had not elected to be a health service body so the provision of primary medical services was known as a 'non-NHS Contract'. He therefore had the option of pursuing private litigation against the Commissioner's decision but instead chose to utilise the NHS dispute resolution procedure and make a referral to Primary Care Appeals. In doing so, he agreed to be bound by our final decision. On 24 June 2021, Primary Care Appeals upheld the Termination Notice.

Dr Shashikanth sought to challenge the decision by judicial review.

On 11 October 2022, Judgment was issued stating that the adjudicator had erred in his decision by accepting a letter from the Commissioner to Dr Shashikanth was a notice of variation to the GMS Contract. A notice of variation should set out the relevant provisions in the Regulations under which it is varying the Contract, and further that the Contract is varied from a set date (not less than 14 days after the notice is served). The letter simply informed Dr Shashikanth that he must comply with paragraph 15A of the relevant Regulations. The Judge noted that this point was not in dispute at the judicial review hearing but "*In fairness to the adjudicator, it must be emphasized that this objection was not raised and he was not invited to consider or decide this question*". However, the position remained that the decision was based on an error. Despite the error, Dr Shashikanth's challenge was dismissed on amenability to judicial review.

Judgment – 11 October 2022

No. CO/3299/2021.

High Court of Justice King's Bench Division Administrative Court

[2022] EWHC 2526 (Admin)

Before: Mr Justice Bourne

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Dr Shashikanth appealed that Judgment to the Court of Appeal and the case was heard on 19 and 20 November 2024.

On 3 December 2024, the Court of Appeal determined that Primary Care Appeals decisions affecting non-NHS contracts are amenable to judicial review.

The Judgment indicates *“that the appropriate order is to quash the determination of the adjudicator and to remit the matter to him to determine in accordance with this judgment, that is, on the basis that there had been no breach of any obligation to co-operate the primary care network as the provisions of the two contracts had not been amended to include obligations equivalent to paragraph 15A of Schedule 3 to the 2015 Regulations.”*

Judgment – 3 December 2024

No.CA/2022/002300.

Court of Appeals [Civil Division]

[2024] EWCA Civ 1477

Before: Lady Justice Asplin, lady Justice Nicola Davies ad Lord Justice Lewis

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