

## Primary Care Appeals

### Background

Dr Haffiz was a GP sole practitioner, who held a contract with NHS England, to provide General Medical Services. In December 2017, the Practice was placed in special measures and assessed as 'overall inadequate'. There were a significant number of patient safety concerns identified by the CQC at that time. Dr Haffiz was provided with support and an opportunity to address the concerns and put safe systems in place. However in March 2018 NHS England reviewed the case and the full history and deemed there were sufficient grounds to issue a remedial notice under the Contract. In May 2018 the CQC carried out a further inspection of the Practice and rated the Practice as 'overall inadequate' and it remained in special measures. On 29 January 2019 a second remedial notice was issued, to give Dr Haffiz another opportunity to implement the improvements. Following a third remedial notice, NHS England served Dr Haffiz with a termination notice under clause 569<sup>1</sup> of the Contract on grounds that Dr Haffiz had failed to remediate three separate remedial notices.

Dr Haffiz lodged an application for resolution with Primary Care Appeals under the NHS dispute resolution procedure. The Adjudication of 19 May 2020 found for NHS England.

### Judgment - 21 December 2020

No. CO/2722/2020. High Court of Justice Queen's Bench Division Administrative Court [2020] EWHC 3792 (Admin), 2020 WL 07508196

Before: Mrs Justice Stacey

The following is a brief summary of the Judgment which can be located on-line.

- The essential question before the Adjudicator was whether NHS England had been entitled to terminate Dr H's Contract, bearing in mind the contractual obligation of reasonableness and the public law duties after three remedial notices over a 12 month period. The Adjudicator did not err in this regard.
- Of the failure to take into account the matters raised in later submissions (from Dr H and NHS England) the Adjudicator concluded that NHS England had already given Dr H a reasonable period of time to comply with the third remedial notice, and it was, therefore entitled not to wait any longer. The Adjudicator did not err in finding that the process was not deficient.
- The Adjudicator considered the efforts to support Dr H and that failure to remediate was a 'last chance'; and
- The Adjudicator concluded that it was open to NHS England to rely on either clause 569 or 571<sup>2</sup> of the Contract, and found that it had not been inappropriate for NHS England to rely on clause 569 to terminate the Contract. The Adjudicator did not err in making this finding.

---

<sup>1</sup> Where the Board is satisfied that the Contractor has not taken the required steps to remedy the breach by the end of the notice period, the Board may give a further notice in writing to the Contractor terminating the Contract with effect from such date as the Board specifies in the notice.

<sup>2</sup> If, following a breach notice or a remedial notice, the Contractor: (a) repeats the breach that was the subject of the breach notice or the remedial notice; or (b) otherwise breaches the Contract resulting in either a remedial notice or a further breach notice, the Board may give notice in writing to the Contractor terminating the Contract with effect from such date as the Board specifies in the notice