

## Care Standards

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

Heard on 23 and 24 February and 30 March 2017 sitting in London

[2016] 2577.EA & [2016] 2578.EA

#### BEFORE

Mr I Robertson (Judge)  
Ms C Joffe (Member)  
Ms J Funnell (Member)

#### BETWEEN:

Dr Soumyo Gorai  
East Tilbury and Corringham Medical Centre

Appellants

-v-

Care Quality Commission

Respondent

#### DECISION

#### REPRESENTATION

Mr O Ojo Solicitor Advocate for the Appellant  
Ms C Patry (Counsel) instructed for the Care Quality Commission

#### THE APPEAL

1. These are two appeals, the first brought by Dr Gorai against a decision by the Care Quality Commission dated 7 December 2015 to refuse his application to register as the Registered Manager of East Tilbury Medical Centre in Essex. There is a second appeal by East Tilbury Medical Centre against the CQC's decision to refuse the application to register the partnership as a service provider of regulated services at this location.
2. The Notice of decision to refuse application was dated 7 December 2015. There are effectively 4 Grounds which we would summarise as follows;
  - i) Fitness of Dr Gorai

- ii) Safeguarding concerns
  - iii) Staffing
  - iv) Governance issues
3. Dr Gorai lodged an appeal on 4 January 2016. This document was subsequently amended. These amendments were subject to an earlier hearing before us and appeal but do not form part of the matters before us today. This does however explain the delay between the issue of the appeal and today's hearing date.
4. The parties were directed by Judge Tudor on 8 April 2016 to draw up an agreed Scott Schedule. Having excluded the two grounds added by the Appellant as they had been dealt with, nine grounds remained as follows;
- i) Failure on application form to disclose full employment history
  - ii) Failure, on application form, to give details of most recent employer (referee)
  - iii) Failure, on application form, to provide details of regulatory proceedings
  - iv) Failure, on application form, to disclose history as a registered person
  - v) In interview Dr Gorai was only able to give very limited information about safeguarding systems and procedures
  - vi) Dr Gorai indicated that one GP would serve 4000 patients which is insufficient to ensure that patients have access to medical treatment
  - vii) At interview, Dr Gorai failed to satisfy the CQC that adequate assessment, monitoring and mitigating processes are in place
  - viii) Dismissal by previous employer gives further concerns about fitness
  - ix) Failure of the partnership to demonstrate compliance with regulations 13,17 and 18

## THE LAW

5. This is an appeal brought under S32 Health and Social Care Act 2008. The appeal is against the decision of the Care Quality Commission under S15 of the Act to refuse Dr Gorai's application to be registered as a manager of the practices. In considering the question of registration reference has to be made to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. It is the Respondent's case that Regs 7,8,13 and 18 are of particular relevance to this appeal. The burden of proof lies with the appellant and the standard of proof is the ordinary civil standard.

### Regulation 7: Requirements relating to Registered Managers

7 (1) A person (M) shall not manage the carrying on of a regulated activity as a registered manager unless M is fit to do so.

7(2) M is not fit to be a registered manager in respect of a regulated activity unless M is –

- (a) Of good character,

- (b) Has the necessary qualifications, skills and experience to manage the carrying on of the regulated activity,
  - (c) Able by reason of M's health, after reasonable adjustments are made, of doing so, and
  - (d) Able to supply to the Commission, or arrange for the availability of, the information specified in Schedule 3
- 7(3) In assessing an individual's character for the purposes of paragraph 2(a), the matters considered must include those listed in Part 2 of Schedule 4

Regulation 8: General (under heading of Section 2: Fundamental Standards).

8 (1) A registered person must comply with regulations 9 to 19 in carrying on a regulated activity.

8(2) But paragraph (1) does not require a person to do something to the extent that what is required to be done to comply with regulations 9 to 19 had already been done by another person who is a registered person in relation to the regulated activity concerned.

Regulation 13: Safeguarding Service Users from Abuse and Improper Treatment

13 (1) Service users must be protected from abuse and improper treatment in accordance with this regulation.

13(2) Systems and processes must be established and operated effectively to prevent abuse of service users.

13(3) Systems and processes must be established and operated effectively to investigate, immediately upon becoming aware of any allegation or evidence of such abuse.

Regulation 18: Staffing

18(1) Sufficient numbers of suitably qualified, competent, skilled and experienced persons must be deployed in order to meet the requirements of this Part.

6. We considered the bundle submitted in this case running to over 750 pages and heard oral evidence from Dr Gorai, Ms Billington, Mrs Sibley and Ms Fox. After two days of oral evidence the parties agreed to provide written submissions and we are most grateful to Mr Ojo and Ms Patry for these helpful documents.

## THE BACKGROUND

7. Dr Gorai graduated from the University of Madras in 1988. He came to this country in or around 1999 working initially at Lewisham University Hospital. Between 1999 and March 2003 he appears to have held a position at two GP practices and also worked as a locum GP through an agency or agencies. On 1 March 2003 he joined Clements House Surgeries initially as a salaried GP and subsequently as a Partner. He was suspended from practice by the GMC for three months 1/3/11 to 31/5/11 and thereafter worked for 18 months as a partner at Branfill Surgery before joining East Tilbury and Corringham Practice on 1 April 2013. We learned through the hearing that at various

stages Dr Gorai has also acted as a locum for various practices and organisations although the dates for this work are somewhat difficult to pin down.

8. The registered manager of the East Tilbury and Corringham Medical Centre was Mr Khan and he ran the practice with his wife Dr Khan. They retired from practice on 31 May 2013. The application by Dr Gorai for Registration as Manager and Application for registration as a new provider of regulated activities were submitted to the CQC on 17 December 2014. The first application form runs to 17 pages the latter to 69 pages. They are complex documents, both of which come with detailed guidance notes. These, self-evidently, are important documents that require careful completion.
9. The core of the CQC case is that Dr Gorai deliberately omitted information from these application forms and that the information supplied was inadequate. Following submission of the application the case was allocated by the Commission to one of its inspectors Ms Fox. She began her enquiries on 13 January 2015. As a result of her enquiries three matters were highlighted i) that Dr Gorai was subject to an investigation by the police and the GMC for an allegation of gross misconduct ii) that there were ongoing enquiries regarding the Practice being run without a registration and iii) that Dr Gorai had previously been a registered manager at Branfill partnership. It was arranged that Ms Fox would conduct a fit person interview on site with a colleague, Ms Sibley, and a specialist adviser Dr Sharma to join the site visit. This took place on 23 February 2015. Following this Ms Fox was not at work for a period but she assisted in drafting a Notice of Proposal to refuse registration. This Notice of Proposal was passed up the CQC management line before reaching the decision maker Ms Billington who, on or around 21 October 2015 decided to adopt the proposed Notice of Proposal to refuse registration.

## THE ORAL EVIDENCE

10. We heard first from Dr Gorai. He was tendered by Mr Ojo for cross examination by Ms Patry. He came across as a very angry man with a sense of grievance against the CQC. He said that at the point of the application the CQC had only just been formed and were not a functional organisation.
11. Ms Patry spent some time looking at Dr Gorai's career history. He became very exercised about the definition of employment in the context of a GP's life. He explained that a GP who was a partner was not employed nor was he employed when working as a locum. As such he did not need to declare this. This, he said, explained why the various locum jobs that he undertook regularly with various organisations that he had links with were not declared on his application form.
12. When asked about his completion of the application form particularly as it referred to employment and reference to the guidance, he confirmed that he did not refer to the guidance. He said he did not have time to look at this. He did not have time to "consider the small print"

13. Ms Patry turned to the issue of his being a Registered Manager at Branfill Surgery, as evidenced by a Registration certificate. Dr Gorai denied any knowledge of this saying that at the time he was in dispute with his partner Dr Chakravarty and that whilst he was formally in partnership with her until April 2013 he had actually been told to leave in September 2012. He accepted he must have signed the registration application but did not remember doing so, although he seemed to remember completing some of the form but being unable to complete the rest. He confirmed that he had never received any communication from the CQC regarding the registration. In short he did not know he was registered.
14. He said that subsequent to sending in the application, in discussion with his new partner Dr Nimalraj he did discover he was registered and determined to bring this up at the fit person interview.
15. Later in evidence Dr Gorai accepted that he had undertaken locum work for Nester Primecare and Wolverhampton Doctors on call service. He said he worked for them when visiting Wolverhampton where his wife comes from perhaps three Saturdays out of four. He also undertook locum work with the Khan practice in 2008, with Thamesdoc and the Petersfield practice where he qualified. He saw no need to disclose these positions.
16. He was asked about the part of the application form asking about ongoing investigations. He said that he had not mentioned the matter with the GMC as he did not regard this as an investigation. He said that he was not hiding this as it appears in the second application and he raised it at the fitness to practice interview.
17. He was asked about the fitness to practice interview and disputed the accuracy of Ms Sibley's notes saying they had never been sent to him to approve. He accepted however that he had had them for a very long period of time and raised no issue regarding them.
18. Dr Gorai was asked about the decision of NHS England to impose conditions upon his inclusion on the medical performers list. He made the point, that, as a result of this decision he was undertaking mentoring at his own cost, that he found this helpful and that the conditions were only imposed for six months although reading the decision there seemed real confusion around the timescales.
19. We heard from Ms Billington who was the decision maker for CQC. As such she stands removed from the investigation and is not part of the management of the inspectors. As we said to Mr Ojo her evidence was of limited value as her rationale for making a decision was limited to circumstances on that date, we have to determine the matter afresh at today's date.
20. Ms Fox then gave evidence and was examined in chief for an hour or so by Ms Patry. She confirmed her statement and the accuracy of her template notes made at the time of her fit person interview. She confirmed the

accuracy of Ms Sibley's notes. She explained that the purpose of the fit person interview was to see if the applicant could demonstrate they are fit to be a registered manager, that they have the knowledge and understanding of the issues and the regulations and the experience to put into practice the way the service is managed safely and effectively.

21. She said that it was important that all work history is disclosed to look for any gaps and also any evidence of previous dismissals. She said that completion of the template was effectively a record of interview and therefore not a box ticking exercise. She denied having any preconceptions before meeting Dr Gorai though she had gathered information. She said it was not her job to put that information to Dr Gorai but rather by giving him assistance to enable him to bring these issues up himself. She said that she gave significant prompts regarding safeguarding issues and was adamant that he said, "Don't know my role in regard to informing the police. Don't know my RM responsibilities". These were quotes not impressions. She said she was struck by how Dr Gorai refused to accept individual responsibility for anything and shifted blame on to others.
22. Ms Fox told us that she was very concerned about his narrow responses regarding safeguarding issues.
23. In cross examination she confirmed that there were no concerns regarding the premises. She again reiterated that the Dr Gorai said in terms that he did not understand the role. She said that she did not feel he was competent to be a Registered Manager and that he was not honest. She said she felt they had not received full and complete disclosure. She raised the issue of using Dr Nimalraj as a referee and felt this to be inappropriate although accepted when challenged that the wording on the form allowed for this. In all she felt he lacked credibility.
24. Ms Sibley gave evidence. She is Ms Fox's line manager and had management discussions with her regarding the case ahead of the fit person interview. She attended the meeting in her line management role to monitor Quality and Assurance. She said that it was her habit to keep notes of all meetings she attended and that from the tone and tenor of this meeting she tried to note down everything carefully. She said that the normal process was that after the interview an assessment recommendation report would be compiled. This did not take place in this case as Ms Fox was away from work so what went to the legal department was the template note and Notice of Proposal partly drafted by Ms Fox. She said that Ms Fox if anything gave Dr Gorai too many prompts. She felt that he did not articulate his responsibilities in managing a regulated activity. For example he was not able to explain how he would liaise with CQC over statutory notifications, despite multiple prompts.
25. She said that she was concerned by the staffing level proposed for the practice, one GP over two sites with one nurse and two receptionists for 4000 patients. It appeared that Dr Nimalraj only proposed working one session per

week. She was not able to account for why the quotes from Dr Gorai regarding his understanding of roles did not appear in her notes.

## DISCUSSION

26. We have to consider the Appeals afresh and apply our minds to the situation that exists today. We bear in mind that the onus is upon the Appellant to persuade us that he is a fit person to be a registered manager and that the standard of proof is the balance of probabilities.
27. The role of a Registered Manager in a regulated activity is crucial. Indeed it is pivotal to the success of the regulatory framework. That person has individual responsibility to ensure that the regulatory regime is followed and that where difficulties arise the appropriate authorities such as the CQC are notified. They are responsible for good practice and ultimately for ensuring, in the case of GPs, that safeguards are in place to keep patients safe. It follows that this person must be trustworthy, honest and possesses integrity.
28. This is codified by Reg 7 and 8 above.
29. The appeal brought by East Tilbury and Corringham Medical Centre stands or falls upon Dr Gorai's appeal. We note that this was a partnership application by Dr Gorai and Dr Nimalraj. Dr Nimalraj declined to attend or provide evidence to us. We had no evidence before us that he remained as a partner, we know his last date of working in the practice was some time ago. As of today's date we have had no information regarding the status of the relationship or any evidence of Dr Nimalraj being able to meet the requirements.
30. Dr Gorai came to this process under a cloud. In 2008 he was involved in an incident that led to the GMC holding a fitness to practice hearing on 31 January 2011. Amongst many of the findings made were a number for dishonesty. One relating to active dishonesty in falsifying a drivers log and others for more passive dishonesty in not providing assessors with full details of professional commitments. These latter were found by the GMC to be misleading and dishonest. He was suspended for three months. Thus Dr Gorai was on Notice that he had to show exceptional good faith in future dealings with authority. He also, we find, should have reflected upon his actions and those findings and exercised a degree of humility. We have to say that at no stage before us has he shown any ability to reflect or accept blame. There is no humility and no self-awareness of his manifest failings that we find made out.
31. Chronologically the next major issue revolves around the Branfill Partnership. Dr Gorai told us that he entered into a joint partnership with Dr Chakravarty an older GP with definitive (definite?) ways of doing things. They fell out and in September 2012 he was made to physically leave the premises and he had nothing further to do with it until May 2013. We know that Dr Gorai was however registered as manager for the practice on 20 December 2012. He

denies knowledge of this but seemed to accept in evidence he may have completed part of the form. We find this whole issue most unsatisfactory. There are a number of explanations for this none of which put Dr Gorai in a good light. i) He is simply lying ii) He half completed the form, signed it and then allowed someone else to complete and submit or iii) He completed it but genuinely forgot that he had done so. In any of those scenarios he comes out very badly either being dishonest or totally casual in a manner that raises serious questions regarding his fitness.

32. Dr Gorai completed the application forms for registration of himself and the practice on 17 December 2014. We know that he was extremely casual in his approach to this confirming that he did not bother to read the guidance and that he was not interested in the small print. He completed the section regarding employment with the bare minimum engagements. He neglected to mention the numerous regular locum commitments he had. He tried to hide this before us through sophistry regarding the meaning of the word employment. He is a GP a man therefore of significant intellect, he knows full well what was required of him in completing the form. Furthermore having been admonished on this very issue by the GMC just three years previously he should have been on heightened alert. The reality is he deliberately chose not to mention his regular locum commitments. We can only guess at his motivation but if fully reported they would have shown a man spreading himself very thinly on the ground including a regular commitment in Wolverhampton many miles from his home base.
33. In his application form he also chose to omit the current investigation by the GMC. We accept that he did put these details in the practice application. We accept that he was not being dishonest in the way he answered this but it further reveals a cavalier attitude to the form and to the registration process.
34. Following the submission of the application Ms Fox arranged the Fit Person interview. She was accompanied by Ms Sibley who said she was primarily there to assess Ms Fox as a routine Quality and Assurance practice. She did however take extensive notes as she said she realised this was going to be a difficult interview. As previously stated Ms Fox made notes on the template. We have to say having examined the template in detail, that this is a most unsatisfactory way of recording a meeting as the notes are sketchy and the handy aid memoire boxes are not ticked to show compliance. This document gives no flavour of the interview. Ms Sibley's notes assist more. It is clear to us having heard evidence from the three people present, that this was a tense meeting. It appeared to us that Dr Gorai found it challenging and that he regarded it as an imposition. He seemed to take the attitude that this was bureaucratic stuff and nonsense and that as a GP he should be left to get on with it as had occurred prior to the inception of the CQC. We are satisfied that his performance at the interview was defensive and unhelpful.
35. The process of decision making with the CQC after this was labyrinthine and in our view merits review. It appeared ad hoc. We were not assisted by any documentation showing what had or had not been considered by Ms Billington. She said she saw the template but could not remember seeing the

notes, there was no report compiled and we were unclear who compiled the Notice of Intention the whole process appears to have taken nine months. We suggest that the CQC needs to consider a standard decision making template clarifying exactly what was seen and considered at the point of decision.

36. In any event as discussed above we were not assisted by Ms Billington's reasons for her decision as, whatever her view in November 2015, the test for us is our view at the end of this hearing.
37. From the documentary and oral evidence it is clear to us that Dr Gorai did not demonstrate adequate understanding and application of the regulations during the fit person interview.

## FINDINGS

38. We will apply the Scott schedule filed at the original hearing in June 2016.
- i) Failure on application form to disclose full employment history  
We find this proved. As discussed above Dr Gorai knew, or ought to have known, that full disclosure of all his commitments was necessary and his failure to provide full disclosure was deliberate.
  - ii) Failure, on application form, to give details of most recent employer (referee)  
We do not find this proved. The application form asks for a referee and provides details of those persons who are acceptable. Dr Nimalraj falls into the CQC's own definition of an acceptable referee
  - iii) Failure, on application form, to provide details of regulatory proceedings  
We find this proved to a limited extent in that we accept its omission was not with the intention to deceive, as it was included in the second practice application. Rather this shows a cavalier attitude to completing the form accurately.
  - iv) Failure, on application form, to disclose history as a registered person  
Dr Gorai was previously a registered person and either knew or should have known this. We therefore find this proved. Dr Gorai's whole explanation regarding his relationship with Dr Chakravarty is most unsatisfactory and, we note, completely devoid of any evidentiary support.
  - v) In interview Dr Gorai was only able to give very limited information about safeguarding systems and procedures.  
We accept the view that Dr Gorai was unable to articulate his individual responsibilities as Registered Manager and in evidence to us he did not expand upon this but rather spoke of delegating responsibility to Dr Nimalraj. We note that since the CQC decision Dr Gorai has attended a safeguarding course but we saw no reflection of this in his ability to apply knowledge to practice. We do find therefore that as of today's date his safeguarding knowledge is insufficient for a registered manager.

- vi) Dr Gorai indicated that one GP would serve 4000 patients which is insufficient to ensure that patients have access to medical treatment. Dr Gorai called no evidence to gainsay this. It is clear to us that proposed staffing levels were insufficient over the two sites and we find this proved.
  - vii) At interview, Dr Gorai failed to satisfy the CQC that adequate assessment, monitoring and mitigating processes are in place. Again no evidence was called to gainsay the evidence of lack of governance in the bundle and at interview and we find this proved.
  - viii) Dismissal by previous employer gives further concerns about fitness. We assume that this refers to the period with Dr Chakravarty which is shrouded in mystery. We do not know what occurred in that partnership and the CQC have advanced no evidence regarding this and therefore we do not find it proved. In the alternative it may apply to his dismissal by Primecare in 2008. If this is the case we do not consider that this advances matters.
  - ix) Failure of the partnership to demonstrate compliance with regulations 13,17 and 18  
It is the responsibility of the manager to ensure compliance on behalf of the partnership. Dr Gorai has failed to do so and in the light of the findings above we have to find this proved.
39. No concerns have been raised about Dr Gorai's abilities as a GP as the testimonials all point out. However, he presents as a very arrogant man in his dealings with those he considers are hampering his job. We found his attitude and evidence full of misplaced righteous indignation. He showed limited insight into the role of the registered manager and the pivotal role it plays. He was, we find, dishonest in failing to detail all his professional commitments, a finding also made three years previously by the GMC. His attitude and answers to other questions was disingenuous and belies a man of his undoubted intelligence. He shows little or no ability to reflect on his practice and the safety of his patients and is unsuitable to be a registered manager.
40. We would like to say one final thing. Dr Gorai had 13 months or so to reflect upon matters due to the delay caused by his appeal. He would have been advised that the test we would adopt at the hearing was his fitness at this point of time. It would have served him so much better to go away and reflect on what was said about him, to swallow his pride and recognise his own shortcomings. He could have come to this tribunal and told us that he had reflected upon his attitude and recognised his failings, he could have produced evidence to show how he had tackled these and how he was moving forward. The fact that he failed to do any of this reinforces our view about his suitability.
41. Both appeals are dismissed

**Tribunal Judge Ian Robertson**  
**Care Standards**  
**First-tier Tribunal (Health Education and Social Care)**

**Date Issued: 11 April 2017**