

## GP wins appeal against contract termination over PCN non-cooperation



By Eliza Parr

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A Court of Appeal has ruled in favour of a GP partner who was issued with contract termination notices for refusing to cooperate with the local PCN.

Following a years-long dispute, a judgment passed down today found that the CCG 'failed to give notice of a variation' in the GP partner's contract and was therefore wrong to serve contract termination notices.

The judge ruled that the NHS Litigation Authority, now NHS Resolution, 'erred in law in determining that the CCG were entitled to terminate the contracts'.

It is not yet clear whether the contract termination notices from 2020 will become void, but the judges in this appeal have advised the adjudicator to make a decision based on the fact that 'there had been no breach' of contract by the GP partner.

Pulse reported earlier this month that the [BMA had joined these legal proceedings](#) as an 'interested party' with its own legal team, making arguments about the wider ability of GPs to legally challenge NHS adjudicator decisions by 'judicial review'.

On this point, the Court of Appeal judges overturned the previous High Court ruling that the case was not 'amenable' to judicial review, as the NHS adjudicator was in fact exercising a 'public function'.

In response to this outcome, the BMA's GP Committee England said it 'marks a pivotal change' as GP practices who hold their contracts as 'non-NHS bodies' can now challenge adjudicator decisions by judicial review.

The case involved Dr Sashi Shashikanth, a GP principal of two small GMS practices in West London, who was [issued with contract termination notices by Hillingdon CCG in 2020](#) over his failure to comply with a GMS contract clause which obliged practices to cooperate with PCNs 'whether or not' they are signed up the network DES.

This clause meant that non-PCN practices have a duty to inform patients of changes to PCN services, be 'party to appropriate data sharing', and to share non-clinical data with PCNs.

The GP partner had refused to data sharing and had hoped the CCG would provide funding directly to his two practices to provide the enhanced services.

Dr Shashikanth challenged the CCG's decision to terminate his contract with the NHS Litigation Authority, who upheld the decision.

Following this, the GP partner took the case to a 'judicial review' at the High Court in 2022, where a judge ruled that NHSLA, the adjudicator, had acted on an 'error of law', and so upholding the termination was unlawful.

However, Dr Shashikanth's case ultimately lost as the judge decided that his claim was not 'amenable to judicial review', which means the adjudicator's decision could not be challenged via this route and the claim was 'dismissed'.

Dr Shashikanth has since appealed this decision, and the hearing held earlier this month dealt with the 'question of whether a decision of an adjudicator appointed by the Secretary of State to determine a dispute arising out of a contract governing the provision of primary medical services is amenable to judicial review'.

Today's judgement allowed Dr Shashikanth's appeal, and advised that 'the appropriate order is to quash the determination of the adjudicator'.

Lord Justice Lewis said: 'The determination by the adjudicator of a dispute referred to the Secretary of State under regulation 82 of the 2015 Regulations is amenable to judicial review.'

‘The adjudicator erred in law in determining that the CCG were entitled to terminate the contracts by reason of a breach of a contractual obligation to comply with paragraph 15A of Schedule 3 to the 2015 Regulations. The parties may wish to make short submissions on the appropriate order.’

The case focused on whether a letter in 2019 sent by the CCG to Dr Shashikanth had amounted to a valid contract variation, and thus obliged the GP principal to co-operate with the PCN.

NHS England, who was also a respondent in this appeal, argued that ‘the letter amounted to a variation of the appellant’s contract’.

However, the judges found that this was wrong, and that ‘there was no variation of the contracts to include an obligation’ to co-operate with the PCN, and the NHS adjudicator therefore ‘did proceed on an erroneous legal basis’.

Since the CCG ‘failed to give notice of a variation’ to the contract, the judges said that Dr Shashikanth ‘did not, therefore, come under any contractual obligation to comply with the primary care network’.

They said: ‘The CCG was the public body responsible for arranging for the provision of primary medical services. It knew, or should have known, the relevant law. If it wished to impose an obligation on a contractor to do certain things, it had to vary the contracts.’

‘The CCG cannot simply assert that there is a contractual obligation, still less terminate a contract because of a breach of a contractual obligation, when no such obligation existed.’

On the issue of whether Dr Shashikanth was legally able to challenge the adjudicator via judicial review, the judges ruled that the previous High Court judge ‘was wrong to hold that the determination did not involve the exercise of a public function and was not amenable to judicial review’.

They based this decision on an examination of the ‘nature’ of GMS contracts and concluded that the dispute resolution process relating to GP contracts does involve a public function.

‘Once the nature of a general medical services contract is appreciated, the suggestion that a statutory dispute process for resolving disputes about such contracts does not involve a public function does not reflect the reality of the situation,’ the ruling said.

NHS England had argued that Dr Shashikanth’s claim ‘was not amenable to judicial review’ because he had ‘chosen to have his relationship with the CCG regulated by a private law binding contract and did not raise issues of public law’.

In his conclusion, Lord Justice Lewis said: 'For my part, I would consider 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 with 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.'

In response to today's judgment, Dr Shashikanth thanked the BMA, the GPDF, Londonwide LMCs and his MP John McDonnell 'for all their support'.

He told Pulse: 'I am grateful for my wife, my staff, PPG, friends and colleagues for believing in me and standing beside me. It has been challenging five long years.'

'Going forward, I request NHSE to allow and support us to provide PCN and enhanced services to our own patients like they have supported non PCN and non data sharing practices elsewhere in England.'

'We want to continue to provide personalised services to our own patients which the current government wants.'

Dr Shashikanth has previously told Pulse that instead of pursuing termination – as his CCG did – he is aware of some ICBs which have given local funding to non-PCN practices to offer enhanced services to their own population directly.

GPCE chair Dr Katie Bramall-Stainer said: 'The BMA participated as an interested party due to its significant implications for the GP profession – as of today, GP practices which hold their contracts as Non-NHS Bodies can now seek judicial review of adjudicator decisions.'

'It is only fair that practices choosing to use NHS Resolution to resolve disputes with NHS England have the ability to challenge decisions they believe are unjust, regardless of their contract type.'

'We welcome this court decision, which ensures all GP contract holders have equal rights to challenge NHS Resolution decisions, and we view it as a significant step toward fairness and equality within the NHS.'

Londonwide LMCs, who supported Dr Shashikanth in this case, said they are 'pleased' that he won the appeal and 'secured the right result for him and his patients'.

A spokesperson continued: 'We are giving further consideration as to the implications of the judgment, the defining outcome of which was to overturn the previous finding of the Court that practices that held a non-NHS body contract could not pursue a judicial review.'

Pulse has contacted NHS England for comment.