

## **The Queen on the application of Dr Anthony Frederick Slee versus National Health Service Litigation Authority and interested party NHS Commissioning Board**

In the High Court of Justice Queen's Bench Division, Administrative Court  
In the matter of an application for Judicial Review  
CO Ref: CO/4334/2014

Before Justice Stuart-Smith (July 2015)

### History

As a result of a failure to remedy practice issues, in April 2014 NHS England decided to terminate a GDS Contract and sent a Termination Notice to the Contractor. The Contractor sought resolution through the NHS Dispute Resolution Procedure. On 19 August 2014, the NHS LA found in favour of NHS England (case ref 17617).

### Consideration

The claim for Judicial Review involved two grounds. The first was that there was an alleged failure to take into account the issue of the Claimant entering into a partnership. The second concerned the proportionality of the termination. The latter ground was withdrawn before the hearing.

Justice Stuart-Smith concurred with NHS England's submissions that clause 55 provides NHSLA with wide discretion as to how it reaches its decision and is not restricted in terms of what it should / should not consider.

Justice Stuart-Smith concurred that it would appear that any notification concerning the proposed partnership was received after the termination had already occurred and prior to the termination no rectification evidence had been provided.

Justice Stuart-Smith considered in any event that there was no obligation on the adjudicator to consider this as relevant to a decision under clause 332.

In response to whether it was an error of law to not say it was relevant, Justice Stuart-Smith found that this could not be the case in light of clause 335, and advised that it is on this basis that the Claimant's case fails. In reference to the case of *Coughlan* Justice Stuart-Smith did not consider the issue of impending partnership to be a material consideration.

In response to the Claimant's assertion that the Defendant should have the scope to and should have considered matters that were not considered by NHS England (e.g. the impending partnership) Justice Stuart-Smith considered that it cannot be the scope and function of the NHS LA to conduct a search for further information to assist with a decision. Justice Stuart-Smith advised that the NHS LA had jurisdiction to resolve a dispute and not to start afresh. This again was considered to be a fatal flaw to the Claimant's case.

### Decision

Justice Stuart-Smith considered it satisfactory for the NHS LA to find as it did and it was not necessary to highlight other factors that could have been considered. Justice Stuart-Smith dismissed the Claimant's application for Judicial Review.

## Document Control - Change Record

Date	Author	Version	Reason for Change
17 August 2018	Business Services Manager, Primary Care Appeals	2	Logo change