

TRIBUNAL SERVICE
PRIMARY HEALTH LISTS

Case Ref: PHL/15260

Christopher Limb – Judge
Derek Styles – Professional Member
Valerie Barducci – Lay Member

BETWEEN:

GHAFOUR UDDIN
(GOC registration number 01-20813)

Applicant

and

BETSI CADWALADR UNIVERSITY HEALTH BOARD

Respondent

DECISION

1. We sat to hear this case in Liverpool on 12th July 2010. In addition to the documents filed by each party we heard oral evidence from Mr Uddin. Mr Uddin was represented by Mr Singh of Counsel and Mr Phillips, a senior employee of the Respondent, represented the Respondent.
2. Mr Uddin undertook his undergraduate studies in 1993-1996 and was first registered with the General Optical Council in September 1997 following a pre-registration year at Eastbourne Hospital Eye Department. He thereafter worked either in hospital or as an employee in the private sector until in about 2000 he became self employed and carried out locum optometrist work for various practices. In 2004 Mr Uddin bought his own practice in Chester and he continues to work in such capacity. He has also carried out locum work for various local practices.
3. The immediate history of the present case arises from Mr Uddin deciding to apply to join the Supplementary List for Wales so that he could undertake locum work in the north east area of Wales which is geographically very close to the area in which he worked and from

which he had received various requests from colleagues to carry out occasional locum work. Mr Uddin filled in the application form for inclusion on the Supplementary List of the Respondent LHB bearing the date 1st January 2010. We shall refer a little more fully to certain aspects of such form later in this Decision.

4. By letter of 13th April 2010 the Respondent notified Mr Uddin that his application had been refused on the basis that he was unsuitable. in particular : “In reaching its Decision the Health Board has noted that you deliberately failed to declare your convictions on the application form when specifically asked to”. Mr Uddin was notified of his rights of appeal within 28 days and, by letter of 15th April 2010, Mr Uddin gave notice of his intention to appeal. His letter includes the sentences : “I would like to declare honestly and sincerely that I had completely forgotten that I had committed this offence. I would like you to know that if I had, first of all, recalled this offence, and secondly, realised that as a motoring offence it should have been mentioned, I would most certainly had declared this on the application form”.
5. In its short written response of 4th May 2010, the LHB indicated its intention to oppose the appeal and included the statement : “The Health Board takes the view that the failure to disclose is more serious than the offences and that the omission makes the Applicant unsuitable for his inclusion in the Supplementary Ophthalmic List”. We record that Mr Phillips helpfully made it very clear in his submissions to us that they opposed the appeal not because of the nature of the offences themselves but of the importance of trust and integrity and their judgment that the failure to declare the convictions removed their ability to have faith in such standards of trust and integrity. He made plain that if the convictions had been declared the application would not have been refused and the appeal would not have been opposed.

The law

6. The relevant regulations are the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services) (Amendment and Consequential Amendment) (Wales) Regulations 2006 (“the Regulations”). There was a little confusion at one stage in the hearing as to the correct identity and relevant numbering of the Regulations but such is now agreed between the parties. Amongst the provisions of the Regulations is Regulation 4 which provides that an Applicant must send an application. Amongst the various matters specifically identified in such regard is the need to send with the application a Declaration as to whether he/she has any criminal conviction in the United Kingdom (sub-paragraph 4). The LHB may refuse to include a practitioner in its Supplementary List (inter alia) if having considered the Declaration required by Regulation 4(4) and any other information or documents in its possession it considers that the Applicant is unsuitable to be included in its Supplementary List pursuant to Regulation 6(4). The LHB must consider all facts appearing to be relevant and in particular the matters thereafter listed

which include the nature of any offence and the length of time since any offence or conviction and the relevance of any offence to the provision by the practitioner of general ophthalmic services and any likely risk to his/her patients or to public finances. Pursuant to Regulation 6(5) the LHB must consider the overall effect of all the matters being considered.

7. This Tribunal considers all matters afresh and decides the case upon the evidence and arguments which have been presented. We exercise any discretion on the basis of hearing the case afresh. The burden is upon the LHB to establish any facts which are relevant and which are disputed and we must be satisfied on balance of probabilities as to any such facts.

The evidence and issues

8. It is not in dispute that Mr Uddin was convicted on 22nd February 1991 when aged 17 of six offences. Those offences were all interrelated and arose from an occasion when he was driving his father's car. Mr Uddin had a provisional licence but was accompanied only by a friend and not by a qualified driver. He had no insurance. When asked for his personal details he gave his brother's name rather than his own. He was given a Notice to produce his documents including insurance certificate and driving licence. He simply ignored such Notice and did not attend the police station and some time later the police attended his house. On that occasion they asked to see the insurance documents and Mr Uddin initially tried to produce and pass off as his own his brother's insurance documentation. He was thereafter fully open as to what he had done. Amongst his convictions arising out of such matters was a conviction for driving without insurance, a conviction for obstructing the police and a conviction for using a false instrument.
9. There is no dispute that when Mr Uddin completed his application form to the LHB he did not disclose such convictions. Section 11 of the form includes a series of Declarations and Undertakings which include agreement to provision/obtaining of a Criminal Record Bureau Enhanced Certificate and the question "Do you have any criminal convictions in the United Kingdom?" There is clear explanation that the Rehabilitation of Offenders Act 1974 does not apply and "spent" convictions must be declared although matters dealt with by way of a fixed penalty ticket need not be declared. Mr Uddin answered "No" to the question as to whether he had criminal convictions. He did so by marking a box – there being one box for yes and one box for no. One aspect of the case highlighted in the LHB response was that such did not contain a tick like other boxes but a marking which is said to be a "N".
10. It is admitted that the answer to the question was wrong and it is admitted that Mr Uddin has the convictions to which we have already referred.

11. A major and possibly the major matter in dispute between the parties on a factual level is whether or not the withholding of the information as to the criminal convictions was deliberate or not. Mr Singh argued that even if it were accepted that the failure to declare the conviction was deliberate, it would still be necessary to consider whether the nature of the offence and the overall circumstances including Mr Uddin's subsequent history and professional practice made refusal appropriate when exercising discretion.
12. In our opinion – and Mr Phillips for the LHB made no submissions to the contrary – it should be noted that there is no suggestion that Mr Uddin has shown any signs of professional incompetence or behaved inappropriately, inefficiently or dishonestly in the course of his treatment of patients and ancillary activities. This case concerns the fact of and details and importance of the non-declaration of the convictions.
13. On behalf of Mr Uddin, Mr Singh suggested there were five factors that were properly to be relied upon in support of the proposition that the false declaration was not deliberate:
 - (a) the age of the matters (19 years ago) such that it was credible that Mr Uddin might forget;
 - (b) Mr Uddin's age (17½) at the time of the offences and the limited impact which they had had upon him at the time, his father paying the fine and there being no other continuing effect upon Mr Uddin himself;
 - (c) Mr Uddin having specifically considered the answer to question 5 in the context not of the 1991 convictions but in the context of his having been stopped for a speeding offence following which he had no points endorsed on his licence but accepted an option to attend a speed awareness course. Mr Uddin indicated in his evidence that he remembered pausing to consider the appropriate answer in such context and that is the explanation as to why the mark (whether a N or a tick) is different to those which immediately precede and follow it;
 - (d) Mr Uddin was aware there would be a CRB check and indeed an enhanced CRB check and therefore it would be clear that any convictions would be highlighted;
 - (e) The nature of the conviction was such that in view of both his age at the time and the period of years that had followed it was most unlikely that knowledge of the convictions would affect his application (and indeed the LHB confirm that there had been an appropriate declaration and the convictions would not have been likely to lead to a refusal of his application). Mr Singh therefore urged that there was nothing for him to fear in making the declaration and it was most unlikely that he would deliberately not have done so.

14. Mr Phillips' submissions, in effect, can be encapsulated in the proposition that the LHB "finds it difficult to believe that Mr Uddin had forgotten the convictions" and that such declarations are objectively matters of importance which professionals must approach in such light and cannot readily be explained by the proposition that criminal convictions were forgotten.
15. We heard and saw Mr Uddin. We have no reason to doubt his broad description of the matters giving rise to the convictions. Mr Uddin said that the detail of such matters was in large part obtained by him from his father and his brother and that he had no detailed recollection even when the CRB check and the LHB refusal of his application came to light. He indicated that once the charges were brought his father paid the fine and there was not thereafter any great impact on his life and that he was not truly aware of the seriousness of what had happened. He indicated that the Magistrates had initially advised that he should obtain representation and that the case had been re-listed for such purpose so that he had a solicitor representing him. He said that he then got on with his life studying for his A levels and having a social life with his friends and the convictions went to the back of his mind and were simply forgotten by him in the course of his subsequent life.
16. Mr Uddin indicated that he remembered filling in the form and specifically remembered considering whether his speeding offence needed to be declared but consciously decided that it did not need to be declared because of what he had been advised on the speed awareness course.
17. The tenor or "feel" of Mr Uddin's evidence was in our opinion that even when giving evidence to us he found it unsurprising that he had "forgotten" his convictions and thought it fairly natural. He did not highlight anything in his family or personal life or other circumstances which would explain why he would forget such involvement with the police and the Court system. It is one thing to suggest that after many years the offence would have faded to the back of his mind and not be a matter which was often recalled by him but it is quite another thing to suggest that when a specific question of whether he had previous convictions was raised that he could not recall it.
18. Mr Uddin expressly confirmed (as we would have expected to be the case) that he read the questions which he was answering in the application form. He moreover specifically confirmed that he considered the question as to previous convictions at a little more length than the other questions. We do not accept, having heard him, that when the issue was specifically raised by such a question he could not remember being stopped by the police, the police coming to his home, and his attending Court and being fined and having points endorsed upon his driving licence. On balance of probabilities we find that he deliberately gave a false answer. We have considered each of

the arguments put forward on Mr Uddin's behalf by Mr Singh but are not persuaded by such arguments that he had entirely forgotten about his convictions even in the context of the issue being specifically raised in the application form. Some of those arguments, in effect, amount to the propositions either that it was foolish to make such declarations or pointless to make such declarations because the true facts would not be likely to affect the outcome of the application and because the truth would be disclosed by the CRB check in any event. Such arguments have a surface attraction but having heard Mr Uddin and assessed him giving evidence we do not find them compelling in the context of an intelligent professional man.

Decision

19. It is important across most professions and certainly across the various professions within this jurisdiction that the principle of professional trust and integrity is upheld. It is important both that patients can rely upon such behaviour and that external bodies or people receiving communication from an optometrist can rely upon such standard of behaviour. For example, in the context of optometrists, assessments of visual health and ability are frequently required for the DVLA concerning ability to safely drive. It is easily foreseeable that there may be other occasions when a report upon a patient is relied upon as being entirely correct and truthful. We proceed on the basis that it is not the convictions themselves which are important (especially in view of their being committed when Mr Uddin was still at school and aged 17½) but the failure and in particular the deliberate failure to give accurate answers and declarations. We have already indicated that we accept that on balance of probabilities the failure was deliberate. In the context of a deliberate failure to give an accurate answer on an important topic (and, it may be noted, an answer on a topic upon which it is compulsory for the LHB to receive information under the relevant statutory framework) we are of the view that it would normally be appropriate to refuse application to the List on the basis of unsuitability unless there were some very particular and individual circumstances. Whilst we entirely accept that there is no indication of any failings or incompetence in clinical care and whilst we accept the various written testimonials as to the general upright character and behaviour of Mr Uddin, such matters do not in our opinion amount to such unusual and particular circumstances as to justify either a conclusion that a deliberate false statement does not render Mr Uddin "unsuitable" or that the sanction of refusal of the application is not otherwise appropriate, proportionate and reasonable.

Summary

20. We dismiss the appeal.

Christopher Limb
19th July 2010.