

**IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY**

**CASE NO: 13335**

**Professor M Mildred  
Dr P Wray  
Ms S Brougham**

**Chairman  
Professional Member  
Member**

**BETWEEN**

**DR ALISDAIR IAN BOISTELLE  
GDC NO: 54372**

**Appellant**

**and**

**LAMBETH PRIMARY CARE TRUST**

**Respondent**

**DECISION WITH REASONS**

1. By regulations 55-57 of the National Health Service (General Dental Services Contracts) 2005 (“the Regulations”) the new General Dental Services (“GDS”) contract incorporates the NHS Disputes Resolution Procedure (“the Procedure”). Regulation 55 provides for the reference of disputes to the Secretary of State. She has, by the Directions as to the functions of the Family Health Services Appeal Authority (GDS and PDS Agreements Disputes) 2005 (“the FHSAA Directions”), delegated certain decision-making functions to the Family Health Services Appeal Authority.

2. In this case Dr Alisdair Ian Boistelle (“Dr Boistelle”) has invoked the Procedure and certain questions fall under the FHSAA Directions to be dealt with by this Panel. The Panel met on 23 November 2006 in the presence of Dr Boistelle and Lambeth Primary Care Trust (“the PCT”) to decide those questions. Dr Boistelle was accompanied by Mr James Dawson of the BDA and Mr Richard Thomas of the Lambeth, Southwark & Lewisham Local Dental Committee and the PCT was represented by Mr Mark Whiting of Messrs Capsticks.

3. The Panel had satisfied itself that no member had any conflict of interest in hearing the appeal.

4. The Panel had to determine four questions. The first, under paragraph 3(3) of the FHSAA Directions, was whether Dr Boistelle fell within regulation 71(2) of the Regulations. We find on Dr Boistelle’s admission that he fell within Regulation 71(h)(i) on the basis that he was adjudged bankrupt by Order of the Bankruptcy Court dated 5 April 2006.

5. Secondly we find for the purpose of paragraph 3(3) of the FHSAA Directions that Regulation 71(5) has no application to bankruptcy under Regulation 71(2). Dr Boistelle may be forgiven for his belief that it did so apply since clause 327 of his contract (the equivalent of Regulation 71(5)) referred in error to a termination under clause 324.6 instead of clause 324.6.1 to 324.6.3 (the equivalent of Regulation 71(2)). The sense of the words and the Regulations underpinning the contract terms make it plain that the latter is the correct interpretation of the position.

6. Thirdly, under paragraph 3(3) of the FHSAA Directions, we were asked to determine whether, owing to the arrangement made with his creditors on 6 July 1999, Dr Boistelle fell within regulation 71(2) of the Regulations. We find on Dr Boistelle's admission of the existence of that arrangement that he did.

7. Fourthly, we were asked to decide under paragraph 3(2)(b) of the FHSAA Directions whether Dr Boistelle had infringed Regulation 70 by providing written information to the PCT before entering into the contract that was untrue or inaccurate in a material respect in relation to Regulations 4 or 5. As Dr Boistelle admitted, he made a voluntary arrangement with his creditors on 6 July 1999 that continued in force until his bankruptcy on 5 April 2006. This was caught by Regulation 4(g)(iii). Whilst Dr Boistelle did not directly say the contrary to the PCT, he admitted to us that he had not informed the PCT of the arrangement.

8. More importantly, on entering into the contract he warranted in clause 22.1 that he had satisfied the conditions in Regulation 4. We find that this was untrue owing to the prior existence of the arrangement. Owing to difficulties over finalising the contract sum Dr Boistelle did not sign the final version of the contract (that had effect from 1 April 2006) until 7 April 2006. On that date he was in breach of Regulation 4(g)(i) as from 5 April 2006 and had been in breach of Regulation 4(g)(iii) until 5 April 2006.

9. Any party to these proceedings has the right to appeal this decision under and by virtue of Section 11 of the Tribunals and Inquiries Act 1992 by lodging notice in the Royal Courts of Justice, Strand, London WC2A 2LL within 28 days from the date of this decision.

1 December 2006

.....Chair of Panel