

IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Case No: FHS/13905

BETWEEN

Asda Opticians Ltd

Appellant

and

Somerset Primary Care Trust

Respondent

1. This is an appeal by Asda Opticians Ltd (Asda Opticians) against a decision by Somerset PCT (the PCT) to impose conditions on the inclusion of Asda Opticians on the Ophthalmic Performers List pursuant to the National Health Service (General Ophthalmic Services) Regulations 1986. The appeal was conducted on behalf of the appellant by Claire Slade (Professional Services Manager - Optical) and on behalf of the PCT by Ian Schofield (Ophthalmic Lead Somerset PCT).
2. On appeal the FHSAA (the Panel) may make any decision which the PCT could have made. The focus of the appeal was the suitability of practice premises operated by Asda. The premises are situated within an Asda store in Taunton (the Vision Centre Taunton).
3. The conditions imposed were contained in a letter dated 13 June 2007 from the PCT to Asda Opticians. Following a preliminary hearing on 10 October 2007 before the FHSAA panel the conditions were revised by the PCT.¹ The revised conditions are:
 - (a) The waiting area provides insufficient seating. More seats are advisable including the provision of seating to enable the elderly to rise easily.
 - (b) The computer terminal at the reception podium situated in the centre of the frame display area needs to be relocated.
 - (c) The pre-screening area (including the siting of the visual field screener) should be in a separate room with measures taken to significantly reduce noise exposure to eg tannoy announcements. It would be acceptable for one of the two consulting rooms to be used as a pre-screening area. It would be also acceptable if there was a full complement of the screening instruments in each of the consultation rooms so that each optometrist could integrate the screening within their eye examination.
 - (d) Further measures re the siting of the consultation desks should be taken to ensure patient confidentiality. The plastic dividing screens are an improvement regarding visual confidentiality but do little to improve over-hearing.
 - (e) The location of the consultation desks and adjacent frame adjustment/spectacle verification table should be changed as at present they prevent easy access around the practice by disabled people (including access into the consulting rooms), and to some extent even to able bodied people.

¹ R2

4. It became clear as the submissions and evidence developed that the conditions that remained the subject of dispute were: the location of the computer terminal in the reception area (b), the suitability of the pre-screening area (c) and the location of the adjacent frame adjustment/spectacle verification table (e).
5. Asda Opticians appealed against the imposition of conditions by letter dated 8 July 2007 arguing that the conditions imposed were unfounded. In a statement served on 30 November 2007 Claire Slade outlined a number of arguments against the imposition of conditions. These arguments are addressed below.
6. The following persons gave evidence at the hearing on 12 December: Ian Schofield on behalf of the PCT and Claire Slade and Suren Kumar on behalf of Asda Opticians. Suren Kumar is a qualified optometrist, therefore all three witnesses are qualified and practicing optometrists.
7. The justification for the imposition of conditions by the PCT is contained in the statement of Ian Schofield dated 19 November 2007. In this statement Ian Schofield referred to the College of Optometrists' Code of Ethics and Guidelines for Professional Conduct (June 2007)² where it is stated under the heading of 'premises':

Practice premises should be fit for their purpose, comply with all relevant legislation and be arranged internally so as to ensure that patients will enjoy the privacy and comfort which should reasonably be expected during any professional consultation. Specifically:

- (a) the examination procedures should not be disrupted by the general public or disturbed by external noise;
 - (b) the confidentiality of patients' discussions on professional and personal matters should be preserved;
 - (c) patients' records should at all times be secure and confidential;
 - (d) practices should be equipped and maintained so as to allow practitioners to investigate and prescribe in a manner appropriate to current standards and their scope of practice:
 - (e) adequate hygiene should be ensured.
8. The PCT's position was that the Asda Opticians fell short of these guidelines sufficient to justify a conditional inclusion on the list. The panel dealing with this appeal was assisted by this guidance from the College of Optometrists and Asda Opticians accepted the guidance was relevant and delineated the area of dispute.
 9. An important feature of the written and oral evidence of Claire Slade was to make comparisons between the layout of the Vision Centre Taunton with other Asda premises. Her argument can be summarised as follows: the Vision Centre Taunton follows a standard model, this model has been installed in other Asda stores, it has been subject to inspection by other PCTs and no question of 'fitness for purpose' had been raised when these other premises were inspected. The decisions to be made by the panel depended in large part on the precise layout of the Vision Centre Taunton and therefore comparisons with the site layout of other Asda stores was of limited relevance particularly as all the sites have unique qualities. Also on the evidence available the panel decided

² R13

that it would be wrong to draw any inference from the fact that other PCTs in other parts of the country had chosen not to impose conditions.

10. Ian Schofield also introduced evidence (on the morning of the hearing) to make comparisons with other opticians practices to support his arguments. The panel decided not to attach any weight to this evidence as Asda Opticians had not had an opportunity to inspect the premises in question.

Location of the computer terminal

11. The particular concern to the PCT was the possibility of a member of the public having sight of confidential data about a patient of Asda Opticians by seeing the data presented on the computer screen, the computer and screen being located on the reception desk. The reception desk is located in a public area. To deal with the PCT's concerns Asda Opticians had temporarily restricted access to this data via the computer on the reception desk; access was provided via the computers in the dispensing area. Claire Slade argued however that this restriction was unnecessary, particularly as a screen guard had been installed on the reception desk computer. She gave evidence that if the panel chose not to impose conditions then the reception desk computer would revert to being used to access, and display, confidential data.
12. The reception desk computer is located in an area to which the public have access and the panel concluded that despite the provision of a screen, the possibility of a member of the public being able to stand directly behind the computer operator meant that a risk existed of inadvertent disclosure. The panel decided that given the importance of this issue and the fact that it was capable of relatively easy remedy (to either relocate the reception desk or to continue to only make patient information accessible via more secure terminals) then it was reasonable for the PCT to impose conditions.

Modification of the pre-screening area

13. The function of the pre-screening area is to allow a patient of the practice to undergo a number of screening examinations conducted by staff under the supervision of the practice optometrist. These examinations include the use of equipment including a visual field screener. The panel heard evidence about two problems arising from the siting and construction of the pre-screening area; one being lack of privacy and the other noise intrusion.

Privacy - general

14. The question of privacy could simply be addressed by the erection of a wall between the pre-test area and the dispensing area. This was included in the original plan of the premises. Claire Slade informed the panel that there had been an error in not erecting this wall when the Vision Centre was constructed and Suren Kumar told the panel that there should be a wall as it would be better for customers to be secluded from the 'shop floor'. On the basis of this uncontested evidence the panel concluded that such a modification should be undertaken.

The location of the visual field screener

15. A specific problem was identified by the PCT. This was the necessity to provide a quiet and distraction free environment for the use of one item of equipment, the visual field screener.
16. Ian Schofield argued that a quiet location was the optimum environment to conduct this particular examination given that '100% concentration' was required. The difficulty with

- the location of the Taunton Vision Centre within the Asda store was twofold. The first problem was the fact that there was no barrier between the pre-test area and the dispensing area (see above). The second problem was the impact of noise from the rest of the store, in particular the in-store tannoy system. The consultation rooms in the Vision Centre had their own ceilings and were adequately sound proofed, whereas the pre-test area had no separate ceiling.
17. The argument developed by the PCT was that the environment in which the visual field testing was being conducted was important and where there was noise and/or other forms of external distraction this was likely to increase the possibility of the test results being unreliable. Ian Schofield gave evidence to this effect and also relied on correspondence from Roger Gray (consultant ophthalmic surgeon) which supported this position. Roger Gray had visited the Taunton Vision Centre on 9 November 2007.
 18. Claire Slade argued there was no evidence that the noise levels in the store were having any adverse effects on the test results. Suren Kumar supported this position. He argued that any ambiguous results would lead to the tests being repeated. Claire Slade also argued that as Roger Gray, as a consultant ophthalmic surgeon, was not sufficiently well qualified to provide evidence on this issue. The panel did not accept that Roger Gray was not qualified to offer an opinion, rather his evidence had limited value simply because his evidence could not be tested by cross-examination.
 19. Suren Kumar conducted a log of the tests conducted since the beginning of October 2008 and concluded that the noise levels in the store (particularly the tannoy announcements) were not having any adverse effects on the test results. The panel considered that this survey had not been conducted for long enough to allow any conclusions to be drawn from it. Suren Kumar also accepted that external noise could impact on the visual field testing and in November 2007 some attempts had been taken to reduce external noise interference by disconnecting the Tannoy System speakers that were proximate to the Vision Centre.
 20. The panel concluded that the guidance from the Optometrists Code of Ethics and Guidelines for Professional Conduct (referred to above) that 'examination procedures should not be disrupted by external noise' was clear enough to allow a judgement to be made that the noise levels in the rest of the store, attested to by Ian Schofield and Suren Kumar, raised the possibility of the screening being adversely effected. That being the case the panel then went onto consider whether it was proportionate response to direct (by way of the imposition of conditions) the re-sighting or modification of the pre-screening area. Taking into account the interests of the patients of Asda Opticians and the fact that a consulting room was immediately available to conduct the visual field tests the panel concluded that this was a reasonable inclusion.
 21. In summary the pre-screening area could be modified by the erection of a wall between pre-test area and the dispensing area and this would address the privacy issue. The issue of noise intrusion could be addressed either by the modification of the pre-screening area by introducing adequate sound insulation or moving the visual field screener to a consultation room.

Conditions

22. Having concluded that the imposition of conditions was justified the panel can impose any conditions that could have been imposed by the PCT. On the basis of the evidence presented the panel make the following conditions:

- (a) The computer terminal at the reception podium situated in the centre of the frame display area is to be relocated if it is to be used to access and display confidential patient information.
- (b) A wall between the pre-screening area and the dispensing area is to be erected.
- (c) The use of the visual field screener is to be limited to either one of the consulting rooms; or the pre-test area if the pre-test area is modified to provide adequate protection from external noise.
- (d) The location of the consultation desks and adjacent frame adjustment/spectacle verification table should be moved to accommodate any changes required by (b) and (c) above.
- (e) A programme and timetable for compliance with these conditions should be agreed between the PCT and Adsa Opticians without delay and the PCT should review the programme by no later than 1 February 2008 to ensure that the conditions have either been met, or are shortly to be met.

Dated this 11th day of December 2007

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A Harbour

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R Stokes

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J Alderwick