IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Case No: 14783

Panel

Mrs Debra Shaw - Chairman

Dr Howard Freman - Professional Member

Mrs Valerie Barducci - Member

BETWEEN

OXFORDSHIRE PRIMARY CARE TRUST

Applicant

and

DR DAVID OTTERBURN GMC NO: 1613511

Respondent

DECISION WITH REASONS

The Application

1. This is an application by Oxfordshire PCT ("the PCT") for national disqualification of Dr David Otterburn ("the Respondent") under section 18A of the National Health Service (Performers Lists) Regulations 2004 (as amended) and associated regulations ("the Regulations").

<u>History</u>

- The Respondent accepted a caution from the Thames Valley police in respect
 of making indecent photographs of children between 1/12/06 and 01/04/07 at
 Steventon, Oxfordshire, namely 100 level 1 images of a child, which is an
 offence under section 1(1)(A) of the Protection of Children Act 1978. He was
 placed on the Sex Offenders Register.
- 3. As a result, and having considered the criteria set out in section 11(2) of the Regulations, the PCT removed the Respondent from its Performers List with effect from 2nd July 2008 on the ground of unsuitability under sections 10(3) and (4)(c) of the Regulations.
- 4. On 8th September 2008 the PCT applied to the Family Health Services Appeal Authority ("the FHSAA") for a national disqualification to be imposed on the Respondent..
- 5. In a letter to the FHSAA dated 22nd September 2008 the Respondent confirmed he did not intend to oppose the application or to instruct a representative.
- 6. The parties subsequently agreed to the Panel considering the application on the papers alone and the Panel proceeded in the absence of the parties on 2nd December

2008.

The Law

- 7. The relevant law is set out in section 18A of the Regulations. It provides, inter alia, for a PCT to make an application to the FHSAA for a national disqualification to be imposed on a performer which it has removed from its performers list.
- 8. In his letter to the FHSAA dated 22nd September 2008, the Respondent indicated he had applied for voluntary erasure from the Medical Register and if this was granted, the Panel's consideration of this application might not be necessary. However, the FHSAA is confined to the exercise of the duties and powers granted to it by statute. Professional registration and the exercise of the powers of the FHSAA are and must be kept distinct.

Consideration

- 9. The Panel considered the following factors were indicative of the gravity with which the Respondent's actions should be regarded:
 - the sexual nature of the offence
 - the offence was a sexual offence to which Part I of the Sex Offenders Act 1997 applies, resulting in the Respondent being placed on the Sex Offenders Register
 - the offence is relevant to the Respondent performing relevant primary services and constitutes a risk to patients
 - the offence was not confined to the circumstances of the Respondent's practice and is incompatible with his practice as a general practitioner
- 10. Given the facts of the case, the Panel finds that national disqualification is an appropriate and proportionate sanction
- 11. The Panel is of the view that the risks posed by the Respondent are not restricted either to the geographic area in which the PCT offers services or to any one single list and accordingly, the imposition of a national disqualification in respect of all lists prepared by all Primary Care Trusts is proportionate and appropriate.

Decision

- 12. The Panel imposes a national disqualification on the Respondent and orders that he be nationally disqualified from all lists prepared by all Primary Care Trusts.
- 13. In accordance with Rule 42(5) of the Family Health Services Appeal Authority (Procedure) Rules 2001 the Panel hereby notifies the parties to these proceedings that they have the right to appeal this decision under Section 11 of the Tribunals & Inquiries Act 1992 by lodging notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from receipt of this decision.

Dated this day of 2008

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Debra R Shaw Chairman of the Panel