IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY **CASE 13246**

Professor M Mildred - Chairman
Dr R Sadek - Professional Member
Ms J Everitt - Member

BETWEEN

DR MICHAEL J COOKE
(Registration Number 2656733)
Appellant

and

SOUTHAMPTON CITY PRIMARY CARE TRUST
Respondent

DECISION WITH REASONS

1. By a letter dated 3 July 2006 Southampton City Primary Care Trust ("the PCT") refused the application of Dr Michael J Cooke ("Dr Cooke") to join its Performers List ("the List").

2. The refusal was expressed to be the consequence of the consideration by the PCT of references supplied on behalf of Dr Cooke by Drs I Bell, PL Armitage, B Holmes and D Atkinson and of Dr Cooke's lack of recent experience in general medical practice.

3. The decision was expressed to be made under regulations 6(1)(b) and (e) of the National Health Services (Performers Lists) Regulations 2004 ("the Regulations"). These entitle the PCT to refuse to include a performer in its List if (b) it is not satisfied with the references provides or (e) there are grounds for considering that admitting him to the List would be prejudicial to the efficiency of services performed by members of that List.

4. Dr Cooke appealed against the decision of the PCT by a letter dated 26 July 2006 on the grounds that (a) he had had plenty of GP experience and recent experience at Ministry of Defence establishments similar to general practice and (b) that there was no returner scheme available for him to join.

5. Dr Bell's reference reported that Dr Cooke's clinical care, professional relationships with patients, respect of patients' right to be involved in decisions about their care and working with other doctors were average, that his dealing with complaints and errors was poor, that he had insufficient information to form a judgement about his keeping up to date, team working skills or probity in financial and commercial dealings and that he would not be prepared to work with or employ Dr Cooke again. He added criticisms of Dr Cooke's record keeping, attendance at performance-improvement events and response to complaints.

6. Dr Armitage (clinical director of the Healthcare Centre at HM Prison Dorchester) described Dr Cooke as punctual, trustworthy and a valuable asset with an exemplary attitude to patients and staff.

7. Dr Holmes was unable to provide a reference owing to the closure of the Primecare office in Southampton and Dr Atchison (police surgeon) reported that Dr Cooke had not asked him to provide a reference but that the latter was only employed on police and prison work and would therefore have to retrain to be a GP.

8. Dr Cooke submitted a reference from Dr Kiln for the appeal referring to Dr Cooke having all the skills with honesty and compassion required to be a good GP and offering to employ him as a Locum, if he returned to London. He also supplied a favourable reference dated 20 October 2006 from Dr Sheikh arising out of three weeks full time work at Dalton Barracks. Other potential references were supplied but these dated back to 1995 and 1998.

9. Dr Cooke's CV showed his current employment as a police surgeon from March 2003 and that he worked as a duty GP for Naval bases from October 2004 to April 2005, a part-time prison medical officer from May 1998 to July 2002 and a part-time medical adviser to the Benefits Agency from July 1998 to February 2004. His only experience in general practice as such was between 1991 and 1994 as a Locum at 8 practices for periods between 10 weeks in two sessions and almost a year.

10. The appeal came before us at the NHS Litigation Authority on 30 October 2006. All members of the Panel confirmed that they had no conflict of interest in hearing the case. The PCT (which had asked for the appeal to be dealt with on the papers) did not appear and was not represented. Dr Cooke appeared in person and gave a full account of his current workload and aspirations.

11. The context in which Dr Cooke's unsuccessful application to join the List arises is the increasing propensity of providers outside mainstream general practice (for example police, prison and Ministry of Defence medical services) to require that the contracted practitioners are members of a PCT Performers List. It was apparent that Dr Cooke feared that, unless admitted to such a List, his livelihood would disappear. Whilst he had made some attempts to secure a retraining placement, these had not yet borne fruit.

12. We asked him what services he would seek to perform, if he were admitted to such a List. He acknowledged that his skills in certain areas (for example gynaecology, elderly persons' care, long term conditions and paediatrics) were in need of refreshment. Since these are core skills of modern NHS general practice Dr Cooke accepted that he would be ill-equipped to practise as a principal. He asked us to consider allowing his appeal but imposing conditions on his practice. Whilst we clearly have the power so to do under Regulations 8 (1) and 15 (3) we were reluctant to exercise this power in the absence of any representations from the PCT regarding its policy regarding retraining and conditional inclusion, its resources and its attitude to this particular case.

13. Nor had Dr Cooke any considered proposals to make: merely excluding practice as a principal would allow him to be consulted as a locum or an assistant by patients in respect of whose needs his skills are clearly in need of development and modernisation.

14. It seemed to us that in a case such as this where the doctor has realistic aspirations and the PCT has reasonable doubts about his capacity to practise without prejudicing the efficiency of the service, fairness would best be achieved by adjourning the matter for a period of two months to allow the parties to explore whether conditions can be agreed that would permit Dr Cooke to be included on the PCT's List for the purpose of increasing his level of skills required without risk to patients or the efficient provision of services.

15. We thus adjourned the appeal to a date to 25 January 2007 and encouraged the parties promptly and fully to discuss the requirements of both sides with a view to coming back before us offering agreed conditions or informing us that no such agreement is possible so that we could then make a final determination.

16. On the adjourned hearing Dr Cooke again appeared in person. We were extremely disappointed to discover that the PCT had made no representations to deal with the matters raised in paragraph 12 and did not appear.

17. Dr Cooke had provided a reference from a recruitment agency to the effect that he had performed very satisfactorily as a single handed doctor at a military correctional training centre in Colchester from 27 November 2006 to 18 January 2007. He also handed in at the hearing a reference from Dr Lunt to the effect that Dr Cooke had been a pleasant and helpful colleague in Hampshire Police forensic work from February 2002 to December 2006, giving details of the work involved.

18. Dr Cooke told us that this work had all but dried up as the police relied on nurses and 2 or 3 salaried doctors to save expenditure and that he had worked full-time in Colchester where the agency would have preferred him to have been on a Performers List. He had just had a call from an agency offering a full-time locum position at Dorchester Prison for some months.

19. We asked him about his contacts with the PCT since the last hearing. He said that he had had three telephone conversations with Dr Kadri, the Clinical Lead, who had told him that, according to the PCT's interpretation of the regulations, he had had a career break so could not be put on the List or a compromise negotiated since he did not comply with the requirements for admission to the List. He added that he had not been able to contact Ms Coxon, the Head of Primary Care at the PCT. He had not sent any training plans or other documents to the PCT and said that he had not been sure what to do after the last hearing.

20. In reply to Dr Sadek Dr Cooke seemed unsure what was meant by a self-assessment of educational needs or a personal development plan. He said that he had made no formal plan but that in Colchester he had been "flipping through" books. When asked in what areas he felt he needed to develop his skills he replied that that was a tricky question and was extremely hesitant (although he had been asked an identical question at the earlier hearing) saying that general practice was such a wide area. He described the process he had undertaken saying that he sat down and had a think, got a book or magazine and sat down to read it, just plodding on, one topic per day in an informal process with no learning needs document.

21. Dr Cooke then told us that he had passed an examination in November and that Wessex Deanery was prepared to find him a practice in which to undertake a returners' course for a minimum of four half-day sessions per week, starting in April 2007. This would take 6-12 months and was unpaid. At this point Dr Cooke said that the reason for his appeal to us was that the retraining was unpaid. He would do it full-time, if his appeal was rejected but would not otherwise undertake it.

22. He was asked what sort of work he would ideally like to do and replied that it would be full-time general practice but, if this were not possible, he would carry on as before (although he also told us this might not be possible unless he could get onto a List).

23. We found it unusual and evidence of very limited insight that Dr Cooke seemed unprepared to deal with these topics (since they had been of interest to us on the last hearing) and he appeared to be answering our questions without any forethought. We were also surprised that he was approaching his revision in so unstructured a manner and had been so diffident in his approaches to the PCT. His evidence about his preferred career was unsatisfactory as was his impression that the Panel could influence the funding of the returners' programme.

24. We are conducting a rehearing and have had the advantage of seeing the references mentioned above that were not before the PCT when it refused the application. Having read these as well as the hearing bundles, however, and having heard all Dr Cooke's evidence about his clinical skills and experience we are not satisfied with the references provided. Further, we conclude that there are grounds for

considering that admitting him to the PCT's Performers List would be prejudicial to the efficiency of services performed by members of that List.

25. We have considered conditional inclusion on the List but regard systematic and thoroughgoing retraining on a returners' course as far preferable, even if unpaid, for the development of Dr Cooke's skills to the point where he can satisfy a PCT that he can safely perform as a general practitioner. A device to allow him onto the List by imposing conditions that, in order for standards adequately to be upheld, would effectively prevent him from acquiring all the skills necessary for general practice would in our view be in the interests of neither Dr Cooke nor the PCT.

26. Accordingly we dismiss the appeal and refuse Dr Cooke's application to join the PCT's Performers List.

27. We further direct, pursuant to Rule 47(1) of the Family Health Services Appeal Authority (Procedure) Rules 2001 that a copy of this decision is sent to the Secretary of State, The National Assembly of Wales, the Scottish Executive, The Northern Ireland Executive and the Registrar of the General Medical Council.

28. 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.

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Mark Mildred
Chair of Appeal Panel
30 January 2007