

**IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY (“The Tribunal”)**

**Case Number: 15190**

**Listed at: Leeds  
2nd December 2009**

**Mr T Jones Chairman  
Dr D Kooner Professional Member  
Mr C Barnes Member**

**BETWEEN**

**Mr Gavin-Jonathan Brown  
Professional Registration Number: 67423**

**Appellant**

**and**

**COUNTY DURHAM PRIMARY CARE TRUST**

**Respondent**

**DECISION WITH REASONS**

**The Appeal and the Background**

1. This is an appeal made by Mr Brown (“The Appellant”) against a decision of County Durham PCT (“The Respondent PCT”) to conditionally include her on their Dental Performers List in pursuance of regulation 8 of the NHS (performers List) Regulations 2004.
2. On 1<sup>st</sup> July 2009 the Respondent PCT wrote to the Appellant advising him of the conditional inclusion decision. The decision made was based on an application form and supporting documentation and two clinical references. The letter went on to say “...as your experience specialises in Orthodontics and Oral Surgery

rather than General Dental Practice, it would be inappropriate to offer you full inclusion at this time....the conditions to be applied are:

- 1) That your work is restricted to the provision of orthodontics and oral surgery.
  - 2) That before you can undertake any General Dental Practice, you apply for, and provide evidence of having successfully completed the required returners programme as set out by the Northern Deanery”
3. The Respondent PCT advised the Appellant of his right to appeal to this Tribunal which he did in a letter dated 23<sup>rd</sup> July 2009 received by the Tribunal on 27<sup>th</sup> July 2009, accepting admission to the Respondents Performers List whilst exercising a right of appeal against the conditions themselves
4. The matter was set down for an oral hearing at Leeds on 2<sup>nd</sup> December 2009. There were no supplementary submissions from either party to the appeal, save an undated note from the Respondent PCT, written under the hand of Jackie Rubin, Dental Practice Adviser for NHS County Durham and Darlington. This was received by the Tribunal on or about the 26<sup>th</sup> November 2009, it goes on to say:
- “To whom it may concern
- Re Gavin Browns (sic); application to join the County Durham Performers List with full inclusion
- The Panel considered the evidence put forward to the Panel relating to Mr Browns most recent experiences in Primary Care. These seem to indicate that he had only Orthodontic and Oral surgery experience in Primary care in the last 14 years.
- This influenced the Panel to restrict his inclusion to Orthodontics and Oral Surgery”.
5. We presumed that the conditions were imposed in this case to ensure the efficiency of the service and to ensure patients receive safe and effective dental care.
6. At the hearing the Appellant appeared in good time and was read to address the Panel and make himself available to the Respondent PCT officers and/or solicitors, prior to the commencement of the hearing and be open to any questions they might wish to put to him during the hearing.. The Respondent PCT did not attend the hearing, advising the Tribunal of this intention but a day or so before the hearing. Mr Brown was unaware of this and was ready to speak to any representatives of the PCT, and answer any and all of their questions at the hearing. We resolved to proceed to determine the appeal.

7. The Appellant made submissions with the aid of a power point presentation as to the his experience to date, the position he holds within the practice he is working in Durham City and as to his aspirations as to his future practise. He took the Panel through the papers he had submitted with his application, with especial reference to his Career Summary (R49 Tribunal Bundle). Therein, he advised the Panel that he had been involved in General Dental work up until 2001 as a Senior Dental Officer in Community Dental Services. This is not, he reminded us, some 14 years ago as Ms Rubin's note referred to above in paragraph 4 suggests. Moreover, he has been previously included on a neighbouring PCT's Performers List up until time of application since 2006. He has undertaken his own work, but also assisted as with locum/sickness cover for a high street dentist, Mr Nicholson providing General Dental Services in Ingleby Barwick on Teesside, who provided an open reference in this regard.
8. The Appellant felt it was unfortunate that he had no opportunity of explaining any of this to the Respondent PCT, who dealt with all matters on the papers and did not tell him of their planned meeting to determine his application, or of any concerns they had in respect of the same, which he felt might yet have been addressed in their decision making process. Only later, at a chance meeting, as between the Appellant, the Principal of the practice where he is now working (Mr Steadman) and a member of the Respondent PCT's Professional Performance Case Panel, at a Local Dental Committee meeting, did the reasons for conditional inclusion become clearer to the Appellant. In fairness to the Respondent PCT, the Appellant did tell the Panel that soon after this meeting an employee of the Respondent PCT (Mr Paul Chapman) contacted him, and without committing anyone to a different outcome, there was a suggestion made that a fuller application might be yet considered by the Respondent PCT. The Appellant was by now aware of the Panel hearing date, did not wish there to be any further delay in finally determining his application; he said he would deal with the matter before the Panel.
9. In the course of his evidence, and in answer to a number of questions put to him by the Panel, including those of our Professional Member, the Appellant stressed he was concerned that the conditions did not seem applicable or appropriate. He has approached the Deanery; and spoken to Mr Malcolm Smith the Post Graduate Dean, who was equally at a loss as to what returner training would be beneficial and workable in the circumstances put to him by the Appellant. It is the Appellants principal fear, that within the conditions as they are, he could cross the line so to speak as to where his usual practice and restorative work, or onward referral of a Patient could result in the suggestion, or allegation, that he has breached these conditions. In all the circumstances, when asked specifically by the Chair so we might be clear as to what the Appellants concluding submission was, the Appellant said could not think of any conditions restricting his practice, or any further definition of the same which would be reasonable, necessary, workable or enforceable. He asked that his appeal be allowed in that he be placed on the Respondent PCT list without conditions.

**Our Decision**

10. The Panel hears this appeal by way of re determination, under section 15 (1) of the NHS (Performers Regulations) 2004, the Panel has power to revise the decision or impose different conditions. We note fully the concerns expressed by the Respondent PCT and have fully considered all the papers before us. We also note that in re determining this matter, as opposed to dealing with the matter on the face of application, that we have heard more from the Appellant than might have been before the Respondent PCT; this is always unfortunate in any appeal such as this, we do not know of the resources the Respondent has to deal with what may well be a significant number of applications at any one time. The References were indeed from Practitioners holding specialist registration, but we note the form of reference offers no opportunity to differentiate between types of practice. No criticism of the Respondent PCT is implied or intended by the Panel. It is unfortunate, given the comments above as to the Appellants Career Summary, noted in paragraph 7 above, that the Respondent PCT took the view that the Appellant had been so long removed from general dental work.
11. We were satisfied, against the appropriate civil standard, with the Appellants evidence in general, and especially, as to his relevant experience to date. We found him to be credible and reliable witness. We find, looking at the appeal in all its aspects, and in fully addressing the aspects of efficiency of the service, and the need to ensure the safety of patients, that we for like reasons ourselves, subscribe to the reasons, analysis and conclusions put before us by the Appellant in this appeal. The Panel in re determining the matter weighing the interest of patients, patient safety and the efficiency of the service concludes that no conditions are required; anymore than we could formulate any, in all the circumstances of the case before us, which would be reasonable, necessary, proportionate, workable or enforceable.
12. **We allow the appeal** against conditional inclusion, and in doing so, revise the decision made by the Respondent PCT by removing any conditions hitherto applicable. In accordance with rule 42 (5) of the Procedure Rules, we notify a party to the appeal that they can appeal this decision under section 11 of the Tribunals and Inquiries Act 1992, by lodging a Notice of Appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from the date of this decision.

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Mr T Jones, Chairman

