FAMILY HEALTH SERVICES APPEAL AUTHORITY

Case No: 14127

BETWEEN:

BIRMINGHAM EAST AND NORTH PRIMARY CARE TRUST

Applicant

and

DR A S AWAN
GMC Ref No: 0881458

Respondent

DECISION

Panel Members:
Mr Christopher Limb – Chairman
Mr Derek Styles – Professional Member
Mr Mark Rayner – Lay Member

INTRODUCTION

1. The Respondent, Dr Awan, was removed from the Applicant's Ophthalmic List pursuant to Section 49F(2) of the National Health Service Act 1977 as amended on the grounds of his continued inclusion being prejudicial to the efficiency of provision of general ophthalmic services. Such decision was reached on 30th October 2007 and communicated to Dr Awan by letter of 5th November 2007. There has been no appeal against such decision and any appeal would now be out of time. The Applicant seeks an Order for National Disqualification and this is our Decision upon the issue of national disqualification.

2. We have reached our Decision upon the papers and without a hearing attended by the parties. The Applicant sought such procedure pursuant to paragraph 6 of its application for disqualification, namely pursuant to Rule 38 of the Family Health Services Appeal Authority (Procedure) Rules 2001. Such procedure can be followed when either both parties agree or when no reply is received within 21 days. No written response or representations have been received from Dr Awan. In such circumstances we are of the opinion that it is appropriate to consider the matter on the basis of the documents provided.

LEGAL FRAMEWORK

3. Section 49F of the 1977 Act as amended gives power to the Applicant to remove a practitioner from the List of Ophthalmic Opticians undertaking to provide general ophthalmic services if (inter alia) the continued inclusion of the person would be prejudicial to the efficiency of the services which those included in the List undertake

to provide (an "efficiency case"). Section 49N of the 1977 Act as amended provides in sub-section 4 that on application the FHSAA may impose a national disqualification following removal of a practitioner from the List.

4. The wording of the application refers to a power to impose an Order of National Disqualification pursuant to the provisions of Section 159 of the National Health Service Act 2006. In our opinion the 2006 Act does in the relevant section refer only to pharmaceutical services and the 1977 Act as amended remains the relevant statute in force. There is in any event no difference in the principles of the jurisdiction.

5. There is no statutory guidance as to the principles to be applied when considering national disqualification but it is in our opinion proper to consider national disqualification in those cases where the findings against the practitioner are serious and are not by their nature essentially local in the sense of being objectively unlikely to have arisen had the practitioner been in a different area. In considering whether to make an order for National Disqualification it is appropriate in the context of the present case to consider any evidence as to the prospects of a material change in the matters giving rise to the Decision to remove from the List.

EVIDENCE

6. We have available to us the Applicant's application dated 7th November 2007 together with its various (relatively substantial) accompanying documents PCT1 to PCT6. We have also subsequently received the Applicant's solicitors correspondence indicating that the Respondent has applied for and been granted a voluntary erasure from the GMC Register. Such erasure (which does not preclude re-registration with GMC) is not in our opinion a contra-indication to our considering this application on its merits : the jurisdictions are distinct and if there were to be re-registration with the GMC the decision of the FHSAA is necessary for the direction of PCTs in the event of application to join a list.

7. We have read all the papers sent to us. It is to be noted that Dr Awan carried out work for three neighbouring PCT's in Birmingham and the decision for removal was made in relation to all three PCT's at a joint hearing (with the Respondent's consent to such a joint hearing). The matters which became the subject of such hearing originally arose in the context of visits to the premises at which Dr Awan provided services giving rise to cause for concern as to the standard of care being provided. We note the concerns that were then set out by the investigating officer which led to a request to the Royal College of Ophthalmologists to nominate two members to form an External Clinical Advice Team (ECAT) to undertake an assessment of the standard of care provided by Dr Awan. The broad context of the involvement of the ECAT was a concern that in various areas of practice Dr Awan was not applying appropriate or contemporary standards of practice and was thereby putting patients' wellbeing at risk.

8. For our present purposes we in particular note the findings of the ECAT which were in turn accepted by the Trust at its hearing in November:

    (a) 53 consecutive records of patients were audited. There was no comment regarding visual field examination on any patient. There was no comment as to when the patient should be reviewed (albeit the design of the record form did not have a particular field for this);
    (b) There was a structured "viva" assessment involving various scenarios which were then discussed. Such scenarios included an elderly patient with bilateral cataracts in the context of the macula not being able to be visualised, a patient with suspicious optic discs and borderline intraocular pressures, a patient with sudden loss of vision in one eye and with a

photograph of an obvious branch retinal vein occlusion, a patient with diabetic retinopathy with a photograph of obvious exudative maculopathy, a child with a possible squint, a patient with acute wet age related macular degeneration, a patient with symptoms of temporal arteritis, and a patient with bacterial conjunctivitis.

9. The assessment was carried out by Mr Simon John Keightley, a Consultant Ophthalmic Surgeon who practises at Basingstoke Hospital and who is also an Examiner of the College, and by Dr Ackroyd who is an experienced ophthalmic medical practitioner, namely a practitioner in the community such as Dr Awan.

10. The conclusions of the ECAT were that Dr Awan showed very limited knowledge in many of the areas discussed. He was unable to identify the wet age related macular degeneration picture. He was only able to comment on the pictures of diabetic retinopathy and vascular occlusion after much help. Having identified the diagnosis of temporal arteritis from the history he indicated that he would notify the general practitioner by way of a letter rather than an urgent phone call. Dr Awan admitted he had no experience of automated visual field analysis in relation to glaucoma and was unsure how to differentiate between physiological and pathological optic disc cupping. He did not appear to know the difference between various cycloplegics use in the refraction of children. He seemed unsure as to the current correct referral practices in his locality.

11. It was also noted that although he had passed the Diploma of Ophthalmology some years ago he had not converted to the membership qualification when the Royal College of Ophthalmologists was formed. He did not have a formal curriculum vitae or professional portfolio and was not registered for continuing professional development. He indicated he occasionally attended courses albeit without any certificates or record thereof.

12. The overall conclusion of the ECAT was that Dr Awan fell far short of the standards required of a candidate taking the Diploma of the Royal College of Ophthalmologists' examination. This is the "base" qualification/standard for an ophthalmic medical practitioner practising on his own without supervision. When the initial conclusions were communicated the ECAT were also concerned that Dr Awan did not express obvious concern but rather stressed that much of his work was only refracting patients. There were concerns that he did not seem to appreciate the importance of the deficiencies identified.

13. For our purposes we in particular note that the nature of the deficiencies in practice were widespread and not restricted to one or two specific areas of practice. As noted in the ECAT report Dr Awan did not seem to appreciate that important ocular pathology may be seen in optometric practice. As examples, we note that he was unable to identify wet AMD, and only after much help was he able to comment on the pictures of diabetic retinopathy and the vascular occlusion. Additionally the report notes an admission that Dr Awan had no experience of automated visual field analysis in relation to glaucoma and was unsure how to differentiate between physiological and pathological disc cupping. Whilst there are a number of other factors which caused concern, those noted here are fundamental. We note that there was no apparent insight into the failings – indeed his response in his correspondence after the draft report had been sent to him was to dispute the assessment. Dr Awan shows a further lack of insight by suggesting that much of his work was refracting patients only. The inference from this is that he felt he was not examining the health of the eyes, merely obtaining a prescription for spectacles. A significant number of the records produced to us indicate that when Dr Awan noted, either from the history given or from his examination, factors which would lead a competent practitioner to undertake further tests or examinations he failed to do so. There has been no indication of any subsequent attendance upon continuing professional development courses or any other activity to remedy the shortcomings.

CONCLUSION

14. There has been no appeal against the findings of the PCT. As outlined above, the nature of the matters giving rise to the finding of inefficiency were widespread and affected substantial areas of everyday practice. There is no indication of any steps being taken to remedy the shortcomings.

15. We are satisfied that an order of National Disqualification is appropriate. We remind ourselves of the notable effect of an order for National Disqualification upon Dr Awan and the practical effect of preventing him pursuing his career within the NHS. We weigh such considerations against the risk to patients if an Order for National Disqualification is not made. The failings of Dr Awan are such that there is in our opinion a real risk to patients if no Order for National Disqualification is made. We consider an Order for National Disqualification reasonable, necessary and proportionate.

16. We order National Disqualification from inclusion on all lists prepared by all Primary Care Trusts and Health Authorities including but not limited to those referred to in Section 49N(1) of the National Health Service Act 1977 as amended.

17. We are not asked to consider making an Order extending the period after which an application for review may be made to five years under Regulation 9H of the NHS (General Ophthalmic Services) Regulations of 1996 as amended and we do not do so.

18. In the context of Dr Awan not having solicitors representing him we specifically refer to Rule 43 of the Family Health Service Appeal Authority (Procedure) Rules 2001 and the possibility of review of a Panel's Decision in the circumstances there set out. We also notify the parties that any party to these proceedings can appeal this Decision under Section 11 of the Tribunals and Inquiries Act 1992 by lodging Notice of Appeal at the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from receipt of this Decision.

Dated the 21st day of January 2008

Mr Christopher Limb – Chairman
Mr Derek Styles – Professional Member
Mr Mark Rayner – Lay Member