IN THE FAMILY HEALTH SERVICE APPEAL AUTHORITY

Before

Siobhan Goodrich: Legal Member
Dr Rafik Sadek: Professional Member
Mrs Lorna Jacobs: General Member

BETWEEN:

No 13516

DR K RUKMANI Appellant

And

SOUTH WEST ESSEX PCT Respondent

No 13517

DR K RUKMANI

Appellant

And

BRIGHTON AND HOVE PCT Respondent

DETERMINATION WITH REASONS

Representation

The Appellant did not attend and was not represented.
Brighton and Hove was represented by Dr Scanlon, Medical Director.
South West Essex PCT was represented by Mr Richard Both of Counsel instructed by Capsticks.

1. By Notice of Appeal dated 15th December 2006 Dr Rukmani (GMC registration number 2286103) appeals the decision of South West Essex Primary Care Trust (hereafter referred to as "South West Essex PCT" or "the PCT") on 21st November 2006 to refuse her application to be included in its Performers List ("the List") on the grounds that her references were unsatisfactory. By a separate Notice of Appeal of the same date Dr Rukmani also appeals the decision of Brighton & Hove Primary Care Trust on 24th November 2006 (hereafter referred to as Brighton & Hove) to remove her from its List on the grounds that Dr Rukmani could not demonstrate that she had performed primary care services in Brighton and Hove PCT in the preceding twelve months.

2. In the Notice of Appeal concerning the South West Essex PCT decision Berrymans Lace Mawer, then instructed by the Appellant, sensibly suggested that both appeals should be considered together with which course the other parties subsequently agreed. It emerged late in the hearing that the Respondents had not mutually exchanged documents or sought a direction from the Chair to facilitate this. No point was, however, taken on this by the representatives at the hearing. So as to avoid confusion as to the bundles we substitute the documents submitted in the Brighton appeal with the letter "B".

The brief background.

3. Suffice to say at this stage that the Appellant worked as a General Practitioner on the List of the Brighton and Hove PCT between 1996 and 2003. During this period there were ongoing concerns about her abilities and she was suspended from the List. As a result an investigation into her fitness to practice before the General Medical Council (hereafter the GMC) in 2004 the Appellant's registration

was made the subject to various undertakings including a requirement to work under supervision of another GP and to retrain. She did not, however, resume practice in Brighton and Hove.

4. In April 2006 the Appellant began work as a general practitioner at the practice of and under the supervision of a Dr Aslam at the Muree Medical Centre in Basildon, Essex. In July 2006 Brighton and Hove PCT advised the Appellant that they were considering removing her from its List because she had not provided services in its area during the preceding twelve months and that it would be more appropriate to join the List of the PCT where she was retraining. In mid August 2006 Berrymans Lace Mawer wrote to Brighton requesting an oral hearing.

5. In late August 2006 the Appellant applied to be included in the List of the Basildon PCT which, shortly thereafter, became part of the South West Essex PCT. According to Dr Scanlon, South West Essex PCT asked Brighton and Hove PCT to delay removal for a period to enable a CRB check to be processed. In these circumstances it was agreed that an oral hearing should not proceed.

6. In the event on 21st November 2006 South West Essex PCT refused the Appellant's application for inclusion in its List on the basis of unsatisfactory references. On 24th November 2006 Brighton and Hove PCT removed the Appellant from its List because she had not provided general medical services in its area for at least twelve months.

The Grounds of the Appeals.
South West Essex PCT.

7. The Appellant contends that the Respondent placed improper weight on the references supplied and /or had a duty to contact the Appellant to discuss the references and/or to request further potentially satisfactory references. She also contends that South West Essex PCT failed to take into account her ability as a general medical practitioner and her potential contribution to primary health care services in its area. (A2/ 3-4)

Brighton and Hove PCT.

8. The Appellant contends that the decision to remove her was unfair because it knew that removal "places the Appellant in the position of being unable to proceed with her ongoing training…" She also contends that the Appellant's continuing inclusion is in no way detrimental to the efficiency of Brighton and Hove PCT and that the removal was disproportionate and unnecessary.(B/ 3-4)

The Position of the Respondents.

9. South West Essex PCT stands by its original decision not to include the Appellant's name on its List and contends that it was entitled to come to the view that the references supplied were unsatisfactory.

10. It also relies upon additional and alternative grounds namely unsuitability and/or inefficiency. In relation to unsuitability it alleges:

- non disclosure in both the Application form and the Declaration form by Dr Rukmani that her GMC registration was subject to undertakings
- the fact that the Appellant did not refer in her application to her post at Dr Aslam's practice where she was subject to supervision
- late disclosure of the fact that she had been suspended by a PCT and non disclosure of the PCT in question and the relevant details
- non disclosure of the previous unsuccessful application to Thurrock despite additional opportunity given to provide the information.

11. Mr Booth contends that whether or not the information not disclosed was known to the PCT and/or could have been obtained is irrelevant to the assessment of the Appellant's suitability not least because the relationship between a PCT and GPs relies upon the trustworthiness of the practitioner. He also contends that, irrespective of any finding we may make as to the Appellant's candour, the fact that the form submitted by the Appellant was incomplete is sufficient reason for the panel to conclude that the Appellant is unsuitable to be included in the List.

12. The PCT relies also upon the content of the references of Dr Mandal and Dr Aslam and their concerns about the Appellant's attitude and approach to patients as indicating that the Appellant is

unsuitable. It contends that the inclusion of a practitioner with such attitudes would also be prejudicial to the efficiency of services. (A1/11)

13. In relation to inefficiency the PCT contends that the undertakings to which Dr Rukmani was subject impact upon the efficiency of services that she would provide if included in its List (R10). It also contends that the undertakings given to the General Medical Council and the retraining required by them would not address concerns surrounding the appellant's attitude and approach (A1/11).

14. The PCT also asks us to consider whether, in any event, the application is invalid because of the Appellant's failures (summarised above) to provide all the information the PCT required.

15. Brighton and Hove PCT, in a letter dated 18th January 2007 maintain its view that the Appellant should be removed from its list because she has not practiced in the area for many years. Dr Scanlon maintains that it has been difficult to follow the Appellant's progress and that it would be more appropriate for the Appellant to register the locality where she is retraining (B/ 1).

The National Health Service (Performers List) Regulations 2004 (hereafter "the regulations."

16. These provide as follows:

> **Decisions and grounds for refusal**
> "6. - (1) The grounds on which a Primary Care Trust may refuse to include
>
> a performer in its performers List are…..
> (a) having considered the declaration required by regulation 4(4) and (if applicable) regulation 4(5), and any other information or documents in its possession relating to him, it considers that he is unsuitable to be included in its performers List;
> (b) having contacted the referees provided by him under regulation 4(2) (f), it is not satisfied with the references…..
> (e) there are any grounds for considering that admitting him to its performers List would be prejudicial to the efficiency of the service, which those included in that List perform.
>
> (4) Where the Primary Care Trust is considering a refusal of the performer's application under paragraph (1) or (2), it shall consider all facts which appear to it to be relevant and shall in particular take into consideration in relation to paragraph (1) (a),…..
> (a) the nature of any offence, investigation or incident……
> (d) any action or penalty imposed by any licensing, regulatory or other body, the police or the courts as a result of any such offence, incident or investigation.
> (e) the relevance of any offence, investigation or incident to his performing services, which those included in the relevant performers List perform, and any likely risk to his patients or to public finances….
> (g) whether he has been refused admission to,…or removed from any list…. and if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or equivalent body for such action; and
> (5) when the Primary Care trust takes into consideration any of the matters set out in paragraph (4), it shall consider the overall effect of all the matters being considered."

Removal from Performers List.

17. Regulation 10 (6) provides:

> "Where the performer cannot demonstrate that he has performed the services, which those included in the relevant performers list perform, within the area of the Primary Care Trust during the preceding twelve months it may remove him from its performers list**."**

The History of the Appeals.

18. The appeals were first listed for hearing on 15th March 2007 for one day. Despite directions given on 28th February 2007, the exchange of witness statements did not take place because the Appellant's advisors were unable to obtain Dr Rukmani's signature to her witness statement.

19. At the request of the Appellant the panel agreed on 14th March 2007 to adjourn the hearing because it considered that the one day allocated would be insufficient. The panel directed that unless

the parties could agree an alternative suitable date the hearing would take place on 17th and 18th April 2007.

20. The panel were aware from correspondence from the Appellant to the FHSAA that she was concerned that proper discovery had not been given in relation to a decision in April 2006 by Thurrock PCT to refuse her application for inclusion in its list. It was apparent that the Appellant considered that this failed application was relevant to her current appeal against Basildon/South West Essex.

21. The panel were similarly aware that the parties' solicitors were in discussions concerning the Thurrock documents. We therefore directed that if an application for discovery from any person or body was necessary it should be made by Berrymans as the solicitors on record for the Appellant under paragraph 34 of the Rules as soon as possible. No such application was made.

22. Pursuant to directions the Appellant's solicitors disclosed her witness statement on 14th March and that of Dr Aslam on 16th March. They also served a chronology (A/2 22-25) which set out the history of the proceedings before the GMC both before and after November 2006.

23. From this we learnt that on 11 January 2007 the GMC notified Dr Rukmani that, as a result of breach of undertaking number 8 (to inform an eventual employer of the fact of her undertakings at the time of application) her case has been referred to a Fitness to Practise Panel and that, further, a reassessment of her performance was required. Dr Rukmani underwent Peer Review/performance assessment between 25th and 26th February 2007 but did not attend the Test of Competence arranged by the GMC on 13th March 2007.

24. Between 10th April 2007 and the hearing the FHSAA received a series of letters from the Appellant and one "R. Basil" on her behalf which again took up the issue of the Thurrock documentation. Additionally, the Appellant was concerned to know by what means the FHSAA had been able to write to her at her home address in July 2006 when she herself had not provided that information/personal data when she first wrote to them in April 2006 concerning her wish to appeal the Thurrock decision. The Appellant contended that an adjournment was necessary "as the matters in dispute were so vital to the course of the proceedings that there would not be much point in attending…"

25. On 13th April Berrymans Lace Mawer informed the FHSAA by email that they would not be representing the Appellant at the hearing.

26. On 16th April the Appellant was advised that if she wished to apply for an adjournment she should attend personally to make the application at the hearing.

The Hearing on 17th and 18th April 2006.

27. As indicated above Dr Rukmani did not attend the hearing and was not otherwise represented.

28. In the light of this information contained in the Appellant's Chronology and given the nature and substance of the appeal we considered it appropriate to enquire as to the current position with regard to the GMC. We were advised by the PCT that an interim order had been made March 2007 whereby Dr Rukmani's registration was suspended. As we understand it, the interim order imposed by the GMC is of eighteen months duration but is subject to review every 6 months or on application by Dr Rukmani.

29. On the face of the information available to us the GMC order relates to two matters: an allegation that Dr Rukmani failed to comply with the undertakings she gave to that body and the fact that she did not attend the required Test of Competence. Inevitably this last aspect has caused us particular concern. It is, however, impossible for us to discern whether one or other or both resulted in the interim order being imposed.

30. We considered the Appellant's application to further adjourn the hearings pending her request for information under the Freedom of Information Act and/or for personal data concerning her correspondence with the FHSAA in July 2006.We noted that Dr Rukmani was not requesting an adjournment in order that she might instruct new solicitors. Given her belief that the information/documents were relevant to our decision we considered it necessary to enquire of the South West Essex PCT whether the documents requested by Dr Rukmani relating to the Thurrock decision

had been disclosed. Further, we decided that we should examine the documents lest they revealed anything that supported Dr Rukmani's case.

31. It should be emphasised that before so doing, we directed ourselves as to the limited purpose of our examination of the documents. We formed the view that the request for disclosure had been complied with and that nothing in those documents materially advanced the Appellant's case beyond the points that she had already made in her witness statement.

32. Rule 40(1) provides that:

> (1)if a party fails to attend or be represented at a hearing of which he has been duly notified the panel may
>
> (a) unless it is satisfied that there is a reasonable excuse for such absence, hear and determine the appeal… the party's absence: or
>
> b) adjourn the hearing.
>
> (2) Before determining any appeal .. in the absence of a party, the panel shall consider any representations in writing submitted by that party..and the appeal shall be treated as representations in writing.

33. We considered whether Dr Rukmani had presented reasonable excuse for her absence. It appeared from reading the correspondence overall the reason given for her absence was that she considered that there was no point in attending because the panel was prejudiced and biased. In our view a fair-minded and informed observer who was neither unduly suspicious nor complacent would not consider that there was a real possibility that the panel were biased. (See **Porter v Magill [2002] 1 AC 357** and **Lawal v Northern Spirit [2004]1 All.E.R 187**). We concluded that there was no evidence before us that provided a reasonable excuse for the Appellant's absence. Nonetheless under the rules we have a complete discretion as to whether we should determine the Appeal or adjourn the hearing.

34. We considered whether an adjournment would result in Dr Rukmani attending on a later occasion but we considered this unlikely because of the view she had expressed concerning the panel's bias. We also considered that to accede to an adjournment for the reasons advanced by the Appellant would result in delay given that the expressed rationale behind her request was to await the determination of an appeal before the Information Commissioner. Further we considered that the information that the Appellant was seeking in relation to how the FHSAA became aware of her address had no bearing upon the issues in the appeal. We concluded that whilst it was plainly desirable in the interests of justice that Dr Rukmani should attend it was unlikely that that an adjournment would result in Dr Rukmani's attendance at a later date.

35. The Respondents did not contend that the proceedings should be adjourned. On balance we decided that it was plainly in the public interest that a hearing should proceed and that no useful purpose would be achieved by adjournment.

36. In considering both appeals our task is to make a redetermination. It was accepted by Mr Booth and Dr Scanlon that the panel was entitled to make a fresh decision based upon all the material now before it including the further references and evidence submitted by Dr Rukmani. The PCTs accepted that they bore the burden of proof and that the appropriate standard was that of the balance of probabilities. It was accepted by Mr Booth on behalf of South West Essex PCT that the allegation of lack of candour called for strong evidence before that allegation could be considered proven on the balance of probabilities: (see, for example, **Gage v General Chiropractic Council [2004] EWHC 2762 (Admin)**).

37. Whilst we must have regard to the overall effect and relevance of any investigation when considering refusal (see regulation 6 (5)) we do not consider that it would be appropriate or fair to be unduly influenced by the fact that the Appellant may not be allowed to resume any practice by the GMC in the short, mid, or long term. We have formed this view because of the risk that the interim suspension would, thus, become decisive of the outcome. We have therefore decided to determine the appeal on its discrete merits, recognising that the GMC, whether on different evidence or otherwise, may at any further hearing take a different view of the overall merits or practicality of the Appellant being allowed to resume practice as a general medical practitioner in any circumstances.

38. We heard evidence from Dr Scanlon on behalf of Brighton and Hove PCT. We also heard live evidence from Mrs Riddle and Mrs Wheeler, both of whom share the role of Primary Care Support Team Officer (hereafter "the PCSTO") and who dealt with the process of the paper application, as well as Mr Richards the Locality Director of South West Essex PCT. We also received further witness statement from Ms Martin, the Primary Care Support Team Manager submitted by the PCT and statements from Dr Rukmani and Dr Aslam on behalf of the Appellant.
We reminded ourselves of the limitations involved in assessing documentary evidence as well as witness statements which have not been tested by questioning. We accept in general terms that evidence that has not been so tested is of a lesser weight when balanced against oral evidence on the same issues. That said this is a case where much of the evidence is in documentary form and there are few disputed issues of fact. The essential task before us in analysing the evidence relates to what inferences can be safely drawn from all the evidence before us and how the facts and such inferences as are drawn, inform our judgement as to whether either of the appeals should be dismissed or allowed. In relation to the South West Essex Appeal we directed ourselves to consider each ground separately and as alternatives in the light of all the relevant evidence.

39. We have resisted the temptation to draw any inference from the fact that the Appellant did not attend. The significance of her absence is that she has not availed herself of the opportunity to address the issues of concern raised by the PCT, not least in relation to her probity or to provide evidence as to her abilities, attitude and insight. Additionally we have borne in mind that the evidence submitted by Dr Rukmani has not been tested and is of lesser weight than evidence that has been so tested. We directed ourselves to determine the issues before us on all the evidence before us and not to speculate or make assumptions.

The Background.
40. We set out in succeeding paragraphs the background that can be distilled from the documents before us. (See, in the main, B/ 2-5)

41. Dr Rukmani qualified in 1973 at the University of Calcutta. After undertaking hospital appointments in India she came to the UK and undertook hospital posts in mental handicap and psychiatry, obstetrics and gynaecology and anaesthetics between 1976 and 1982. Between 1985 and 1992 she worked in various general practices in and around Birmingham and the West Midlands before working as a full time deputy oncall for Primecare between 1992 and 1996. A2/ 13)

42. In June 1996 Dr Rukmani was appointed as GP for single-handed practice in Portland Road, Hove.

43. From April 1997 until Dr Rukmani ceased practice in Brighton in 2003 the PCT regularly received expressions of concern from a range of people, including hospital consultants, pharmacists, community nursing staff, practice staff and patients. The range of concerns covered clinical practice as well as communication and relationship difficulties. A raft of support was put in place including the development of a personal learning plan supervised by a local GP tutor and regular monitoring by Dr Scanlon.

44. By July 2002 no progress had been made in relation to the personal development plan and Dr Rukmani arranged for a colleague in Essex to take on that role. In October 2002 following a complaint in relation to the asthma care provided by Dr R to a child, a formal independent educational assessment by Dr. Bill Bevington of the Deanery.
His key findings were as follows:

- No significant continuing professional development
- Poor record keeping, no use of computer by Dr. Rukmani
- No concept of primary or secondary prevention
- No audit
- Clinical issues with regard to the management of diabetes
- Staffing issues: although pleasant and dedicated staff in the practice, inadequate contracts of employment, no staff meetings, Dr. Rukmani critical of nursing staff and of staff requiring time off while at other times supportive
- Dr. Rukmani with no awareness of what should and could be achieved in her practice

45. Dr Bevington's report concluded "sadly my over-riding feeling is that this is a doctor who may never significantly change the way in which she thinks. I think she is a classic example of a doctor who felt that her medical skills were assured on the day she qualified in medicine and that from that day to this, she has not really had any need or obligation to develop herself or her practice in any significant way."

46. In January 2003 Dr. Rukmani although refuting some specific findings in the report accepted that action was required. It was agreed that Dr. Rukmani and her friend/colleague, Dr. Chalapathy, should meet with the PCT and agree to implement an action plan (with deadlines) drawn up by Dr. Scanlon on the basis of Dr. Bevington's report. Dr. Lisa Argent was asked to oversee compliance with the action plan. Dr. Peter Ellis, a GP educationalist in London agreed, at request of Dr. Jayaweera and Dr. Rukmani, to provide educational support.

47. In September 2003 the PCT received a letter from a consultant paediatrician detailing his concerns about Dr R's treatment of two children which involved the prescription of paracetamol hourly and the use of hot water as a remedy. Following investigation the PCT panel decided to refer the Appellant to the GMC and to suspend her from the list pending the outcome of those proceedings. According to the Appellant's chronology she agreed that the referral to the GMC related to a history of poor clinical practice.

48. In December 2003 Dr Rukmani agreed to the GMC's proposal that she undergo assessment of her professional performance which duly took place between February and April 2004. (A1/ 23) The result of the assessment that Dr R's professional practice was found to be deficient in four areas.

49. Dr Rukmani agreed the GMC statement of requirements and gave undertakings which were intended to last until August 2005. In the event the statement was extended for another year with revised undertakings (A2/ 41-44)

50. In May 2006 Brighton and Hove PCT became aware that that Dr. Rukmani might be working in London. Following discussions with the professional support panel the Chief Executive wrote to Dr Rukmani advising her of the PCT's intention to remove her from the list in August 2006 because she had not worked in Brighton and Hove since November 2003.
(B/ 9)

51. In a letter dated 15th August 2006 Berrymans Lace Mawer on behalf of Dr Rukmani wrote to Dr Scanlon explaining that Dr Rukmani was "implementing a programme of re-training in South East Essex PCT area, but is not, as yet, registered on their List. Removal by Brighton and Hove PCT would consequently place Dr. Rukmani in a position of being unable to proceed with her ongoing training. In the circumstances, exercise of the PCT's discretion would be unfair in the circumstances and I am sure would be considered unfavourably by the GMC." (B/ 8)

52. On 25th August Dr Scanlon replied "I understand that Dr. Rukmani is proceeding with retraining in Essex and that the local PCT is happy for her to be included on the local performers List. They have asked that Brighton and Hove PCT delay removal for a period of about 8 weeks to allow their CRB (criminal records bureau) check to come through. I have agreed to this" (B 7). In October 2006 the Medical Protection Society, on behalf of Dr Rukmani**,** requested the PCT to delay removal for a further 4 weeks with which course Dr Scanlon agreed, setting a new date of removal on November 24th...

53. We noted that in her witness statement the Appellant did not dispute any of the facts upon which the above summary is based but contends that Brighton and Hove PCT had withdrawn their agreement to postpone any decision to remove until she had been placed on "a" List in Essex. (A7 at para 6). In this the Appellant appears to contend that Brighton and Hove's agreement was not specific to her pending application to join the Basildon list. We reject this contention because it is inconsistent with all the correspondence.

54. We note that the Appellant also contends that at no point whilst working at Brighton and Hove PCT did the PCT notify her that the services she was providing demonstrated "inefficiency" as defined under the Performers Regulations. We consider that the point taken lacks merit. On the basis of the evidence before us we are satisfied that Dr Rukmani was well aware of the nature and extent of the concerns entertained by Brighton and Hove PCT which plainly raised issues concerning her efficiency.

55. Dr Scanlon's evidence was that in the light of the request from Dr Rukmani's solicitors he agreed to delay removal from the List so as to enable the South West application to be processed. He spoke to Dr Aslam and to the practice manager Sue Truman. He understood from his conversations with both of them and from telephone conversations with the PCT that Dr Rukmani's application was a formality and that the reason that further time was required was solely due to delays in obtaining CRB check. He told us that had South West Essex PCT informed him that it was unlikely to accept Dr Rukmani he would have taken the request for a further delay back to his Performance Group rather than agree to a further delay in implementing the Brighton decision on his own initiative.

56. Dr Scanlon also told us although he knew it may cause South West Essex PCT to view Dr Rukmani's application less favourably he sent a large bundle of documents setting out the full history relating to Dr Rukmani to Dr Ali, the Clinical Governance Lead at Basildon PCT by letter dated 5th October 2006 which letter was also copied to Dr Rukmani. In answer to Mr Booth he said that he had not received any acknowledgement of receipt. We were later informed that Dr Ali had retired from his post at the end of September 2006. Dr Scanlon could not recall if he ever spoke to Dr Ali after sending the documentation. In answer to Mr Booth he said that in his conversations with other staff at South West Essex PCT no reference had been made to the contents of the box file.

57. We find that Dr Scanlon was thoughtful and conscientious in his approach to the problems posed by Dr Rukmani's practice. Further, we found him to be a conscientious witness and accept his evidence.

58. We consider that Brighton and Hove PCT were entitled to exercise their discretion to remove Dr Rukmani given that the Appellant had not worked within the PCT for three years and bearing in mind the evident difficulty in monitoring a doctor who was now working in another PCT.

59. We are required to redetermine the decision of Brighton and Hove PCT. We have decided that the appeal should be refused for the reasons given above. The decision made was wholly reasonable. Given the history of this matter we consider that if and when Dr Rukmani is permitted to resume practice it is likely that she will seek to do so in Essex. Even if such is not the case, it is important that any decision concerning any future application she may be able to make for inclusion to any other list reflects the merits of her application to be included in the list of South West Essex PCT. We are of this view because it is the most recent application the Appellant has made and will be relevant and influential in any future application to another PCT that she may make.

Our findings on the Appellant's application to Basildon/South West Essex PCT.

60. In August 2006 Dr Rukmani made enquires of the Primary Care Support Team which is located at Raleigh Road, Basildon regarding the possibility of joining the List of Basildon PCT.

61. The South Essex area is currently divided into South East Essex PCT and South West Essex PCT. Prior to September 2006 there were 5 separate PCTs covering the same geographical area. Following reorganisation Basildon PCT became part of South West Essex PCT along with Thurrock, Billericay, Brentford and Wickford. Prior to and post reorganisation Mrs Riddle and Mrs Wheeler supported the Basildon PCT/locality. The PCST office in Raleigh Road, however, housed all support staff for all PCTs in the area including Sharon Pratt, who, as the Thurrock PCSTO, dealt with Dr Rukmani's application to Thurrock PCT which was refused in April 2006.

62. On 18th August 2006 Mrs Riddle, the PCSTO, wrote to Dr Rukmani enclosing a blank application form (PCT 16) and Declaration Form 16D (A2/ I).

63. On 1st September 2006 Dr Rukmani submitted the application form to Basildon PCT signed by and dated 24th August (A2/ 2-9), as well as the Declaration Form which was signed and dated 29thAugust. (A2 11-14)

The Application Form.

64. Amongst other things and pursuant to the mandatory requirements of regulation 4, this requires the applicant to provide, amongst other things, the following information:

"1. Details of any Primary Care Trust in whose performers List you are included or from whose List…from which you have been removed…or from any whose List…you have been refused admission… with any explanation as to why…"

65. It is apparent that for this to be answered in a complete fashion the Appellant should have stated that she had been refused admission by Thurrock PCT and that the reason for the refusal was that she was considered unsuitable. The Appellant left this section blank**.**

66. Section 4 of the application form requires the Applicant to provide "any other information that the Primary Care Trust may reasonably require to determine your application. Dr Rukmani wrote "nil."

The Undertakings.

67. By signing the application form Dr Rukmani consented, amongst other things to a request being made by the Primary Care trust to any employer or former employer, …regulatory or other body for information relating to a current investigation, or an investigation where the outcome was adverse, by them into the doctor .." (A2/ 8)

The Declaration Form 16D.

68. This requires the applicant to state yes or no to a number of matters required under regulation 4. Whilst completing the boxes in relation to a number of other questions Dr Rukmani did not answer the following affirmatively or negatively:

" Have you ever been the subject of an investigation

- by any licensing regulatory or other body into your professional conduct or performance…..

or

- by any current or former employer into your professional conduct or performance…… where the finding was adverse."

"Are you currently the subject of any investigation:-
by any regulatory… body into your professional conduct or performance…"

69. In answer to the question "have you ever been refused admission or been removed or contingently removed from a PCT List" Dr Rukmani answered "yes." It is to be noted that this answer was candid and at least partially cured the failure to provide a complete answer to the question posed in the application form (see paragraphs 64 and 65 above)

70. After a series of questions that concern corporate bodies the form on the next page states "if you have answered yes to any of the previous questions please give details on the following sheet including approximate dates, of where the investigation or proceedings were, the nature of the investigation or proceedings, or any outcome (please use a separate sheet if required)."

71. The form then provides a blank page at the foot of which is a box containing the following: "I hereby declare that the information given here and on any continuation sheet is true and complete." Dr Rukmani did not provide any further information and signed the declaration.

72. That the information was incomplete is evident from the fact that Dr Rukmani had not answered either yes or no to two significant questions in the Declaration and had not, as at 29th September, provided any of the further information requested in relation to the question that she had answered affirmatively.

73. On 8th September Mrs Riddle wrote to Dr Rukmani about a number of matters outstanding with her application (A2/ 25). She also sent to her the "guide to completing the Disclosure Application Form" (hereafter "the guidance"). Mrs Riddle expressly requested additional documents concerning identification, an MDU certificate, passport, and GMC certificate. She also requested details of referees from recent professional experience and advised Dr Rukmani that as she had been working as a salaried GP at Dr Aslam's practice this should be included under her professional experience. Further Mrs Riddle drew attention to the career gap presented in Dr Rukmani's form after November 2003 and advised Dr Rukmani that she must provide an explanation of any career gaps since the date of her first

registration. We note, however, that Mrs Riddle did not expressly ask Dr Rukmani to complete those sections which had been left blank in the application form or declaration.

74. On 9th October Mrs Riddle again wrote to Dr Rukmani chasing the information previously requested (A2/ 27).

75. On 12th October 2006 Dr Rukmani came to the PCT support office to update/complete her application. She completed a sheet of A4 paper in manuscript (A2/ 10) which Mrs Riddle then attached to the application. This document sets out further details of professional experience and provided some information in relation to the gaps referred to in Mrs Riddle's letter. In this regard Dr Rukmani provided the following information:
"1st June 1996- 26 Nov 2003 – as single handed in Hove East Sussex.
Nov 2003 – April 2006 I did not work.
Nov 2003-June 2004 suspended by PCT
2004-2006 – applied for practises."
On the same day she agreed to Mrs Riddle's suggestion that Dr Aslam be approached to provide a reference.

76. The further information provided by Dr Rukmani made no reference to the fitness to practice proceedings at the GMC or the fact that her registration was the subject of undertakings including a requirement that she work under supervision. Further, whilst she had acknowledged that she had been refused admission by a PCT in the declaration she did not identify Thurrock PCT or the reasons given to her for that refusal.

77. Dr Rukmani had not provided a certified copy of her GMC registration to Mrs Riddle and said that it had been lost when she had been working at a previous practice. Sharon Pratt, the PCSTO provided Mrs Riddle with the GMC certificate provided by Dr Rukmani in the Thurrock application. Mrs Riddle also obtained the entry for Dr Rukmani from the GMC website on 13th October 2006. Both of these documents showed the same information, namely, that Dr Rukmani's registration was subject to eight undertakings given by her in the context of fitness to practise proceedings before the GMC which included the requirement "To limit her medical practice to posts agreed to be suitable by a Director of Postgraduate General Practice Education with an experienced general practitioner supervising her work". (See A2/ 42-45 for the full text)

78. In her witness statement Mrs Martin, the Primary Care Support Team Manager (see Bundle 3- unpaginated) stated at paragraph 21 that had Dr Rukmani provided the information regarding the GMC investigation and the fact that she had been refused admission to Thurrock "it would have been forwarded to the PCT and the issues flagged up with them as something which they should take into account."

79. Recognising that this is a different issue and is irrelevant to whether or not Dr Rukmani provided complete or candid information, we reject the suggestion that Basildon PCT were, in fact, misled by Dr Rukmani. It is plain from all the evidence (including that of Ms Martin herself) that both she and the Basildon PCSTOs were aware of the fact of the Thurrock refusal and the fact and detail of the Appellant's undertakings to the GMC by 13th October at the very latest. Although plainly obliged by the regulation 6 (3) to check, so far as reasonably practical, the information provided by the applicant and to ensure that it had sight of relevant documents, it was apparent from the evidence of the PCSTOs that another officer mistakenly considered that the reasons for Thurrock's refusal could not be sought from that PCT.

80. The evidence was that the application form was thereafter provided to Ms Bryant, the Deputy Director of Primary Care. It appeared from the evidence of Mrs Riddle and Mrs Wheeler that the GMC register entry may not have been included in the documents provided to Ms Bryant, who, at least in the first instance, was to decide the application. If this was so, it arose from defects within the PCT's own internal processes. Further, although told by Dr Rukmani that she had been previously suspended by a PCT (see A2/ 14) and by Dr Aslam's reference that she was now working under supervision instigated by the GMC and being implemented by the Deanery (see A2/ 55) the PCT elected to make no substantial enquiry in relation to these matters, preferring to make its decision solely on the basis of its view of the references supplied. We will return to this aspect later.

81. The Respondent's case as set out in its Reply to the Notice of Appeal is that the manner of which Dr Rukmani filled out the form suggested a lack of candour and that for these reasons Dr Rukmani is unsuitable to be included in the List. Mr Booth submitted that the duty of candour is almost elevated given the circumstances of the Appellant's history with the GMC and that the inexplicable gaps in the application form and declaration cannot be explained on the basis of inattention. He argued that the Appellant was well aware of her own history and, on the basis of Dr Scanlon's evidence, had been sent the same information in relation to the concerns of Brighton and Hove PCT just days before she provided the additional information on 12th October 2006. We turn to consider the Appellant's response to the allegation of lack of candour.

82. In her witness statement dated 9th March 2007 (A2/ 6-11) Dr Rukmani sets out in some detail the background in relation to her earlier application to West Thurrock PCT. She refers to the fact that she was open with Dr. Raj, the London Deanery and Thurrock PCT concerning her position and had spoken at length with Dr Shehadi, the Clinical Governance Lead, with regard to her history with Brighton and her current position with the GMC. She also referred to the fact that she relied in that application upon a reference from Dr Hibble who had drawn up her educational plan at the Deanery.

83. The Appellant states in relation to her application to Basildon PCT "Though curious as to the requirement (though there was said to be a policy for even existing List members to reapply for CRB clearance) I was under the impression that my application to join the List in South West Essex PCT was essentially a rubber stamping exercise. In this regard I should mention appealing the "Thurrock" decision ….for the purposes of safeguarding my position" (See paragraph 15 at A2/ 10)). The Appellant goes on to state that at no time did she act or intend to deceive South West Essex PCT and that she is stressed and offended by the suggestion. (See paragraph 9)

84. We considered the potential inference that Dr Rukmani did not provide the information because she thought that the PCT was well aware of it already because of her earlier application to Thurrock PCT. Likewise we considered the potential inference that Dr Rukmani did not include the information precisely because she thought that it would lead Basildon to conclude, as had Thurrock PCT, that she was unsuitable to be included in the List. We bear in mind the evidence that the Appellant did not originally proffer Dr Aslam as a clinical reference or, indeed, include the information that she was working with him under supervision. We note also that even when given a further opportunity to fill in the gaps in relation to her career history she did not refer to the GMC proceedings, her undertakings, the involvement of the Deanery or the reason for her unsuccessful application to Thurrock. We directed ourselves that there was an evidential burden upon the Appellant to explain why the form and declaration she submitted were incomplete and why the information provided as to her career history was so brief. Further we directed ourselves that whether or not the information that was not provided by the Appellant could or should have been obtained by the PCT is irrelevant to any findings as to why the Appellant did not complete the form.

85. Whilst we note that the explanation provided by the Appellant in her witness statement is also incomplete and has not been tested in cross examination, the thrust of her evidence (when seen in context) is that she had already provided the information to effectively the same office and had been led to believe that her application to Basildon was essentially a "rubber stamping" exercise (see A2/ 10) In this latter respect it is striking that her evidence is similar to that of Dr Scanlon who had also understood that Dr Rukmani's application was a formality.

86. We noted Mr Booth's contention that if this had been the Appellant's state of mind there could have been no conceivable reason not to include the full information. Whilst we agree that there is evidence that suggests a lack of candour on the Appellant's part, the panel does not consider that the evidence adduced before it is sufficiently cogent to enable it to safely conclude on the balance of probabilities that Dr Rukmani sought to hide material facts. Whilst cautious not to give undue weight to either factor, we note that Dr Mandal refers to his opinion of the Appellant's character as being "100% honest" and, further, that there is no evidence before us of any prior pattern of dishonesty.

87. We directed ourselves as to the importance that PCTs should be able to be confident in the accuracy, honesty and completeness of information provided by the general practitioners on its Lists. Further, we directed ourselves that, so far as the application form is concerned, the requirements as to the information to be provided by the practitioner are in mandatory terms (see regulation 4). However, in the absence of evidence that satisfies us that the Appellant intended to mislead the panel considers that,

on the evidence before us, the simple fact that the information provided by her was incomplete is insufficient to conclude that she is unsuitable to be included in the List in the circumstances of this case. We bear in mind that the Appellant had provided full information in relation to the GMC proceedings to Thurrock PCT which application was dealt with by the same office and had been led to believe that her application to Basildon /South West Essex PCT was a rubber stamping exercise. In any event, we do not consider that the provision of an incomplete form is, of itself, sufficient grounds to conclude that an applicant is unsuitable without further enquiry.

88. It is convenient to deal at this stage with the subsidiary contention contained within the Appellant's Reply in relation to the validity of the application.
We were not referred to any regulation that provided the PCT with grounds to refuse an application on the simple basis that the application submitted was incomplete and was thus invalid. We do not consider that this additional argument has any merit. The grounds for refusal set out in Regulation 6 do not refer to a PCT being given a discretionary power or mandatory obligation to refuse an application on this simple basis although, of course, a PCT might argue. that a general practitioner who does not provide full information is unsuitable. We note, however, that Regulation 4 (7) imposes an obligation on the PCT: "it shall seek from him such further information, references or documentation as it may reasonably require in order to make a decision" if it finds that the information, references or documentation supplied by the performer is not sufficient. Further, as a matter of common sense, it is open to a PCT to simply refuse to process an application that is incomplete.

Dr Rukmani's referees.
89. Regulation 4 9 (2) (f) requires an applicant to provide "the names of two referees who are willing to provide clinical references relating to 2 recent posts (which may include any current post) as a performer which lasted at least three months without a significant break, and, where this is not possible a full explanation and the names and addresses of alternative referees."

90. Initially Dr Rukmani provided one name only, a Dr Raj. On 12th October Mrs Riddle advised her that this referee was not suitable because she had only worked for him in an administrative capacity. As indicated above Mrs Riddle suggested that Dr Aslam would be a suitable referee and Dr Rukmani agreed that he be contacted. Further to Mrs Riddle's request Dr Rukmani provided the name and address of a second referee, Dr Mandal, on 13th October 2006.

91. Dr Mandal provided a reference dated 20th October 2006 (A2 50-52) which omitted to provide any information as to when and for how long the Appellant had worked with him. These details were chased by a PCSTO and the detail that the Appellant had only worked with Dr Mandal for one month in 1996 and for 6-10 half days in 2003 was then inserted. We agree with the PCT that Dr Mandal, having no recent knowledge as to the Appellant's clinical practice, was wholly unsuitable as a referee since his ability to provide recent information as to the Appellant's clinical abilities was non existent.

92. We note that in answer to the question: "On the basis that no-one is perfect, please comment on what you believe are the candidate's weaknesses," Dr Mandal replied that the Appellant was "self opinionated" and " I might be wrong but (she) needs some more understanding to see other's side also." As to her character he stated that "she is 100% honest and very clear cut person". (A2/ 51)

93. Dr Aslam provided a reference on 20th October 2006 (A2/ 54-56) which stated that the Appellant was working at his practice "under the supervision of the GMC who (have) instructed the Eastern Deanery to provide her with a programme of retraining and assessment. Dr Rukmani has made inroads into producing a PDP and is also attending most of the postgraduate lecture events" (A2/ 55). As to her ability to carry out the duties of a general practitioner he stated, "Dr Rukmani has carried out her duties in a diligent and methodical way and clinically cannot be criticized in the main; however, there (have) been a number of verbal complaints from patients about her attitude, which has been perceived as unsympathetic and lacking engagement."

94. In answer to the question asked on the basis that no-one is perfect Dr Aslam stated: "Dr. Rukmani does lack interpersonal qualities, often finding it difficult to engage with the patients she sees in an understanding manner. She has struggled severely to understand the patient base here. The practice is situated in an area of reasonably high deprivation but the doctor does not seem to be 'tuned in' with this fact and displays regular bouts of indignation and dissatisfaction with the type of lifestyle and habits of many of our patients." (A2/ 56)

95. Faced with one reference from Dr Mandal who, on any basis, was not a suitable referee and that from Dr Aslam, whose reference supported the view that the Appellant was unsatisfactory in some respects, the PCT did not make any further enquiries of Dr Rukmani or indeed any other body such as the East of England Deanery (hereafter "the Deanery"). We find that in the light of the fact that Dr Mandal could not be considered a suitable referee the PCT should have actively considered the obligation imposed upon it by regulation 4 (7) to seek further information ,references or documentation. No evidence was adduced from Ms Bryant as to her thought processes but we know from the evidence of Mr Richards that she sought his advice as to whether it was permissible to reject the Appellant's application on the simple basis that the references were unsatisfactory.

96. Mr Richard's evidence in chief was that he knew of the involvement of the GMC because of the terms of Dr Aslam's reference but that he was not then aware that Dr Rukmani was actually subject to GMC undertakings. He knew that Dr Rukmani was working under Dr Aslam's supervison for he told us that he had considered conditional inclusion on this basis. He rejected this because he was concerned about Dr Aslam's ability to engage in supervision of Dr Rukmani in the context of the demands of his practice. Mr Richards was aware from Ms Bryant that Dr Rukmani had previously made an application to Thurrock which he assumed had been unsuccessful although neither he nor, he believed, Ms Bryant were aware of the reasons for Thurrock's refusal.

97. As to the references before him, whilst pleased to note that Dr Aslam's reference was reasonably favourable in relation to Dr Rukmani's clinical abilities, Mr Richards was concerned about the evidence before him in relation to Dr Rukmani's attitude. He considered that Dr Rukmani would struggle given that Dr Aslam's practice was in an area of high deprivation. In short he advised Ms Bryant that the unsatisfactory nature of the references was sufficient grounds to reject the application without more.

98. Given that Dr Rukmani had worked in a single handed practice for many years and was in the process of retraining, Mr Richards was asked about the sort of references that might be satisfactory in such circumstances. He said that in this sort of situation he would consider a non recent reference from someone such as prescribing advisor or clinical governance lead who had worked with a doctor in the past. He said that if the Appellant had provided this sort of references in relation to her practice even before 2003 he would have been happier. He agreed that in the context of a doctor who was undergoing retraining it was unlikely that any reference would be entirely satisfactory. He said that in these circumstances he would look for someone to provide evidence of satisfactory progress. He told us that in dealing with the Appellant's application it did not cross his mind that a reference from the Deanery was a possibility. Whilst he said that there was a significant onus on an applicant to provide suitable referees he accepted that there was an element of support that the PCT can provide. He expressed also his reservations about the suitability of Dr Rukmani working under Dr Aslam's supervision because of the nature of the practice at the Muree Medical Centre would result in an adverse effect on Dr Aslam's ability to provide an appropriate service. He said that in discussions with Dr Aslam subsequent to the decision having been made, the latter had "begun to accept that it might be a tall order."

99. Subsequent to the decision of 21st November 2006 Mr Richards looked into the application more closely and learnt of the undertakings to the GMC. Whilst the box of documents sent by Dr Scanlon to Dr Ali never came into his possession he later considered that there were other grounds that would have justified refusal on the grounds of suitability and inefficiency. It was plain from his evidence that he saw the application as one that was specific to Dr Aslam's practice rather than a general application for inclusion on the List. He saw this as a significant factor.

100. We consider that the PCT's approach to the Appellant's application was both somewhat rigid and narrow in all the circumstances. Whilst we recognise that the guidance provides that "it would not be good practice for PCTs to pursue references indefinitely on the one off chance that one will eventually be satisfactory" this advice does not quite meet the point. On any basis the Appellant's application was, in reality, determined on one reference because, as was well known to the PCT, Dr Mandal had no recent experience enabling him to usefully comment on the Appellant's clinical abilities. We note in this regard that in the Response to the Notice of Appeal the PCT had stated that Dr Mandal was unsuitable as a referee and that Dr Rukmani had therefore provided only one referee who met the requirements (A2/ 7). It was, or should have been, obvious to the PCT that Dr Rukmani had particular

difficulties meeting the ordinary requirement of two recent clinical referees because, albeit belatedly, she had told the PCT that she had been suspended between 2003 and 2004 and had been applying for practices since then.

101. In these circumstances, we consider that it would have been far more appropriate had the PCT specifically advised Dr Rukmani of the fact that Dr Mandal was not a suitable referee and addressed the issue of a suitable alternative with her in a direct manner . In making this finding we are aware that it had proved difficult for the PCSTOs to engage Dr Rukmani. We are mindful of the fact that Mrs Riddle and Mrs Wheeler were support officers and we would not wish to express criticism of them. We consider, however, that there came a time when a more senior officer should have looked at the application in the round and advised appropriately.

102. The guidance itself (A2/ 15-25) envisages that an alternative to two recent clinical references may be required and advises that "if the PCT is satisfied that a doctor cannot meet the normal conditions it may accept references from any other clinicians who it believes can comment objectively on the doctor's clinical abilities" (see paragraph 13.4). It further states at paragraph 13.14 that "It is expected that PCTs will consider any significant breaks in career history and whether any retraining may be necessary." In our view, whatever the inadequacies of the information provided by the Appellant, the PCT knew, or ought to have known, both from the information contained in Dr Aslam's reference and the GMC register that the Appellant on a retraining programme which was being overseen by the Deanery.

103. In our view a constructive approach to the application would have been to advise Dr Rukmani that it intended to contact the Deanery for its views as to her progress in retraining. Such an approach would have been accord with regulations 4 (7), 6 (3) and the guidance. Alternatively, Dr Rukmani could have been simply advised that it was appropriate for her to nominate someone from the Deanery as a referee. In so saying we do not overlook the fact that the Appellant makes it clear that she had relied on Dr Hibble as a referee in her unsuccessful application to Thurrock and so it could be said that she did not need such advice. It is of note, however, that the Appellant when advised by solicitors did indeed rely upon the evidence of Dr Hunt, the Associate Director of the Deanery who was directly involved in the Appellant's retraining. The fact is, however, that the Appellant was not told that Dr Mandal's reference, (in so far as it was favourable), would effectively be discounted because of his lack of recent experience of her work. In our view the failure to provide the Appellant with at least this information and advice was not in accord with the regulations and/ or in the spirit of the guidance and, in any event, was unfair in all the circumstances. In this latter regard we bear in mind also that both Dr Rukmani and Dr Scanlon had been given the erroneous impression that the application was a formality.

104. In making these observations we are conscious that Dr Rukmani's application presented particular challenges. We directed ourselves that, irrespective of our view as to the deficiencies in the approach to Dr Rukmani's application on the part of the PCT, our task is to redetermine the application on its true merits on the basis of the evidence now before us including that submitted by the Appellant in support of her appeal.

105. Dr Hunt's letter to the GMC dated the 18th of October 2006 relayed his continuing concerns over the Appellant's attitude and communication skills, and noted a lack of drive and the need for continuing encouragement against a background of concerns regarding the Appellant's psychological wellbeing (A1/ 25-26). He concluded that "Dr Rukmani is working in a busy non training practice in a deprived area. Whilst exposure to patients has improved her overall confidence there are concerns over her attitude and communication skills and her difficulties in defusing confrontational situations … she appears to lack the necessary drive and determination to complete various of the specific recommendations in her PDP and appears to need to be continually encouraged in this matter. In his later letter of 13th December 2006 (A1/ 32) however, Dr Hunt expressed his opinion that Dr Rukmani was making progress regarding her professional development plan whilst noting that this was dependent upon her continued ability to work clinically and under supervision, which in turn was dependent upon inclusion on a PCT list. He concluded that he fully supported her inclusion on a performance List under continued supervision.

106. In October 2006 Dr McEwen, who is a Communication Skills facilitator at the Deanery, had been asked by Dr Hunt to help the Appellant address aspects of her professional development plan that related to communication. He saw Dr Rukmani on a number of occasions and provided a report to Dr

Hunt in order to update him in November 2006 (A1/ 27-28). Having explained what occurred at the sessions he concluded " Regretfully it is my view that unless Dr Rukmani accepts that there is no quick fix in dealing with the consultations that she has difficulty with and that she accepts that there is a need for her to have a wider approach to her learning in this area and of the need to have a repertoire of strategies and communication skills to defuse potential and actual confrontation within the consultation session, it will be difficult for her to move in the desired direction. I try to be learner centred …to facilitate the learner to reach the desired outcomes. Regretfully Dr Rukmani has declined to accept that such an approach could help her to address this aspect of her learning plan."

107. We consider that Dr Aslam's reference was a candid and informative document, as were the letters provided by Dr Hunt and Dr McEwen. Taken together all three identify significant problems. We note that the evidence of Dr McEwen is reminiscent of the view expressed by Dr Bevington as long ago as 2002. However, looking more closely at the evidence before us, the panel considers that the general thrust is not of a hopeless case, but rather one of a difficult case which may, at last, be showing some progress.

108. Dr Aslam's evidence as set out in his witness statement dated 9th March 2007 (A2/ 18-20) is of particular importance. He proved himself frank in his original reference. Further the fact that he is an approved educational supervisor and has had continued and recent exposure to Dr Rukmani's recent clinical work is of particular importance when assessing his evidence. In Paragraph 3 he refers to a noticeable improvement in her skills, whilst in paragraph 4 he refers to his original concerns regarding her communication skills and how she decided on prescriptions. With regard to the latter he states that the problems have resolved following discussions with her and the pharmaceutical adviser. So far as communication difficulties are concerned he states that Dr Rukmani is fully aware that she needs to improve her communication skills and wants to do so. He further states that patients are now asking to see her personally. Paragraph 5 is particularly telling, reporting a willingness and ability to learn, awareness on the part of the Appellant of the need to improve her communication skills, and, more importantly, a wish to do so.

109. Whilst recognising that this evidence contrasts somewhat with reports as to the Appellant's progress in late 2006 we consider that Dr Aslam's recent evidence represents a distinct move forward from the previous reports, and cannot be dismissed. We recognise also that the Appellant's application has the support of Dr Hunt.

110. We directed ourselves to consider the evidence in the round, weighing the lengthy history of significant and sustained problems with the Appellant's clinical practice, attitude, communication and insight over a number of years against the recent evidence of improvement in relation to her attitude, communication, prescribing and motivation as set out in Dr Aslam's statement. We have borne in mind that this evidence has not been tested in cross examination.

111. We consider that references should be viewed in overall context. Dr Rukmani is a doctor with recognised difficulties engaged, until very recently, in a formal program of retraining under supervision, and candid references must necessarily reflect these facts. We considered also the potential inconsistencies evident from the fact that the Appellant has hitherto been considered to be suitable to be included on a PCT list, and that, had it not been for the decision of Brighton and Hove PCT to remove her, on solely geographical grounds, would have continued to be included on a PCT list and, thus, to be able to continue her retraining.

112. In relation to both suitability and inefficiency Mr Booth drew our attention to the professional development plan submitted by Dr Rukmani (A2/ 16) and contended that this relates to identified deficiencies in basic medical practice. We consider, however, that Dr Aslam provided a relatively positive reference in relation to the Appellant's clinical skills and that his witness statement attests to ongoing satisfactory progress. On balance the panel considers that the evidence of Dr Aslam and Dr Hunt in relation to the Appellant's efforts to improve her skills is such that the references before us are satisfactory in the context of a doctor who is retraining and, further, that the Appellant is suitable to be included in the List despite the fact that she did not provide complete information in her application.

113. In relation to inefficiency the PCT contends that the undertakings to which the Appellant was subject and, thus, any condition which might be imposed will impact upon the efficiency of the services that she will provide. We noted that although it would have been open to the PCT to have investigated

and taken into account any incidents of inefficiency and/or complaints relating to performance or inadequacy of care on the part of Dr Rukmani at the Murree Medical Centre at a time when her application was pending, it did not do so. We note that there is no evidence of patient harm in relation to recent practice.

114. We note also that Mr Richards was concerned about the impact of the need for supervision on the efficiency of the practice in which Dr Rukmani was working because of its particular characteristics. He expressed the view at the hearing that the Appellant might be suitable for conditional inclusion in a different practice. As indicated above we consider that Mr Richards misdirected himself in treating the application as one specific to a particular practice. Whilst recognising that in the Appellant's particular circumstances the chances of her obtaining a position in another practice in the PCT are, at best, uncertain, we consider that her application for inclusion was freestanding and should have been so regarded by Mr Richards.

115. We agree, however, that the Appellant's inclusion on the List does pose a risk to the efficiency of services that she will provide in the event that she is able to practice. The inefficiency we identified on the evidence before us relates both to her communication skills and the fact that the Appellant's retraining is not complete. The PCT contends that the deficiencies identified in relation to attitude and communication is not capable of being addressed by conditional inclusion. The panel disagrees. Despite the evidence of Dr Mc Ewen to the effect that the Appellant may be incapable of change, the evidence of Dr Aslam shows that some improvement has been effected. Of course, it remains to be seen whether or not the GMC decides that the Appellant's registration should be reinstated and, if so, upon what conditions. For the reasons given above we do not consider it appropriate to prejudge or, indeed, influence any conclusion that the GMC may reach which will depend entirely upon the evidence before it.

116. We directed ourselves to consider whether, on the evidence before us, there was a reasonable prospect that the inefficiencies identified in the Appellant's practice could be addressed by conditions with a view to removing any prejudice to the efficiency of NHS primary care services posed by her inclusion. We have balanced the interests of the parties' one against the other and the public interest in the efficiency of those appointed to the list. The panel's view is that in the event that the Appellant's registration is restored by the GMC, the risk to the efficiency of services within the National Health Service can adequately and reasonably be met by suitable conditions as follows:

1. Doctor Rukmani will within 14 days of this decision confirm in writing her acceptance of these conditions in their entirety.

2. Dr Rukmani will comply fully with any conditions that may be imposed upon her registration by the General Medical Council.

3. In any event Dr Rukmani will undertake work only under supervision in a practice and by a supervisor approved by the post graduate dean.

4. Dr Rukmani undertakes to provide herself or permit disclosure to the South West Essex PCT of:

    a. all documentation in relation to proceedings before the General Medical Council

    b. all assessments and reports prepared by or at the request of the London Deanery and/or any other body or person from whom any reports are requested by the GMC

Conclusion.

117. In relation to the separate and alternative grounds relied upon, the panel has decided, by a majority, that the Appellant is suitable to be included in the list, that the references are now satisfactory and that any prejudice to the efficiency of services can be met by conditional inclusion.

118. Accordingly, the appeal against the decision of South West Essex PCT is allowed to the extent that the Appellant is conditionally included in its performers list in the terms set out in para 116 above.

The appeal against the decision of Brighton and Hove PCT to remove the Appellant's name from its performers list is refused.

119. We draw the attention of the parties to Rule 43 of the Family Health Services Appeal Authority (Procedure) Rules.

120. Finally, in accordance with Rule 42 (5) of the Rules we notify the parties that they may have the right of appeal against this decision under Section 11 of the Tribunals & Inquiries Act. Any appeal shall be made by lodging a notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from receipt of this decision.

Siobhan Goodrich
Chair of Appeal Panel
11th June 2007