

**TRIBUNAL SERVICE**  
**PRIMARY HEALTH LIST**

**Case No: PHL/15321**

Mr Christopher Limb - Judge  
Mr Derek Styles - Professional Member  
Mrs Sheila Brougham - Lay Member

BETWEEN:

MR ASIF AKHTAR  
(GOC Reg No 01-24209)

Applicant

and

MANCHESTER PRIMARY CARE TRUST

Respondent

**DECISION**

**Introduction**

1. We sat to hear this case in Manchester on 21<sup>st</sup> February 2011 and having completed the evidence and heard submissions the members of the Tribunal further met on 22<sup>nd</sup> February to reach our Decision. In addition to the substantial documents provided by the parties we heard oral evidence from Hilary Hodgson called by the Respondent and from Mr Akhtar. Mr Akhtar was represented by Miss Eleanor Sanderson, Counsel, and the PCT was represented by Mr John Sharples, Counsel. Both parties had filed Skeleton Arguments.
2. Following graduation and a pre-registration year, Mr Akhtar was registered as a fully qualified optometrist in October 2008. He was initially on the Performers List of Oldham PCT. He applied to join the Respondent's List by application dated 20<sup>th</sup> October 2008 (although one page also bears the date of 28<sup>th</sup> October 2008). This case arises from the information given upon the application form and subsequently.
3. The relevant background commences with matters which gave rise to Mr Akhtar being convicted (on his own guilty plea) of two criminal offences. The first offence was a conspiracy to defraud between January 2005 and August 2008. The Defendant was one of several Defendants but his own involvement was restricted to one aspect. The second offence was in respect of acts tending and intended to pervert

the course of justice between 6<sup>th</sup> and 13<sup>th</sup> February 2008. The broader background to the first offence was the central involvement of one of the brothers of Mr Akhtar in an extensive fraud to obtain money from “staged” accidents and subsequent personal injury claims. It is not suggested that Mr Akhtar had any part in planning or advance knowledge of them. His involvement in the first offence was to agree after the event to pretend to be an injured driver in one such accident and to cooperate in a claim being made for damages for personal injury and for damage to the car. The accident in question was on 14<sup>th</sup> September 2005. The behaviour of Mr Akhtar relied upon took place after that time and until August 2006. His actions in regard to the second offence involved his attending at a police station following his car having been earlier stopped when driven by somebody else (not someone whom he had directly authorised to drive it) and who had given Mr Akhtar’s name. He attended at the police station in order to produce his driving licence and insurance documents and purported to be the person to whom the notice to produce those documents had been given and who had been driving the car when stopped by the police. We shall return later in this Decision to the details of the involvement of Mr Akhtar so far as relevant to issues in the case. Mr Akhtar was charged with the offences in July 2008. He appeared at the Magistrates Court on 14<sup>th</sup> October 2008 and was committed for trial at the Crown Court. His initial appearance at the Crown Court was on 31<sup>st</sup> October 2008 and he entered guilty pleas on 26<sup>th</sup> January 2009. Because of issues relating to other Defendants he was not sentenced until 21<sup>st</sup> October 2009. He received a sentence in respect of each offence of 200 hours Community Service.

4. The history of the application and of this appeal is, in summary, as follows. The application to join the Respondent’s List was made on 20<sup>th</sup> October 2008. A Criminal Records Bureau Certificate (dated 27<sup>th</sup> May 2008 and obtained in the context of his joining the Oldham PCT List) was sent to the Respondent on 30<sup>th</sup> December 2008. Mr Akhtar was admitted to the Respondent’s List on 16<sup>th</sup> February 2009. Indirectly on 26<sup>th</sup> October 2009 by the Manager of Boots Opticians for whom he was working and directly by e-mail himself on 28<sup>th</sup> October 2009, Mr Akhtar informed the Respondent of conviction and sentence in respect of the criminal offences.
5. Mr Akhtar informed the General Optical Council of the convictions at the end of October 2009 and an investigation was formally commenced on 3<sup>rd</sup> November 2009. The GOC Investigation Committee considered the matter in February 2010 and determined that an application be made to the Fitness to Practice Committee for consideration of an Interim Order. On 18<sup>th</sup> March 2010 the Committee was not satisfied that Mr Akhtar posed a risk to the public or that it was otherwise in the public interest that he be subject of an Interim Suspension Order (the requirements for an Interim Order being that an Order was necessary for protection of members of the public or otherwise was in the public

interest). At the present time it is understood that a full hearing has not yet taken place.

6. The PCT witness, Hilary Hodgson, started work one day a week for the Respondent in December 2009 as Optometric Adviser. Shortly after that time she was asked to investigate the circumstances of Mr Akhtar's application and membership of the Performers List. In addition to the documents already available to the Respondent she made enquiries with the GOC. She wrote to Mr Akhtar on 30<sup>th</sup> June 2010 and Mr Akhtar replied on 12<sup>th</sup> July 2010. Thereafter Mrs Hodgson prepared a report for the Respondent's Panel to consider. Such report was dated August 2010. Mr Akhtar was notified of the intention to hold a Panel hearing and sent a copy of the report under cover of letter of 24<sup>th</sup> August 2010. The Panel held a hearing on 28<sup>th</sup> September 2010. Mr Akhtar was present and was represented by Counsel and solicitor. Mrs Hodgson presented her report and Mr Akhtar had the opportunity to ask her questions (although none were asked). Mr Akhtar gave evidence and his Counsel made submissions to the Panel. The Panel concluded that all the allegations had been proved and that it was necessary, reasonable and proportionate to remove Mr Akhtar from the Performers List on the grounds of unsuitability. Such Decision was communicated by letter of 5<sup>th</sup> October 2010. Mr Akhtar's appeal form dated 1<sup>st</sup> November 2010 and attached Notice of Appeal were received by the Tribunal Service on 5<sup>th</sup> November 2010.

### **Law/Regulations**

7. This hearing is by way of a re-hearing and we consider the merits of the matter afresh. Insofar as there are relevant issues of fact the burden is upon the Respondent to prove the facts relied upon to the extent that we are satisfied on balance of probabilities of their truth and accuracy.
8. The provisions of the National Health Service (Performers Lists) Regulations 2004 ("the Regulations") apply to the process of inclusion in a Performers List and relevant considerations for removal from such list.
9. Regulation 4 makes provision as to various items of information and various Undertakings and Declarations which are required. Regulation 4(3), inter alia, requires:
  - (a) an Undertaking to provide the Declaration and documents required by Regulation 9 (which in turn requires Declaration within 7 days of occurrence of conviction of any criminal offence or of becoming the subject of any investigation into his professional conduct by any licensing or regulatory or other body);
  - (b) an undertaking to notify the PCT within 7 days of any material changes to the information provided in the application until the

application is finally determined or, if his name is included in the Performers List, at any time when his name is included in that list;

(f) to provide an Enhanced Criminal Record Certificate.

10. By Regulation 4(4) the Applicant must send with the application a Declaration as to whether (inter alia) he has any criminal conviction or (quoted in full as it features notably in the case) “is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Primary Care Trust”.
11. Pursuant to Regulation 6 the PCT may refuse to include a performer in the list, inter alia, if it considers the Applicant is unsuitable to be included in the Performers List.
12. Pursuant to Regulation 10(3) and (4) the PCT may remove a performer from its Performers List, inter alia:
  - (a) if his continued inclusion in the Performers List would be prejudicial to the efficiency of the services which those included in the relevant Performers Lists perform; or
  - (b) if the Applicant is unsuitable to be included in that Performers List.
13. Pursuant to Regulation 11 the PCT, when considering whether to remove a performer from its list in an unsuitability case, shall consider any information relating to him which is received in accordance with any provision of Regulation 9 (so far as relevant referring to a conviction or a disciplinary finding by a regulatory body) and shall take account of the matters in Regulation 11(2), namely the nature of any offence, investigation or incident, the length of time since any such offence, incident, conviction or investigation, whether there are any other offences, incidents or investigations to be considered, any action taken or penalty imposed by any licensing or regulatory body, the police or the Courts, the relevance of any offence, incident or investigation to his performing relevant primary services and any likely risk to any patients or the public finances, (and other matters not potentially relevant to this case).
14. For the avoidance of doubt, it is noted that the Decision of the PCT against which the appeal is brought was based solely upon unsuitability and it is not therefore appropriate that arguments which were originally considered in relation to efficiency are further considered. We consider the case solely in relation to suitability.
15. Both parties made some references to the Department of Health Guidance for PCT's on Performers List Management. Such guidance was referred to by the PCT and we are aware is often used by PCT's when considering cases. It is often helpful in its commentary. We have noted the passages referred to by each party although in the

present case the references are little more than the contents of the Regulations themselves.

### **Facts/evidence**

16. The PCT Decision letter of 5<sup>th</sup> October 2010 found all allegations proved. We set out those allegations which were:
- (i) Conviction of two criminal offences, namely conspiracy to commit fraud and perverting the course of justice, both of which impact on suitability to remain included in a Performers List;
  - (ii) On 28 October 2008 submission of a false Fitness to Practice Declaration as part of the application to join the Performers List and in breach of Regulation 4(4)(g);
  - (iii) Failure to comply with the written Undertaking given when applying to join the List and in breach of Regulations 9(5) and 9(6) in that there was failure to notify the PCT within 7 days of any material changes to the information provided in the application and in particular following appearance at the Crown Court on 26<sup>th</sup> January 2009 when Mr Akhtar pleaded guilty to committing two criminal offences and was convicted of these offences;
  - (iv) Failure to make a Declaration to the PCT within 7 days of 3<sup>rd</sup> November 2009 that he had become subject to an investigation into his professional conduct by the General Optical Council in breach of Regulation 9(1)(j);
  - (v) Production to the PCT on 30<sup>th</sup> December 2008 of a copy of the CRB Certificate of 27<sup>th</sup> May 2008 with the intention of misleading the PCT to believe that he had no pending criminal charges outstanding when he knew that such assertion was false and the CRB Certificate no longer accurate;
  - (vi) The actions were dishonest, inappropriate, improper and unprofessional;
  - (vii) He was unsuitable to remain included in the Performers List.
17. The allegation in relation to the CRB Certificate was not pursued in the hearing before us. The PCT as well as the Appellant's representative accepted that information as to a criminal charge which had not yet been the subject of a conviction may or may not have been given in a certificate : this is information that would be given at the discretion of the Chief Police Officer and there was no evidence available as to likely practice one way or the other. It is also to be noted that whilst the PCT maintained its case in relation to notification of material changes within 7 days of becoming the subject of an investigation by the General Optical Council, the essence of the PCT case related to the facts and circumstances of the two criminal offences and the contents of the initial application form and in particular the Declaration in the form arising from Regulation 4(4)(g).

18. It is helpful to consider the application form and the specific contents or Declarations within the application which are said to be relevant by one or the other party.
19. Amongst the Declarations and Undertakings made by Mr Akhtar there is an Undertaking on page 4 of the document to notify the PCT within 7 days of any material changes to the information provided in the application until the application is finally determined or, if included in the Performers List, at any time when his name remains included in that list. Amongst the Declarations answered "No" on page 6 of the form are:
- "(a) Have you any criminal convictions in the United Kingdom?
  - (g) Are you currently the subject of any proceedings which might lead to such a conviction, which has not yet been notified to the Primary Care Trust?
  - (h) Have you ever been the subject to any investigation into your professional conduct by any licensing, regulatory or other body where the outcome was adverse?
  - (i) Are you currently the subject to any investigation into your professional conduct by any licensing, regulatory or other body?"
20. The majority of the underlying facts in the case were not in dispute but there was important dispute as to the surrounding circumstances and states of mind of Mr Akhtar at relevant times. We shall refer to our relevant findings in relation to his evidence in such regards. We will not make express reference to the evidence of Mrs Hodgson : it provided a useful framework and background for the case but the conclusions to be drawn from the evidence are a matter for us and not for her as a witness.
21. As already indicated there are two criminal offences with which this case is concerned. The Appellant's Grounds of Appeal refer to the mischief in relation to the offences occurring in 2005 : whilst matters started in 2005 that was not the end of relevant facts or actions constituting the offences. There was a "staged" accident on 14<sup>th</sup> September 2005. Mr Akhtar was not involved in the accident and was not the driver of the vehicle involved. In the course of the criminal proceedings the Crown Court Judge expressly found that Mr Akhtar was recruited after the collision and did not have prior involvement. He became involved at the behest of one of his brothers who was one of the central conspirators in relation to both that accident and other accidents. The broad purpose of the conspiracy was to make false claims for injury and to make inflated claims for damage and to receive monies on such basis from insurance companies. In the course of cross-examination, Mr Akhtar accepted that he was involved in a course of actions over a period of about twelve months. He accepted that the known purpose of the actions was to obtain financial gain albeit

not for himself. Mr Akhtar said that his purpose was to help his family or to avoid his family being in trouble. It should be noted that his sister and his father were also involved or recruited into the claim. It was not accepted that he filled in the false claim form. It was accepted that after the claim had been submitted he was visited by investigators from the insurance company and told them lies. Insurance investigators spoke to Mr Akhtar in June 2006 and he made statements to the broad effect that he was driving the car at the time of accident, that one of the other Defendants was a passenger, and that the car suffered extensive damage. There was a further meeting/interview with insurance investigators in August 2006 when Mr Akhtar repeated his previous statements. In April 2006, Mr Akhtar had attended a Dr Cooke who had been instructed to prepare a medical report for the purpose of the claim. In the course of such examination and interview and as reflected in the written medical report that was thereafter produced, Mr Akhtar gave details of the spurious accident in similar terms to those he later gave to the insurance investigators and also gave a detailed account as to the extent of a whiplash injury he suffered and its impact upon him. In cross-examination he accepted that he therefore repeated lies upon several occasions over a period of months.

22. We accept that Mr Akhtar would not have become involved in the offence if it were not for his brother. We accept that there was a degree of implied physical threat from his brother and that there was also pressure both from his brother and later from his mother to cooperate with the false claim because his sister and father would otherwise be exposed as behaving similarly and potentially also suffer actual losses. We do note that, in his own evidence, Mr Akhtar said that there came a time (no precise date was given) "after a few months" when Mr Akhtar (in the words of his written statement) "realised that I could not carry on with the course of action and refused to continue with my brother's scheme. I instructed him to cancel the claim that pertained to me. To the best of my knowledge he did so". It would appear and we find that such instruction to the brother to cancel any claim must have been towards the end of 2006. Mr Akhtar believed and we proceed on the basis that the claim was cancelled : it certainly appears that it was not paid out.

23. There was a notable gap in time before the second offence was committed. The second offence was not immediately connected with the first offence nor with the general conspiracy of other people to make false or inflated claims arising from road traffic accidents. The circumstances were that his brother, without his knowledge, took his car and allowed another person (who he indicated in his evidence was a well known criminal in the Bolton area) to drive the car. The car was stopped whilst the friend of his brother was driving and Mr Akhtar's name was given as the driver's name. A Notice to produce driving licence and insurance documents was given to the driver. Such incident occurred on 6<sup>th</sup> February 2008 and at some time that day or in the next few days Mr Akhtar's brother came to the family home and

gave the Notice to Mr Akhtar and told him he had to take his driving documents to the police. Mr Akhtar gave evidence that he initially refused, was then told who the driver of the car was and became frightened of reprisals if he refused and took the documents to the police station on 12<sup>th</sup> February. He accepts that he did so thereby holding himself out as the person who had been the person driving when the Notice was given. In the course of cross-examination Mr Akhtar was asked as to why he carried out the criminal action in 2008, especially in the context of what had happened in 2005/6. He gave an answer to the effect that he complied with his brother's request because he was scared of reprisals and therefore because he was protecting himself. The Panel clarified this aspect in its own questions of Mr Akhtar and he answered quite clearly that apart from his brother the only person within the family who might be in trouble as a result of the incident would be himself. In other words there was no question in relation to the second offence of Mr Akhtar acting to in any way protect his sister, father or innocent members of his family.

24. There is no dispute that Mr Akhtar completed the application form and in particular the Declarations in the way referred to in paragraph 19 above nor that the answer to question (g) should have been "yes". It is to be noted that the various Declarations follow the wording of the Regulations and in particular the central Declaration (g) is in the same words as Regulation 4(4)(g). Mr Akhtar gave evidence that he considered his answers and (so far as relevant) the answer to question (g) : in other words his evidence was not that he ticked all "no" answers without giving the matter thought. He gave evidence that he answered "no" because he had been advised by his solicitor (initially a solicitor who was also instructed for co-defendants including his brother) that it was likely that because of his very minor role the Prosecution were likely to not proceed against him and to proceed only against the ringleaders or major players. It was on such a basis that he said he considered at the time of completing the application form that he did not believe that he was the subject of proceedings which might lead to a conviction.
25. The essence of the evidence of Mr Akhtar in relation to failure to inform the PCT of material changes to his position – in particular his entering a guilty plea to both offences on 26<sup>th</sup> January 2009 – was that he considered that his guilty plea did not amount to a conviction and a conviction only arose upon his being sentenced. It is not disputed that following his sentence he promptly informed the PCT – having swiftly taken internal advice from relevant managers at Boots for whom he was then working.
26. We do not summarise the evidence in relation to the failure to make a Declaration in respect of the commencement of investigation by the General Optical Council in view of the PCT already having been informed of the conviction by such time and the relative lack of

emphasis put upon such matter by the PCT in the course of the hearing in the context of the other more serious allegations.

27. We note and accept that there is no suggestion that Mr Akhtar is not competent in relation to his professional expertise in optometry. We note and accept various references from those with whom he has worked that they are very pleased with his work. We note and accept that individual patients have expressed satisfaction and gratitude for the care he has given them. We note and accept that he has provided numerous personal references which are entirely positive and which confirm that in the various writers' experiences he has always behaved (amongst other attributes) with honesty and integrity and that he has a strong and reliable loyalty to his family and to his friends. We heard from Mr Akhtar and accept that he bitterly regrets his actions and wishes he could put the clock back and have behaved differently. He told us, and we accept, that he accepts he should have behaved differently and is ashamed. He told us, and we accept, that he has cut all ties with the brother who was involved in the criminal enterprises – although it is our understanding that that brother is presently in prison and therefore there is no possibility of any unwanted or unavoidable contact with his brother.

#### **Arguments/Submissions/Findings**

28. In relation to the first offence there is little, if any, dispute about the actions of Mr Akhtar and the extent and circumstances of his involvement. It was urged on behalf of Mr Akhtar and not challenged that he became involved because of pressure from his brother and subsequent pressure from other members of his family who were involved and also from his mother who wished those other members of the family not to get into trouble with the police. It does not appear that it was suggested there was any physical violence from his brother albeit that there might have been a background fear because of his brother's larger physical strength and personality. The major aspect urged upon us was the extent of pressure from the family and the fear of other members of the family being revealed to have been involved in crime if Mr Akhtar did not agree to participate in the way requested.
29. On behalf of the PCT various aspects were emphasised including the period of time over which the fraudulent pretence was persisted in and the various actions undertaken by Mr Akhtar over and above allowing his name to be used in the knowledge that financial gain (albeit not for him personally) was the intended outcome of the fraud.
30. We accept and think it of importance that the actions constituting the first offence were not actions under pressure which concerned only a single day and from which there was a relatively swift withdrawal. It was known that the criminal intention of the overall claim was to dishonestly obtain monies from insurance companies and such is

serious and concerning in its own right. In this case however we consider it of importance that the actions of Mr Akhtar continued for almost a year. His part was not only passive but involved two occasions when he maintained and detailed the false allegations in the course of interviews with insurance investigators and another occasion when he gave not only false details of the accident itself but also entirely fabricated details of his own suggested injury and consequent suffering to a doctor who was instructed to prepare a medical report. We were made aware of no circumstances which were materially different when Mr Akhtar eventually told his brother that he would no longer be involved and that the claim must not be pursued and (so far as he was aware) was not pursued.

31. So far as the second offence is concerned it is to be noted that it has no real connection with the first offence save for the involvement of the same brother. The second offence has no similar involvement of his father or sister or innocent members of the family. The only motivation given by Mr Akhtar for his involvement was personal fear because of the notorious reputation of the person who had been driving his car.
32. Both in written submissions and in oral submissions on behalf of Mr Akhtar relatively little emphasis was placed upon the second offence. In our view the second offence, although arguably less serious than the first offence, is as important as the first offence because of the repetition of dishonest criminality.
33. We also note and think of importance that neither offence can be described as a youthful or juvenile crime since which overall circumstances have notably changed. Mr Akhtar was born in November 1980 and therefore was aged 25 at the time of the first offence, even though a student at such time. In relation to the second offence, not only was he older but he was working professionally in his pre-registration year.
34. The issue between the parties in relation to the false Declaration upon the application form relates to whether such was deliberate or dishonest or alternatively was based upon an erroneous but genuine belief that he would not be convicted of any offence and therefore that there were not circumstances which might lead to a conviction.

35. By reason of his two degrees and professional qualification Mr Akhtar is self-evidently to be considered an intelligent man. When giving evidence we found him to answer questions in a way entirely consistent with a man of intelligence and education. In our judgment there is a clear distinction between the question as to whether an Applicant is the subject of proceedings "which might lead to such conviction" and earlier questions which concern actual convictions. The wording is plain and we struggle to think of any alternative wording which would be clearer. In our judgment it is objectively plain that once Mr Akhtar had been charged and was being taken to Court (and indeed had made appearances at Court by the time of his application) he was the subject of proceedings which might lead to a conviction. An honest answer to the question would not be affected by legal advice that the proceedings may not be pursued. The proceedings were in existence and at the time of the Declaration Mr Akhtar had appeared at the Magistrates Court and was awaiting the first hearing at the Crown Court. Whilst he may genuinely have thought there was a possibility or even a probability that the proceedings might be dropped, the question required him to answer yes. He could have added any further information he thought relevant including an explanation that he had been advised that proceedings may not be pursued. Mr Akhtar accepts he consciously considered his reply and we do not accept that he can have taken any view other than that his answer was incorrect and intended to be incorrect and therefore was dishonest. He may have had a hope that the proceedings would not be pursued but he cannot have honestly thought that the proceedings "might" not have led to a conviction.

36. We do not make any express findings in relation to the failure to notify changes in view of the relatively small part played in the course of the hearing and in the context of the other more serious matters. Such approach should not be taken to be a public indication that such failures might not in some circumstances and in some cases be considered serious.

### **Decision**

37. We have taken into account the Regulations and in particular the matters set out in Regulation 11(2). Both criminal offences were inherently serious offences and in the context of membership of the Performers List are to be noted as involving dishonesty. The first offence also involved the issue of financial loss to the insurers and wrongful financial gain by others. The first offence involved actions by Mr Akhtar over a period of about a year. His response to whatever pressures were brought upon him involved actions over such a prolonged period and repetition of important false statements both to insurance investigators and to an independent doctor. There was a notable gap in time until the second offence was committed and there is no suggestion of worry about the impact upon other family members as mitigation. Mr Akhtar at the time of all the offences was in all

senses of the word an adult and at the time of the second offence was starting to practice as an optometrist in his pre-registration year.

38. It is important across most professions and certainly across the various professions within this jurisdiction that the principle of professional trust and integrity is upheld. It is important that patients can rely upon such behaviour and that external bodies or people receiving communication from an optometrist can rely upon such standard behaviour. It is important that financial probity is present.
39. The criminal offences would in themselves have led us to conclude that Mr Akhtar was unsuitable to be a member of the Performers List. Such position is compounded by his failure and in our judgment his dishonest failure to make a correct Declaration in his application. There are in our judgment no very particular or individual circumstances of such force as would prevent the otherwise conclusion that such dishonesty renders Mr Akhtar "unsuitable". Such facts and background also lead us to what we feel is the inevitable conclusion that the sanction of removal from the Performers List is appropriate, proportional and reasonable.

#### **Summary**

40. We dismiss the Appeal.

**Christopher Limb**  
**28<sup>th</sup> February 2011**