

**IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY**

**Case Number: 14181**

**Mr T Jones  
Dr Chope  
Ms Everitt**

**Chairman  
Professional Member  
Member**

**BETWEEN**

**MS SHIRLEY SCOLA  
Professional Registration Number: 48306**

**Appellant**

**and**

**BRISTOL PRIMARY CARE TRUST**

**Respondent**

**DECISION WITH REASONS**

**The Appeal and the Background**

1. This is an appeal made by Ms S Scola ("The Appellant") against a decision of Bristol PCT ("The Respondent PCT") to conditionally include her on their Dental Performers List in pursuance of regulation 8 of the NHS (performers List) Regulations 2004.
2. On 13<sup>th</sup> November 2007 the Respondent PCT wrote to the Appellant advising her of the conditional inclusion decision. It made reference to the following conditions:

"While in the Dental performers List you will be subject to the following conditions:

1. Your practice will be restricted to Orthodontics only performed at Smile Solution, 6 The Parade, Shirehampton, Bristol, BS11 9TS.
  2. You will be supervised by Helen Leach from whom we will obtain reports after 3 and 6 months."
3. The Respondent PCT advised the Appellant of her right to appeal to this Tribunal which she did writing to the Tribunal on 16<sup>th</sup> November 2007.
  4. The Appellant set her reasons for submitting an appeal in a detailed letter dated 16<sup>th</sup> November 2007. She made it clear that she was already included on another PCT list and that in seeking to fill a locum post she had already been told by the Respondent PCT her application for inclusion

may take some 8 weeks. She offered to work under supervision in this time. She did all she could to facilitate a personal application rather than submit the application at the time of postal disruption. It was put to her that she had not worked in the NHS since December 2002 she should provide an additional referee, which she did, urging a Professor in Orthodontics to provide the same by e mail to speed matters up The Appellant said in relation to the appeal that:

“The limitation to orthodontics is reasonable, but I feel that the need for supervision is unreasonable in that:

- (a) It overturns the decision of the Professor of Orthodontics
- (b) They should have allowed me to start immediately as they would have a vocational trainee”

The Appellant enclosed copies of her C V.

5. The Respondent PCT replied in a submission of the 3<sup>rd</sup> January 2008. The Respondent PCT at paragraph 2 makes reference to guidance produced by the Department of Health “Delivering quality in primary care – Primary care trust management of primary care practitioners’ lists”: The Respondent PCT annexed the guidance to their submission, and drew the attention of the Panel and the Appellant to the same in relation to the reasonableness of imposing the conditions in this matter.

The Respondent PCT dealt with the Appellants appeal grounds with reference to the matters raised as follows:

As to inclusion as a vocational trainee; the Respondent PCT did not feel it appropriate to do this as the Appellant does not fall into a category within Regulation 28 (2) (b) of the 2004 List Regulations and she did not in any event apply for such inclusion.

The Respondent PCT in its submission responding to the appeal stated that it was unaware of the Appellants offer to work under supervision whilst her application was being considered; but in any event pending the processing of the application and checks that are undertaken such an offer could not lawfully be acted upon.

The Respondent PCT states they have fully taken into account all of the comments of the Appellants additional referee Professor Sandy. Indeed, they took further advice in respect of it from the Trust’s clinical governance dental lead.

It was noted that the Appellant has not been in General Dental Practice in the United Kingdom since January 1979, has been out of clinical practice since 2003; but specifically out of NHS clinical practice since 2002. To return to NHS work a practitioner has to be on the Performers List. With regards to the Performers List there are no separate regulations for specialists including orthodontists.

The Respondent PCT had adopted a policy, to be applied with discretion according to the individual circumstances of an applicant, to the effect that if an applicant had not provided NHS general dental services within the last 12 months then a set of conditions relating to supervision is to be recommended. This is to safeguard patients while allowing the practitioner to work with a mentor while they become familiar with current NHS clinical practice and their managerial skills meet the need of the new NHS dental contract.

Conditions were imposed in this case to ensure the efficiency of the service and to ensure patients receive safe and effective dental care.

6. Neither party to the appeal sought an oral hearing. The matter was initially allocated to a list that included an oral hearing which did not proceed as such. We arranged a subsequent telephone conference, between all panel members, who were able to discuss the appeal with one another at the same time.

## **Our Decision**

7. The Panel hears this appeal by way of re determination, under section 15 (1) of the NHS (Performers Regulations) 2004, the Panel has power to revise the decision or impose different conditions. It is clear to us, and we find, that the Respondent PCT conditions were indeed reasonable, necessary and a proportionate response to the application. We note fully the concerns expressed by the Appellant as to the steps she took to expedite the application, her concerns that her experience and Professor Sandy's support for her application have been disregarded. We find that in respect of the latter concern, the Professors comments were properly considered, and that the Respondent PCT took a balanced, measured view of his input as to the Appellants capacity to work in NHS clinical practice. We find, looking at the appeal in all its aspects, and in addressing the aspects of efficiency of the service, and the need to ensure the safety of patients, that we for like reasons ourselves, subscribe to the reasons, analysis and conclusions put before us by the Respondent PCT in this appeal.
8. Accordingly, we find that there are good reasons, which are balanced and proportionate, as noted above, to impose conditions upon the Appellants application for inclusion on the Respondent's Dental Performers List.
9. We dismiss the appeal. In accordance with rule 42 (5) of the Procedure Rules, we notify a party to the appeal that they can appeal this decision under section 11 of the Tribunals and Inquiries Act 1992, by lodging a Notice of Appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from the date of this decision.

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Mr T Jones, Chairman