

In the Family Health Services Appeal Authority

case no: 13408 and 13494

Heard at the Offices of the
Care Standards Tribunal
London

On 22 March 2007

Before

**Mr J D Atkinson (Chairman)
Professor Clark
Mrs L Jacobs**

Between

Mr Corey Baxter and Opticall (UK) Limited

Appellant

and

**South Leicestershire Primary Care Trust
now known as
Leicestershire County and Rutland Primary Care Trust**

1st Respondent

and

Dudley Primary Care Trust

2nd Respondent

Representation:

For the Appellant:

Ms S Kapila of The Association of Optometrists

For the Respondent:

Ms Kirkpatrick, Head of Primary Care 1st Respondent

Mrs J Ross, Contracts Service Manager 2nd Respondent

DECISION AND REASONS

The Appeal

1. This is an appeal by Corey Baxter and Opticall (UK) Ltd against the decisions of the respondents not to include them on the respondents' general ophthalmic lists under the Health Services Act 1977 (as amended) and associated regulations. The decision of Leicestershire County and Rutland Primary Care Trust (1st respondent) against which appeal is brought was notified by letter dated 14 September 2006. The decision of Dudley Primary Care Trust (2nd respondent) against which appeal is brought was notified by letter dated 6 November 2006.

The Proceedings

2. Mr Baxter registered as an optometrist in 1999.

3. On 28 June 2006 Mr Baxter applied to the 1st respondent for inclusion on its ophthalmic list. The application form was signed by Mr Baxter but the application was made in the name of Optical (UK) LLP, a corporate body.
4. On 29 June 2006 Mr Baxter applied to the 2nd respondent for inclusion on its ophthalmic list. The application form was also signed by Mr Baxter and made in the name of Optical (UK) LLP.
5. By a letter dated 14 September 2006 the 1st respondent notified Mr Baxter that the application for inclusion on the list was refused. The reasons given may be summarised as follows:
 - i. Mr Baxter had failed to declare two previous and one current investigation about him
 - ii. In the light of all the available information Mr Baxter was considered to be unsuitable to be admitted on to the list and
 - iii. inclusion on the list would be prejudicial to the efficiency of the service and
 - iv. Mr Baxter was currently subject to investigation by a regulatory body
6. By letter dated 11 October 2006 Mr Baxter gave notice of appeal against the decision of the 1st respondent.
7. By a letter dated 6 November 2006 the 2nd respondent notified Mr Baxter that the application for inclusion on the list was refused. The reasons given may be summarised as follows:
 - i. Mr Baxter had failed to declare two previous investigations about him
 - ii. Mr Baxter when asked about the two previous investigations failed to inform the 2nd respondent of a recent GOC investigation
 - iii. Mr Baxter had been refused admission by the 1st respondent
8. By letter dated 4 December 2006 Mr Baxter gave notice of appeal against the decision of the 2nd respondent.
9. Appeals to the FHSAA are by way of redetermination.
10. The first appeal was originally listed for full hearing on 18 January 2007. However, the substantive hearing was adjourned and the Panel directed that the two present appeals be heard together because of their material commonality.
11. By skeleton argument the respondents submitted that the basis for refusing to include Mr Baxter on their lists was on the grounds of unsuitability, that they had not considered specific matters relating to clinical practice and that they did not seek to put such matters in issue.

The Law

12. The relevant law is to be found in the 1977 Health Services Act as amended together with associated regulations. Extracts of the relevant law as set out in National Health Service (General Ophthalmic Services) Regulations 1986, as amended may be summarised as follows:

... a primary care trust may refuse to include an ophthalmic medical practitioner or optician from its performers list where...

in the light of all the information in its possession it considers he is unsuitable to be on the list

his inclusion in its list would be prejudicial to the efficiency of the services which those

included in the relevant list perform.

13. In addition a person may be included in the list subject to conditions relating to preventing any prejudice to the efficiency of the services in question or for preventing acts or omission concerning fraud.

The documents and evidence considered

14. The Panel had before it a bundle indexed and paginated to 163 in respect of the appeal concerning the 1st respondent and another bundle paginated to 97 for the 2nd respondent.
15. For the hearing, the appellant filed an unindexed but paginated bundle to 23 together with a statement from Mr Baxter dated 19 March 2007. At the end of the hearing Ms Kapila in closing submissions sought to adduce further documentary evidence. The Panel refused permission to do so as, on her own admission, only limited reliance would be placed on the new evidence which was on matters that did not go to the core of the issues.
16. In addition, in the course of the hearing the Panel gave leave to the appellant for the filing of a copy email dated 29 September 2006.

Oral Evidence on behalf of the respondents

17. The respondents did not file witness statements from any relevant officers, preferring to rely on the documentation previously submitted. However those officers present, Ms Kirkpatrick and Mrs Ross indicated that they were content to answer questions put to them.
18. Relevant extracts of Ms Kirkpatrick's oral evidence may be summarised as follows. Ms Kirkpatrick confirmed that the respondents did not seek to raise issues about Mr Baxter's clinical practice. There were concerns however about the fact that Mr Baxter worked with vulnerable people in care and nursing homes.
19. The respondents decision not to include Mr Baxter on the list was based on both efficiency and unsuitability grounds. The inefficiency aspects were linked to his failure to complete documentation properly and to provide information on inquiry. The respondent had not set out in detail its concerns in the course of the telephone conversation of 25 August 2006 with Mr Baxter (respondent bundle page 8), however Mr Baxter knew of the concerns based on an email of 18 July 2006 (respondent's bundle page 86). Mr Baxter in a telephone conversation of 5 September 2006 said that he was too busy to attend a PCT hearing on the matter.
20. The respondent, following investigation and a hearing which Mr Baxter did not attend, came to the view that Mr Baxter's failure to declare the previous investigations were not mere oversight because he continued to fail to make appropriate declarations after the email dated 18 July 2006 had informed him of such a failure. This view is set out at page 10 of the 1st respondent's bundle.
21. In questioning, it was suggested to Ms Kirkpatrick that Mr Baxter had written to the respondent and a number of PCTs informing them of his error. In reply Ms Kirkpatrick said that the respondent had not received such a letter nor had the Melton and Charnwood PCTs. Mr Baxter had had a number of telephone conversations with her colleagues and at no time had volunteered information to the respondent that he had made a mistake on his application form.
22. In coming to its view the respondent was aware that Leicester City PCT had accepted Mr. Baxter on to its list, but was of the view that each PCT had to make its own decision.

23. The respondent was of the view that Mr Baxter was unsuitable to be included on the list because he had shown himself to be untrustworthy and was working with vulnerable members of society.
24. The respondent was aware that the last investigation into Mr Baxter had been in 2003. It was accepted that at the time of the application Mr Baxter had not been the subject of an investigation by the GOC, however he had become aware of it on 25 August 2006, yet Mr Baxter had written to the respondent on 31 August 2006 (respondent bundle 80) and made no mention of it. It was accepted that the GOC investigation was eventually dropped.
25. The respondent in coming to its decision was aware of the seriousness of the decision and was of the view that Mr Baxter had engaged in falsehood. At the time of the decision the respondent was not aware that other PCTs had also refused Mr Baxter's applications. The respondent took account of all the documents before it as set out in the minutes. Ms Kirkpatrick, when asked to identify in the minutes where positive factors, such as the passage of time in relation to the investigations, had been taken into account, replied that the wording of the minutes was the PCT's and not hers.
26. The respondent did not specifically consider whether Mr Baxter could be included on the list subject to conditions.
27. Mrs Ross did not materially add to that which had already been said.

Oral evidence on behalf of the appellant

28. Mr Baxter adopted as evidence in chief his statement dated 19 March 2007. It is not necessary to rehearse its contents in full here. In brief the statement indicated that Mr Baxter had signed the application forms but left matters of detail to his colleague Mr Cooke; that at the relevant time his personal circumstances were such that he was under pressure and he did not have day to day contact with his office; that when he was informed of the errors on the forms he took appropriate steps; that he apologised for those errors and that he had now taken steps to ensure proper administration within his office. Mr Baxter's further oral evidence may be summarised as follows.
29. The application forms for inclusion on the lists were completed by his partner Mr Cooke at Mr Baxter's office. Mr Baxter had moved away in the summer of 2004 but had returned in summer 2006. Mr Cooke then sent the forms to Mr Baxter to sign. Mr Baxter may have filled in some parts of the form himself. Mr Baxter accepted that he had not read the declarations set out on the form carefully enough.
30. Mr Baxter had not ticked the appropriate boxes because he did not think that they related to him. The forms had been completed by others at his office. There were 15 or so application forms for him to sign and he signed them believing that they were correct.
31. Mr Baxter's view of his letter of 22 August 2006 (appellant bundle page 20) to a Ms Poyser was that it fairly set out the sanctions imposed following the previous investigations about him. In consequence the sanction was a warning to adhere to the regulations. On further questioning Mr Baxter agreed that £250 had also been withheld as part of the sanction and that the letter did not set out the matters relating to the investigations in depth. That was because Mr Baxter in writing the letter was responding to information he had been given by the PCT and the PCT already had the information about the previous investigations.
32. When asked why he was writing a letter on the 22 August 2006 (page 20) informing the recipient of the omission on his application form, given the evidence of the email of 18 July 2006 (1st respondent bundle page 86) which indicated that he was aware of the omissions on the application form in July, Mr Baxter said that he had signed all the forms at the same

time, Mr Baxter admitted that there were errors on the forms. The forms had been filled in Bromsgrove and then Mr Baxter had signed them. Mr Baxter referred to other letters to various PCTs in his bundle. Mr Baxter said that he personally had not sent out the letters to the different PCTs. There was a time delay between the email of 18 July 2006 and the letter of 22 August 2006 because Mr Baxter was in London. Mr Baxter had not dated the letters when he signed them.

33. Mr Baxter was asked further questions about the letters in his bundle. Some of the letters are not dated, some of the letters did not have a recipient address. Mr Baxter was asked which PCTs had received the letters which he said had been sent, informing them of the omission on his application forms. Mr Baxter said that he did not know the names of all the PCTs but they included Bristol, Worcestershire, Shropshire and Leicestershire. Mr Baxter did not have any evidence that they had received the letters. Mr Baxter had not checked them himself because of the circumstances at the time. Mr Baxter apologised for that.
34. Mr Baxter was asked why the documentation relating to these letters had not been produced earlier. Mr Baxter said that as soon as he received information from the respondent about his omissions he instructed somebody in his office to send a letter to all the PCTs concerned. Mr Baxter clarified his reply by saying that he had instructed Mr Cooke to do that. Mr Baxter from his own personal knowledge was unable to say whether such letters had been sent, however he had personally sent a letter on 5 September 2006 (page 87 1st respondent bundle). The other letters were not signed or dated. Mr Baxter said that he could only assume that the letters in his bundle had been sent out.
35. Mr Baxter said that he remembered having a telephone conversation with the PCT on 5 September 2006. The PCT had offered him the opportunity to attend a meeting about his application. Mr Baxter said that he could not attend the meeting because he had clinics. The PCT had not offered another date although Mr Baxter could not remember what was said. Mr Baxter said that he needed 3 weeks notice of a meeting. He was busy most days. In the previous 3 months he had not been working until August. The areas he worked were Bristol, Walsall, Shropshire and Leicestershire.
36. Mr Baxter considered that making accurate records was vital. When asked about his recorded failure, as set out in the previous investigation, to include entries in the medical records relating to acuity, Mr Baxter said that he had always believed accurate records were important.
37. When asked if he thought such accuracy was important to other documentation Mr Baxter said that he had not been in attendance at the practice office at the time the letters had been sent out. Mr Baxter had left those matters to be undertaken under the supervision of Mr Cooke. Checks should have been made then. Now Mr Baxter personally supervised the documentation.
38. Mr Baxter was asked if he could recall when he had first made available the letters set out in the appellant bundle. He said that he could not remember but that possibly it had been earlier in 2007. He was asked whether that would have been before or after the directions hearing on 18 January 2007. Mr Baxter said that they had been made available possibly in late 2006. Mr Baxter was asked further if he mentioned their existence before he had sent them to his representative. Mr Baxter said that he could not remember, but that his representative would have the details on that point. Mr Baxter could not remember whether or not the letters had been discussed before or after the directions hearing on 18 January 2007. Mr Baxter was asked why those documents had not been made available for the first hearing in January 2007. He said that he could not recall the dates of the letters but that some of the PCTs had received them. When asked further whether he knew that PCTs had received the letter, Mr Baxter said that he was making an assumption that the letters had been received.

39. Mr Baxter was asked about the email dated 5 September 2006 (at page 87 of the 1st respondent's bundle) which attached a letter from him to the 2nd respondent dated 31 August 2006. Mr Baxter was asked why no reference was made in that letter to his claim of having written an earlier letter which he had said had been written as soon as he had learnt of the omission on the application form. Mr Baxter said that the failure to mention his earlier correspondence on this was an oversight and it was his usual practice to refer to previous correspondence when writing such a letter. At that time he was doing things that he would not normally do. Mr Baxter accepted that the email was not correctly worded.
40. Mr Baxter was asked about the lack of clinical references produced on his behalf. He said that he was working independently in the south east and was dealing with issues on an ad hoc basis. Mr Baxter said that he had a number of issues with Mr Cooke. Mr Baxter had to go behind Mr Cooke's back to send off letters. Mr Cooke had not sent out the letters. Mr Baxter said that he was working blind and that the situation was not ideal. Mr Baxter said that he did not believe that the unfortunate errors would lead to the present situation. He was being bombarded with information about letters not being received.
41. As to 5 Sept 2006 email Mr Baxter did not dispute that that was the first indication from that PCT that his earlier letter had not been received. Mr Baxter agreed that the email did not mention the previous letter that he had sent out. Mr Baxter did not have a record of those earlier letters. They were in generic form and he had not been able to recover them from the computer system.
42. Mr Baxter said that he was not able to produce copies of the letters sent because the office was below standard at the time. Mr Baxter had printed off the letters that he had been able to access on an individual basis. Mr Baxter had been told by Mr Cooke that the other letters had been sent by office staff.
43. Mr Baxter had now taken over personal supervision of the office staff. He now lives close to the office and attends on a day to day basis. Mr Baxter supervises all the administrative tasks and obtains weekly reports. He now has a total staff number of 4. Mr Baxter had 3 days of clinics per week with two thirds of the time spent on clinical work and about one third on admin.

The Respondents' submissions

44. The respondents relied on the documentation submitted which now included notification from Coventry Teaching Primary Care Trust and Herefordshire Primary Care Trust to refuse Mr. Baxter's applications for inclusion on their lists.
45. The respondents also relied on their skeleton arguments which may be summarised as follows. Mr Baxter had failed to declare investigations into his conduct and of any body corporate with whom he was formerly practising. Mr Baxter became subject to a GOC investigation in August 2006 which he failed to notify to the respondents. Mr Baxter failed to amend his errors despite being advised of their existence in an email of 17 July 2006 and subsequently went on to make further applications in which he replicated the errors. Accordingly, whilst the respondents raise no issue specifically about his clinical practice, Mr Baxter is unsuitable to be included on the list, particularly given that he works in residential and nursing homes with vulnerable members of society.

The Appellant's submissions

46. Ms Kapila, on behalf of the appellant, relied on her skeleton argument to the effect that the previous investigations were some time ago and resulted only in warnings; that the GOC investigation had not begun at the time of the application and had now been dropped; and there was a reasonable explanation for the errors for which Mr Baxter apologised. The

reference in the skeleton argument to Mr Baxter not being required to declare the previous investigations was not pursued before the Panel.

47. Ms Kapila also made further submissions that may be summarised as follows. Mr Baxter had been admitted onto the list of other PCTs. The respondents in taking their decisions had not shown that they had followed the DoH guidance in refusing inclusion on the list, extracts of which are set out at page 101 and following of the bundle.
48. Paragraph 5.2.20 showed the need to consider why other PCTs had reached a different conclusion to justify why it had reached a different conclusion.
49. Paragraph 5.2.21 set out a number of factors to be considered in making such decisions. In the present case the investigations in issue took place over 3 years ago and resulted in only a warning to Mr Baxter with no referral to the GOC or any other subsequent complaints.
50. Paragraph 5.2.16, although relating to convictions showed the importance of the principle of proportionality in arriving at a decision. In this case, involving only a minor slip up, refusal to include Mr Baxter on the list was not a proportionate response.
51. Mr Baxter now provided the proper delivery of services as evidenced by references from the care home managers as set out in the appellant's bundle. Mr Baxter had learnt his lesson, put his house in order and provided a proper explanation for what had gone wrong.

Assessment of Evidence and Findings of Fact

52. The Panel considered all the evidence, the submissions of the representatives and makes the following findings.
53. The Panel finds Mr Baxter to be an unreliable witness for the reasons set out below.
54. Mr Baxter's account of events is vague and unsupported by reliable documentation. Mr Baxter stated at paragraph 9 of his statement dated 19 March 2007 that, when he had become aware of the errors on his application form he drafted a letter to be sent to all the PCTs informing them of his mistake. In oral evidence when asked about whether or not he knew, from his personal knowledge, such letters had been sent, he said that he personally knew that one had been sent on 5 September 2006 and assumed that letters to the other PCTs had been sent. Mr Baxter, when asked why he was unable to produce copies of such letters said that he had left matters to other members of his staff and that he had been unable to retrieve copies from his office system.
55. Mr Baxter was also asked why the letters that he said had been sent to all the PCTs had only been made available shortly before the present hearing. In particular he was pressed on when those documents were made available to his representative, however Mr Baxter was unable to say whether the letters had been made available only 2 weeks prior to the hearing, or before the original hearing date of 18 January 2007, or some time in January 2007, or earlier. Mr Baxter said that he did not recall. In this context Ms Kapila for the Panel's assistance provided a copy of an email dated 28 September 2006 enclosing an undated copy of a letter sent to East Staffordshire PCT.
56. The Panel finds it to be implausible that Mr Baxter was simply unable to recollect when such documents were made available given the chronology of these proceedings yet, he had a seeming ability to recall the sequence of certain events such as those in September 2006.
57. The Panel's concerns about the plausibility of Mr Baxter's account are supported by other aspects of his account about these letters. Mr Baxter claimed on the one hand to have drafted a letter in generic terms to go out to all PCTs, yet in oral evidence when asked about

these letters said that he was responding on an 'ad hoc' basis to inquiries made by PCTs. The Panel also notes that the letters before it appear to be individually drafted rather than in a generic format. This inconsistency is significant because it goes to the issue of what steps Mr Baxter took once it became apparent to him that there were systematic errors in all the applications that he has made, said to be variously 15-17 in total.

58. In addition, while the copy letters produced to the Panel, as previously noted, at times were not dated, or were unaddressed, or did not signify the recipient's title, the Panel is concerned that at times the contents were misleading. Thus in his letter dated 31 August 2006 to Ms Ross at page 87 of the bundle Mr Baxter purports to explain his case to Dudley PCT. In the letter Mr Baxter suggests that the optometric advisor involved in the investigation by Shropshire PCT under reference number 10/03 had carried out very few domiciliary examinations. However, the report of the hearing at page 134 of the bundle shows that the advisor carries out six domiciliary visits per month. Mr Baxter's letter of 31 August 2006 not only seeks to cast aspersions on the credibility of the optometric adviser, but also fails to indicate to Dudley PCT, that not only had Mr Baxter been investigated by Shropshire PCT under reference number 10/03, but had also been subject a prior investigation by Shropshire in 2002 (page 118 of the bundle). The Panel further notes the letter of 31 August 2006 makes no mention of the GOC investigation which would have been notified to Mr Baxter prior to 31 August 2006 and as evidenced by the letter dated 22 August 2006 as set out at page 78 of the respondent bundle.
59. The Panel's concerns about Mr Baxter providing misleading evidence is further aggravated by statements which also appear to minimise, not only the number of investigations into his conduct but also the extent of the sanction. Thus in oral evidence Mr Baxter was asked about his letter of 22 August 2006 at page 20 of the appellant bundle. The Panel note here in passing that whilst the letter is dated, it is not addressed, nor is the designation of the recipient given other than that of Ms Poyser. In this letter Mr Baxter does mention 2 investigations into his conduct but when giving an account of the sanctions states, in relation to the first investigation *no sanctions were necessary and... warned me to ...*; and in relation to the second investigation stated that *the outcome was exactly the same [as the first]...* However, the Panels notes that the outcome of the second investigation was not only a warning but also resulted in the imposition of a withholding of a sum of £250.
60. Looking at the totality of the evidence the Panel finds that the combination of Mr Baxter's tendency to minimise the number of investigations and their outcome and to provide less than complete information about them together with the implausibility and inconsistency points noted above support the view that Mr Baxter has provided deliberately misleading evidence about events and circumstances surrounding his applications for entry on the list.
61. The Panel finds that Mr Baxter in making his applications to the respondents failed without good cause to mention that he had been subject to 2 prior investigations into his conduct. The Panel further finds that Mr Baxter failed to inform the respondents about an investigation by the GOC which had commenced after the making of his applications but before their determination. In addition the Panel finds that Mr Baxter has sought to mislead the parties and the Panel about his circumstances and events.

Decision and Reasons

62. In the light of all the evidence and submissions and given the findings above the Panel first considered whether or not Mr Baxter is unsuitable to be included on the respondents list taking into account the considerations for refusal as set out in the regulations and the guidance from the DoH.
63. The Panel finds, that despite Mr Baxter's misleading evidence, he is not unsuitable to be included on the list. Mr Baxter's actions when looked at in the round do not go fundamentally

to his ability to perform the services of an optometrist. The two investigations, whilst raising matters not to be taken lightly, resulted in sanctions that were towards the lower end of seriousness in the spectrum of outcomes. The investigations relate to events that occurred most recently in 2003 and since then there have been no further complaints subject to substantive investigation. The Panel note that the GOC investigation notified on 22 August 2006 were not pursued.

64. In those circumstances the Panel finds that it would be disproportionate to refuse inclusion on the list on grounds of unsuitability.
65. However, the Panel finds that the evidence shows that there are grounds for considering Mr Baxter's inclusion on the list would be prejudicial to the efficiency of the services which those included in the relevant list perform.
66. The inefficiencies arise from Mr Baxter's virtual wholesale inability to produce reliable documentation and to provide a proper account of events. Mr Baxter on his own admission, was of the view that his office systems were not adequate. Mr Baxter stated that he had made as many as 15 applications for inclusion on the list but was unable to produce clear, comprehensive or even adequate information in relation to those matters. Mr Baxter demonstrated a clear inability to fill in forms correctly, viz the applications themselves, or to follow proper office administrative procedures as to signing, dating and filing letters.
67. All these are matters of concern that go to whether or not optometric services can be efficiently provided by Mr Baxter. The Panel notes that whilst accurate documentation and administration is important in all fields of health care this is especially so in optometry given the technical nature of many of the outcomes following an assessment. In addition, Mr Baxter's practice is directed, apparently wholly, to the provision of services in the context of domiciliary visits. This is a significant aspect of this appeal because it is in an area where practitioners are not usually subject to peer review, informally or otherwise, and are dealing with vulnerable people in care or residential homes. Such clients are particularly vulnerable given that they may have limited cognitive powers and may lack adequate support, for whatever reason, from an individual carer or supporter and are likely to have limited choice as to the provider of services.
68. In considering whether or not the inefficiencies so identified are of such magnitude as to amount to a sound basis for refusing to include Mr Baxter on the list, the Panel have considered the issue of proportionality. The Panel notes that Mr Baxter now claims to *have put his house in order*. However, given the concerns about the reliability of his evidence, the Panel finds that he has not brought forward sufficient evidence to show that the deficits in efficiency have been ameliorated as claimed.
69. The Panel have considered whether or not the concerns about efficiency may be met by some means other than by refusing inclusion on the list and finds that the inefficiencies in the provision of services can be met by including Mr Baxter on the list subject to conditions set out below.
70. Condition i. is imposed with the objective of reducing the prejudice that arises from Mr Baxter's failure to deal properly with administrative matters. As a result of this condition Mr Baxter will need to work alongside professionals who will be able, informally or otherwise, to monitor his performance.
71. Condition ii. is imposed with a view to addressing the concerns relating to the particular vulnerabilities of Mr Baxter's client group to date. These concerns about inefficiencies are clearly linked with issues relating to condition i. , but are directed at the specialist field of domiciliary visits where accurate administration, given the potential complexity of the outcomes and difficulties of the client group, is at a particularly high premium. The Panel finds

that the extent of Mr Baxter's inefficiency is such that, while he is able to perform other optometric services subject to conditions, he is not able to do so in relation to domiciliary visits for the reasons noted above.

72. Condition iii. is imposed with a view to ensuring not only that Mr Baxter complies with his statutory duty to inform other PCTs of the outcome of these proceedings, but to enable the respondents also to comply with their own statutory duties about disseminating this determination.
73. The Panel finds that the inclusion of Mr Baxter on the respondents' lists subject to these conditions is a proportionate response to the prejudice to the efficiency of services as set out above.

Summary

74. The Panel directs that Mr Baxter be included on the ophthalmic lists of Leicestershire County and Rutland Primary Care Trust and Dudley Primary Care Trust subject to the following conditions
- i. Mr Baxter is not to practice as an independent practitioner, that is to say, if he wishes to be in practice he must be in practice with another practitioner where there is potential for peer review
 - ii. Mr Baxter is not to undertake domiciliary optometric assessments
 - iii. Mr Baxter, within 14 days of receiving notice of this determination, is to provide the respondents with a complete list of all those PCTs in respect of which he has made an application for inclusion on an ophthalmic list and is to inform those PCTs of the outcome of these proceedings.
75. In accordance with Rule 42 (5) of the Rules the Panel hereby gives notice that a party to these proceedings can appeal this decision under Sec 11 Tribunals & Inquiries Act 1992 by lodging notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days of receipt of this decision.

Signed

Date

Mr J D Atkinson, Chairman