

**FAMILY HEALTH SERVICES APPEAL AUTHORITY (FHSAA)**

**Case No: FHS/13563**

**APPEAL AGAINST REFUSAL TO INCLUDE ON THE MEDICAL PERFORMERS LIST**

**Dr. B.B CHAUDHURI**

**Appellant**

**-and-**

**NEWHAM PRIMARY CARE TRUST**

**Respondent**

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**DETERMINATION**

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**HEARING 19<sup>th</sup> April 2007 at:**  
**The Care Standards Tribunal, 18 Pocock Street, London SE1 OBW**

**Parties in attendance:-**

**PANEL:-**

Miss Karen Rea	Chair
Dr Howard Freeman	GP Member
Dr Diana Rutzer	Lay Panel Member

**REPRESENTATIVES:-**

Miss Nadia Persaud	Solicitor for the PCT
Dr Chaudhuri	In Person

**WITNESSES:-**

Miss Jenny Mazarelo	Head of the Primary Care Trust Planning & Development, Newham Primary Care Trust
Dr Katherine Corlett	Medical Director of the Newham PCT
Dr Biswas	for Dr Chaudhuri
Mr Kazi	for Dr Chaudhuri

The hearing was held in public.

**INTRODUCTION**

This is an Appeal by Dr B.B Chaudhuri against a decision of the Newham PCT dated the 20<sup>th</sup> December 2006 (see bundle pages 59-60) to refuse Dr Chaudhuri's application to join the Newham PCT General Medical Services Performance List and General Medical Services. The reasons for that were set out in the Decision letter of the 20<sup>th</sup> December 2006 and related to:-

- (1) the failure by Dr Chaudhuri to comply with undertakings after his removal from the supplementary list in July 2003;
- (2) the failure by Dr Chaudhuri to supply satisfactory references.

**REMIT**

The PCT made its decision under Regulation 6(1) of the NHS (Performers List) Regulations 2004 in which the PCT had a discretion to include Dr Chaudhuri in its Performers List on the grounds of:-

- (a) Unsuitability;
- (b) Unsatisfactory references;
- (e) That inclusion would be prejudicial to the efficiency of the services.

In taking its decision under Regulation 6(1), the PCT must have paid regard to Regulation 6(4) and (5) of the same said Regulations.

Dr Chaudhuri brought his appeal under Regulation 15 of the NHS (Performers List) Regulations 2004 and in particular under Regulation 15(1), (2)(a) and (3).

The powers of the panel of the FHSAA on this Appeal are to be found under s.49M(4), and (5)(a)(b) of the Health & Social Care Act 2001, amending the NHS Act 1977 as well as under s.49N(3), (6) and (8) in relation to National Disqualification.

The FHSAA makes its decision by way of hearing this case as a re-hearing and the decisions that the Panel can make today are the same decisions which could have been made by the PCT at the time of the original decision, which was on the 29<sup>th</sup> November 2006.

**PRELIMINARY MATTERS**

It was clarified with the PCT's solicitor, Miss Persaud, at the beginning of the proceedings that the PCT were not pursuing its decision on the grounds of efficiency. Miss Persaud made it clear that the grounds that the PCT had pursued and continued to pursue now were on the grounds of unsuitability and a failure to provide proper references and not on the grounds of efficiency. She added that the Panel had the power to pay regard to the efficiency criteria, and if the Panel wished it could adjudicate that this case was an efficiency case rather than a suitability case. The Panel reminded the parties that in any decision relating to unsuitability only, the Panel's powers could not include conditional inclusion. The PCT also could not have imposed conditional inclusion because they had based their case on the basis of unsuitability (the parties were referred to paragraph 15.6 of the Department of Health document "Primary Medical Performers Lists – Delivering Quality in Primary Care", where this was made clear).

Thus, the Panel's powers today would be:-

- (1) To include Dr Chaudhuri on the Newham PCT's Performers List;
- (2) Not to include Dr Chaudhuri on the Newham PCT's Performers List;
- (3) To conditionally include Dr Chaudhuri on the Newham PCT's Performers List, *if (but only if)* the Panel considered this to be an efficiency rather than a suitability case.

As a second preliminary issue, the Panel gave a Determination on the written submissions of Dr Chaudhuri prior to this Hearing in which he asked for all documents relating to the 2003 matters (and also the 2004 matters) in this case to be put before this Panel and for this Panel to pay regard to all the earlier history in the case and the decision that was made on the 1<sup>st</sup> July 2003 in removing him from the then List. In particular, he wished to have the witnesses Lisa Browney, Ben Essex and Marie Needham, who were involved in the 2003 matters, to be called at this Hearing today.

So that it is clear, the Appellant alleged by way of his grounds of appeal before this Panel a conspiracy and racial discrimination against him. This was denied by the PCT

The Panel determined that *any* matters concerning the July 2003 decision and any further decisions thereafter except for the 29<sup>th</sup> November 2006 decision, were outside the remit of the Panel today and therefore *ultra vires*. The matters of 2003 and 2004 were discreet and separate decisions taken then and never successfully appealed by the Appellant, notwithstanding his attempts and as evidenced in the paperwork by the decisions of Mr Justice Mitting on the 22<sup>nd</sup> June 2004 and Mr Justice Collins of the 5<sup>th</sup> April 2006. In addition, the Hearing today was going to be by way of a re-hearing of the PCT's decision of the 29<sup>th</sup> November 2006 and as such, the remit now was restricted to the matters raised and discussed at that meeting and as outlined in Dr Corlett and Ms Mazarelo's recommending document to the Newham Executive Committee dated 29<sup>th</sup> November 2006 and both their witness statements at pages 64 – 70 of the Respondent's bundle.

Any reference to the decision of July 2003 in, for example, the letter by the Newham PCT of their decision of 29<sup>th</sup> November 2006, which letter was dated the 20<sup>th</sup> December 2006, was by way of a factual comment only, and as an historical backdrop to the events that took place prior to that decision. The comment in the December letter was not indicative of a reason for that decision of the PCT. Those reasons were clear in the Panel's view – a failure on undertakings and a failure on references.

In any event, the Panel would be vigilant and if the 2003 decision became an element of the case upon which the PCT had overly relied in November and December 2006, this Panel would be able to require further information and adjourn the case.

In any event, even if there were to be some reliance on matters pertaining to 2003, this Panel would be well able to give that such proper weight as it considers appropriate, looking at the overall effect of it when compared to the grounds of the PCT's refusal on the basis of the failure of undertakings and the failure on references. It can take such a view and give it the appropriate weight, particularly in light of the comments made by Mr Justice Mitting and Mr Justice Collins in their judgments on this case.

The Panel were also minded that the judgment of Mr Justice Mitting had dealt with the Appellant's absence from the 1<sup>st</sup> July 2003 Hearing and, having paid regard to the important case law in relation to Dr Chaudhuri's Article 6 Right to a Fair Hearing, Mr Justice Mitting concluded that it was fair for the PCT to have proceeded with the Hearing, especially in light of Dr Chaudhuri's wife's assertion at the time that he no longer wished to practice in this country (this is now disputed). However, the Panel's decision now was that it is too late to re-visit this aspect of the matter. To do so, would be to appeal the 2003 and even 2004 decisions by this route, which would be *ultra vires* the powers of this Panel and would be improper in any event as an abuse of process of the proceedings. Once again, the Panel re-assured Dr Chaudhuri that they would be vigilant about the stance taken by the PCT on the 29<sup>th</sup> November 2006.

## THE EVIDENCE

The parties were reminded of the standard of care on the Appellant of proving that he was a fit doctor to be placed upon the Performers List, on the balance of probabilities.

In order to help Dr Chaudhuri properly focus his case, as it was not apparent from his papers how that focus was to be made by him, and it became more apparent as he started to speak that he needed direction and focus so as to put his case properly, it was decided by all parties including Dr Chaudhuri that the Respondent's witnesses would be heard first and then Dr Chaudhuri and his witnesses be heard thereafter, so that he could focus upon the real issues in this case, which would be identified in oral evidence.

Ms Mazarelo gave evidence first and stated that at all times she had paid regard to the requirement in Regulation 4 of the NHS (Performers Lists) Regulations 2004, under Regulation 4(2)(f), which was that Dr Chaudhuri was required to provide the names and addresses of two referees who were willing to provide clinical references relating to two recent posts which may include any current post as a performer, which lasted at least three months without a significant break and, where that was not possible, a full explanation and the names and addresses of alternative referees.

The references provided by Dr Chaudhuri at the time of his application, which was received on the 7<sup>th</sup> August 2007, are references from Dr Biswas and Dr Khatri. These references referred to work in 2005, which was some time ago (in particular, 26<sup>th</sup> January 2005), no clinical capability was shown and it referred to a period not of work but of observation.

Moreover, the period of work was not of three months duration but of only two weeks duration. No other alternative explanation of any kind was given, with names and addresses of alternative referees, by Dr Chaudhuri. The Appellant had not worked as a doctor in the NHS since 2003 and therefore Ms Mazarelo had concern about whether he was sufficiently up to date and as to the clinical aspects of his knowledge and capability.

She discussed the matter with Dr Corlett and they decided to prepare a briefing paper for the Executive Committee. This was prepared a few days before the Executive Committee meeting on the 29<sup>th</sup> November 2006 but the briefing paper was dated the 29<sup>th</sup> November 2006. That was followed up by the letter from the FHSAA dated the 20<sup>th</sup> December 2006 which Ms Mazarelo wrote. Whilst it referred to the original removal from the NHS Supplementary List on the 11<sup>th</sup> July 2003 and that the PCT still considered that the removal was appropriate in the circumstances where the Appellant had failed to provide evidence about the original matter of clinical record keeping, the letter highlighted the fact that Dr Chaudhuri had not seen NHS patients for several years and that satisfactory references were now required. Those references supplied were not satisfactory.

However, in order to give Dr Chaudhuri a chance to comply with the requirements, an invitation was made in the letter to him to consider the Returners Scheme run by the Deanery which, if he were to be able to meet those entry requirements, the PCT would consider his application again.

Ms Mazarelo confirmed in her evidence that at the time of the decision she was not aware that he had attempted the examination (a multiple choice examination) for entry into the Returners Scheme, but had only achieved 58% (the pass mark being 63%). She also acknowledged that she would have seen a letter from the Family Health Services Appeal Authority dated the 16<sup>th</sup> August 2006 prior to the meeting on 29<sup>th</sup> November 2006, but she did not remember seeing it at the time she made her initial recommendation or when she discussed the matter with Dr Corlett, shortly after the application form from Dr Chaudhuri had been received by the Trust.

What she does remember is in particular looking at the references and finding them lacking (in the way described). She confirmed that she would have seen the 16<sup>th</sup> August 2006 letter and any other information such as GMC information between the time of the initial decision that she and Dr Corlett made and the date that they prepared the briefing paper. The FHSAA letter referred to Dr Chaudhuri having been conditionally included on the medical list of Newham PCT on the 20<sup>th</sup> September 2002 and then removed from it on the 2<sup>nd</sup> July 2003. He was then refused inclusion on the Performers List of Tower Hamlets PCT on 20<sup>th</sup> October 2004. He was not found to be held in breach of the regulatory terms of service. The GMC document dated 31<sup>st</sup> August 2006 confirmed that Dr Chaudhuri had been found not guilty of serious professional misconduct at a GMC meeting from the 3<sup>rd</sup> to the 5<sup>th</sup> July 1995. This email was confirmed in a letter dated 29<sup>th</sup> November 2006 to North East London Family Health Services Consortium.

On questions from the Panel, Ms Mazarelo had completed the tick box checklist in relation to documentary evidence received to make her recommendation and that did include reference to the information received from the FHSAA. She further confirmed that the basis of her recommendation was the application form from Dr Chaudhuri and the unsuitable references. There was no evidence that he had worked as a GP and that he was either competent or up to date.

The next witness for the PCT was Dr Katherine Corlett, the Medical Director of the Newham PCT and who had been Medical Director at the time of these events and since May 2005.

She confirmed that she had relied as a ground for the recommendation for refusal on the unsuitable references because they did not show that Dr Chaudhuri was competent or up to date. She could not remember if she saw the GMC and FHSAA documents referred to (when Ms Mazarelo gave evidence on the matter) but the references struck her in particular as not being recent, not showing any clinical work, that Dr Chaudhuri had only taken part as an observer, as well as the fact that the references were over a 2 week period rather than the required three month period.

She confirmed that she must have got the FSHAA and Tower Hamlets information and the High Court decisions after the initial recommendation she made with Ms Mazarelo and before the meeting of the 29<sup>th</sup> November 2006. She repeated again that the references were the thing that struck her, as well as the fact that there was no evidence that this General Practitioner was either competent or up to date, particularly as he had been out of NHS General Practice for over 3 years.

She disagreed that the offer made for a Return to Service Scheme for Dr Chaudhuri was misguided because the other schemes that exist; Fresh Start Scheme; Flexible Careers Scheme and a Retainer Scheme, did not have any element of assessment in them which was required in Dr Chaudhuri's case. The GP Returners Scheme is open to everybody and has the element of assessment in it. In order to go onto that Scheme, the General Practitioner would have to undertake a successful multiple choice question examination and simulated surgery. It is only at that stage where the General Practitioner would be admitted to the Scheme. It would be at that stage where the PCT's offer would come into play, since it would be at that stage that Dr Chaudhuri would be able to apply to the PCT, having passed both examinations, to go onto the Performers List by way of conditional inclusion so that he could then do the Returners Scheme which requires performance of duties. Unless he were on the Performers List (whether conditional or unconditional) he would be unable to perform the duties on the Returners Scheme. Therefore, there was no danger that the PCT, on this occasion in inviting him to try the Returners Scheme, was categorising this case as an efficiency case. It was clearly still a suitability case and the Appellant would not be permitted to perform unless and until he had passed the examinations and re-applied to Newham PCT to go on the Performers List in order to complete the Returners Scheme.

She felt that with the present information on his practice, the Appellant would not be fit to join the Performers List, by reason of the references he produced at the time of the recommendation that was made by Dr Corlett and Miss Mazarelo, and also Dr Corlett confirmed that this would be the case today, she having seen his up to date references in the bundles for the Appeal.

She confirmed that she had the Regulations before her when looking at the criteria with which she had to comply and with which Dr Chaudhuri had to comply in order to satisfy the PCT that he was a suitable doctor to be permitted to join the Performers List.

On questioning by the Appellant, she confirmed that she had not been required under the Regulations to go into the background and career of the Appellant because she simply had to follow the Regulations which were strictly drafted. She also confirmed that she knew now that he had failed the examination and achieved a 58% mark. She referred to the document A7 in which Dr Khan of the Returners Scheme invited Dr Chaudhuri to re-take the examination. To her knowledge, that had not been taken up by Dr Chaudhuri. Dr Khan was the Associate Director of the London department of Post Graduate Medical and Dental Education in the General Practice Education and Training Department who had overall control of the GP's Returners Scheme.

On questioning by Dr Chaudhuri, she stated that to her knowledge there was nothing in the Rules or Regulations to say that a General Practitioner under those circumstances could only work 2 days a week. She also confirmed that there was no retirement age under the new GMS contracts. She was concerned that Dr Chaudhuri needed to show competency to work in general practice. She stated that the very fact that a General Practitioner needed supervision, which was indicated by the Appellant as being open to him to arrange should the FHSAA consider that necessary, worried her further and she would feel *less* inclined to put him on a Performers List for that reason.

She also explained that re-validation was not yet in practice in this country; it was some years away. Re-validation looked at the physical health of the doctor, the knowledge of the doctor and any appraisals of him.

On questions from the Panel, Dr Corlett confirmed that she had not contacted the referees because, on the basis of the references alone, it was clear to her that the references were unsuitable. She was unaware of the nuances between a suitability case and an efficiency case, but she felt that this General Practitioner came into the category of 'unsuitability'.

On re-examination she reiterated that it was on the basis of the unsatisfactory references and the long period of time that he had been out of NHS general practice that formed the basis of her decision not to admit the Appellant onto the Performers List. Nothing in the evidence since the decision in November 2006 has shifted the balance from suitability to efficiency in her opinion.

Dr Chaudhuri then gave evidence and gave an account of his current references and his old references and how they have shown that he worked as a doctor. He also emphasised that he had worked with Dr Timmis, a Consultant Surgeon in his clinic, as well as with junior doctors. He had worked in a number of clinics, including a Gynaecological clinic and in a Paediatric clinic.

He reiterated that he does regular medical work and was fully registered with the General Medical Council. He had his own clinic with his two children who were also doctors. He was not concerned about earning money but more took a philanthropic view of wanting to continue in general practice, particularly within his own ethnic community. He stated that he had a good pension and it was necessary for the dignity of a doctor to have his name on the Performers List. He referred to work he had done in Pakistan, Bangladesh, India, St Lucia and that he had citizenship in all those countries as well as British Citizenship. He referred to the references of a Councillor who was an OBE and that he had many qualifications including MBBS, DPH, DA, LTM, FRIPHH, FRSM and FACPS. He was qualified in Tropical Medicine from Calcutta. He had 3 children and his father had been a general practitioner; his children were general practitioners and he was used to being in a medical atmosphere. He had seen many private patients and used his surgery as a clinic.

He went into the background of these matters going back to 2002 when he had been taken off the supplementary list. He managed to get a number to work with the Essex Health Authority on the 28<sup>th</sup> September 2003. At that stage Tower Hamlets and Newham PCT's offered him another number. He was required to follow conditions on the basis only that he could carry on performing general practitioner duties if he complied with those conditions, which included producing two references. When he was in Essex he worked in Brightlingsea in a 5,000 patient practice as a locum. In 2003 he went to South East Asia and on his return he found that he had been taken off the Performers List. Therefore he challenged this in the High Court and Mr Justice Mitting made his conclusions. It was at this stage that the Chair explained to him that Mr Justice Mitting (and indeed, Mr Justice Collins after him) had not quashed any of the PCT's decisions. The reference to 'quashing decisions' was purely on the front sheet of the judgment and was rehearsing the contents of his own Notice of Appeal.

Dr Chaudhuri then went on to say that he had become the victim of a conspiracy between all the consortia and PCT's in his East London Area. It was known also that he had had tried to liaise between different ethnic communities and that there had been a plot to kill him and he thought that Newham PCT might well be behind that plot.

He stated that Mr Justice Collins then heard an application against the FHSAA's last decision which upheld the 2004 PCT decision to not include Dr Chaudhuri on the Performers List upon his own application, after he had been removed in 2003 from the supplementary list.

He took issue with the fact that his references were not up to date or recent. He found that they showed proof of clinical competence. He acted like a social worker and was seeing patients every day. He felt stigmatised that his name was not on the Performers List. He felt that the examination pass mark of 63% was not reflective of other pass marks at 50% in other examinations. When asked whether he could take it again, he felt that taking it again was not the point as he had been told that the exam was for newcomers and it was beyond the dignity of a doctor in his position to take the examination again. After that he would then have to do 6 months under a trainer and "work like a dog" under another doctor. Furthermore, he would have to find a trainer. The simulated surgery test was not appropriate since he only wanted to practice in general practice and not perform surgery or take over a surgery. All he wanted to do was locum work as he was not as young as he used to be.

On cross-examination he stated that he had worked for four weeks with Dr Timmis in July 2005 and was doing ECG's with him and going with him on his rounds. He showed his up to date training, as he saw it, in dividers 6 and 7 of the file in April 2005, but could not identify any more recent training. He said that he had worked in Calcutta and done out-patients there as well as operations and had opened two clinics in Pakistan.

On questions from the Panel he gave more detail about the type of practice he had been doing in the last few years which included seeing patients who were illegal immigrants who came in by the plane load to the East End of London. He knew that no questions would be asked and Dr Chaudhuri would recommend them to go to the chemist for medication if they required it. He saw patients on his own in his own personal clinic at his home. He felt that he could not work with other doctors because he was not permitted to work as an NHS General Practitioner.

He was pressed on why he would not do the examination for the Returners Scheme again. His impression was that he had doubts about it because he felt that it was a 'remote control examination'. He felt that there was no respect for him in having to do the examination. So many people have said that he is a great doctor, that he felt frustrated with the Deanery and with the whole aspect of taking the examination. He felt that the examination was meant for European doctors or new doctors or post graduate doctors. He has his GMC Registration so why would he need to take the exam again, he asked rhetorically.

It was clarified that he last worked as a GP in East London 3½ years ago. He was asked why he did the examination in the first place and he said that he had lost trust in it since he had done it the first time. He felt that if he could, he would have lots of doctors who would let him come to work with them. He could not see why he would need to take the examination again because he had passed it in his view and in any event he only wanted to do locum work and not to open a surgery.

On further questioning from the Panel he reluctantly admitted that he could take the test again even if he did not have trust in it. He would do whatever the Panel wished him to do to comply in order to be able to get on to the Performers List.

He confirmed to further Panel questioning that he had not mentioned on his application form that he had worked as a GP in 2003 but rather said that he last worked in 2001 on his application form. He apologised for omitting it.

Dr Biswas on Dr Chaudhuri's behalf gave a character reference and read out his reference that was written at page A.21 of the bundle.

Mr Khalil Kazi, a Councillor and OBE, also gave evidence of character for Dr Chaudhuri and read out his statement which is at page A.22 of the bundle.

Both described Dr Chaudhuri as a very good clinician and an active, dynamic, capable and consensual doctor and of considerable value to the Bengali and Asian community, as there is a shortage of such doctors in Newham.

In final submissions, Miss Persaud outlined the Regulations and summarised the PCT's case which was based upon suitability and unsatisfactory references. She re-stated that the Respondent had to be satisfied and still has to be satisfied now that the Appellant can show knowledge, skills and attitude as well as consultation and diagnosis skills, prescription skills, referral skills and administrative skills to be a safe practitioner so as to be able to be allowed to be admitted onto the Performers List. She stated that the references were not relating to clinical practice, were observation only, were not sufficiently recent and were too short in duration in terms of what Dr Chaudhuri had done in practice. This is particularly pertinent in light of the fact that he had been out of practice for over 3 years.

Dr Chaudhuri in his submissions stated that he had a number of references which were in the bundle in which we could see that he had accompanied various doctors and had taken part in clinical practice by observation. He asked the Panel to approach the matter with an open mind and if there was a suitable way for him to go on to the Performers List then he would concur with that and do anything that he felt that he could to be on that List. He reminded the Panel that only the Panel had the power to undo the victimising attitude of the PCT. He reiterated that he is very active despite his age (76) and he has full references where it is clear "the whole world appreciates me".

#### THE PANEL'S DECISION AND REASONS

In reaching its decision, the Panel paid regard to all the documentation and all the oral evidence and submissions. The Panel paid regard to its duties under the Regulations and under Statute as already outlined and the Panel paid regard to the principle of proportionality whereby it balanced, on the one hand, the overriding duty of all regulatory bodies to protect the public and also to pay regard to the wider public interest which is public confidence in the profession of medicine and the upholding and maintaining of standards in the profession against, on the other side, the right of the Appellant to practise, whether restricted or unrestricted, in his chosen profession.

The Panel has determined that the Appeal shall be dismissed. The Panel upholds the PCT's decision of 29<sup>th</sup> November 2006, as reflected in the PCT's letter of 20<sup>th</sup> December 2006 that Dr Chaudhuri, the Appellant, shall be refused to be included as a performer in the Newham PCT's Performers List by reason of his unsuitability and unsatisfactory references. The Panel is not of the view that this case is a case that falls within Regulation 6(1)(e) of the NHS Performers List Regulations 2004 and that therefore this is *not* an 'efficiency' case. Therefore, this Panel has determined that it has no powers of conditional inclusion on to the Performers List. Its powers relate to whether or not Dr Chaudhuri, the Appellant, can or cannot be included in the Performers List and it has determined that he cannot be included in the Newham PCT's Performers List.

The reasons are that the Appellant has been out of general practice for 3½ years and must be able to show that he has suitable capabilities in relation to the knowledge, skills, attitude, consultation and diagnosis, prescribing, referral and administrative duties of a general practitioner to the level that makes him safe and competent. In

order to do this, the PCT and this Panel have not been given, read or told of any clinical competencies performed by the Appellant since 2003 to present day that in any way go towards fulfilling these criteria.

The Appellant has failed to produce any witnesses, either written or oral, who can show the required recent performance of these duties which have lasted at least three months without any significant break and which must relate to two recent posts. In the alternative, the Appellant has not provided any or any full explanation of why not and nor has he provided any names and addresses of alternative referees who could comply with Regulation 4(2)(f) of the said Regulations. It is insufficient for the Appellant to provide various references, some of which can be said to be highly complimentary but who deal only with his personality and his patently dedicated community work. This does not satisfy the criteria under the National Health Service, which is there principally to protect the public and to ensure that safe and competent general practitioners are allowed to perform their duties in the community.

The Panel has no doubt that the Appellant is extremely highly thought of in his local community and note the respect and dignity accorded to him with regard to that. It is clear that he is a wise and trusted member of his community and it is hoped that no decision that is made whether now or in the past would diminish that standing in his community.

Notwithstanding that though, the Regulations are written clearly and are structured under Statute for the purpose principally of public protection and to ensure that general practitioners are of recent practice, up to date and safe. That is their purpose.

To that end, the Panel has not found any evidence from the Appellant that he can satisfy the criteria laid down in the Regulations. Equally, the Panel is satisfied that the PCT has made a thorough and reasoned decision in November 2006, as shown in their letter of the 20<sup>th</sup> December 2006 and the Panel does not have any further evidence since then to determine anything different than that which is obvious, namely, that the Appellant has been out of practice as a general practitioner for 3½ years, that he has not shown any relevant clinical practice in that period to present day and has shown no new evidence to allow this panel to depart from the sound PCT decision of November/December 2006. It is clear that the references are and remain unsuitable, both the references that were available in November 2006 and any new references that have come about since then in the Appellant's bundle. They are unsuitable because they do not refer to recent current posts (two) that last for three months without significant break. There are no alternative referees with whom the PCT or indeed the FHSAA could contact or speak in order to ascertain the Appellant's full clinical practice in that period. Thus, the Panel's decision is that the decision of the PCT was reasonable and proportionate.

Indeed, the PCT went further and invited the Appellant to join the Returners Scheme (even though it did not know at that stage that he had taken and failed the examination) and Dr Khan of the Post Graduate Medical School in charge of the Returners Scheme had invited the Appellant to take the examination again as the Appellant was quite close the pass mark (which was remarked upon by Mr Justice Collins in his judgment). The Appellant has chosen not to re-take the exam and, in the Panel's view, has given no satisfactory explanation as to why that is so.

In the Panel's opinion, in most of his answers, the Appellant demonstrated considerable ignorance of the structure of the Regulations and Rules surrounding General Practitioners today and also demonstrated an unwillingness to learn or re-learn; a considerable lack of insight was demonstrated in his evidence and indeed, in his written documentation.

It is clear to the Panel that this Appellant General Practitioner can return to NHS general practice on the Performers List if he re-takes the examination (multiple choice) of the Returners Scheme and undertakes a successful surgery simulation. At that stage he would then have to apply to the Newham PCT to be included on the Performers List and comply with all the regulatory criteria which includes the said references in relation to recent posts. He would have to demonstrate two recent posts which lasted at least three months without a significant break or in the alternative a full explanation of why not and the names and addresses of alternative referees who would be suitable to demonstrate that he was capable to perform as a general practitioner. The Respondent PCT has made it clear that they will reconsider his application to join the Performers List at that stage, should it arise, with an open mind, albeit that no one could know the outcome of any subsequent application by the Appellant.

Therefore, it is now for the Appellant to decide what he wishes to do in relation to reapplying to join the Performers List.

#### NATIONAL DISQUALIFICATION

With regard to the matter of National Disqualification, the Panel did not invite any submissions in relation to that, since the Panel felt that there was no hard evidence of direct patient risk when the Appellant was practising as a General Practitioner and the Panel did not feel now that there was a significant risk to the public that was so serious that demanded National Disqualification. In any event, the PCT has the power to request National Disqualification, which it has not exercised.



Finally, in accordance with Rule 42 (5) of the Rules we hereby notify 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 from receipt of this decision

**DATED : 20<sup>th</sup> April 2007**

**KAREN REA  
CHAIR**

.....  
**Signed on behalf of :-**

**Dr Howard Freeman, Medical Panel Member  
and  
Dr Diana Ratzer, Lay Panel Member,  
having been approved by them.**