

**IN THE FAMILY HEALTH SERVICES APPEAL
AUTHORITY**

CASE 13624

Professor M Mildred - Chairman
Mr D Styles - Professional Member
Mr T Bennett - Member

BETWEEN

KEITH DOUGLAS
(Registration Number D-11848)
Appellant

and

BUCKINGHAMSHIRE PRIMARY CARE TRUST
Respondent

DECISION WITH REASONS

Background

1. Mr Keith Douglas ("Mr Douglas"), as the sole director of a Corporate Body, applied for inclusion on the Ophthalmic List of the Respondent ("the PCT") by a written application in standard form dated 18 July 2006. In the course of that application he replied "No" to the following questions: "13.1 Have you any criminal convictions in the United Kingdom (fixed penalty offences not needing to be declared)?" and "13.3 Have you accepted a police caution on (sic) the United Kingdom?" He further declared at the end of the application form that his responses were full and complete.

2. The PCT made enquiries and obtained a Criminal Records Bureau ("CRB") certificate. That showed that Mr Douglas had in fact been convicted on 7 February 1968 on two counts of inciting a child (boy) to commit an act of gross indecency contrary to s. 1 (1) of the Indecency with Children Act 1960 and on 29 July 1983 of indecent exposure with the intention to insult a female contrary to s. 4 of the Vagrancy Act 1824.

3. In addition the certificate showed that Mr Douglas had been cautioned by Thames Valley Police on 12 November 1999 for obstructing the police contrary to s. 51(3) of the Police Act 1964. The certificate contained and we have no further details of that offence.

The PCT's Decision

4. The PCT refused Mr Douglas' application on the ground of unsuitability under Regulation 7A(1)(a) of the NHS (General Ophthalmic Services) Regulations 1986 (as amended) due to his failure to disclose his previous criminal convictions. That decision was communicated to Mr Douglas by letter dated 30 January 2007.

The Appeal

5. By letter dated 20 February 2007 Mr Douglas appealed against the PCT's refusal. His grounds were (a) he considered his authority for the PCT to obtain a CRB certificate amounted to disclosure of the convictions; (b) if a separate disclosure had been overlooked, that was inadvertent and innocent; (c) the convictions were minor, 40 and 25 years old and isolated incidents resulting from nervous breakdowns and (d) never impinged on his professional behaviour.

6. The PCT replied to these grounds by letter dated 19 March 2007 in some detail. They set out the decision-making process with reference to Regulations and statutory Guidance. In essence the PCT based its refusal firstly on the number of and time between the offences and their serious nature in relation to Mr Douglas' position of trust, secondly on the dishonesty inherent in his application and thirdly on his lack of insight in relation to these two elements.

7. In addition Mr Douglas referred to his 23 years of unstinting service and lack of problems with the ophthalmic authorities during that time. The PCT took issue with the latter point in its reply to the appeal.

8. On 11 May 2007 the FHSAA received a letter from Mr Douglas withdrawing his appeal fixed for hearing on 22 May 2007. In its letter of 19 March, however, the PCT had given notice of its intention to apply for a National Disqualification in which they persisted after the withdrawal by Mr Douglas of his appeal.

Application for National Disqualification

9. At the hearing on 22 May 2007 all members of the Panel confirmed that they had no conflicts of interest in hearing the appeal. The application was dealt with on the papers, Mr Douglas having been offered and having declined the opportunity to make representations regarding National Disqualification.

Grounds of application for National Disqualification

10. The PCT again relied on the number of and time between the offences and their serious nature in relation to Mr Douglas' position of trust, on the dishonesty inherent in his application and on his lack of insight in relation to these two elements. It also relied on the need to safeguard patients and the requirements for probity and high standards on the part of those placed in the public's trust. It submitted that these considerations render Mr Douglas unsuitable to practice in any PCT area.

11. The PCT also drew our attention to paragraph 7.1.1 of the Department of Health Guidance Delivering Quality in Primary Care – Primary Care Trust Management of Practitioners Lists – General Ophthalmic Service Practitioners: “where the facts of the case are serious...it would be wrong to allow the optometrist/OMP or corporate optician to offer his services to every PCT in turn in the hope that he will find one willing to accept him”.

Discussion

12. Our power to make a National Disqualification is derived from section 49N(4)(b) of the National Health Service Act 1977. That section contains no criteria for making or refusing such an order. Since the introduction of the current Lists regime the Department of Health has issued guidance to PCTs and practitioners as the various personal healthcare provider professions have come under that regime.

13. A common thread is that National Disqualification should be seriously considered when a practitioner is refused entry onto or removed from a Performers List on the ground of unsuitability and where the facts giving rise to the PCT's decision are (a) serious and (b) not essentially local to the particular PCT.

14. In this case the facts comprise two sexual offences and a caution for obstructing the police over a period of 31 years and a false declaration in the application to join the PCT's List. In addition the response of Mr Douglas to the PCT's refusal made light of and sought to explain away the matters complained of in a manner that led the PCT to doubt that he had the necessary insight to conduct personal healthcare activities, even if it were accepted (which they did not) that the underlying facts themselves did not make him unsuitable for inclusion on the List.

15. By his appeal letter Mr Douglas claimed never to have had any problem with the Health Service ophthalmic authorities. In its response to the appeal the PCT contested this in some detail. These were not matters raised in the original refusal but, given that Mr Douglas has put them into issue, we have felt able generally to take them into account in the context of the application although we make no specific findings on matters of detail.

16. Convictions for sexual offences are matters to which, under paragraph 5.2.19 of the Guidance, the PCT must give special consideration. In this case there are two separated by fifteen years: Mr Douglas describes them as “relatively minor and understood at the time [to be] isolated incidences resulting from “nervous breakdowns” due to traumas which occurred

in [his] life". No evidence of the conditions alleged to have given rise to the assaults and Mr Douglas' present freedom from those conditions has been placed before us. Although the incidents were in the distant past, the fact that there were two of them so far apart is not reassuring. Equally disconcerting are the differences of age and gender of the victims.

17. The PCT was certainly entitled to take a poor view of Mr Douglas' failure to disclose them. Giving an authority to submit to a CRB check is no substitute for answering specific and explicit questions truthfully. We do not find Mr Douglas' explanation "If a separate disclosure had been overlooked I sincerely apologise but there was absolutely no attempt to conceal information" syntactically compelling or in any other way a satisfactory explanation for his failures.

18. If Mr Douglas only undertook the work he was entitled to do there would be little opportunity when measuring and fitting spectacles to behave inappropriately or worse. He has, however, admitted to fitting contact lenses when not qualified and registered so to do and this not only casts further doubt on his probity but would also have given him a greater opportunity for physical contact with patients.

19. Whilst the history must qualify as a serious matter to be taken into account, we are much more influenced by the lack of frankness in the application form and the cavalier attempt to explain it away. Professionals in Mr Douglas' position bear a heavy responsibility for the probity of their words and deeds. In this case Mr Douglas has in both aspects fallen far short of the standard expected of him. He has by his response provoked further disclosures by the PCT that (even in the absence of detailed enquiry and findings of fact) raise more areas for concern in relation to his probity and his insight into his performance. There is nothing exclusively local in these failures.

Decision

19. For the reasons set out above we are of the view that Mr Douglas' undoubted unsuitability to practice is not confined to the area of the PCT and accordingly order National Disqualification.

Order

20. We order pursuant to section 49N of the National Health Service Act 1977 that Mr Keith Douglas (Registration Number D-11848) be disqualified from inclusion in all Performers Lists prepared by all Primary Care Trusts and all lists deemed to succeed or replace such Lists by virtue of any Regulations made thereunder.

21. We direct, pursuant to Rule 47(1) of the Family Health Services Appeal Authority (Procedure) Rules 2001 that a copy of this decision is sent to the Secretary of State, The National Assembly of Wales, the Scottish Executive, The Northern Ireland Executive and the Registrar of the General Medical Council.

22. Any party to these proceedings has the right to appeal this decision under and by virtue of Section 11 of the Tribunals and Inquiries Act 1992 by lodging notice in the Royal Courts of Justice, Strand, London WC2A 2LL within 28 days from the date of this decision. Under Rule 43 of The Family Health Services Appeal Authority (Procedure) Rules 2001 a party may also apply for a review of this decision no later than 14 days after the date on which this decision is sent.

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Mark Mildred
Chair of Appeal Panel
23 May 2007