

**IN THE FAMILY HEALTH SERVICES APPEAL AUTHORITY**

**Case No: 15188**

**Panel**

Mrs D Shaw - Chairman  
Mr D Styles - Professional Member  
Mrs M Harley - Member

**BETWEEN**

**Mr LLOYD COLLINS**  
GOC NO: 01-23901

**Appellant**

**and**

**SOUTH GLOUCESTERSHIRE PRIMARY CARE TRUST**

**Respondent**

**DECISION WITH REASONS**

**The Appeal**

1. This is an appeal by Mr Lloyd Collins ("the Appellant") against the refusal of South Gloucestershire Primary Care Trust ("the PCT") to include him on its Performers List under section 6(1)(a) of the National Health Service (Performers Lists) Regulations 2004 (as amended) and associated regulations ("the Regulations") on the grounds that he has two separate offences, apparently close together in time and the subsequent GOC investigations undertaken and the findings related to convictions imposed resulted in GOC conditions being imposed.

**History**

2. The Appellant graduated as an optometrist from Cardiff University in 2006, following which he began his pre-registration year at a Specsavers practice in Bodmin, Cornwall. He stayed there from September 2006 to September 2007, but for various reasons found this post unsuitable and moved to Plymouth Specsavers in October 2007 as a pre-registration student and subsequently qualified in March 2008 when he registered with the GOC.
3. The Appellant has submitted that he had used drugs previously on a recreational basis but only when going to a dance event, party, occasionally at home or perhaps on camping holidays and that he had

never taken drugs on any occasion at work or even the day before attending work.

4. The Appellant was first arrested in April 2008 on the way to a nightclub. He and a friend were seen by a passing patrol car coming out of a shop and passing items between them, stopped and searched and one tablet and a small amount of crystals were found, resulting in him being taken to the police station and searched further, interviewed and bailed, pending the police sending away the substances found to be tested. Once the testing was completed the Appellant was invited back to the police station and told that the tablet had no illegal drugs within it (the tablet was termed a legal high) and the crystals found contained MDMA. As MDMA is an illegal substance the Appellant was cautioned in June 2008 for the possession of same, the value of which was £1.
5. Earlier in the year, in March 2008, and prior to his first arrest, the Appellant had ordered some chemicals to be posted to him. They were termed 'research chemicals' on the internet. The chemicals ordered were 2c-b and DOC. The Appellant understood these to be derivatives of ecstasy or to have similar actions to ecstasy. As the 2c-b and DOC did not arrive he chased up the order. The company asked him to provide a different address for the drugs to be sent to; which he did. The 2c-b did arrive at the second address and hence the Appellant had it in his possession when the police raided his house some months later.
6. The authorities intercepted the first package and discovered the contents. They searched the Appellant's house on 16<sup>th</sup> July and found 2c-b, 2c-e, ketamine, cannabis, amphetamine and magic mushrooms. He submitted the 2c-e was ordered from the internet in mid 2007, he purchased the ketamine from a friend earlier in 2008, both the cannabis and amphetamine had been given to him by a friend and he had collected the magic mushrooms in the autumn of 2007 and stored them in a jar in his room. Accordingly he was taken to the police station for questioning.
7. At the police station the Appellant was questioned by Customs and Excise and the police. When he was interviewed by the police he admitted that the drugs they had found in his flat were for his personal use. The police bailed the Appellant whilst they sent the drugs for analysis. The Appellant was asked to appear again at the police station two months later to discuss their findings, at which time he was charged with possession. The total value of the drugs found was £3.12, although this did not include the 2c-b, 2c-e, mushrooms or ketamine, as these were not considered to have any significant street value at the Court hearing.
8. The Appellant attended court on 10<sup>th</sup> September 2008, pleaded guilty to the charges and was given a conditional discharge.

9. Approximately five days before his court hearing the Appellant advised his employer of his position. Specsavers operate a drugs policy and the Appellant was advised that he could either be suspended and investigated with a very likely chance of being dismissed or alternatively he could tender his resignation, which he did.
10. Following his conviction the Appellant decided to move from Plymouth back home with his parents in Cornwall. He recognised the difficult situation he was in and went to see his GP to book a counselling appointment, which went very well and she did not indicate he needed to see her again.
11. The caution and conviction were notified to Plymouth PCT in September 2008 and the GOC notified the Appellant that he was the subject of an interim order on 15<sup>th</sup> December 2008. At that hearing his registration on the GOC Register became subject to various conditions. The GOC have standard conditions but the Appellant was also required to have his work supervised and to have his supervisor provide quarterly reports to the GOC on his behaviour and work, as well as to register with the relevant Drugs Action Team (DAT) for substance misuse to obtain appropriate treatment and to forward quarterly reports from the service provider to the GOC.
12. The Appellant commenced work at Dollond & Aitchison Opticians (D & A) in March 2009. Mr Mark Greening at D & A agreed to be the Appellant's supervisor and to provide quarterly reports. The Appellant also had to have monthly drug tests and those results were required to be submitted to the GOC's Registrar. He was also required to contact his local DAT to seek counselling. In his case the local DAT was the Harbour Drug Team.
13. The Appellant has submitted that he found the counselling helpful in consolidating the progress he had made up to that point. Although he had already been abstinent for a number of months by that time, the sessions were helpful in reviewing his background and reasons for drug use, developing his attitude to the use of drugs and discussing strategies for maintaining long term abstinence.
14. The GOC's rules require an interim order to be reviewed within 6 months. Accordingly, the Appellant's order was reviewed on 15<sup>th</sup> June 2009 by the Fitness to Practise Panel. At that review hearing it was found that he had complied with all of his conditions, and as Harbour DAT had provided a report to the effect they considered he had completed his counselling and no longer required their assistance the GOC Panel removed the condition relating to contacting DAT and for them to provide quarterly reports.
15. The Appellant's supervisor provided reports which were considered to be satisfactory. He had by then completed 7 drug tests and all were found to be negative, bar one which tested positive for opiates. However, it is submitted that this was due to the fact the Appellant had had a heavy cold

at the time of the test and had taken an over the counter cold relief product containing codeine. The Appellant's supervisor confirmed with the GOC that he had been suffering from a heavy cold at the material time and both the GOC health adviser and the forensic medical expert instructed by the Association of Optometrists (AOP) confirmed that codeine would produce a positive test of opiates.

16. The Appellant continues to have quarterly reports from Mr Greening and to undergo drug testing. All his drug tests since April 2009 have been negative.
17. The Appellant moved to Bristol in January 2009 and as he had changed location he decided to apply to South Gloucestershire PCT to join their performers list, but his application was refused.
18. The Appellant has submitted that he is committed to remaining totally drug free; as he has been since his arrest in July 2008. The events of the past year and a half have allowed him to re-evaluate his actions and attitudes. He very much enjoys and values his professional work. Although at the material time he is confident that his ability to care for his patients was never compromised, he does accept that the public have a right to expect professionals to act within the law and understands that it is unacceptable for a health care professional to be involved at any level with illegal drug use. He has submitted that his recreational drug use was as a result of adolescent curiosity, which as he has now matured is no longer of any interest to him. This has been assisted in part by counselling but also by his natural progression in life

### **Grounds of Appeal**

19. The Appellant appealed on the following grounds:
  - (i) The PCT's refusal to include him on the Ophthalmic Performers' List is both unreasonable and prohibitive in all the circumstances.
  - (ii) The PCT has not given any satisfactory reason save for the ongoing GOC investigation for declining to include the Appellant on the Ophthalmic Performers' List. The Appellant submits that inclusion on the GOC Register should be satisfactory to warrant inclusion.
  - (iii) He is currently residing in the Bristol area but in the absence of an Ophthalmic Performers' List number he is unable to work and support himself in his current place of residence.
20. The Appellant requested:

- (i) either that he be included on the PCT's Ophthalmic Performers' List immediately to enable him to provide GOS services in the area in which he is currently residing or, in the alternative,
  - (ii) that he be conditionally included on the PCT's Ophthalmic Performers' List subject to reasonable conditions attached to his inclusion.
21. The Appellant invited the PCT to revert with reasonable conditions, or to accept the information gathered in respect of his conditional inclusion on the GOC Register form part or all of the conditions attached to his inclusion on its Ophthalmic Performers' List. He submitted the PCT had not sought to engage with him to consider conditions that might be appropriate to attach such that he could be included.
22. Notwithstanding the above, the Appellant does not accept that there is any deficiency in his professional conduct or competence because of the caution and conviction received in June and September 2008.
23. Although currently registered with Plymouth PCT, as he now lives on Bristol, the Appellant is seeking to be placed on the ophthalmic list where he lives and wishes to work.

**PCT's response to appeal application**

24. The PCT had undertaken a Criminal Records Bureau check which concurred with the information provided in the application. It had also ascertained from Plymouth PCT that it had not considered the Appellant's offences or the conditions imposed by the GOC or undertaken any local investigation or consideration of action on the Appellants inclusion on its Ophthalmic Performers' List.
25. The (South Glos) PCT had then reviewed the information provided and considered the options, which were Conditional Inclusion, Inclusion or Refusal. It had considered it would be inappropriate to consider inclusion without any conditions due to the GOC conditions and current investigation and the recent history of drug offences, which were recorded within less than four months and each included different drugs and were dealt with by two different constabularies.
26. The PCT considered:
- (i) the nature of the offences (including possession of Class A, B and C drugs)
  - (ii) the number of drugs involved (one relating to the first offence and six relating to the second)

- (iii) the short period of time between the acceptance of the caution (4 June 2008) and committing the next offence (16 July 2008)
- (iv) the time between the conviction and the application for inclusion on the PCT's Ophthalmic Performers' List

and concluded that such offences made the Appellant unsuitable to hold a position of trust and responsibility that involves contact with various people including potentially vulnerable people.

27. The PCT considered the recent history of convictions, the ongoing investigation by the GOC and current conditions attached to the Appellant's registration pending further Fitness to Practise hearings, were sufficient and satisfactory reasons to warrant refusal to the Ophthalmic Performers' List at this time. It further considered that with unspent convictions in place and a GOC investigation, the Appellant is unsuitable for inclusion and it could not therefore consider conditional inclusion.

### **Evidence provided by the Appellant**

28. In response to Directions issued by the Appeal Panel Chair, the Appellant provided copies of:
- (i) Report dated 29 May 2009 from Harbour Drug Team to the GOC to the effect they considered the Appellant had completed his counselling and no longer required their assistance.
  - (ii) Monthly drug test results
  - (iii) Favourable Reports dated 9<sup>th</sup> April and 16<sup>th</sup> August 2009 from Mr Greening to the GOC
  - (iv) Favourable references from:
    1. Mr Greening dated 23 September 2009
    2. John Callaghan (his pre-registration supervisor from September 2007 to April 2008) dated 10 December 2008
    3. Tania Richards (his manager from July to September 2008) dated 11 December 2008
    4. Winnie Maina (professional colleague since June 2008) dated 11 December 2008
    5. Helen Holman (Practice Manager at Specsavers, Plymouth from October 2007 to July 2008) dated 12 December 2008
  - (v) GOC Continuing Education and Training points statement for period 2 January 2007 to 31 December 2009

## **Hearing**

29. The Hearing took place on 19<sup>th</sup> October 2009 at Bristol Employment Tribunal, The Crescent Centre, Temple Back, Bristol. A list of the persons present is attached at Appendix I.
30. The PCT declined to attend the hearing and relied on the papers it had already submitted as its evidence.

## **Summary of Appellant's written submissions**

31. The Appellant is not unsuitable for inclusion on the List by reason of the factors outlined by the PCT in their letter dated 30 June 2009, or for any other reason, because:
  - 31.1 The Council's Interim Orders Panel had considered the same evidence as the PCT and had reached the decision that the Appellant is suitable for inclusion on the GOC register but that he should be subject to conditions and not that he is unsuitable and should be suspended.
    - 31.1.1 An application for an Interim Order was heard before the Council's Interim Orders Panel on 15 December 2008. At that hearing it was decided that 'some action' at the interim stage should be taken and that the Appellant's registration should be made subject to a number of conditions
    - 31.1.2 In addition to a number of standard conditions, they included a requirement to register with a regional DAT, to undertake monthly random drug tests, only to take drugs that have been prescribed by a medical professional and not to possess any illegal drugs as listed in the relevant regulations
    - 31.1.3 The condition to register with a regional DAT was revoked at a review hearing held on 15 June 2009, where it was accepted that the Appellant had complied with all of the conditions imposed in December.
    - 31.1.4 The decision by the Council not to suspend the Appellant but to make his registration subject to conditions only was relevant in relation to whether he is suitable to be included on the list.
    - 31.1.5 It was unclear why the Appellant would be suitable to remain on the GOC Register subject to conditions but, at the same time, not suitable to be included on the PCT List, either without restriction or subject to conditions.

- 31.1.6 In relation to conditional inclusion on the List, no adequate reason had been provided by the PCT as to why this course was not appropriate. It was not addressed in the PCT's letter of 15<sup>th</sup> September 2008. Although it was addressed in the PCT's representations in relation to this hearing, no reason was given as to why refusal was 'the most appropriate' option in the circumstances and why conditional inclusion was inappropriate.
- 31.2 This was not a case of addiction or dependency; indeed there was no evidence to suggest that the Appellant had taken illegal drugs at work or had ever let his ability to practise be adversely affected by his then recreational drug use.
- 31.2.1 The Appellant accepted that he had taken drugs in the past on a recreational basis. He took drugs occasionally during 2007- 2008.
- 31.2.2 There had never been any suggestion that the Appellant had taken drugs at work, been under the influence of drugs at work or allowed his ability to practise as an optometrist to be adversely affected by taking drugs.
- 31.2.3 Nor was this a case in which it was alleged that the Appellant was in any way deficient in terms of his clinical ability.
- 31.2.4 Indeed, the references provided by those who worked with the Appellant, including those who did so around the time he was cautioned and convicted, confirmed this.
- 31.2.5 The PCT relied upon the nature and number of drugs covered by the caution and conviction and, also, on the short period of time between the Appellant accepting a caution on 4 June 2009 and being found in possession of other controlled drugs on 16<sup>th</sup> July 2009. None of these factors were indicative of an underlying dependency on or addiction to illegal substances. Reliance was placed on the small quantities of drugs found and the Appellant's account as to how and at what stage he came into possession of the substances.
- 31.2.6 In any event, the Magistrates Court clearly saw the level of criminality involved as being at the lower end of the scale as a Conditional Discharge was imposed.
- 31.2.7 In relation to the PCT's contention that the conviction from 4 June 2008 was 'unspent', as the sentence imposed was a Conditional Discharge, the sentence was 'spent' after the expiry of 12 months or at the end of the order, whichever was the longer period (Rehabilitation of Offenders Act 1974, Table B). In this case, the Conditional Discharge was for a period of 12 months. The conviction was therefore 'spent' on 10<sup>th</sup>



September 2009.

- 31.3 In any event, the Appellant had complied with the conditions imposed on his registration by the Council, had attended counselling and had completely stopped taking illegal substances
- 31.3.1 The Appellant had in fact stopped taking drugs following his caution in June 2008. Following his conviction in September 2008 he voluntarily attended a counselling session with his GP, who indicated that he did not have to attend again.
- 31.3.2 The Appellant had referred himself to Harbour DAT within a week of the Interim Order hearing in December. He attended an initial appointment and three further sessions, following which the relevant person found that there was 'no evidence of addiction or physical dependence either currently or historically'.
- 31.3.3 As a result of his full and proper attendance in this regard, the condition to register with a regional DAT imposed by the Interim Orders Panel in December 2008 was revoked on review in June 2009.
- 31.3.4 In addition, the Appellant had undergone monthly drug tests. All had been negative, save for one test on 20 April 2009 which was positive for opiates. The overwhelming evidential position was that this was due to the Appellant taking cold relief medicine containing codeine around the time of the test.
- 31.3.5 Indeed this explanation was accepted by the Interim Orders Panel's Adviser and the Panel itself at the hearing in June 2009. These tests were strong evidence that the Appellant has been, and remains, drug-free.
- 31.3.6 The Appellant's supervisor, Mark Greening, had remarked that he has remained 'in full compliance' with the conditions imposed and he was 'delighted with his progress'.
- 31.3.7 The Appellant had progressed very well in the last 12 months. He was very keen to continue his professional development as an optometrist and was committed to remaining 'drug free'. He had demonstrated considerable insight and realised why it is important, both for himself and the profession, to continue to abstain from drugs.
- 31.4 All of the evidence available pointed towards the Appellant being a highly competent, conscientious and professional practitioner.
- 31.4.1 There could be no doubt that the Appellant was more than competent clinically. In fact, the evidence pointed towards him being an excellent practitioner with a bright future in

optometry ahead of him.

31.4.2 Copies of the Appellant's CET documentation had also been provided.

31.4.3 This was persuasive in deciding whether this appeal should succeed as there was no suggestion that patient safety would be compromised if the Appellant were to be included in the List.

32. In conclusion, the Appellant was a highly competent practitioner who stopped using drugs recreationally over a year ago and had since demonstrated considerable insight into the actions that, regrettably, led to a criminal caution in 2007 and a conviction in 2008. That conviction was now over a year old and the Appellant had since consistently demonstrated his commitment to remaining drug-free. It was submitted therefore that this appeal should be allowed and that the Appellant should be included in the List, either without restriction or subject to conditions. If conditional inclusion was thought to be appropriate, further submissions would be made as to the precise conditions at the hearing. Of course the Appellant would comply with any reasonable condition imposed, as he had done throughout the Council's investigation.

### **Summary of Additional Oral Evidence at the Hearing**

33. The Appellant confirmed he did not currently use any illegal drugs and had stopped taking them in June 2008 when the GOC had imposed conditions on his registration. He felt he had been given a clear choice between taking drugs or continuing his career and professional development and the latter was obviously more important. He knew it was unacceptable for professionals to take drugs and it was not something he felt interested in any more.
34. He was happy to continue in his present job for the moment and to try to develop his career and skills and obtain additional accreditations, for example in glaucoma and shared care, in the future.
35. The Appellant was aware the general public did not think drug use was acceptable and that health professionals should be setting a good example to the public.
36. His previous drug use had been variable; between once to a few times a month when he went to clubs or dance events or at home.
37. The counselling sessions had helped him to review his attitude and he would not go back to using drugs.
38. The Appellant's drug use had not affected his ability to do his job; he never took drugs before work or the night before work. He had usually taken them on a Saturday night and he did not go back to work until Monday or, more usually, Tuesday.
39. He had ordered the drugs found at his home address before he was first arrested and cautioned. He had picked and kept magic mushrooms there for over a year because

he didn't want to take them very often. With hindsight he should have got rid of the drugs at his home, but he did not know what to do with them and he had not decided to totally stop his drug use after his first arrest. However, that was the wrong decision, because when he was arrested in July 2008 for the second time he was worried and upset because he would have to go to court and he would lose his job which he really enjoyed. That was when he decided to stop taking drugs and he had not taken them since.

40. The GOC conditions required him to contact Harbour DAT. The sessions with the counsellor there on why he had begun to take drugs and what he was seeking helped the Appellant to see drugs created illusions. By the time of the June 2009 Interim Order Review hearing, the condition to attend appointments with the DAT was revoked and he was happy to continue not to take drugs without that support.
41. The Appellant was very surprised when he tested positive for opiates in April 2009 but he was informed the codeine he took for a cold and headache would produce a positive result.
42. He had secured his job at D & A in March 2009, having disclosed everything. It was good to have a supervisor who was trying to help him and understood his position. He was happy there and intended to practise in the Bristol area for the next year. Although he was on the Plymouth PCT's Performers' List, which gave him the right to practise elsewhere, he had not lived in Plymouth for a year, which meant he could be removed from their List, although he had done a couple of locums there in the past month.

### **Closing Submissions**

43. The Panel should have regard to the relevance of the Appellant's caution and conviction on his ability to perform his duties and the impact on patient safety.
44. The Appellant was the first to admit his previous record did not make happy reading, but having heard his evidence and considering matters in full, the evidence was overwhelming that he is now a suitable person to be included in the Performers' List.
45. The GOC decision, whilst not determinative, was persuasive regarding the Appellant's suitability to practise. The Interim Orders Panel considered the same evidence (i.e. his caution and conviction); they had power to suspend the Appellant if they felt there was a risk to patient safety or it was in the public interest, but they decided not to do so as they considered him suitable to practise subject to conditions. At any Fitness to Practise hearing all of his remedial steps would be considered.
46. There was overwhelming evidence that the Appellant's drug use was occasional and recreational rather than a dependency. It did not affect his ability to carry out his job or patient safety.

47. All of the drugs found in the Appellant's home had been there since before he was first arrested and cautioned.
48. His conditional discharge from the Magistrates Court reflected the gravity of the charge against him, i.e. the bald facts of the caution and conviction would suggest a more serious situation than it in fact was.
49. Since July 2008 the Appellant had not taken drugs, he was now doing well and committed to staying drug free, he had responded very positively to the GOC conditions and the help he had been offered, the evidence from Harbour DAT was there was no dependency or addiction, in the opinion of Mark Greening, his supervisor, he was an excellent practitioner and responding very well, and there was no suggestion he was not clinically competent. Given this and the fact the Appellant's references indicated he had a very bright future, it was submitted that he was a suitable person. He was still on Plymouth PCT's List but he was aware if he did not perform services there for 12 months he could be removed. If he was suitable for that PCT's Performers' List he should not have to run the risk of not being suitable on another List because he had moved area.

### **Consideration of the Evidence and Conclusions**

50. We have carefully considered all of the written and oral evidence, bearing in mind that the burden of proof lies with the PCT. It is not clear to us from the evidence whether the decision to refuse to include the Appellant on the PCT's List was taken in committee following discussion, or on the papers alone by the Clinical Governance Manager. In this regard we accept the submission on behalf of the Appellant that in relation to conditional inclusion on the List, no adequate reason has been provided by the PCT as to why this course was not appropriate, since although it was addressed in the PCT's submissions in relation to this appeal, no reason was given as to why refusal was 'the most appropriate' option in the circumstances and why conditional inclusion was inappropriate. However, as this is a redetermination as opposed to a review of the PCT's decision, we are aware that any issues around how the PCT reached its decision or what it considered will be superseded by our determination.
51. We first considered whether we agreed with the PCT that the Appellant is unsuitable for inclusion on its Ophthalmic Performers' List on the basis of the nature of the offences, the number of drugs involved, the short period of time between his acceptance of the caution in June 2008 and committing the next offence in July 2008, and the time between the conviction in September 2008 and his application for inclusion on the PCT's Ophthalmic Performers' List in March 2009.
52. Whilst not in any way wishing to downplay the gravity of the nature of the offences, we are of the view that the PCT took the facts at face value. On the evidence before us it appears that the PCT looked at the chronology of events and may have been unaware that the Appellant came into possession of the substances that led to his conviction before he was cautioned.

53. We have also considered, as the PCT indicated it has done, whether the Appellant is unsuitable to hold a position of trust and responsibility that involves contact with various people, including potentially vulnerable people. As a witness, we found the Appellant to be credible and contrite and whilst we in no way condone it, we accept that this is a case of recreational drug use rather than addiction or dependency; there is no evidence to suggest that the Appellant has ever taken illegal drugs at work or let his ability to practise be adversely affected by his drug use.
54. Given the supportive reference for the Appellant from his supervisor, Mark Greening, that he has remained in full compliance with the GOC conditions imposed on him and that he was 'delighted with his progress,' together with his other supportive references from around the time he was cautioned and convicted, we also accept that the Appellant is not in any way deficient in terms of his clinical ability.
55. We also note the PCT indicated that the short period between the Appellant's conviction in September 2008 and his application for inclusion on the PCT's Ophthalmic Performers' List in March 2009 was one of the grounds for it finding him unsuitable to be included on its List. However, almost 7 months has elapsed since the Appellant originally submitted his application, during which time he has continued to demonstrate his commitment to remaining drug-free.
56. We also take into account that the Appellant has now fully complied for ten months with the conditions imposed on his registration by the GOC's Interim Orders Panel on 15<sup>th</sup> December 2008 and that he will remain bound by those conditions for a further eight months. We note that he has complied with the condition to attend counselling (which condition the GOC has now revoked), and that the monthly drug tests he is obliged by those conditions to undergo indicate he has now stopped taking illegal substances. In this regard we accept, as did the Interim Orders Review Panel in June 2009, that for the one test on 20 April 2009 which was positive for opiates, the evidence indicates that this was due to the Appellant taking cold relief medicine containing codeine around the time of the test.
57. For all of the above reasons, we consider it would be unduly harsh not to consider the progress the Appellant has made since his conviction in September 2008 and to cut short his career at such an early stage. Accordingly, we do not find the Appellant to be unsuitable for inclusion in the PCT's Ophthalmic Performers' List
58. We next considered whether the Appellant's inclusion in the List might be prejudicial to the efficiency of services, and if so, whether it would be appropriate for his inclusion to be subject to conditions.
59. We are of the unanimous view that the Appellant's offences merit conditions being imposed upon him. However, we are also aware that he is currently subject to stringent conditions imposed by the GMC, with which he has fully complied for the last ten months and with which he must continue to comply for the next eight months, if he wishes to retain his GOC registration.

60. Given the above, we do not consider it is necessary to impose any further conditions on the Appellant for inclusion in the PCT's Ophthalmic Performers' List.

**Decision**

61. For all the above reasons we hereby allow the Appellant's appeal to be included in the PCT's Ophthalmic Performers' List.

62. We wish to place on record our trust and expectation that the events since the Appellant's arrest in April 2008 have had a salutary effect on him and that he will continue to bear in mind that the public have a right to expect professionals to act within the law and that it is unacceptable for a health care professional to be involved at any level with illegal drug use. In coming to our decision we ask the Appellant to bear in mind that it is unlikely he would be treated in the same way by his professional regulators were he ever to be caught taking drugs in the future.

**Supplementary matters**

63. We direct that a copy of this decision be sent to the persons and bodies referred to in section 47 of the FHSAA (Procedure) Rules 2001 (the Rules).

64. In accordance with Rule 42(5) of the Rules, we hereby notify the parties that they have the right to appeal this decision under and by virtue of section 11 of the Tribunals and 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 this 29<sup>th</sup> day of October 2009**

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**Debra R Shaw**  
**Chairman of the Appeal Panel**

**APPENDIX I**

**Panel members**

Mrs D Shaw	Chair
Mr D Styles	Professional member

Mrs M Harley

Member

**Persons Present**

Mr L Collins

Appellant

Mr S Singh

Counsel for the Appellant

Ms F Mitchell

Solicitor, Association of Optometrists

Mr T Brown

Clerk for the Appeal