IN THE FIRST-TIER TRIBUNAL
(HEALTH, EDUCATION AND SOCIAL CARE CHAMBER)
PRIMARY HEALTH LISTS

Case No: PHL/15289

Tribunal Members

Mrs Debra Shaw	**-**	**Chairman**
Dr I A Lone	**-**	**Professional Member**
Professor D Croisdale-Appleby	**-**	**Member**

BETWEEN

DR AMANDA BOOTH
GMC No: 3170500

Appellant

and

NHS NORTH OF TYNE

Respondent

Considered on 11th November 2010 and 24th January 2011

DECISION WITH REASONS

The Application

1. This is an appeal by Dr Amanda Booth (the Appellant) against the removal of her name from the medical Performers List of NHS North of Tyne (the Respondent/ PCT) under the provisions of Regulation 8(2) of the National Health Service (Performers Lists) Regulations 2004 (as amended) and associated regulations (the Regulations).

History

2. The Appellant completed her training in 1990, following which she undertook a variety of locum jobs before becoming a GP Principal in Boldon in 1995. She worked as a GP Principal part-time in that practice until 2000 when she resigned. After that, she worked in various GP practices as a locum and then for three sessions a week at the Longrigg Medical Group until 2003, when she decided to take a career break.

3. After a period of considerable health difficulties during which time the Appellant's GMC registration lapsed, she decided to resume work in 2007. When she reapplied to the GMC this triggered a comprehensive clinical and occupational health assessment, culminating in a Fitness to Practise Panel hearing on 7th November 2007, at which the Panel was informed the Appellant was to receive a period of retraining and supervision

and to return to work part-time. The Panel decided to restore the Appellant's name to the Medical Register.

4. The Appellant applied to join the PCT's Medical Performers List and in February 2008 she was included on condition that:

   i) (Your) work as an NHS General Medical Practitioner be restricted to work as a GP Returner for the purposes of the GP Returners Scheme run by the Northern Deanery

   ii) That, upon completion of the GP Returner Training, the Trust will review your inclusion in its review Medical Performers List with a view to full inclusion pending successful completion of training.

5. The Appellant was required to spend a year working part time as a GP Returner, to be trained and supervised by an experienced trainer, Dr Ruth White, under the auspices of the Northern Deanery. She was also required to pass the Applied Knowledge Test (AKT) of the Membership of the Royal College of General Practitioners and to obtain a satisfactory Trainer's Report.

6. The Appellant failed the AKT at the first attempt but Dr White asked for and obtained a three-month extension to her training until May 2009, which allowed the Appellant to re-take and pass the AKT in April 2009.

7. Unfortunately, Dr White became ill at the beginning of April 2009 and did not thereafter return to work. The Appellant continued to have some supervision by the other partners at the practice, but they did not train her or provide any feedback before she left at the beginning of May, seemingly under the impression she had passed the Scheme. Dr White, very sadly, died in mid 2009.

8. On 8th June 2009 the clinical Sub-Dean, Dr Jamie Harrison, invited the Appellant to his office to tell her that although she had passed the AKT, her successful completion of the Returners Scheme was further dependent upon receipt of a satisfactory trainer's report and an assessment of consulting skills (the other trainer in the practice being unable to provide positive evidence that the Appellant had successfully completed her training). The Appellant expressed surprise at this as she considered she had not received any indication or feedback to this effect. In the circumstances, the Deanery apologised and offered the Appellant a further opportunity to meet the requirements of the Scheme and to have her conditions on the Performers' List removed. Dr Harrison indicated he would organise a further six months of training in a different practice, and would look into the Appellant's claim that she had not received any feedback.

9. Unfortunately, several prospective approaches by the Deanery to accredited training practices were unsuccessful and no further training or more detailed assessment could be provided. Instead, in August 2009, the Appellant was offered a one week assessment by the Deanery to be carried out by two GP trainers from the Longrigg Practice. This was delayed until November at the Appellant's request due to her ill health.

10. The resulting report from the Longrigg Practice was unfavourable, resulting in the Deanery feeling that they were unable to sign off the Scheme as being satisfactorily completed.

11. At a meeting on 6th May 2010 the PCT's Performance Advisory Group recommended that a Panel be convened to review the Appellant's position on the Medical Performers' List on the basis she should be removed under regulation 8(2): namely on the ground that she had failed to satisfy the conditions imposed for her inclusion.

12. At a hearing on 21st June 2010 the Panel determined the Appellant's name should be removed from the PCT's Medical Performers List under regulation 8(2), on the ground that she had failed to satisfy the second condition imposed on her inclusion.

13. The Tribunals Service received an appeal application dated 15th July 2010 from the Appellant, citing failure of process (as her trainer had been absent for the last month of her Scheme) and her own ill-health as the grounds of her appeal.

The Law

14. The law referred to in this appeal is set out in sections 8(1), 8(2), 14(8), 15(1), 15(2)(c) and (d) and 15(3) of the Regulations.

8(1)		A PCT may determine that, if a performer is to be included in its performers list, he is to be subject, while he remains included in that performers list, to the imposition of conditions, having regard to the requirements of section 28X(6) (preventing fraud or prejudice to the efficiency of services)
8(2)		If a performer fails to comply with a condition which has been imposed by the PCT, it may remove him from its performers list
14(8)		If a PCT decides to review its decision to impose conditions under regulation 8, it may vary the conditions, impose different conditions, remove the conditions or remove the performer from its performers list.
15(1)		A performer may appeal (by way of redetermination) to the (First-tier Tribunal) against a decision of a PCT mentioned in paragraph (2)
15(2)		The PCT decisions in question are decisions –
	(c)	on a review, under regulation 14, of a conditional inclusion under regulation 8
	(d)	to remove the performer under regulations 8(2), 10(3) or 10(6), 12(3)(c) or 15(6)(b)
15(3)		On appeal the [First-tier Tribunal] may make any decision which the PCT could have made

Preliminary matters

15. Prior to the commencement of the hearing all three tribunal members confirmed they had not had any prior interest or involvement in the appeal that would preclude them from considering the evidence in an independent and impartial manner.

16. The persons who appeared before the Tribunal were:

Dr Amanda Booth	Appellant
Mr James Counsell	Counsel for the Appellant
Dr Neil Morris	Deputy Medical Director North of Tyne NHS
Mr John Fitzpatrick	Respondent's representative (Hempsons)
Dr Jamie Harrison	Witness for the Respondent
De Peter Brumby	Witness for the Respondent

Preliminary issues

Request for a private hearing

17. Prior to the commencement of the hearing the Appellant requested a private hearing on the grounds her grievances about her Returner Scheme were with other doctors. The Tribunal did not consider these to be valid grounds and declined her request.

Was there any breach of condition?

18. It was submitted in the Appellant's Skeleton Argument that the wording of the second condition (set out verbatim at paragraph 4(ii) above) appeared to suggest the Appellant might be fully included on the Performers List *pending* completion of training, which could hardly have been intended, but more importantly, the condition imposed no obligation on the Appellant, since successful completion of the Returner Scheme was expressed as the trigger for review of her inclusion but was not expressed as an obligation on her part and merely set out a timetable identifying when there might be a review of her inclusion. It was suggested that if the condition had imposed an obligation that the Appellant should complete the scheme to the *satisfaction* of her trainer, matters might have been different, although given there was no report from Dr White, it was hard to see how she could be in breach. The PCT Panel had added a requirement that the Appellant should have completed her GP Returner Training *satisfactorily* but the word did not appear in the condition and could not be "read in" after the event.

19. Alternatively, it was submitted that if the condition was ambiguous, it ought not to be interpreted in a way which placed a greater burden of proof on the Appellant, who faced career threatening action if construed in that way. The reality was that the Deanery was unable to confirm completion of the Scheme because it was unable to obtain a report from a trainer who had become ill and had not completed the training and had not replaced that trainer with another

20. At the hearing, the PCT's representative contended that the conditions were imposed on the Appellant under Regulation 8(1) to prevent prejudice to the efficiency of services, and the Appellant knew she was being allowed onto the Performers List to enable her to take

part in the Returners Scheme, at the end of which the PCT would remove the conditions. He submitted that if the word *"pending"* was replaced by *"following"* the second condition would make perfect sense, but what was clear was that the Appellant was required to pass her training in order to be included in the Performers List without conditions.

21. He further submitted that the PCT had decided to review the Appellant's position on the Performers List when it was informed by the Deanery that she had failed to pass the Returner Scheme, and it took the decision to remove her under Regulation 8(2) for breach of the second condition. However, it could have arrived at exactly the same decision under Regulation 14(8), and the Tribunal had power to remove the Appellant from the Performers List under Regulation 15 either by virtue of Regulation 8(2) or, on review, under Regulation 14(8).

22. Counsel for the Appellant countered that the purpose of Regulation 15(3) was to allow the Tribunal to make any decision which the PCT could have made, that is, he suggested it could alter the PCT's decision but it could not alter the grounds for its decision and accordingly it was not legitimate for the PCT to argue that the Tribunal could rely on Regulation 14(8) as opposed to Regulation 8(2), as 14(8) was not the subject of the PCT's decision.

23. On the basis that the Tribunal might not ultimately accept there had not been any breach of condition, the parties proceeded to make submissions in relation to whether or not the Appellant had been in breach of the second condition and could be removed from the Performers List under Regulation 8(2)

The evidence

24. Over the course of the hearing, which lasted for two days, we were presented with a very large amount of written and oral evidence. For the purposes of our consideration of the evidence and this decision, we have summarized the most pertinent submissions and evidence from each of the witnesses.

Dr Jamie Harrison (Deputy Head of School of Primary Care, Northern Deanery)

25. In his Witness Statement Dr Harrison explained the nature of the GP Returner Scheme (which changed to its current format of the GP Induction and Refresher Scheme in April 2009), which was designed to bring doctors back into the active GP workforce after a significant period of absence from GP Clinical work. Exit and entry requirements were set locally by the GP Postgraduate Deanery in question, but normally involved passing an interview with a senior GP educator from the Deanery prior to entry, leading to an offer letter stating that a proposed placement within a GP training practice would be made available (where possible) and describing the exit requirements which would be required for successful signing-off of the scheme. Successful completion would normally involve passing both a test of clinical knowledge and a test of clinical skills, with the doctor also receiving a report from the appointed GP Trainer to confirm that performance during the placement had been at a satisfactory level, that is, consistent with independent practice as a GP, on leaving the scheme.

26. The duration of the scheme was normally six months full-time or twelve months part-time and the Returner would learn by undertaking a role analogous to a GP trainee whereby they develop and demonstrate their skills and competencies. It would be the returning GP's responsibility to gather the necessary evidence (as an adult learner) to satisfy the scheme's exit requirements and, separately or together with the GP Trainer, to highlight to the Deanery any issues that might impede or prevent the signing-off process.

27. Despite its efforts to do so, the Northern Deanery had been unable to gather the necessary positive evidence to support signing off the Appellant. She had been informed of the scheme's three exit requirements: namely a pass of the AKT; a successful assessment of consulting skills; and a satisfactory "trainer" report.

28. The Scheme was planned to run from 1st February 2008 until 31st January 2009. However, Dr White expressed concerns in late 2008 regarding the Appellant's performance and the Deanery granted an extension until 30th April 2009 to allow her more time. Dr White continued to express her concerns to the Deanery in a report dated 15th January 2009.

29. The Appellant took study leave in mid April 2009 prior to her second attempt at the AKT, and at a similar time Dr White took sickness leave and never returned. The Appellant returned to the practice in late April 2009 after taking the AKT and left in early to mid-May 2009.

30. The Deanery remained unaware of Dr White's absence during May 2009, but on becoming aware then sought to find a mechanism to seek confirmation of the outstanding elements necessary to sign off the Appellant. However, Dr White's co-trainer was unable to provide such positive evidence from the practice as was required. Five GP training practices were then approached by the Deanery to provide a further supervised placement for the Appellant, but all declined to do so.

31. However, a sixth practice approached (the Longrigg Medical Centre) agreed to provide help, but only on the basis of undertaking a structured week of assessments. The Appellant agreed to accept this offer. The assessment week was delayed by the Appellant seeking medical treatment, but it finally took place from 9th to 13th November 2009. The examiners, Dr Peter Brumby and Dr Anne Harrison, were both experienced GP trainers with particular expertise in the assessment, training and remediation of both GP trainees and of experienced GPs. They considered the assessment demonstrated a series of significant and serious concerns regarding the Appellant's performance as a doctor, and their joint report dated 1st December 2009 concluded there was not any compelling evidence that her situation was remediable by further training.

32. The Deanery thus remained neither able to sign off the Appellant nor able to offer more time on the Scheme, having already given an extension. The current position was that it was unable to confirm the Appellant had demonstrated successfully all the three exit requirements stipulated in her Returner Scheme, and the assessment of her professional performance had raised serious and significant concerns.

33. At the hearing Dr Harrison submitted there was no requirement that stipulated that a report from Dr White was the only way evidence could be collected and suggested that another trainer in the same practice could have equally acceptably provided it.

34. He further said that he would expect such a report to comment on how the Returner had performed and related to other people in the practice. Under the current format the report had been formalised with more specific and formalised questions, and consulting skills would be a separate issue., but at the time of the assessment of consulting skills the methodology would either have been a direct observation in real time, or a video tape with a camera in the consultation. This would be reviewed by the trainer. Alternatively, an assessment tool would be used. This was not a training programme per se, so the methodology and context was different; it was not the same as an ongoing in-depth assessment of a trainee

35. When the Appellant was accepted onto the Scheme on the twelve months part-time basis, there was no commitment to extend it. Dr Harrison was aware in 2008 that there would be a future recommendation (which came into effect in April 2009) not to offer extensions for any reason such as poor performance, but in fact when Dr White asked for a three-month extension, he was sympathetic and granted it.

36. In June 2009 Dr Harrison's intention had been to offer the Appellant a further period on the Scheme but five practices with a vacancy refused, so his only option was to ask for assessment, which Longrigg agreed to carry out over the period of one week. He believed they were the best and most experienced team in the Deanery to do such an assessment, and the offer was willingly accepted by the Appellant.

37. Patient safety was a concern if the Appellant were to work as a single-handed locum because of the continuing comments from Dr White, whose concerns arose from case based discussions *(pages R36-38)*, the suggestion of some areas of underperformance on the CSA course the Appellant attended on 29th October 2009 *(pages RR18-22)*, and the outcome of the formal assessment in November 2009 at Longrigg *(pages R21-31)*. The Appellant's inability to herself comprehend areas of concern was also a problem.

38. In accordance with the current Committee of GP Education Directors, COGPED, Guidance, the Deanery did not feel able to offer the Appellant any further training.

39. In response to questions, Dr Harrison disputed the claim from the Appellant's representative that the COGPED Guidance (which came into force in April 2009) was irrelevant, as he felt it was a helpful document by which the Tribunal could understand the thinking behind its development.

40. When Dr Thomas (Dr Harrison's predecessor at the Deanery) accepted the Appellant on the Returner Scheme, he had clarified the Deanery's requirements for assessment of successful completion in his offer letter dated 23rd January 2008 *(page RR11)*. Although the requirements to monitor and clarify the process of competency progression were not the same as for the training process, the Deanery did introduce review of the trainer process, leading to it writing to Dr White in October 2008 asking for a progress report for its November 2008 meeting, although they had to chase to receive this in December 2008. The Scheme was of a facilitative, hands-off form, although the Deanery did monitor it to the extent that the trainer notified it if there were any areas of concern. Feedback was requested twice a year and the Deanery then provided a final report to the PCT.

41. Although the statutory title of the responsible person was "trainer", that was not their function in the case of returners. There was a limit to how much they could retrain experienced GPs.

42. Dr White only provided to the Deanery a memo dated 30th May 2008 *(pages R39-40)*, an e-mail dated 23rd December 2008 *(page AA6)*, and a memo dated 15th January 2009 *(pages R36-38)*. A major worry to Dr Harrison raised in the first memo was that it indicated the Appellant sometimes didn't take the advice she herself actively sought. Dr White was slow to respond to the Deanery's request for the provision of further feedback, but when she e-mailed in December 2008 (having spoken by phone to Dr Harrison in November/December), he felt it was unusual to ask for a time-extension and he was aware of Dr White's considerable level of concern.

43. Although Dr White had been instructed by the Deanery (in a letter dated 31st January 2008 *(page RR28)*) to contact Dr Thomas promptly if she discovered any limiting concerns related to the Appellant's performance, or if the time she needed to spend in supervision proved to be excessive, Dr Harrison felt it had taken considerable time and thought to work out what were the Appellant's ingrained ways of practice and how to address these, before a whole range of issues became evident which would not then be easily resolved. He felt the trainers had pondered the evidence together, and as a result it had become more evident over time that there were a whole range of issues in the Appellant's behaviour.

44. Although Dr Harrison had no contact with Dr White after January 2009, and indeed was not aware until much later that she had gone off sick, he considered the responsibility lay with the Appellant to fulfil the conditions of the Scheme. Essentially, in his view, here was a doctor knowingly about to complete a Scheme where there was another trainer in the practice who was competent to assess her clinical skills and capable of completing a trainer's report, yet she left the practice in mid-May without letting the Deanery know the situation. Dr Harrison considered the Appellant was fully aware that to complete the Scheme she needed to furnish the three pieces of information referred to earlier.

45. When the Deanery had asked if Dr MacDonald (the other trainer in the practice) could provide a report, the content and conclusion of that report was not sufficiently satisfactory to enable the Deanery to sign-off the Appellant *(page R35)*.

46. Although Dr White did not share her memos as written with the Appellant, they indicated that the Appellant was given feedback. Dr Harrison queried that if such feedback was not being given and received, for what reasons did the Appellant think she was being given a time-extension.

47. At Dr Harrison's meeting with the Appellant on 8th June 2009 *(record at page AA9)*, she had come to his office seemingly expecting no complications and she had became upset when she was told that Dr White had not completed a trainer's report and that Dr MacDonald felt unable to provide one and had expressed concerns at the Appellant being able to practise independently. Dr Harrison agreed he had told the Appellant that the Deanery would investigate why appropriate feedback was not given, and the Appellant was advised she would not be satisfactorily signed off the Scheme at this stage and that a Refresher placement in a different practice would be identified to begin in September 2009 for six months, but the words "if we can" had to be read into that as all placements

were voluntary and could not be guaranteed. The Deanery had no power to compel a practice to take a doctor.

48. By August 2009 the Deanery had had three rebuttals and had approached all practices with a vacancy within a fifty mile radius. The alternative of an assessment by the Longrigg practice, whilst not perfect, was a valid and reliable way to provide an assessment of consultation skills. From his knowledge of that practice's previous work Dr Harrison expected a very thorough, meticulous assessment with methodology understandable to educators across the UK. Dr Brumby e-mailed to him the structure of the assessment, and Dr Harrison accepted his proposal as he had by then had five rebuttals from other practices.

49. Dr Harrison attended the feedback meeting at the Longrigg practice on Friday 13th November 2009 at the end of the assessment week when Dr Brumby and Dr (Anne) Harrison explained to the Appellant why they chose to terminate the assessment early because of their very significant concerns which they did not feel were remediable. He was not surprised by their conclusion; they were his top team within the Deanery and although there had been significant hints of concerns earlier, it was only when they undertook a proper, in-depth assessment of the Appellant that they obtained answers. All work prior to that assessment was crystal ball gazing; the only summative assessments were the AKT and the Longrigg assessment. He did not accept the pressurised atmosphere of the assessment might explain why the Appellant had not performed well.

50. The Deanery had stretched itself so much to help the Appellant because the situation was so extraordinary; they were sympathetic and the budget allowed for it to undertake appropriate action.

51. Assessments could be considered as pressurised and stressful because of the high stakes – they had to be passed, but generally doctors would act differently for the first few consultations and then quickly revert to type and forget about any observers or camera. If the assessment did not go well on the first day, there were further opportunities to do well on the other days.

52. The Deanery would not be able to support the Appellant undertaking further training on a self-funding basis in a non-training practice as a certain level of competency from a trained educator and assessor was required for training to be effective.

53. At the commencement of the second day of the hearing the Appellant submitted some extra documents (pages AA27-30), which the PCT and the Tribunal accepted, showing the steps she had recently taken to try and progress her career. The Tribunal agreed to Dr Harrison being recalled to comment on same.

54. The Appellant provided a letter from Widdrington Surgery dated 13th January 2011 *(page AA27)* confirming it would be willing to help with her training requirements by offering one to four sessions a week from February to July 2011, subject to acceptance by the GMC, the PCT and the Deanery. The sessions would not be fully supervised but one of the doctors there would be contactable for any queries during consultations and would review the surgeries on completion.

55. Dr Harrison considered the terms of the offer fitted with a Retainer Scheme rather than what is now known as the Induction and Refresher (I & R) Scheme: it was not fully supervised and there was no mention of regular assessment. He considered that it was not a viable option in this case.

56. With regard to the letter from the North Western Deanery dated 17th January 2011 *(pages AA29-30)*, it simply laid out how that Deanery would operate a GP I & R Scheme and the fact it would require a willing training practice and the Appellant being on a willing local Performers List.

Dr Peter Brumby (GP Trainer at Longrigg Medical Centre)

57. In his Witness Statement Dr Brumby confirmed he had been a GP trainer since 1985, in which capacity he had taken responsibility for the GP training of more than forty doctors. He had also been part of the Northumbria Vocational Training Scheme (NVTS) advanced training network for a number of years in which capacity he had assessed a wide range of doctors in difficulty at various stages of their careers. He was assisted in his assessment of the Appellant by Dr Anne Harrison, who had been an NVTS trainer for fifteen years.

58. On 6th November 2009 the Appellant was invited to attend his practice for a one hour tutorial on their clinical software system (EMIS) before the assessment week began on Monday 9th November.

59. The assessment consisted of two, two day clinical sessions at Longrigg with a day of rest/reflection half-way through the week. An out of hours (OOH) session at the local OOH provider was also scheduled on the morning of Saturday 14th November.

60. The Appellant was to work in surgery, undertake home visits, read post, sign prescriptions, review and action test results, and do a small amount of "on-call" time speaking to patients on the telephone and assessing their clinical needs. The assessors would be present throughout and endeavour to adopt a discrete presence.

61. The assessors used the RCGP Consultation Observation Tool (COT) to assess the Appellant. They formally completed 11 COTs and were unable to find the Appellant competent overall in any of the consultations. They also kept contemporaneous notes of the consultations.

62. They concluded the Appellant's work was of a worryingly low standard and her consulting skills were very poor. As a result of escalating concerns about patient safety, and not wishing to subject patients to a poor experience of general practice, they terminated the assessment process on Friday 13th November and held a review meeting with the Appellant to inform her of the assessment results. They also cancelled the OOH session the following day.

63. Although the Appellant was given encouragement, advice and support by the assessors throughout, she showed no sign that she heeded any of their feedback. The assessors felt this was very unusual and disconcerting and that although the Appellant had an intellectual understanding of medicine she was quite unaware of how poorly she was performing clinically. She was also unable to follow ordinary advice, e.g.

simple instructions for using the computer. The assessors felt it was unlikely that further training could correct the Appellant's ingrained difficulties in managing the work of general practice.

64. At the hearing Dr Brumby confirmed that the assessors had abandoned a number of COTs because the consultations were going very badly and the assessors had to intervene to prevent a dangerous or inappropriate management plan being enacted.

65. The assessors had chosen four clinical vignettes as they were the ones that had unsettled them the most; they were a representative sample.

66. By the Thursday evening the assessors were very concerned about the Appellant's level of performance and how it was impacting on their patients. They felt it was important to call a halt at that stage; Dr Brumby rang Dr Harrison to let him know and he joined them at the review meeting on Friday morning, where they made it clear to the Appellant she was not showing a level of competence they would feel comfortable with for someone undertaking independent practice.

67. It was a reliable and appropriate workplace based assessment (WBA) with more than one assessor, using their usual setting, pace and selection of patients and pitched at a very low level without any terminal care cases or management of chronic disease over a period of time as they were simply determining competency.

68. The Appellant did ask to defer the assessment while her thyroxine dose was adjusted but she agreed to come on a later date and there was no evidence she was ill.

69. She was familiar with the building, the consulting room, computer system and patients having worked in the practice a number of years ago and Dr Brumby did not consider any of these had been an issue.

70. In response to the Appellant's submission she had no opportunity to learn during the assessment and only received feedback at the end of the week, Dr Brumby countered that it was a high-stakes summative assessment. The assessors were not there to teach the Appellant how to be a doctor, but to help her in the process of assessment by giving her direct instructions and help during consultations in terms of local protocols e.g. by telling her how to arrange a blood test within the practice or helping her with the computer system. Whilst there was always a formative element within the process, the assessors did not set out to teach the Appellant.

71 In response to questions Dr Brumby confirmed that Dr Harrison had told him the Appellant had passed the AKT, that Dr White had died, and spoke of the difficulty the Deanery faced in coming to a conclusion about her competence. He was not aware the Deanery had initially offered her six months of further training but he did know she had not been working for six months prior to the assessment. The assessment looked at very basic aspects of a GP's work, and once someone was trained as a GP he would not expect their basic competencies to fade over time as opposed to higher-grade competencies such as management or the long-term care of chronic conditions.

72. The EMIS computer system was fundamentally the same as when the Appellant had worked at the Longrigg practice several years before and had just been tweaked a little. She had received an hour's tutorial on it before the assessment.

73. Allowances were made for the Appellant in so much as she was only given two-thirds of the usual practice workload and plenty of time before surgeries began to settle down, look through notes and familiarise herself with the patient take, and also after surgeries to catch up with herself. As it was a WBA, the Appellant was not given any time between the ten-minute consultations. Whilst it was not unusual for surgeries to run ten or twenty minutes late, the Appellant's ran very late. Huge allowances were also made for her home visits; she was taken through a summary and encouraged her to look at patient computer records before going out. As she was driven there the nature of the patients' accommodation was discussed with her. Likewise, allowances were made for telephone triage in so much as the duty doctor's patient workload was reduced; the Appellant only had to do two hours of surgery, which was spread out so she could speak to patients at the appropriate time.

74. With regard to the clinical vignettes, for the first one the Appellant was spoken with on the way back from their visit, but it must have been clear to her they were not satisfactory because of the number of times the assessors had had to intervene.

75. Dr Brumby denied the size of the consulting room used for assessment had been a problem.

76. The Appellant had been scheduled to see 48 patients (randomly selected as they booked appointments) during the assessment; they had twelve COTs and probably another six to eight where the consultations had been stopped to maintain patient safety. By and large she did not get to the end of surgeries and was so far behind that either he (Dr Brumby) or Dr Harrison did them.

77. None of the twelve completed COTs were satisfactory. Some were satisfactory in parts, but none were satisfactory overall and all were recorded as the Appellant needing further development.

78. The assessors decided to terminate the assessment on Thursday afternoon. They felt they should give the Appellant the opportunity to respond at the meeting on the Friday morning. In their experience it was rare for this to happen.

79. Earlier, when the Appellant had worked at Longrigg in 2002 - 2003 the practice had suggested to the Deanery at that stage that there were problems with her performance, but the assessors had not had any contact with her since then. Dr Brumby had not mentioned this when Dr Harrison asked them to undertake the assessment as he felt professional assessors were entirely capable of assessing on what they saw rather than using any previous knowledge.

<u>Dr Amanda Booth (the Appellant)</u>

80. In her Witness Statement the Appellant confirmed that for the Returner Scheme she needed to pass the AKT and to obtain a satisfactory trainer's report, showing evidence of and demonstrating consulting skills using video.

81. At the Guidepost practice she had surgeries on Tuesday morning and afternoon, Thursday morning and Friday morning, when she also had a one-hour seminar with Dr White when they discussed a topic, reviewed her surgeries, or referrals. She felt she had a good relationship with Dr White and could discuss patients with her when the diagnosis was not clear, ask for help in diagnosing ENT conditions (as Dr White was a specialist), ask for help with treatment options and discuss differential diagnoses with her. She felt that Dr White was very supportive with her preparation for the AKT. However, they did not have any formal appraisal sessions and Dr White never explained to or shared with her any of the feedback which she sent to the Deanery. It was only after the Appellant had left the practice that she became aware that Dr White was liaising with the Deanery and providing some informal feedback, but she was never provided with copies of Dr White's memos or e-mail relating to this. Although they discussed matters of concern at their informal sessions, as far as the Appellant was aware, her training was going well; she had asked during their discussions if Dr White was prepared to sign her off and she had said "Yes". The Appellant felt sure that if Dr White had been able to continue as her trainer and with appropriate feedback, it would have been possible for Dr White to sign her off.

82. The Appellant had failed her AKT at the first attempt but thought it might be a measure of Dr White's confidence in her that, rather than seek to end her training at that stage, Dr White asked for and obtained a three-month extension to her training to allow her to re-take the AKT, which she passed in April 2009.

83. Dr White took sick leave from the beginning of April and the Appellant was left with the other partners, who supervised her surgeries but did not train her. She had asked Dr MacDonald for feedback on the penultimate day of her fifteen month training period but he had not mentioned any problems or explained he was not prepared to sign her off. She had left the practice at the beginning of May 2009 under the impression that she had passed the Scheme.

84 The Appellant only learnt Dr White had died some time after she herself had left the practice. From her point of view this meant there was no report on her performance and no appraisal had taken place; in short, she felt that there was no one to help her to finish the Scheme.

85. A month after she left the practice, Dr Harrison called her into his office to tell her she had not passed. She was shocked by this news, which came as a complete surprise. Dr Harrison appeared sympathetic and apologised for the problems this had created and said he would organise a further six months of training and look into why she had not received any feedback. Although frustrated by this, the Appellant could see why a further six months was required. However, she received a letter in August offering her a week's assessment at Longrigg instead. She attended a meeting with Dr Harrison on 2nd September 2009 when he explained further what was now being offered. With the benefit of hindsight, the Appellant felt she should have realised this would not adequately allow her to demonstrate her skills but, by then, she had already been out of practice for a number of months and she was not given any alternative training plan.

86. Due to hypothyroidism the Appellant delayed going to Longrigg until November. Her TSH had risen significantly, requiring an increase in her thyroxine dose; this increase can cause difficulties with concentration and memory and in hindsight, it may be that

she should have postponed further. She could not say whether her perceived poor performance may have been partly caused by a raised TSH.

87. She had found the assessment week especially difficult; she had not worked for the previous six months and she had to start afresh in a new practice with a schedule of ten minute appointments. On the first day she was running thirty minutes late and Dr (Anne) Harrison interrupted her and said she would finish the surgery. The Appellant felt she had been unable to demonstrate her clinical skills and it undermined her self-confidence. Dr Harrison's mobile phone went off three times in the second surgery and Dr Brumby's attitude also made her anxious. As a result she felt she did not perform to the best of her ability. She did not feel the assessors' report adequately reflected her abilities or efforts during that week. She was not provided with feedback until the last day of the week, by which time she felt it was too late to implement any suggestions they might have had.

88. The Appellant understood that with further monitoring, the Guidepost partners felt she could practise independently but her perception was that the doctors at Longrigg were negative from the start, and wondered if this had something to do with her having worked there in the past. With hindsight, she felt the week-long assessment was not a good idea and she should have raised concerns more vigorously before it commenced. She was desperately keen to continue her career and felt she had been let down on the Returner Scheme and deserved a further chance.

89. At the hearing the Appellant confirmed she had seen Dr White's memos and e-mail to the Deanery for the first time at her meeting with Dr Harrison on 8th June 2009. She said that Dr White had never discussed with her the four areas of concern set out in the memo dated 15th January 2009 *(page R3*7); nor had she mentioned there could be difficulties in signing her off *(page R3*7).

90. The Appellant had not asked for feedback from Dr MacDonald until her penultimate day, as he said there were no problems and he had nothing to say. He gave her the impression he was going to sign her off.

91. At the Deanery meeting on 8th June 2009 *(page AA9)* Dr Harrison gave no indication he might not be able to find her a Refresher placement in a different practice

92. Given Dr White had been on leave for the last month of her training at Guidepost the Appellant had thought further training would be a good idea.

93. With regard to the clinical vignettes, the Appellant accepted that her response to each had given rise to areas of concern, and that some of the assessors' criticisms were valid e.g. she should not have undertaken a rectal examination in the presence of the patient's husband. But she was criticised for her clinical skills in an environment she did not think was conducive to exhibiting them. She had been upset that she was not allowed to finish the surgery on the first morning and did not feel the assessors appreciated she was trying hard.

94. In response to questions, the Appellant confirmed she was aware the PCT would review her continued inclusion on its Performers List at the end of the Returner Scheme and that she had to pass the Scheme to the Deanery's satisfaction in order to return to practice.

95. Dr White made the application for the time-extension on her Returner Scheme; she did not discuss why, but the Appellant had failed the AKT the first time, so Dr White applied so that she could re-sit it.

96. When informed that the application for the time-extension was made before she took the AKT (the results not being available until February 2009), the Appellant acknowledged the application might have been made before she took the AKT.

97. The Appellant submitted she had agreed to the time-extension because Dr White wanted to do video-consulting work.

98. In some of the tutorials with Dr White after she got the results in February, she had discussed retaking the AKT but they never discussed her possibly not reaching satisfactory sign-off stage.

99. The Appellant claimed that the results of the case based discussion she undertook with Dr Morgan on 17th April 2009 *(pages RR16-17)* were satisfactory, but when challenged, she acknowledged that his overall conclusion was that she needed further development.

100. She explained that she had agreed to the Longrigg assessment at the time because there were no alternatives up for discussion.

101. She had attended a CSA Preparation Course in October 2009 (*pages RR19-22)* because she needed some practice before the Longrigg assessment: one of her examinations there had been satisfactory and one needed further development.

102. The Appellant felt she had not adequately explained the problems she had experienced at the PCT Panel hearing, but that she had had the opportunity to do so before this Tribunal. She accepted she was not safe to practise independently as a GP at this stage but she wanted the Tribunal to recognise her training at Guidepost had been flawed because Dr White's training had been inadequate in that she had never been introduced to the COT tool so she had no idea by what criteria she was being judged at the Longrigg assessment. She requested that Dr Harrison reflect on the offer he had made to her of six months further training on the basis she had not received adequate feedback at Guidepost. If he was not prepared to accept her at the Northern Deanery, then she would go elsewhere.

103. Having read the correspondence between Dr White and the Deanery, the Appellant acknowledged Dr White did have some concerns about her performance but asserted that Dr White had never communicated them to her nor showed her copies of the correspondence.

104. There was no formal feedback at their weekly sessions where they discussed the pros and cons of different management plans. In retrospect the Appellant felt they should have done more video consultation work.

105. The Appellant accepted that if she was to be taken on by Widdrington Surgery, the terms of their offer would need further clarification as she felt that she needed to be supervised.

106. The Appellant had been able to actively engage with Dr White for 14 out of the 15 months of the Scheme.

107. In the majority of the weekly sessions with Dr White (approximately 60 hours over the duration of the Scheme) either they reflected together over surgeries she had done and picked difficult diagnostic or management problems to discuss – usually four or five cases per session, or they looked at Multiple Choice Questions for the AKT.

108. The Appellant felt she had indirect feedback from Dr White when they discussed cases and Dr White would highlight the management of a problem and explain how she had managed the cases she had, but she had never criticised the Appellant's performance..

109. The Appellant thought that Dr White asked for a time-extension in order to do more video work on consultation because she wanted her to have more experience. The Appellant had been taken aback because Dr White had not said anything about her performance prior to that.

110. The Appellant did not know why Dr White had written in her memo dated 15th January 2009 *"She has stopped resisting my nagging and videoed some surgeries which we've used in teaching sessions" (page R36),* as she was she was quite happy to be videoed when asked to do it. She suggested it might mean Dr White was encouraging her to set up a camera and explain to the staff what she was doing.

111. Besides taking the AKT in the final month of the Scheme there were also video consultations, the trainer's report and case based discussion with Dr Morgan to be done.

112. At the weekly sessions, Dr White mentioned positive and negatives in the Appellant's consultations, but there was nothing to cause her to think she couldn't complete the Scheme.

Closing Submissions

113. The PCT's representative rehearsed the arguments relating to whether there had been a breach of condition set out in paragraphs 18-22 above.

114. He also submitted that the Appellant had been made fully aware from the outset of the criteria she had to meet on the Returners Scheme. She had been unable to satisfy two of the three requirements, and the Deanery had made it clear it would not allow her to continue on the Scheme and that it had nothing further to offer her in relation to Returner training. The Tribunal had heard that Dr Brumby considered her untrainable; none of the COTs had been satisfactory; and the Appellant had difficulty applying her knowledge to consultations.

115. The evidence of Dr Brumby, Dr Morgan, Dr MacDonald and Dr White, the outcome of the CSA course and the Longrigg assessment, together with the Appellant herself acknowledging she requires more training, all made it highly undesirable to allow the appeal. The Appellant had not suggested any suitable conditions to protect patients and the PCT had no suggestions for contingent removal or conditional inclusion.

116. The letter from Widdrington Surgery should be disregarded as a viable proposal as it neither had the support of the Deanery nor of the PCT. In relation to the letter from the North West Deanery, there were a number of hurdles to overcome before the Appellant could be accepted onto their scheme and she would have to withdraw from the PCT's Performers List and join the list of a local PCT in the north-west of England.

117. In the light of the letter from the North West Deanery, the PCT did not intend to pursue its application for national disqualification although the Tribunal had the inherent power to impose national disqualification of its own volition.

118. Counsel for the Appellant rehearsed the arguments relating to whether there had been a breach of condition set out in paragraphs 18 – 19 above, and submitted that if the Tribunal were to decide there had been no breach of either of the conditions as expressed, that would be the end of the matter.

119. He also submitted that the meeting on 8th June 2009 was critically important because Dr Harrison told the Appellant she needed a further six months of training but what he had assessed as necessary did not take place.

120. It was not surprising that the Appellant did not perform well at her assessment; she had been off work for six months and told she needed a further six months of training. The only people who felt her performance was irremediable were her assessors and it was arguable that this was due to the summary nature of the one and a half days she spent being assessed that week.

121. If the conditions could be construed in a way that the Appellant had failed to comply with one of them, then the PCT Panel ought not to have decided to remove her from the Performers List in circumstances where any failure to comply was not of her making but arose out of events outside her control.

122. In any event, the PCT Panel failed adequately or at all to take properly into account the difficulties which she had faced during her period of retraining under the GP Returner Scheme.

123. If the PCT Panel took into account the unfavourable report from Longrigg, then it was wrong to do so since the report's conclusions were irrelevant to the issue which the Panel had to decide, namely, whether or not there had been a failure to comply with a condition.

124. Given that any failure arose out of the illness of her trainer (Dr White) rather than out of any fault on her part, it was unreasonable and unfair of the PCT Panel to have concluded that the Appellant should be removed.. He suggested that a further period of conditional inclusion, the other option posited by the presenting officer, was the only fair option in such circumstances.

125. Counsel for the Appellant reiterated the grounds of appeal set out in paragraph 11 of the Appellant's Skeleton argument and in paragraphs 132 -137 below and contended that for all of those reasons, the Tribunal should allow this appeal and substitute an order for conditional inclusion.

126. The Appellant understood that any application by the PCT for national disqualification would be put on hold pending the outcome of this appeal. Given the North West Deanery's stance and the fact that the Appellant was to be the subject of a GMC Performance Assessment, it was not appropriate at this stage.

Consideration and Conclusions

127. We have carefully considered all of the written and oral evidence before us. We first consider the submissions relating to whether or not there was a breach of condition.

128. We accept the wording of the second condition could have been more clearly drafted; the use of the word *"pending"* is clearly incorrect and we agree the word *"following"* should have been used instead. However, we do not accept the submission on behalf of the Appellant that the condition imposed no obligation on the Appellant because the use of the word *"successful"* as opposed to *"satisfactory"* meant completion of the Returner Scheme was expressed as the trigger for review of her inclusion but was not expressed as an obligation on her part and merely set out a timetable identifying when there might be a review of her inclusion. In response to questions, the Appellant confirmed she was aware the PCT would review her continued inclusion on its Performers List at the end of the Returner Scheme and she was clear that she had to pass the Scheme to the Deanery's satisfaction in order to return to practice. Accordingly, we are satisfied the meaning and intention of the conditions were clear to the Appellant from the outset and that she was aware that the conditions would only be removed by the PCT when she had passed the Scheme to the Deanery's satisfaction. We are satisfied that the Appellant also must have understood the consequences of not passing the Scheme to the Deanery's satisfaction, i.e. if she was unable fully to comply with the conditions of her conditional inclusion, the PCT would be entitled to remove her from its Performers List.

129. Given the above, it was not necessary for us to consider the Appellant's removal on review under Regulation 14(8), which was suggested as an alternative power of the Tribunal by the PCT's representative. In any event, on this point we concur with Counsel for the Appellant that the purpose of Regulation 15(3) is to allow the Tribunal to make any decision which the PCT could have made, that is, it can alter the PCT's decision, but it cannot alter the grounds for its decision and accordingly, we could not legitimately rely on Regulation 14(8) in an appeal against a decision made under a different regulation.

130. We went on to consider the Appellant's appeal against the PCT's decision to remove her under Regulation 8(2) on the basis she had been in breach of the second condition.

131. In her Notice of Appeal the Appellant indicated her grounds of appeal were a failure in process, as her trainer was absent for the last month of the Scheme and because of her own ill-health. However, Counsel for the Appellant listed different and additional grounds of appeal in his Skeleton Argument. Accordingly, we considered those grounds of appeal but in doing so we also covered the Appellant's original grounds during our deliberations.

132. The first ground of appeal submitted by Counsel for the Appellant was that she had not received the training which she had been offered when she was included on the List and which everyone concerned had indicated was required.

132.1 We note that the Scheme was normally six months full-time or twelve months part-time and that the Appellant was offered a part-time post from 1st February 2008 until 31st January 2009, which was extended for a further three months until 30th April 2009 (at Dr White's request) to allow her more time.

132.2 We further note Dr Harrison's evidence that when the Appellant was accepted onto the Scheme for twelve months part-time there was no commitment to extend it, and he was aware in 2008 that there would be a future recommendation (which came into effect in April 2009) not to offer extensions for any reason such as poor performance. However, when Dr White asked for a three month extension he was sympathetic and granted it.

132.3 Furthermore, we note the extraordinary and difficult situation that arose when Dr White took sick leave and tragically died shortly thereafter, which was the reason why Dr Harrison remained sympathetic by the time of his meeting with the Appellant on 8th June 2009 and offered her a further six months of training in a different practice.

132.4 We accept Dr Harrison's contention that the words "if we can" had to be read into that offer, as all placements were voluntary and could not be guaranteed and the Deanery had no power to compel a practice to take a doctor.

132.5 Given all of the above, and the fact that the Appellant was able to actively engage with Dr White for at least 14 out of the 15 months of the Scheme, we do not accept that the Appellant did not receive the training which she was offered and which she required. (We have considered the last month of the Scheme during which time Dr White was absent in more detail in paragraph 134 below).

133. The second ground of appeal submitted by Counsel for the Appellant was that during the course of her training with Dr White, the Appellant had not received any formal feedback and was not given copies of the written informal feedback provided to the Deanery by Dr White. The third ground of appeal was that she had been lead to believe, at all times, that she would satisfactorily complete the Scheme. We considered both of these grounds together as we felt they were interlinked.

133.1 We accept that Dr White did not provide the Appellant with copies of the memos dated 30th May 2008 and 15th January 2009 or the e-mail dated 23rd December 2008 which she sent to the Deanery, and that it was only after the Appellant had left Guidepost that she became aware of them.

133.2 We note the Appellant's assertions that Dr White never communicated any concerns about her performance to her, never discussed with her the four areas of concern set out in the memo dated 15th January 2009, nor mentioned

there could be difficulties in signing her off and that there was no formal feedback at their weekly sessions. She submitted that in the majority of the weekly sessions with Dr White (approximately 60 hours over the duration of the Scheme) they went over surgeries she had done and picked difficult diagnostic or management problems to discuss or they looked at Multiple Choice Questions for the AKT, and that any feedback she received was indirect, when they discussed cases and Dr White would highlight the management of a problem and explain how she had managed some of her cases, but she never criticised the Appellant's performance in any shape or form.

133.3 We also note that on questioning, the Appellant initially claimed that she thought it might be a measure of Dr White's confidence in her that, rather than seek to end her training when she had failed her AKT at the first attempt, Dr White asked for and obtained a three-month extension to her training to allow her to re-take the AKT, which she passed in April 2009. However, when informed that the application for the time-extension was made before she took the AKT at the first attempt, the Appellant amended her evidence and said she had agreed to the time-extension because Dr White wanted to do video-consulting work.

133.4 We further note that despite the Appellant's evidence to us that she was quite happy to be videoed when asked, Dr White commented in her e-mail dated 23rd December 2008 that the Appellant *"had let [her] talk her into videoing herself"*, which together with her comment in her e-mail dated 15th January 2009 that *"She has stopped resisting my nagging and videoed some surgeries which we've used in teaching sessions"* indicates to us that the Appellant seemed reluctant to use video consulting.

133.5 Again, we observe the Appellant submitted that the results of the case based discussion she undertook with Dr Morgan on 17th April 2009 were satisfactory, but when challenged, she acknowledged that his overall conclusion was that she needed further development

133.6 Given the above contradictions in the Appellant's evidence, whilst we accept Dr White may have wanted to appear positive and to encourage the Appellant, and that she may not have shared any early concerns with the Appellant (having indicated in her memo dated 30th May 2008 *"I haven't shared this short letter with her yet but I regularly feedback on performance etc"*), we consider that by the time Dr White e-mailed Dr Harrison on 23rd December 2008 and told him that she had already part fed back to the Appellant where she thought she was and told her she did not think she was ready for a salaried job (despite the Appellant being almost eleven months into the Scheme at this stage), Dr White must have mentioned some of her concerns to the Appellant during her time on the Scheme, and we are not persuaded that there was a total absence of negative feedback over the entire period.

133.7 Likewise, given that the Appellant was told she needed a time-extension and her willingness to accept that she needed both this extension and the further six month extension offered by Dr Harrison in June 2009, together with Dr

Morgan's conclusions following their case based discussion at a very late stage in her training, we are not persuaded that the Appellant had been led to believe, at all times, that she would satisfactorily complete the Returners Scheme .

134. The Appellant's fourth ground of appeal was that the Deanery had not replaced Dr White when she had become ill, apparently because it was not aware of the trainer's illness.

134.1 We note that the timing was such that the Appellant completed fourteen out of fifteen months of the Scheme, leaving to take the AKT at the time Dr White went off on sick leave and only returning to the practice in late April 2009 before finishing in early May 2009. We also note that the other partners continued to supervise her surgeries but did not train her during this short period.

134.2 Given Dr White was only absent for a short time at the very end of the Scheme (which had already been extended beyond the mutually agreed duration), we consider that by that stage, if the Appellant expected she was about to be signed off as having satisfactorily completed the Scheme and being able to safely practise as an independent GP, normal supervision by the other partners should have sufficed. We concluded this was not a valid ground of appeal.

135. The Appellant's fifth ground of appeal was that the Deanery said that it was unable to confirm the Appellant's completion of the Scheme, not through anything done or not done by her, but because Dr White was not available to "sign her off" and had not been replaced, and that to second guess what Dr White or another might have done at the end of the training period was pure speculation;

135.1 We note the Deanery's evidence that there was no requirement stipulating that a report from Dr White was the only way evidence could be collected, and that another trainer in the practice could have provided it, but that when Dr White's co-trainer was unable to provide positive evidence from the practice and the five GP training practices approached to provide a further supervised placement for the Appellant declined to do so, the Deanery had to try and find another method to sign her off.

135.2 In these unfortunate and unforeseen circumstances we consider the Deanery took appropriate and constructive steps to find a reasonable alternative way to sign off the Appellant. Nor was it the Deanery's fault that Dr White was unable to sign her off, and the Deanery had no option other than to find another way to assess Dr White at the end of the training period. Given that all practices within a fifty mile radius with a vacancy declined to provide a placement, we accept that the alternative of the one week assessment by the Longrigg practice was a valid and reliable way to provide an assessment of consultation skills in the circumstances.

136. The sixth ground of appeal was that the Deanery had expressly recognised the inadequacies of the Appellant's training and had offered her a further six month period of training, presumably because that was what it thought was required. The Deanery had

undertaken to inform the PCT not to remove her from the list until she had completed this further six months' training.

136.1 We note that at his meeting with the Appellant on 8th June 2009, Dr Harrison told the Appellant that a Refresher placement in a different practice would be identified to begin in September 2009 for six months. However, as mentioned above, we have accepted that the words "if we can" had to be read into that offer as all placements were voluntary and could not be guaranteed and the Deanery was aware it had no power to compel a practice to take a doctor.

136.2 We consider Dr Harrison went above and beyond what was required in his attempts to assist the Appellant; she had already been granted one extension and we consider the offer of a further extension was given out of sympathy rather than obligation. Dr Harrison could not have foreseen that what he was offering could not be provided; he had made the offer in good faith but the fact he could not fulfil it and had to seek an alternative (which in the event the Appellant accepted) did not mean the Deanery should continue to be held to that offer or that the alternative was unsatisfactory.

137. The seventh ground of appeal was that then to reduce that retraining and assessment to a one week assessment was unsatisfactory and if that was all that had been required for the Appellant to demonstrate her skills, she would have been offered this originally. The eighth and final ground of appeal was that the assessment, in itself, was hopelessly inadequate as a tool to assess the Appellant's competence (even if that were the issue before the PCT Panel – which it was not). She had been off work for six months by that time and had been ill in the interim. She was being required to perform in unfamiliar surroundings with no further opportunity of retraining, as had been previously offered. She was then being required to take part in a summary assessment over a few days with no further training. Even during this week, she was not given the opportunity to learn from her mistakes. The only feedback which took place was at the end of the week on the Friday morning after which all further sessions were abandoned. We considered both of these grounds together as we felt they were interlinked.

137.1 We agree that the assessment was not the issue before the PCT Panel, or this Tribunal; it was simply a means to establish the issue of whether or not there had been a failure to comply with a condition and in relation to that, whether or not the Appellant was given a fair opportunity to comply with that condition by being able to satisfactorily complete the Returner Scheme when she was accepted onto it.

137.2 The Scheme ran for six months, or twelve months on a part-time basis. The e-mail and memos from Dr White together, with the fact the Appellant needed a further three month extension, indicate that she was not ready to be signed off after the usual twelve months. We consider the Appellant was fortunate to be granted a further three months to complete the Scheme and re-sit the AKT. Dr Harrison gave evidence that when the Appellant was accepted onto the Scheme for twelve months there was no commitment to extend it and yet although he was aware in 2008 that there would be a future recommendation (which came into effect in April 2009) not to offer extensions for any reason

such as poor performance, when Dr White asked for a three month extension he was sympathetic and granted it.

137.3 We also consider Dr Harrison's offer of a further six months of Refresher Training in June 2009, despite the very unusual and difficult circumstances in which it arose, went above and beyond what was required. When that offer could not be fulfilled we do not accept that the offer of a week-long assessment was an unsuitable alternative or that it was hopelessly inadequate as a tool to assess the Appellant's competence; we consider it was a valid way to seek confirmation of the outstanding elements to sign off the Appellant.

137.4 We note Dr Harrison considered the assessors his top team within the Deanery, and that they were only looking at very basic aspects of a GP's work. We also note and agree with Dr Brumby's assertion that once someone was trained as a GP he would not expect their basic competencies to fade over time, as opposed to higher-grade competencies such as management or long-term chronic care. We further note the allowances the assessors said they made for the Appellant at the surgery, on home visits and when she undertook telephone triage, yet despite all of this, when the assessors called a meeting on 13th November 2009 to explain to the Appellant why they felt they had to terminate the assessment early, they had very significant concerns which they did not feel were remediable. They felt that although the Appellant had an intellectual understanding of medicine, she was quite unaware of how poorly she was performing clinically and they were also concerned that she was unable to follow simple advice and felt it was unlikely that further training could correct her ingrained difficulties in managing the work of general practice.

137.5 At the hearing Dr Brumby confirmed that the assessors had abandoned a number of COTs because the consultations were going very badly and the assessors had to intervene to prevent a dangerous or inappropriate management plan being enacted. He told us that although they gave encouragement, advice and support to the Appellant throughout, she showed no sign that she heeded any of their feedback and they felt this was very unusual and disconcerting.

137.6 We note that the Appellant found the assessment week especially difficult; she had not worked for the previous six months, she felt she had been unable to demonstrate her clinical skills and it undermined her self-confidence when the assessor took over her surgery on the first morning because she was running late. Moreover, she did not feel the assessors' report adequately reflected her abilities or efforts during that week and she was not provided with feedback until the last day of the week, by which time it was too late to implement any suggestions they might have had. We also note that due to hypothyroidism the Appellant delayed going to Longrigg until November and that she submitted that the required increase in her thyroxine dose could, in hindsight, have caused difficulties with her concentration and memory. The Appellant also said her perception was that the doctors at Longrigg were negative from the start, and wondered if this had something to do with her having worked there in the past.

137.7 Dr Harrison told us he was not particularly surprised by the assessors' conclusions; he felt that although there had been significant hints of concerns earlier, it was only when they undertook a proper, in-depth assessment of the Appellant that they obtained compelling evidence. All work prior to that assessment was crystal ball gazing; the only summative assessments were the AKT and the Longrigg assessment. Dr Harrison did not accept that the pressurised atmosphere of the assessment might be an explanation of why the Appellant had not performed adequately..

137.8 We considered all of the submissions in relation to the assessment, bearing in mind that the Appellant was a fully trained GP who was on a Returners Scheme to brush up on her basic skills and update herself, rather than someone requiring training de novo. We concluded that this was not a case of the Appellant falling just below the required standard or needing some minor assistance in one or two areas. Despite having finished the Returners Scheme and being granted a time-extension to do so, the assessment confirmed the Appellant's competencies fell far below the level required to pass the Returners Scheme. We note that although the Appellant would ideally have liked further time on the Scheme, at the time she accepted the Deanery was unable to provide it and agreed to this alternative method of assessing her competencies. Nor did she indicate at the time that she still had health problems. Accordingly, we feel her later submissions in relation to possible ill-health, negativity on the part of the assessors, lack of feedback etc. were excuses to justify her poor performance rather than valid reasons for it.

138. Turning to the steps she Appellant told us she has recently taken to try and progress her career, we note that Dr Harrison considered the terms of the offer from Widdrington Surgery fitted with a Retainer Scheme rather than with an Induction and Refresher Scheme and that it was not a viable option in this case. He also indicated that the Deanery would not be able to support the Appellant undertaking further training on a self-funding basis in a non-training practice, as a certain level of competency from a trained educator and assessor was required for training to be effective. Given that this letter from the Widdrington Surgery has neither the support of the Deanery nor of the PCT, we accept that it is not a viable option

139. We also note the letter from the North Western Deanery is not a definite offer, but simply sets out how that Deanery would operate a GP I & R Scheme and states the fact that it would require a willing training practice and the Appellant being on a willing local Performers List. Accordingly, it is clear that there are a number of hurdles to overcome before the Appellant could be accepted onto their scheme and she would have to withdraw from the PCT's Performers List and join the list of a local PCT in the north-west.

140. However, given that in the light of this letter the PCT has submitted it does not intend to pursue its application for national disqualification and given that the Appellant is currently the subject of a GMC Performance Assessment, although the Tribunal has the inherent power to impose national disqualification on its own motion, we consider consideration of national disqualification should be left in abeyance pending the outcome of the GMC Performance Assessment.

Decision

141. The Appellant has failed to fully comply with the terms of her conditional inclusion in the Respondent's Performers List. Accordingly, her appeal against removal from the Performers List under Regulation 8(2) is dismissed and her name should be removed from its Performers List.

142. The parties are hereby notified of their right to appeal this decision under Section 11 of The Tribunals Courts and Enforcement Act 2007. Pursuant to paragraph 46 of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber Rules) 2008 (SI 2008/2699) a person seeking permission to appeal must make a written application to the Tribunal no later than 28 days after the date that this decision was sent to them.

Dated this 7th day of February 2011

……..
Debra R Shaw
First-tier Tribunal Judge on behalf of the Tribunal