

TRIBUNAL SERVICE
PRIMARY HEALTH LISTS

Case No: PHL/15307

Mr Christopher Limb – Judge
Dr Raj K Rathi – Professional Member
Mr Colin Barnes – Lay Member

BETWEEN:

DR CHINATU AKANO
(GMC Reg No: 6061365)

Applicant

and

HEREFORDSHIRE NHS PRIMARY CARE TRUST

Respondent

DECISION

Introduction

1. We sat to hear this case in Birmingham on 10th January 2011. In addition to the documents filed by each party we heard oral evidence from Dr John Kevin Ilesley and Mrs Ann Hughes called by the Respondent and from Dr Okano. Dr Okano represented himself and the PCT was represented by Mrs Jonsberg, the PCT Board Secretary.
2. Dr Okano qualified in Nigeria and initially worked in Nigeria. From at least 2003 he has worked in the United Kingdom and from 2004 onwards in general practice. In 2008 his registration with the General Medical Council (GMC) was suspended : such arose from working excessive hours and did not arise from concerns as to his clinical competence. We do not have the full papers from such proceedings (and are not critical of such) but do have the notification of Decision of 21st October 2010 which relates the history of the suspension being reviewed in August 2009 when it was varied to one of conditional registration and of further review and variation of conditions in October 2009. The conditions included (paragraph 6) the need to seek a report from his workplace Supervisor, whether hospital Consultant or GP principal or in an Out of Hours Service or Locum Agency, the Clinical Advisor or Senior Doctor, and (paragraph 8) the need to inform any organisation or person employing or contracting with him to undertake medical work, any Locum Agency or Out of Hours Service he is registered with or applies to be registered with, any prospective employer, and the PCT in whose list he is included or is seeking inclusion (such notifications to be at the time of application).

3. The relevance of the GMC Orders to the present case is that Dr Akano could not and did not work when suspended and has subsequently, from August 2009, worked as an Out of Hours GP in South Wales upon the list of Cardiff Local Health Board. His application to Herefordshire PCT was made on 21st August 2009 when suspension had only very recently been lifted and less than two weeks after he had started to work again.

4. There was delay in the PCT arriving at a Decision. In his application form, Dr Akano nominated two clinical referees, Dr Shukla and Dr Chimezie. Dr Shukla and Dr Chimezie were sent clinical reference forms under cover of letters of 24th September 2009. Dr Shukla completed the reference form dated 11th November 2009. As we shall indicate in fuller terms, such reference was not considered to be satisfactory when reviewed by Dr Ilsley on 25th November 2009. Dr Chimezie did not initially return the form. After “chasing” by the PCT the form was returned and received on 27th April 2010. That reference was considered an acceptable reference by Dr Ilsley when considered on 10th May 2010. Dr Akano was informed by e-mail on 12th May 2010 that the reference from Dr Shukla had not been accepted by the GP Advisor (Dr Ilsley) and a reference from an employer rather than a colleague should be obtained. Dr Godwin was then identified as a referee and a request sent to him. He returned a reference dated 10th June 2010 which, on 16th July 2010, was considered unacceptable when reviewed by Dr Ilsley. In the meantime there had been some further delay occasioned because all PCT’s were mandated from 1st April 2010 to review their list management procedures and such required a review which (in practical terms) suspended consideration of all applications which had not been finally decided as staple 2010. The PCT’s Family Health Service Contractor Panel Sub-Group met on 17th September 2010 to consider Dr Akano’s application (together, as we understand it, with four other applications which had been delayed by reason of the review). The outcome of that meeting was refusal of the application on the basis that only one reference was acceptable.

5. We have available the Minutes of the meeting of 17th September 2010 and the letter of 24th September 2010 which notified Dr Akano of the Decision, Both in the Minutes of the meeting and in the letter, the reasons of the Panel were summarised as:
 - (i) The reference from Dr Chimezie was from a colleague who had known Dr Akano for six years and for whom Dr Akano had worked as a locum until two years previously and was an acceptable reference;

 - (ii) The second reference from Dr Shukla was from a colleague/fellow locum not an employer and it was difficult to assess the reliability of the reference as some of the questions had not been answered and it was deemed unacceptable;

- (iii) Dr Akano had been given the opportunity to provide a third referee;
 - (iv) The third reference was from Dr Godwin who had only employed Dr Akano as a locum for three separate weeks in March, April and May 2010. The reference was considered unacceptable because it was sparse on detail and unsupported by evidence;
 - (v) The conclusion was reached that the references were unsatisfactory and the application was refused;
 - (vi) The decision of the Panel was noted to be unanimous.
6. The panel was constituted with a non-executive Director of the PCT as Chairman, together with Dr Waters, an LMC representative and General Practitioner, Dr Harrison, a Local Dental Committee representative and General Dental Practitioner, and Mr Edwards, an Associate Director of Integrated Commissioning. Others in attendance included PCT employees and advisers including Dr Ilsley and Mrs Hughes.
 7. Dr Akano sent his Appeal application form dated 2nd October 2010. His Notice in particular draws attention to having initially sent referees who had been previously accepted on other applications; the reference from Dr Godwin not having been notified to Dr Akano as being unacceptable and unsupported by evidence; Dr Akano not being aware of the contents of the references; Dr Akano not being informed as to the matters considered unsatisfactory in the references and not being given the opportunity to obtain a further fuller or satisfactory reference.

Facts/evidence

8. There was very little dispute of primary fact albeit differing arguments as to the interpretation of the facts and/or the judgments to be made upon those facts.
9. We refer in the course of our Decision to those aspects of the facts and history which appear to be relevant to the Decision but we have read all the written material placed before us as well as listening to the oral evidence.
10. The central factual evidence is that relating to the clinical references. The referees are nominated by the Applicant but the communication with the referee thereafter is made by the PCT. Each of the letters accompanying a request for a reference included the sentences : "I would be grateful if you could complete the enclosed reference reply form, as fully as possible, giving your opinion as to the clinical suitability of this person to work within a General Practice. You should ensure that any comments you choose to make about the Applicant

can be substantiated and are supported by your reasons". There is nothing within the letter or within the form which expressly indicates specific matters which should be covered save insofar as such are set out in the form. The form itself is headed as a "Clinical Reference". There are general questions as to how long the referee has known the Applicant and in what capacity, as to the role of the Applicant within the referees organisation, the length of service and the reason for leaving. There is a specific question as to whether the referee is aware of any restrictions on the Applicant's professional registration and/or of any outstanding investigations or complaints. Thereafter there is a series of questions which are prefaced by the sentence "Based on your knowledge of the Applicant please comment, with an explanation of your reasons, (the underlining is within the form) on their suitability for inclusion in the PCT's Performer List". The following sections then list the specific areas of clinical experience, clinical and professional competence, clinical judgment, communication and interpersonal skills, organisational skills, strengths and areas which require development, reliability, and would you re-employ the Applicant, explaining reasons if not. There is then a final box for additional comments felt relevant in considering the Applicant's suitability to provide NHS services. Although there is no further express guidance as to the extent of detail required the spaces left upon the form for the referee are such that only one or two sentences would fit in if completed in longhand, albeit there is a general reference to continuing on a separate sheet if necessary.

11. We summarise the reference from Dr Shukla quite shortly because Dr Akano accepts that the reference is not a satisfactory one. Dr Shukla knew Dr Akano only as a locum colleague. He said that from "informal talk..he appeared quite experienced" in relation to clinical experience. He indicated that he had no supervisory role to enable him to judge clinical and professional competence or clinical judgment. He indicated communication and interpersonal skills were good. He indicated he did not have any role to assess organisational skills. So far as strengths in areas which required development, he indicated that he found him quite confident during conversation about psychiatric and medico/legal issues and in relation to liability found him a reliable colleague. His additional comments indicated that Dr Akano was pleasant, cooperative and punctual and a reliable colleague.
12. Dr Ilsley's recorded comment on the reference form when marking it unacceptable was "We need to know more about the GMC restrictions. Furthermore the referee is a colleague (not an employer). He was a locum as well. It is difficult to assess the reliability of this".
13. In effect, the parties agreed that Dr Shukla was not in a position to give answers to most of the relevant questions. He was not negative but simply unable to assist to any significant degree because of the nature of his relationship with a knowledge of Dr Akano.

14. The reference form of Dr Chimezie indicated that he had known Dr Akano “as a colleague about six years then used as a locum to cover vacant sessions in our surgery till two years ago”. He indicated that the need for locums had ended because the practice had eight partners and covered necessary shifts between themselves. Dr Chimezie indicated that he was unaware of any restrictions on professional registration. His first answer indicated “Known this gentleman for at least seven years, has presented himself as hard working and serious professional, and very professional in discharging his duties”. His answers in relation to clinical and professional competence and clinical judgment were simply stated as “Excellent”. His answer in relation to communication and interpersonal skills was simply stated “Very good”. His answer in relation to organisational skills was “Excellent”. His answer in relation to strengths and areas which require development was “Above average”. His answer in relation to reliability was “Very reliable”. He indicated that he would re-employ the Applicant. His additional comments were “Very serious professional and above all human in his clinical judgments”. Dr Ilsley’s brief recorded comment when deeming the reference acceptable was “good reference”.
15. The reference of Dr Godwin indicated in its initial sections that Dr Akano had been known over a period of three months and had been used as a locum for three separate weeks, two weeks for Dr Godwin himself and one week for a colleague, one week in March 2010, one week in April 2010 and one week in May 2010. He indicated he was not aware of any restrictions on the Applicant’s professional registration. In relation to the question as to clinical experience, he answered “Not known to me”. In relation to clinical and professional competence he stated “Seemed satisfactory”. In relation to clinical judgment he answered “Seemed satisfactory”. In relation to communication and interpersonal skills he answered “Good”. In relation to organisational skills he answered “Good”. In relation to strengths and areas which require development he answered “Arrived on time, worked hard without complaint and kept good records”. In relation to reliability he answered “No problem”. In relation to whether he would re-employ the Applicant he answered “We have done”. By way of additional comment he said “We only employed him as a locum (? further word) and did not directly observe his practice, however competence and record keeping seemed good”. The recorded comment of Dr Ilsley when finding the reference unacceptable was “Very short acquaintance with the doctor, who only worked as a locum. The reference is sparse on detail and is unsupported by evidence”.
16. In his written statement, Dr Ilsley indicated in relation to the reference from Dr Shukla that he considered that reference without any other documents available. We do not further refer to such reference as both parties accepted it was not satisfactory. In relation to the reference of Dr Chimezie, Dr Ilsley noted that Dr Okano had been known to Dr Chimezie’s practice for seven years and the reference described Dr Okano as professional and competent. He continues “Several of the

fields are completed with one word answers but these were positive. Based on the referee's long acquaintance with the Applicant, together with his role as an employer, I accepted this reference". In oral evidence-in-chief, Dr Ilsley indicated that although some of the parts of the reference had been filled in sparsely he noted that Dr Chimezie had known Dr Akano for six years. Our understanding of Dr Ilsley's evidence was that the known background of such length of relationship in effect led him to feel able to assume that there was a proper evidential basis for very briefly worded positive assessments. In cross-examination, Dr Akano did not directly ask Dr Ilsley as to what was the distinction between the references of Dr Chimezie on the one hand and Dr Goodman on the other but our conclusion from the evidence as a whole and in particular the written statement and the evidence-in-chief was that the distinction between the two references in Dr Ilsley's mind was that Dr Chimezie had known for a long period of time and his assessments were to be understood in such light.

17. In his written statement, Dr Ilsley says in relation to the reference of Dr Godwin that the application criteria state that a referee should be able to form a judgment about an Applicant based on at least three months clinical experience. As we shall later indicate such appears to be a reference to the Regulations and/or the Department of Health Guidance. It is not a matter which is expressly referred to in the letter sent to the referee or in the reference form itself. Dr Ilsley in his written statement notes that it was impossible for Dr Akano to obtain an up to date reference that met such criteria because of his suspension until August 2009 and continues "However I was prepared to accept a reference that did not meet the criteria in respect of the three month guideline (as allowed by the guidelines on the application form) as long as such a reference was satisfactory in every other respect. In this instance I felt that I could not accept the reference supplied for the reason stated above at this point". The reason stated above is a reference back to the handwritten comments which indicate a short acquaintance together with sparse detail and no supportive evidence. The written statement of Dr Ilsley indicates that he did not want Dr Akano to be disadvantaged unfairly so decided to telephone Dr Goodwin to see if he was able and willing to amplify his comments in order to give him a further opportunity to provide a more satisfactory reference. In his written statement, Dr Ilsley indicates that he spoke to Dr Godwin's Practice Manager and to Dr Godwin on 16th July 2010. He confirms that he was told by the Practice Manager that she was aware as to the GMC restrictions although Dr Godwin said that he had not been told until Dr Akano arrived to work at the surgery. In his written statement he indicates in relation to his conversation with Dr Godwin : "I asked him whether he was able to give me any more information about Dr Akano or his work but he was not. It appeared that he had had little personal contact with him whilst he was working at the practice. His work had appeared satisfactory and there had been no complaints. He was unaware that Dr Akano's working hours should have been monitored and recorded". Dr Ilsley in a written

statement then indicates he was disappointed to learn that Dr Godwin could not provide any further positive information, that he was worried that Dr Akano had apparently failed to inform Dr Godwin about the terms of his GMC restriction, and that in the circumstances he felt unable to recommend admission to the Performers List. He felt that the application should be submitted for review by the Contractor Panel Sub-Committee.

18. In his oral evidence-in-chief, Dr Ilsley indicated that by the time of considering Dr Godwin's reference he was aware of the wider papers held by the PCT and of the GMC Order. He indicated that prior to his phone conversation with Dr Godwin he felt he did not know whether there was any wider potential basis for him expressing or forming a judgment as to Dr Akano's clinical merits such as any previous contact or conversation with colleagues who knew him well. He indicated that when talking with Dr Godwin and asking about his knowledge of the GMC restrictions, Dr Godwin indicated he did not know until he arrived at the practice and that he was annoyed that he had not known earlier. He further indicated that upon questioning as to the basis for his assessments he drew the conclusion that the acquaintance was not a substantial one (he indicated that he was finding it difficult to choose a suitable adjective and mentioned superficial though thought that was possibly too strong a word). Overall he formed the view that Dr Godwin did not have the sort of relationship with and knowledge of Dr Akano that Dr Ilsley would hope for or expect in someone giving a professional reference.
19. When cross-examined by Dr Akano, Dr Ilsley indicated his view that the various answers (which we have earlier quoted) contained in the reference form were extremely brief and made reference and no evidence, hence his phone call to see if there was substantiating evidence to support satisfactory or good assessment of the various areas covered by the questions. Dr Ilsley indicated that he did not believe he had a duty to make such a phone call to Dr Godwin but thought he was being fair to Dr Akano by doing so in order to discover whether the brief answers in the context of a short professional relationship could be expanded or strengthened. He says he was given no such material in support of the conclusion that Dr Godwin was in a position to bolster or support positive assessments of Dr Akano beyond the brief written answers read in the context of a three week employment as a locum.
20. Dr Akano asked various questions in cross-examination directed to the importance Dr Ilsley did or did not place upon the referee's knowledge of the GMC restrictions. It is recorded that Dr Ilsley accepted from the outset that the Practice Manager had been informed of those restrictions when the application was made albeit Dr Godwin not personally being told until Dr Akano first attended to work. He accepted the Practice Manager should have informed the doctors who carried professional responsibility for locums working in the practice and with

their patients. It was in one form or another suggested several times to Dr Ilsley in cross-examination by Dr Akano that Dr Ilsley had been notably influenced by whether or not Dr Godwin knew of the GMC restrictions but Dr Ilsley indicated that whilst he had a concern in such regard such was not the reason for his advice that the reference was not acceptable. Thus at one stage he said “My decision was not made because of the (GMC) restriction but because of my inability to get reassurance as to clinical competence from the third referee”. At another point he said that the reference was not a “bad” reference but an “inadequate” reference and many times referred to the very short period of relationship between Dr Godwin and Dr Akano as not being a period such as would enable a professional judgment.

21. Mrs Hughes was called and tendered for cross-examination. She principally gave evidence as to the processes of the PCT and in particular the reasons for the length of time taken to process Dr Akano’s application. She was not part of the decision making Panel albeit present at the meeting of the Panel. She was not asked about and would not have been in a position to give a relevant view so far as the merits of the reference from Dr Godwin. She accepted that with hindsight it would have been preferable that Dr Akano had been directly informed before the Panel hearing as to the initial view taken that the reference of Dr Godwin was not satisfactory.
22. Mrs Hughes indicated that the potential wider merits of Dr Akano’s application were not considered in detail because the availability of two satisfactory clinical references was a pre-requisite to being on the Performers List.
23. Dr Akano addressed us by way (in effect) of a joint process of giving evidence and making submissions. A great deal of what Dr Akano said to us amounted in effect to him saying that he had at no time acted otherwise other than with appropriate clinical judgment and proficiency and both before his suspension and subsequent to his suspension when working as a locum had received favourable comment both from other GP’s for whom he worked and from patients. It is to be recorded that the PCT at no time challenged such propositions. He also indicated that Dr Godwin had been very satisfied with him and that Dr Godwin was a very experienced GP of good standing. Dr Akano also made plain that he felt that the consideration of his application had been clouded or affected by either or both of Dr Ilsley and the Contractors Panel members being influenced by suggestion of lack of probity or integrity because of misunderstanding as to whether he had or had not complied with the GMC restrictions in relation to giving of information to potential employers as to those restrictions and/or the requirement for a report upon his work from those employing him. He made plain that he was not suggesting dishonesty by Dr Ilsley in his answers but was concerned that such issues had affected the otherwise judgment upon the references. Dr Akano also argued that there was objectively little difference between

the detail of answers or the quality of answers between Dr Chimezie's written reference on the one hand and Dr Godwin's written reference on the other. Whilst it may be said that the use of adjectives such as "excellent" by Dr Chimezie compared with the words such as "seems satisfactory" by Dr Goodwin is distinction, we accept the more general point that Dr Chimezie's written reference was as equally brief in its answers as that of Dr Godwin. As we shall later indicate the most relevant distinction between the two references is, in our opinion, not the words used so much as the known substantially longer professional relationship with Dr Akano on the part of Dr Chimezie (referred to variously in his six years plus two years use as a locum or as "at least seven years), compared with three separate weeks work on the part of Dr Godwin.

Law/Regulations

24. The provisions of the National Health Service (Performers Lists) Regulations 2004 ("the Regulations") apply to the process of inclusion in a Performers List. Regulation 4(2)(f) requires that an Applicant must provide (amongst other matters) "names and addresses of two referees, who are willing to provide clinical references relating to two recent posts (which may include any current post) as a performer which lasted at least three months without a significant break, and, where this is not possible, a full explanation and the names and addresses of alternative referees". Regulation 4(7) provides "If, in the case of any application, the Primary Care Trust finds that the information, references or documentation supplied by the performer are not sufficient for it to decide his application, it shall seek from him such further information, references or documentation as it may reasonably require in order to make a decision and he shall supply it with the material so sought". Regulation 6(1) indicates the grounds upon which a Primary Care Trust may refuse to include a performer in its Performers List. One of those grounds is "(b) having contacted the referees provided by him under Regulation 4(2)(f) it is not satisfied with the references".

25. The Department of Health provides guidance/advice for PCT's on list management in the document "Primary Medical Performers Lists delivering quality and primary care" published in August 2004. Such is no more than advice and does not have any force of law. Understandably, PCT's have regard to it and it may be noted that it includes the following:

"13.3 Where a doctor cannot provide references relating to a post lasting at least three months (for example, when his preferred working pattern is a series of short term locum positions), PCT'S may consider separate periods of work within one general practice over a twelve month period that average out at least thirteen weeks.

13.4 If initial references are not satisfactory, it is for individual PCT's to agree whether further references should be sought. However in an individual case, it would not be good practice for PCT's to pursue references indefinitely on the off chance that one will eventually be satisfactory.

13.5 If the PCT is satisfied that a doctor cannot meet the normal conditions it may accept references from other clinicians who it believes can comment objectively on the doctor's clinical abilities. When requesting references, the PCT must state that it needs clinical (not general) references. If it decides to ask referees to complete pro-forma rather than free-style references, it would be good practice to discuss their proposed content with local clinicians or their representatives to make sure that the pro-forma is fit for purpose".

26. Refusal on the ground of unsatisfactory references is a discretionary and not an obligatory ground of refusal, We bear in mind that the practical purpose of the Regulations is to take reasonable precautions to ensure that the past clinical performance and efficiency of a practitioner has been satisfactory and to do so by reference to those who have known them and their work to a reasonable extent in the past. Such is an objectively sensible course to take in relation to the engagement of any professional person and in the absence of unusual circumstances it would in our judgment normally be reasonable to refuse an application if it were properly considered that the references had been appropriately obtained and considered and objectively considered unsatisfactory. As with all discretionary powers, the power is to be exercised in a reasonable and just manner.

27. Insofar as any decisions of fact have to be made it is necessary that we are satisfied on the balance of probabilities.

Decision

28. It is self evidently an important matter that medical practitioners on a Performers List should be appropriately checked for their suitability to be on such lists. It is in our opinion reasonable that a PCT (and in this case Herefordshire PCT and their adviser Dr Ilsley) should want references to be more than simply a "tick box" exercise and to provide reasoning or evidence for the assessments given. It does however seem plain that the letters and documents used do not seem to make that plain to all referees – Dr Chimezie as well as Dr Godwin gave very short answers to most of the questions (one or two words in most cases). If this experience is common it may be that the PCT (and other PCT's if the faults are in a common format) should consider revision of wording to make the expectation of substantiating evidence or reasoning clearer. In addition (and recognising that the application form adopts the wording of Regulation 4(2)(f) in this regard) it may be

sensible to consider whether it can be made plainer what is potentially satisfactory for those practitioners who are not in a position to provide clinical references relating to two recent posts lasting at least three months without a significant break. So far as references are concerned it is implicit that the Regulations assume that people who are able to give the most useful recent assessment of clinical skills should give the references even if they are not in relation to posts which can be described as recent or as lasting at least three months without a significant break. If in such a context a PCT would want some further evidence as to what had occurred since a clinical post had been held it would be sensible that the forms make plain what is required.

29. Having said the foregoing and whilst it is important the process is as fair as possible towards the Applicant, it must be the primary concern of the PCT and of this Tribunal that references are obtained from a source with appropriate knowledge and experience in relation to the Applicant's clinical expertise. We accept the honesty and accuracy of Dr Ilsley in describing both what he did and the way in which he came to his decision in relation to the reference from Dr Godwin. Looking at the matter afresh we agree that it is appropriate to know the basis for a referee's assessment of the various areas upon which their opinion is sought. In the case of Dr Chimezie it is reasonable (possibly generous to the Applicant) to assume that because of the length of knowledge of the Applicant's practice there must have been a substantial basis upon which the referee could give the opinion, even though it had been preferable that he spelt that out. Is it reasonable, proportional and appropriate to approach the reference from a person who had only three weeks relationship with the Applicant (and one of those weeks was the Applicant carrying out locum work for one of his colleagues rather than for himself) on a rather different basis and without the same willingness to make an assumption that there must be proper grounds for opinions. That is even more the case in the context of Dr Godwin's reference which in relation to the primary clinical aspects of experience, competence and judgment answered respectively "not known to me. Seems satisfactory" and "seemed satisfactory". It may be noted the introduction to such questions was slightly different by the time of the form sent to Dr Godwin and expressly included the sentence "Single word responses will not assist the clinical adviser in reaching a judgment on the Applicant's suitability and may result in a delay in approval". Dr Godwin's answers were not clear cut in endorsing the Applicant's suitability for inclusion in the Performers Lists and gave no reasoning or evidence. The form read on its own is reasonably considered not to be satisfactory. We accept the evidence of Dr Ilsley in relation to his subsequent phone call with Dr Godwin not providing any significant further detail or evidence. We are in agreement with the opinion expressed by Dr Ilsley and accepted by the PCT Panel that the reference from Dr Godwin (the written reference and the telephone conversation being considered together) was unsatisfactory and that in the absence of two satisfactory clinical references it was reasonable and just to refuse the application.

30. In our opinion the PCT fulfilled their obligations under Regulation 4(7) by informing Dr Akano that the reference of Dr Shukla was not satisfactory and giving him the opportunity to provide an alternative reference and by Dr Ilsley giving Dr Godwin the opportunity in a telephone conversation to provide any further evidence or reasoning if he felt there was more he could say.

31. In the context of a public decision we wish to add and emphasise that the unsatisfactory reference was not a negative reference in the sense of saying that the Applicant was not suitable to include in a Performers List. It was inadequate not negative. This Decision should not therefore be taken to equate to a finding that Dr Akano's references were negative. This Decision is in effect neutral so far as any future applications he may make and which must be decided (so far as clinical references are concerned) upon the references then available.

Summary

32. The appeal is dismissed and the refusal of the PCT to include the Applicant upon its Performers List is upheld.

Christopher Limb
17th January 2011