

TRIBUNAL SERVICE

Case No. PHL15370

HEALTH EDUCATION AND SOCIAL CARE CHAMBER

PRIMARY HEALTH LISTS

TRIBUNAL JUDGE: CHRISTOPHER LIMB

PROFESSIONAL MEMBER: RICHARD STOKES

LAY MEMBER: LINDA THURLOW

B E T W E E N

**DR SUBASH CHANDRABOSH SHARMA
GOC REGISTRATION NUMBER 01-8032**

Applicant

and

BUCKINGHAMSHIRE PRIMARY CARE TRUST

Respondent

DECISION

Introduction

- 1 Dr Sharma is an optometrist who qualified in 1969. At various times during his career he has worked both in the United Kingdom and in Trinidad. More recently he has worked in the United Kingdom from 1996 to 2006, and worked in Trinidad from 2006 to 2009. From 2009 he has worked as a lecturer in optometry at the University of West Indies. He applied to join the Respondent's Ophthalmic Performers List by a form dated 19th August 2010. The application was refused and such decision

notified by letter of 7th February 2011 on the basis that, having contacted the referees provided, the PCT was not satisfied with the references. The more precise wording in such letter (reflected in the further letter of 24th February 2011) was that they had been “unable to secure two satisfactory references for your employment within the last two years”.

- 2 The essence of Dr Sharma’s position, which is reflected in various documents sent by him either to the PCT or to this Tribunal, is that his recent working history makes it difficult to provide any recent clinical references but that he has a long professional career without any basis for doubting his professional competence.
- 3 This case relates to the issues arising in relation to the provision of references.
- 4 By agreement of both parties the Tribunal has considered the case upon the papers and without attendance by either party. We have read all the papers provided to us, both in the formal bundle and in subsequent emails. In a recent email to the tribunal office on 20th July Dr Sharma suggested he was unaware that there would not be a hearing with oral submissions or evidence : he has plainly agreed and understood in the past (for example his reference in his email of 23rd June to a “hearing in absentia”) and it is now too late to require parties and witnesses to attend. No new feature requiring fresh evidence or argument has been identified.

The Law/Regulations

- 5 The relevant Regulations are to be found in the National Health Service (Performers Lists) Regulations 2004. Regulation 4 provides that an application for inclusion in a Performance List shall be made by sending the Primary Care Trust an application in writing which shall include (amongst other matters) the information mentioned in paragraph (2). So far as relevant to this case, paragraph (2) requires provision of “(f) 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 6(1) provides that a Primary Care Trust may refuse to include in the Performers List on grounds including: “(b) having contacted the referees provided by him under Regulation 4(2)(f), it is not satisfied with the references”.

Issues/Evidence

- 6 The application form which Dr Sharma completed had a section headed “References” which says “Please provide 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”.

- 7 In his application form, Dr Sharma provided two referees: Dr Colin Fowler who was stated to be a lecturer at Aston University, and Ms Shireen Bharuchi who was said to be an optometrist at Ciba UK Limited. By email of 10th September Dr Sharma indicated that Ms Bharuchi had contacted Dr Sharma to say she could not complete the form as she had not known him for the stipulated three months, and asked for Mr John Mortimer of Vision Express to be considered a replacement referee.
- 8 The reference form returned by Dr Fowler indicated that he had not worked with Dr Sharma for at least three months over the last two years, and that he had last worked with him over forty years ago as a fellow research student. The majority of the subsequent questions were then answered by Dr Fowler on the basis that he had “insufficient knowledge to form a judgement about this aspect of the optometrist’s practice”. The second reference form was returned by Mr John Waterman (no point is taken as to the substitution of Mr Waterman for Mr Mortimer) of Vision Express in Oxford who confirmed that he had worked with Dr Sharma for at least three months over the last two years. He indicated that the professional relationship between them had been that of Dr Sharma working as a locum optometrist in his store. Mr Waterman answered the majority of the subsequent questions on the form indicating that Dr Sharma had been found to be acceptable in relation to the various

headings (the only one not so answered being in relation to keeping up to date with training and maintaining performance in respect of which he said he had insufficient knowledge). It indicated in the “additional information” box that Dr Sharma had worked both in his own practice and in other practices within the group and that Mr Waterman had known him since 1997 when Dr Sharma had been a resident optometrist in the High Wycombe practice.

9 It is not in dispute that Mr Waterman was a practice manager and not a fellow optometrist. Although the notification letter from the Respondents does not give great detail, the papers in this appeal make plain that the reference was not considered to be satisfactory on the basis that:

(a) The reference from Mr Fowler did not meet the specified time period; and

(b) The reference from Mr Waterman was not a clinical reference.

10 Dr Sharma has not disputed that Dr Fowler had not known him in terms of his professional practice for forty years, nor that Mr Waterman was not a fellow optometrist but a practice manager. He indicates (as for example in his email of 19th February 2011 to the PCT) that his recent work in the UK as a locum did not bring him into contact with other optometrists and (in effect) he was unaware that other responsible professionals might be able

to give satisfactory references. Two letters of reference have been sent by email on 20th July – we refer to these in our decision.

Decision

- 11 It might be considered by some people that the PCT could proactively give greater assistance to Applicants such as Dr Sharma without recent clinical practice in the UK, but both the Regulations and the application form are very clearly worded and not only state that the primary requirement is for clinical references (the form underlines the word “clinical”), and for references relating to recent posts, but also “where this is not possible, a full explanation and the names and addresses of alternative referees”. In our opinion, the references provided in this case do not amount to satisfactory clinical references on the basis of experience of Dr Sharma's clinical practice, in a direct sense of being a working colleague, or on any alternative basis such as being in a related profession with a working experience of Dr Sharma's treatment of patients. Until the email of last week, there has been no provision by Dr Sharma of alternative referees who speak of his clinical competence, even if doing so from some other standpoint in the context of his recent career path.

- 12 The Regulations do not provide an absolute requirement for receipt of recent clinical references. The PCT has a discretion. However, we accept that it would normally be appropriate that the PCT has referees in relation to clinical competence. In the present case there were no such referees,

whether in the most common form of recent clinical colleagues or in some other capacity in the context of Dr Sharma's recent career. The relatively brief letters of reference sent on 20th July may or may not be able to be expanded and may be from people able to give satisfactory references, but in present form they are brief and moreover have been provided at a time not enabling the PCT to consider them and potentially ask further questions of the referees. It is not appropriate that we attempt to assess the referees' knowledge of Dr Sharma in such a context, but we note the letters are brief in detail.

- 13 We make plain that we do not wish our present finding to influence or harm any subsequent application by Dr Sharma which includes an explanation of his recent career and gives alternative referees in such a context. Any such application must be judged on its own merits and all the evidence then provided.
- 14 Upon the evidence available to the PCT and to this Tribunal, we are of the view that there is no satisfactory provision of recent clinical references and no alternative referees provided in the context of a full explanation of their ability to speak as to current professional competence.
- 15 The PCT was entitled to take the view that there was an absence of appropriate references and such was a reasonable basis for rejection of the application. We are also of the view that it is reasonable and

proportionate to refuse the application in the present case on the current evidence. The appeal is dismissed.

CHRISTOPHER LIMB

24th July 2011



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