

## **POLICY FOR ADMISSION TO THE PCT's MEDICAL, DENTAL AND OPHTHALMIC PERFORMERS LISTS**

### **1.0. INTRODUCTION**

- 1.1. On 1<sup>st</sup> April 2004 the National Health Service (Performers Lists) Regulations 2004 were introduced and since that date any doctor wishing to work in primary care in England has to be included in an English PCT's medical Performers List. The Regulations were amended on 1<sup>st</sup> April 2006 to introduce a dental Performers List and on 1<sup>st</sup> August 2008 to introduce an ophthalmic Performers List. This means that all doctors, dentists, optometrists and ophthalmic medical practitioners who provide treatment to NHS patients in a primary care setting must be included on a PCT's Performers List.
- 1.2. The effect of the 1977 NHS Act and the NHS (Performers Lists) Regulations 2004 is to allow PCT's to regulate the performance of primary medical, dental and ophthalmic services in their areas. Formally, this means that PCT's have the power to prevent performers from performing primary care services, or to place restrictions (conditions) on individual performers with which they are obliged to comply.
- 1.3. This applies whether a Performer provides services as a contractor/performer, or is a Performer who has been engaged or employed by a contractor to perform services (whether directly or via some other body or agency), or a Performer who is employed to perform the services by a PCT.
- 1.4. Each Performer can only be on one PCT list. However, that listing allows the Performer to provide services as within any PCT area in England. Any Performer that wishes to also provide services in Scotland, Wales or Northern Ireland must make arrangements to be included in their appropriate Performers List.
- 1.5. To enable a Performer to remain included on the PCT Performers List, they must be able to demonstrate that they have practised within the PCT area during the previous twelve months. Where a Performer is not able to demonstrate this, the PCT will consider the Performers removal from its Performers List.

### **2.0. PURPOSE OF THIS POLICY**

- 2.1. South Staffordshire PCT has a responsibility to clearly lay out the processes and procedures to be followed where a practitioner applies to be included in its Performers Lists. This policy applies to all general medical practitioners, general dental practitioners, optometrists and ophthalmic medical performers who apply to become primary care performers; all must be included on an English PCTs Performers List in order to treat NHS patients in a primary care setting in England. The aim of these procedures is to

2.2. The PCT will not discriminate on the grounds of gender, faith, race, disability, age or sexual orientation in the operation of any of the procedures dealt with in this document. Every application will be dealt with according to individual circumstances.

### **3.0. POLICY AGREEMENT PATH**

3.1. To be agreed by the PCT Board.

### **4.0. CROSS REFERENCE TO OTHER RELATED POLICIES**

- Management of Poorly Performing Contractors Policy
- GP Appraisal Policy

### **5.0. AGREED DEFINITIONS**

5.1. 'The Act' shall mean the National Health Service Act, 1977.

5.2. 'Admission Procedures' shall mean proceedings arising from an application by a Performer for admission to the list under the Act and the Regulations

5.3. 'Performers Decision Making Group' makes recommendations to the Responsible Board Member when there are concerns about an application.

5.4. 'PCT' shall mean Primary Care Trust

5.5. 'Performer' means a health care professional

5.6. 'Performers List' means a list prepared and published pursuant to Regulation 3(1)

5.7. 'Performers List Panel' – consists of the Head of Primary Care, a Primary Care Manager not involved in the original application and the relevant Clinical Advisor. The Panel reviews each application and may guide and advise the staff administering an application, request further information before making a decision, approve the inclusion or refer the application to the Performers List Decision Making Group where appropriate.

5.8. Any reference to 'he/him/his' includes reference to 'she/her/hers'

5.9. 'The Regulations' shall mean the NHS (Performers Lists) Regulations 2004, as amended

5.10. 'Responsible Board Member' is the executive member of the PCT's Board with formal responsibility for decisions in respect of admission, conditional admission, suspension, removal or contingent removal in respect of the Performers Lists and sits as Chair on the Performers

## **6.0. INCLUSION**

- 6.1. Most applicants are processed and approved without difficulty. There are however some applications which cause concern and the Regulations give the PCT the authority to undertake the following measures; all decisions made in respect of these will be made after due consideration by the PCTs Performers Decision Making Group.

### **6.1.1. MANDATORY REFUSAL**

There are certain grounds for refusal to the Performers List which are mandatory under the Regulations and for which there is no right of appeal. An applicant can however challenge the PCT decision through the Civil Courts

The grounds for Mandatory Refusal are –

- *he has not provided satisfactory evidence that he intends to perform the services, which those included in the relevant Performers List perform, in its area;*
- *it is not satisfied he has the knowledge of English which, in his own interests or those of his patients, it is necessary in performing the services, which those included in the relevant Performers List perform, in its area;*
- *he has been convicted in the United Kingdom of murder;*
- *he has been convicted in the United Kingdom of a criminal offence, committed on or after the day prescribed in relevant Part, and has been sentenced to a term or imprisonment over six months;*
- *he is subjected to a national disqualification*
- *he has not updated his application in accordance with regulation 7(4); or*
- *in a case to which regulation 15(4) applies, he does not notify it under regulation 15(5) that he wishes to be included in its Performers List subject to the specified condition.*

### **6.1.2. DISCRETIONARY REFUSAL**

The PCT may use its discretion to refuse admission to the Performers List. Decisions can be made on the grounds of suitability, efficiency and fraud. Such decisions take into account the information and declarations provided by the applicant and any other relevant factors that the PCT/NHS is aware of.

The grounds for Discretionary Refusal are –

- *having considered that the declaration required by regulation 4(4) and (if applicable) regulation 4(5), and any other information or documents in its Performers List*
- *having contacted the referees provided by him under regulation 4(2)(f), it is not satisfied with references*

- *having checked with NHS Counter Fraud and Security Management Service for any facts that it considers relevant relating to past or current fraud investigations involving or relating to him, which that Service shall apply and, having considered these and any other facts in its possession relating to fraud involving or relating to him, the Trust considers these justify such refusal*
- *having checked with the Secretary of State for any facts that he considers relevant relating to past or current investigations or proceedings involving or related to the performer, which he shall supply, and, having considered these and any other facts in its possession involving or relating to the performer, the Trust considers these justify such refusal; or*
- *there are any grounds for considering that admitting him to its Performers List would be prejudicial to the efficiency of the services, which those included in that list perform.*

## 6.2. DEFERRAL

- 6.2.1. An application can be deferred where there is an outstanding matter (e.g. criminal proceedings) involving the applicant where, if the outcome was adverse, it would be likely to lead the PCT to remove the applicant from its Performers List, if it had originally included him on it.

A determination to defer a decision needs to be evidence based and factually robust. The PCT may only defer taking a decision until the outcome of the event or events that led to that decision has been resolved.

There is no right of appeal against deferment.

## 6.3. CONDITIONAL INCLUSION

- 6.3.1. The PCT may consider that a Performer can be included in a Performers List subject to certain conditions. The aim of the conditions must be:

- To prevent any possible prejudice by the performer's inclusion to the efficiency of primary care services
- To prevent any attempt by a Performer to secure for himself or another person any financial or other benefit to which they are not entitled

- 6.3.2. The PCT is obliged to review conditions if the Performer requests a review in writing providing the request is made –

- no earlier than 3 months after the date on which the PCT imposed the conditions; or
- no earlier than 6 months after the date of any previous review

- 6.3.3. Should the applicant fail to comply with any condition(s) imposed by the Performers List Panel on behalf of the PCT, the PCT may remove the applicant from its Performers List.

- 6.3.4. On review, the PCT may vary or remove conditions (or may conclude that removal would be justified).

## **7.0. RIGHT OF APPEAL**

- 7.1. There is a right of appeal to the Family Health Services Appeal Unit against the following decisions:
- Discretionary refusal to include a Performer on a list
  - Conditional inclusion of a Performers name on a list
  - Review and revision of conditions associated with conditional inclusion
- 7.2. The appeal rights are consistent with the National Health Service's obligations under the Human Rights Act 1998 and as such they are to a fully independent appeal body.
- 7.3. Appeals to decisions made by PCTs as part of the local management of Performers Lists are made to the Family Health Services Appeals Authority (FHSAA). The FHSAA is an independent Tribunal which is completely independent of the Department of Health, is not a Special Health Authority, and is not accountable to the Secretary of State for Health. Appeals are made directly to the FHSAA. The Tribunal transferred from the National Health Service Litigation Authority (NHSLA) to the Tribunals Service on 1<sup>st</sup> April 2009; this is an executive agency of the Ministry of Justice.
- 7.4. An applicant who receives notification of one of the above decisions may appeal to the FHSAA. This must be done in writing directly to the FHSAA within 28 days from the date the PCT notified the applicant of its decision.
- 7.5. Unless the applicant withdraws the appeal, the FHSAA will determine the appeal in accordance with its rules and any directions it may issue about the way in which the appeal will be dealt with.

## **8.0. EMERGENCY INCLUSION**

- 8.1. Following the declaration that an emergency has occurred, is occurring or is about to occur in accordance with the Civil Contingencies Act 2004. The General Medical Council may register medical practitioners under their provisions for emergency registration.
- 8.2. GPs registered under GMC emergency provisions may apply for inclusion on the PCT List, providing they have been on such a List in the preceding five years and had only been removed from that List because they had not performed services for the PCT in the previous 12 months or for some other reason unconnected with the impairment of their fitness to practise. Such applicants need not supply all the information normally supplied by Performers List applicants, but there are also additional obligations placed upon them.

## **9.0. THE APPLICATION PROCESS**

- 9.1. Legal responsibility and accountability for decisions to include practitioners on the Performers Lists rests with the PCT.

9.2. All applicants are required to attend the Primary Care Trust, located at Springfields Health & Wellbeing Centre, Lovett Court, Rugeley, Staffordshire, WS15 2FH, in relation to their application for purposes of identification. In addition, the PCT reserves the right to require the applicant to meet with the appropriate Clinical Adviser.

9.3. An application to a Performers List must include:

- A full career history (including non-professional posts)
- Two recent clinical references relating to posts held within the previous 12 months which lasted at least three months (in some exceptional circumstances, the 12 month period may be waived, for example Maternity Leave)
- Details of any relevant qualification including vocational training
- Details of any criminal convictions and cautions anywhere in the world. The PCT will undertake CRB checks even if the applicant states that they have never resided within the UK. In circumstances where an applicant is coming directly from overseas, the PCT will require the applicant to present a current CRB certificate (or equivalent) from the country of origin; along with a certified translation if the original is not issued in English. The total cost of a foreign CRB and translation will be borne by the applicant.
- Details of any known involvement in NHS fraud investigations
- Details of past investigations by licensing, regulatory or other bodies resulting in an adverse finding and/or restrictions on practice and any current investigation anywhere in the world
- Details of language qualifications (Section 11 and Appendix A detail the agreed language requirements for the different professions)
- An Enhanced Disclosure Certificate from the Criminal Records Bureau

9.4. Applications will be processed by appropriate locality Primary Care Administrator; the process will be overseen by the corresponding locality Primary Care Manager. If the Primary Care Administrator has any concerns regarding an application, they must raise it with their Primary Care Manager in the first instance.

9.5. **Stage 1**

Regulatory checks will be carried out to identify any aspects requiring Statutory Refusal. If Statutory Refusal needs to be considered, subject to there being sufficient robust evidence, the application will be referred to the Performer List Panel.

The Regulatory checks include –

- Verification of applicants identity via three forms of original identification (e.g. birth certificate, passport & driving licence)
- Two clinical references obtained by the PCT from a clinician who has worked with the applicant during the last 12 months for a period not less than 3 months.
- Current registration with the appropriate registering body and details of any past or current investigations i.e. GMC, GDC, GOC
- Evidence of current defence organisation membership

- Self employed status for non-national/EEA member
- Vocational training qualification certificate
- Confirmation of the necessary language requirement – see appendix A
- Family Health Services Appeal Unit (information on current or past refusals to admit, conditional admission, removals etc)
- NHS Counter Fraud Service
- Criminal Records Bureau (CRB) check
- Previous PCT
- Occupational Health Certificate

#### 9.6. **Stage 2**

Two clinical references will be obtained by the PCT from referees nominated by the applicant. The referees must have worked with the applicant during the preceding 12 months for a period of not less than 3 months. The PCT will issue a reference template to the nominated referees. The references will be checked in respect of the content and the period to which they refer against the other information provided by the applicant. The Primary Care Manager will determine the extent of additional checks to be undertaken and/or any additional information required.

Otherwise the application will proceed to –

#### 9.7. **Stage 3**

The clinical references along with a copy of the applicant's application form and CV will be forwarded to the appropriate PCT clinical adviser for their clinical opinion. Where the appropriate clinical advisers certify that the references are satisfactory and there are no adverse indications arising from the information, documentation, declarations or checks the application will proceed to –

#### 9.8. **Stage 4**

The whole application is then re-checked by a Primary Care Administrator and, if found to be complete and in order, is forwarded to the appropriate Primary Care Manager who will refer it to the PCT Performers List Panel.

#### 9.9. **Stage 5**

The Performers List Panel consists of the Head of Primary Care, a Primary Care Manager not involved in the original application and the relevant Clinical Advisor. The Panel reviews each application and can –

- Guide and advise staff administering an application
- Request further information prior to reaching a decision
- Admit the applicant to the Performer List
- Refer the application to the Performers Decision Making Group

## **10.0. APPLICATIONS FROM NON EEA NATIONALS**

10.1. Applicants from outside the EEA will need to supply evidence of their entitlement to work and remain in this country. Where an applicant intends to be a sole trader, partner, contractor and/or Performer (i.e. not an employee) they will also have to demonstrate their ability to work as a self employed person. This will be demonstrated by:

- A stamped passport indicating the relevant level of entry clearance i.e. inclusion of work permit
- A corresponding letter from the Home Office

10.2. Dentists from non EEA nations that have not got a Vocational Training Number or who have not completed an appropriate period of Vocational Training as defined in the Regulations must be assessed by the PCT in conjunction with the Postgraduate Dental Deanery to determine whether the dentist can be admitted to the List based on them having experience and training equivalent to Vocational Training.

## **11.0. LANGUAGE REQUIREMENTS**

The NHS (Performers Lists) Regulations 2004, as amended, paragraph 6 (2) (b) states:

*“The grounds on which a Primary Care Trust must refuse to include a Performer in its Performers List are that –*

*... it is not satisfied that he has the knowledge of English which, in his own interests or those of his patients, is necessary in performing the services, which those included in the relevant Performers List perform, in its area.”*

### **11.1. MEDICAL PERFORMERS LIST**

For doctors from outside the European Economic Area (EEA) member states, their English knowledge is checked by the General Medical Council as part of the registration process.

Doctors from EEA member states must have one of the following:-

- Evidence of graduation from a UK or Irish Republic medical school
- A Certificate of Completion of Training
- A stamped International Language Testing System (IELTS) Academic certificate Test Report with a score of at least 7.0 with a minimum score of 7.0 in each of the areas tested (speaking, listening, reading and writing).

### **11.2. DENTAL PERFORMERS LIST**

For dentists from outside the EEA, their knowledge of English is checked by the General Dental Council.

In order to work as a NHS dentist they will need to have a Vocational Training number or follow the assessment process detailed in Appendix B.

Dentists from EEA member states must have one of the following:

- Evidence of graduation from a UK or Irish Republic dental school
- Successfully completed a years vocational training in the UK
- A stamped IELTS Academic certificate Test Report with a score of at least 7.0 in each of the sections, including the Academic Reading Modules
- A language testing certificate which demonstrates a level of attainment comparable to a minimum of the academic IELTS level 7.0 in each module see Factsheet 17, Gateway 12181 (July 2009).

### **11.3. OPHTHALMIC PERFORMERS LIST**

For optometrists from outside the EEA, their knowledge of English is checked by the General Optical Council.

Dentists from EEA member states must have one of the following:

- Evidence of graduation from a UK or Irish republic optometry school
- Successful completion of one year pre-registration training in the UK
- A stamped IELTS Academic certificate Test Report with a score of at least 7.0 in each module in each of the sections, including the Academic Reading Modules
- \*A language testing certificate which demonstrates a level of attainment comparable to a minimum of the academic IELTS level 7.0. Individual scores for each section of the test must not be lower than 6.0, with the exception of the 'Speaking' section, where a minimum score of 7.0 must be achieved.

*\*A list of comparable exams and levels provided by the Department of Health and acceptable to South Staffordshire PCT are detailed in appendix A.*

### **12.0. APPLICATIONS FROM GP REGISTRARS, DENTAL VOCATIONAL TRAINEES AND OPHTHALMIC PRE REGISTRATION TRAINEES**

12.1. GP Registrars and Dental Vocational Trainees must apply to join a Performers List before their vocational training in general practice begins. However, it is not always possible to complete the admission process before the date on which they are due to begin training.

12.2. The Regulations allow GP Registrars/Dental Vocational Trainees registered with the GMC/GDC respectively, to perform primary medical/dental services despite not being included on a Performers List, as long as:

- They have applied to join the Performers List before the date on which the training is due to begin; until
- Either the PCT notifies them of the decision on the application, or until two months after the date on which the training begins, which ever is the earlier.

- 12.3. Should the application process not be completed by the end of the two month period, the Registrar/Vocational Trainee ceases to be able to perform in primary medical/dental service until such time as the application process is successfully completed or there is a reasonable explanation for the delay. If it becomes apparent that an application does not look like it will be completed within the two month period, the PCT will write to the applicant at the six week point to advise the applicant that the process may not be completed within the usual two month timescale. The PCT will advise the applicant of the date on which they will have to cease practising until their application is completed. This will enable the training practice sufficient time to cancel clinics if necessary so as to avoid inconvenience and disruption to patients. The PCT will continue to keep all parties updated until the situation is resolved.
- 12.4. Any person who is not an optometrist, i.e. an Ophthalmic Pre-registration Trainee, but expects to become so on successful completion of their training may make an application to the PCT not less than three months before they anticipate being entered on the General Ophthalmic Council Register.

### **13.0. SIGNIFICANT BREAKS IN CAREER HISTORY**

- 13.1. Where a Performer applies to be included in a list and has not provided the relevant NHS services for a period of more than a year he will be required to meet with the appropriate Clinical Advisor to identify what, if any, retraining needs he may have. Expert advice will be sought, e.g. from the Deanery as necessary.

### **14.0. PERIOD OF TIME TO PROCESS AN APPLICATION**

- 14.1. The applicant will need to bring their application form and all original documents to the PCT office at least eight weeks before the planned date of inclusion. The PCT will not accept an application unless the form is fully completed and is supported by all of the required documents. Where incomplete applications are presented, the applicant will be asked to make an appointment to return with a complete application. Only when the completed application is received will the PCT commence the application process. PCT staff will make every effort to complete the application process within the eight weeks.
- 14.2. There are however a number of issues that might potentially delay approval. These may include delays in CRB checks and receipt and suitability of references. In addition, where the PCT has concerns about the inclusion of an individual there are other processes which might need pursuing, for example conditional inclusion.
- 14.3. Where an application has not been completed within a three month period where supplementary information is required from the applicant or their referees, the PCT will contact the applicant and advise that their application will terminate if the application is not concluded within six months of its original commencement. If an application fails to be concluded within a six month period, the PCT will terminate the process and inform the applicant

that they will need to submit a new application if they still wish to be included. The PCT will notify the Secretary of State and neighbouring PCTs that the application has terminated.

## **15.0. CONTINUED INCLUSION**

- 15.1. The PCT will contact each of the Performers on an annual basis to establish that they have practised within the PCT during the preceding 12 months. In circumstance where a Performer has not practised within the 12 month period, the PCT may take steps to remove the Performer. As part of this annual review, the PCT will also request that the Performer confirms the accuracy of personal details e.g. private address and telephone numbers.
- 15.2. All GPs included on the PCTs Performers List will be required to participate in the PCT GP appraisal process. Failure to comply may result in removal from the Performers List.

## **16.0. SUMMARY OF ROLES AND RESPONSIBILITIES**

- 16.1. The Primary Care Team will provide the administrative and managerial support for the application process. The majority of decisions will be straightforward and made by the Performers List Panel.
- 16.2. Where there are concerns in respect of an application, the appropriate Primary Care Manager will review the available information and ensure that the application follows the appropriate path.
- 16.3. The Clinical Advisors will review references and accompanying information relating to an application and decide whether or not they are acceptable, and identify any concerns.
- 16.4. Where there are concerns about an application, the Performers List Panel will consider all the information and make recommendation to the Performers Decision Making Group.

## **17.0. ADDITIONAL RESOURCES REQUIRED**

- 17.1. No additional resources are required.

## **18.0. ADDITIONAL TRAINING REQUIRED**

- 18.1. No additional training is required.

## **19.0. COMMUNICATION OF THIS POLICY**

- 19.1. The policy, once approved, will be circulated to the relevant PCT departments, GP, dental and ophthalmic practices and the Local Medical, Dental and Optical Committees.

19.2. The policy will be accessible via the PCT's website for performers/contractors, applicants to the Lists.

## **20.0. PROCEDURES AND GUIDELINES REFERENCED IN THIS POLICY**

- The NHS (Performers Lists) Regulations 2004; (S.I. 2004/585) as amended by S.I. 2005/502,893 and 3491, 2006/635 and 1385, 2008/1187 and 2010/22, 234 and 412 Statutory Instrument 2004/585.
- The NHS (Performers Lists) Directions 2010.
- Department of Health Guidance: Delivering Quality in Primary Care – Trust Management of Primary Care Performer Lists.

## **21.0. COMPLIANCE MONITORING**

21.1. Each application is checked and authorised by the Performers List Panel.

## **22.0. REVIEW PERIOD FOR THIS POLICY**

22.1. This Policy will be reviewed on an annual basis by Primary Care and or when amendments to the relevant Regulations or guidance are issued by the Department of Health.

22.2. Date of review ~ November 2011

## APPENDIX A

<b>English Language Testing Qualifications</b>		
<b>Awarding Body</b>	<b>Title of Qualification</b>	<b>Score equivalent to a minimum of 7 at each module of IELTS</b>
Cambridge University Certificate in English (ESOL) www.cambridgeesol.org	Business English Certificate (BED)	BEC Vantage
London Chamber of Commerce Institute Examination (LCCIEB) www.lccieb.com	English for Business (EFB)	EFB Level 2
National Open College Network NOCN www.nocn.org.uk	NOCL Entry Level Certificate ESOL Skills for Life	Entry 2
Pitmans www.pitmanqualifications.com	Certificate in English	Achiever B2 *CEF Level
Trinity www.trinitycollege.co.uk	B2 *CEF Level	Certificate in Integrated Skills in English (ISE I)
University of Bath www.bath.ac.uk/ubelt/	English Language Assessment	2.5
Linguarama www.linguarama.com	Linguarama English Test	2.0
Eutopia Medical Solutions www.eutopiamedical.com	Eutopia Certificate in Dental English Language	60%
Educational Testing Service www.ets.org	Test of English as a Foreign Language (TOEFL) Internet Based Test	80
Educational Testing Service www.ets.org	Test of English as a Foreign Language (TOEFL) Computer Based Test	200
Educational Testing Service www.ets.org	Test of English as a Foreign Language (TOEFL) Paper Based Test	450
Educational Testing Service www.ets.org	Test of English for International Communication (TOEIC)	660

**DENTAL VT EQUIVALENCE TRAINING**

In order to undergo VT Equivalence Training the Dentist must have received a written offer of employment from an approved training practice. The PCT can advise if the practice is approved or if it needs to apply for training status.

If the practice is not already an approved training practice, it will need to apply for training status and be approved before any application can be considered.

The written offer of employment and three copies of a portfolio of clinical experience will need to be delivered in person to the Primary Care Administrator, along with the completed application form and other required documents. Then two copies of the portfolio will be sent to the Postgraduate Deanery to be assessed, to determine whether the dentist has the required experience and training equivalent to Vocational Training, or to advise what further training is required.

Once it has been assessed the Postgraduate Deanery will return the portfolios to the PCT, together with a letter advising of the training requirements (if any), and a training plan will then need to be agreed between the trainer and the applicant. A copy of the training plan will be sent to the Postgraduate Deanery and a copy to the PCT.

The application process, to join the Dental Performers List, will proceed at the same time as the assessment of the portfolio and inclusion onto the List can only be approved if all of the above requirements are met. After the completion of the training, the Performer will be required to provide a copy of the letter issued by the Postgraduate Deanery, which confirms their VT by Assessment Number. This will then enable the Performer to be fully included on the Performers List.