

**COUNCIL FOR HEALTHCARE REGULATORY EXCELLENCE**

**NOTE OF CASE MEETING ON 25 NOVEMBER 2005**

**BY TELEPHONE**

**Re: Mr Edward John Neville Chater**

**PRESENT:** Jonathan Asbridge (Chair)  
Nigel Clarke  
James McCusker

**IN ATTENDANCE:** Professor Julie Stone, Deputy Director, CHRE  
Michael Andrews, Fitness to Practise Manager, CHRE  
Briony Mills, Fitness to Practise Officer, CHRE  
Tom Cassels, Partner, Baker & McKenzie (Legal Advisor)  
Andrew Hill, Associate, Baker & McKenzie  
Paul Benjamin, Trainee Solicitor, Baker & McKenzie

**1. DEFINITIONS**

In this note, the following abbreviations will apply:

CHRE	Council for Healthcare Regulatory Excellence
GDC	General Dental Council
Mr Chater	Mr Edward John Neville Chater
PCC	Professional Conduct Committee of the GDC
SPM	Serious Professional Misconduct
The Act	NHS Reform and Healthcare Professions Act 2002
The Council	CHRE as constituted for this Section 29 Case Meeting
Truscott/Ruscillo case	The Court of Appeal decision in CRHP v (1) GMC and (2) Ruscillo and CRHP v (1) NMC and (2) Steven Truscott [2004] EWCA Civ 1356; [2005] 1 WLR 717.

**2. THE PCC'S DECISION**

The Council considered whether the decision of the PCC on 3 November 2005, finding Mr Chater guilty of SPM and concluding the case without sanction, should be referred to the High Court under section 29 of the Act.

### **3. DOCUMENTS**

The following documents were before the Council:

- (a) Transcript of the hearing dated 2 and 3 November 2005;
- (b) Exhibits before the PCC hearing;
- (c) Determination of the PCC dated 3 November 2005;
- (d) CHRE's Section 29 Case Meeting Manual;
- (e) CHRE's Section 29 Process and Guidelines (Nov 2005); and
- (f) Lawyers' report prepared by Baker & McKenzie dated 24 November 2005.

### **4. CONFLICTS OF INTEREST**

The Chair informed the Council that the members convened had no apparent conflicts of interest and no conflicts of interest were registered.

### **5. MATTERS NOTED BY THE COUNCIL**

The Council noted the matters set out below.

#### **5.1 Jurisdiction**

The Council was advised that CHRE had jurisdiction to refer the case to the High Court under section 29(4)(b) of the Act, if the relevant criteria were met.

#### **5.2 Background to the PCC's findings**

- (a) Mr Chater appeared before the PCC on 2 and 3 November 2005 in relation to an allegation of SPM. Most of the charges related to his treatment of a patient, Mr A, in particular his failure to keep adequate records of the treatment and advice given to Mr A. One of the charges against Mr Chater, however, related to his failure to ensure that he had adequate professional indemnity cover for the period from May 2000 to May 2001.
- (b) Although he had an insurance policy in place at the time, provided by Norwich Union, it did not afford professional indemnity cover, so that if a patient had a claim against Mr Chater, the patient would have to look to him personally.
- (c) Mr Chater had also appeared before the PCC on 25 January 2002, relating to a charge of SPM for treatment provided to a patient in late 1997 and early 1998. The hearing had originally commenced in October 2001, but was adjourned so that Mr Chater could obtain legal representation. One element of the charges against Mr Chater at that hearing related to his failure to have indemnity cover in respect of the period May 2001 to October 2001.
- (d) Again, Mr Chater had had insurance cover in place for the May 2001 to October 2001 period, provided by AXA, but had only discovered that this was inadequate when he was asked by the PCC to produce evidence of his professional indemnity insurance. As soon as Mr Chater discovered that his AXA policy did not provide an indemnity for his professional practice, he acquired alternative insurance, which continues in effect to date.
- (e) Part of Mr Chater's case before the PCC on 2 and 3 November 2005 was that the GDC had made a mistake in breaking the period without cover (May 2000 to October 2001) into two parts. Mr Chater had continuously held indemnity

cover before May 2000 with a Dentists' Defence organisation. Due to financial difficulties he had looked for a cheaper alternative and had settled on a 'practice policy' which he had not realised was different from a full indemnity policy. Both policies which were subject to the charges for both hearings were practice policies.

- (f) The GDC's position was that each policy could be considered a separate instance of SPM. However, it was accepted by the GDC that given the particular circumstances, the fact that one continuous period had been split in two could be taken into account by the PCC in deciding sanction. The PCC's Legal Assessor adopted this position and advised the PCC that this was how it should approach these matters.

### **5.3 The PCC's findings**

The PCC found that Mr Chater's failure to hold adequate professional indemnity cover for the period 15 May 2000 to 14 May 2001 was a breach of the GDC's ethics guidance. As a result the PCC found him guilty of SPM. The PCC found him not guilty of the other charges relating to his treatment of Mr A. The PCC then concluded the case without sanction.

## **6. PUBLIC PROTECTION**

The Council did not consider that the circumstances of the case and the PCC's decision gave rise to sufficient concerns for public protection to satisfy the criteria in section 29 of the Act.

In arriving at this conclusion, the Council considered the following matters:

### **6.1 Appropriate Sanction**

- (a) In a previous case heard by the PCC, a dentist who had failed to obtain adequate indemnity cover was sanctioned by erasure. However, in that case the dentist had knowingly and dishonestly failed to obtain cover, whereas in the present case the Council noted that Mr Chater had been found by the PCC to have made an innocent error.
- (b) Mr Chater had faced two separate charges of SPM relating to one continuous period without indemnity cover, albeit under two inadequate insurance policies. In relation to both charges there had been no sanction imposed.

### **6.2 Redress for patients**

- (a) While a lack of indemnity cover for the relevant period would in itself raise public protection issues, Mr Chater is now covered and there is nothing to indicate a risk that he would not remain covered in future.
- (b) There was a risk that any patient wishing to make a claim against Mr Chater as a result of treatment provided by him during the relevant uninsured period would not have the security of being able to claim against an insurer. The Council noted, however, that no further claims had emerged to date.

### **6.3 Damage to reputation of the profession**

- (a) Public perception of the profession might be damaged by the lack of sanction against Mr Chater on two occasions. While not imposing a sanction did not

raise sufficient public protection issues to refer the case, imposing an admonishment on at least one occasion might have been a better approach.

- (b) The Council noted that the GDC has produced draft guidance (not yet implemented) which stresses the importance of maintaining indemnity insurance and advises that erasure should be considered in cases where a dentist has failed so to do.

## **7. UNDUE LENIENCE**

Having concluded that the circumstances of the case and the FPP's decision did not give rise to sufficient concerns for public protection to satisfy the criteria in section 29 of the Act, the Council was not required to consider whether the decision of the PCC to conclude the case without sanction was unduly lenient.

The Council considered it appropriate in the circumstances of this case, however, to express a view. Given the matters noted above, the Council did not consider in all the circumstances that the decision of the PCC to conclude the case without sanction was manifestly inappropriate.

## **8. OTHER ISSUES**

The Council noted that it was open to CHRE, on the basis of the judgment in *Truscott/Ruscillo*, to challenge the PCC's findings that Mr Chater was not guilty of SPM in relation to the other non-insurance related charges, where those findings led to an unduly lenient outcome.

The Council considered the PCC's findings on the other charges and concluded that, while Mr Chater's conduct had been deficient, the threshold for challenging the findings had not been crossed.

## **9. CONCLUSION**

The Council concluded that:

- (a) Based on the matters noted by the Council in sections 5, 6, 7 and 8 above, it was not desirable for the protection of members of the public for CHRE to exercise its jurisdiction to refer this case to the High Court and, although it was not required to consider it, the decision of the PCC to conclude the case without sanction was not unduly lenient.
- (b) As such, the criteria in section 29 of the Act were not fulfilled. Accordingly, there was no basis on which to exercise CHRE's discretion to refer the case to the High Court.

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**JONATHAN ASBRIDGE (Chair)**

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**DATE**